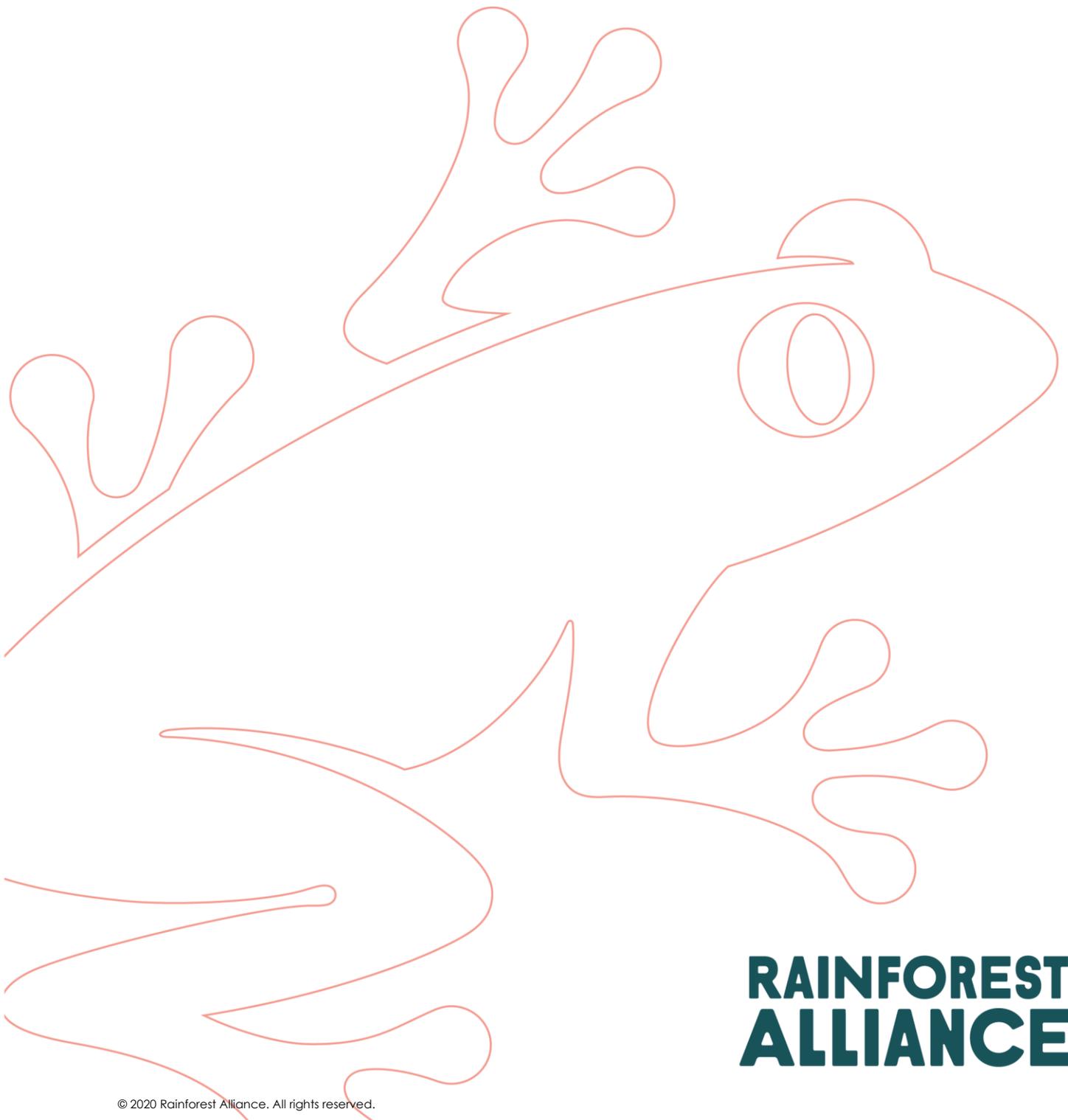


ANNEX S11

Free, Prior and Informed Consent (FPIC) Processes

Version 1.1



**RAINFOREST
ALLIANCE**



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For any question related to the precise meaning of the information contained in the translation, please refer to the official English version for clarification. Any discrepancies or differences in meaning due to translation are not binding and have no effect for auditing or certification purposes.

More information?

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Document Name:		Document Code:	Version:
Annex S11: Free, Prior and Informed Consent (FPIC) Processes		SA-S-SD-12-V1.1	V1.1
Date of first publication:	Date of revision:	Valid From:	Expires by:
June 30 th , 2020	January 31 st . 2020	July 1 st , 2020	Until further notice
Developed by:		Approved by:	
Rainforest Alliance Department Standards and Assurance		Chief Supply Chain Officer	
Linked to:			
SA-S-SD-1-V1.1 Rainforest Alliance 2020 Sustainable Agriculture Standard, Farm requirements			
Replaces:			
SA-S-SD-12-V1 Annex 11: Free, Prior and Informed Consent (FPIC) Processes			
Applicable to:			
Farm certificate holders			
Country/Region:			
All			
Crop:		Type of Certification:	
All crops in the scope of the Rainforest Alliance certification system; please see Certification Rules.		Large farms in group certificates, Individual certified farms	

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LIST OF ABBREVIATIONS

FPIC: Free, Prior and Informed Consent

HCVs: High Conservation Values

NGOs: Non-governmental Organization

OBJECTIVE

This Rainforest Alliance Annex aims to provide Certificate Holders with additional detailed information on how to reach and maintain compliance with requirements under the topic "5.8 Communities" in the Rainforest Alliance Sustainable Agriculture Standard.

SCOPE

Requirement 5.8.1 of the 2020 Rainforest Alliance Standard requires that Farm management of medium, large and individual farms respects legal and customary rights of indigenous peoples and local communities. Activities diminishing the land or resource use rights or collective interests of indigenous peoples and local communities, including areas with High Conservation Valued (HCV) 5 and 6, are conducted only after having received free, prior and informed consent (FPIC) following the process set out below which describes:

- a) The cases where an FPIC process is required
- b) The steps required in the FPIC process where necessary. The FPIC process includes:
 - Negotiated compensation for the loss of use
 - Documentation of the process, including maps that indicate the location, boundaries, and planned uses of lands and other resources over which communities have legal, customary, or user rights.

1. FPIC DEFINITION AUDIENCE

All Peoples have the right to self-determination. It is a fundamental principle in international law, embodied in the Charter of the United Nations and the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social, and Cultural Rights. Indigenous Peoples' rights to lands, territories, and natural resources are embedded within the universal right to self-determination.

Free, Prior and Informed Consent (FPIC) regarding any changes to these rights and uses is part of the right to self-determination. FPIC is a specific right that pertains to Indigenous Peoples and local communities and is recognized in the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP). It allows them to give or withhold consent to a project that may affect them or their territories. Even after they have given their consent, they can withdraw it at any stage. Furthermore, FPIC enables them to negotiate the conditions under which the project will be designed, implemented, monitored, and evaluated.

The normative framework for FPIC consists of a series of international legal instruments, including the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP), the International Labour Organization Convention 169 (ILO 169), and the Convention on Biological Diversity (CBD), among many others, as well as national laws.

FPIC is not just a result of a process to obtain consent to a particular project. It is, above all, a process by which Indigenous Peoples are able to conduct their own independent and collective discussions and decision-making. They do so in an environment where they do not feel intimidated and where they have sufficient time to discuss in their own language and in a culturally appropriate way on matters affecting their rights, lands, natural resources, territories, livelihoods, knowledge, social fabric, traditions, governance systems, and culture or heritage (tangible and intangible).



It is important to underline that the FPIC process does not guarantee consent as a result. The result of an FPIC process can be any of the following outcomes:

- Consent from the Indigenous Peoples' community on the proposed activity.
- Consent after negotiation and change of the conditions under which the project will be planned, implemented, monitored, and evaluated.
- The withholding of consent.

Requirement 5.8.1 provides specific provisions for certificate holders to conduct an FPIC process with Indigenous Peoples and local communities in cases when these communities' land or resource use rights would be diminished by proposed activities of the farm. Rainforest Alliance uses the following definition of FPIC:

The right of indigenous peoples and other local communities to make free and informed choices about the use or development of their lands and resources. FPIC is implemented through a participatory process involving all affected groups that is carried out prior to the finalization or implementation of any development plans. An FPIC process ensures that communities are not coerced or intimidated; that decisions are reached through the communities' own chosen institutions or representatives; that communities' consent is sought and freely given prior to the authorization or start of any activities; that communities have full information about the scope of any proposed development and its likely impacts on their lands, livelihoods and environment; and that ultimately their choices to give or withhold consent are respected.

All elements within FPIC are interlinked, and they should not be treated as separate elements. The first three elements (free, prior and informed) set the conditions for discussing consent as a decision-making process. This means to be considered a valid result or outcome of a collective decision-making process consent should be:

- Sought before any project, plan, or action takes place (*prior*),
- Independently decided upon (*free*),
- Based on accurate, timely, and sufficient information provided in a culturally appropriate way (*informed*).

The definitions of these terms below build on a common understanding of FPIC endorsed by the United Nations Permanent Forum on Indigenous Issues (UNPFII) at its Fourth Session in 2005, and from the UNREDD Program Guidelines on Free, Prior and Informed Consent.

Free

Free refers to consent given voluntarily and without coercion, intimidation, or manipulation. It also refers to a process that is self-directed by the community from whom consent is being sought, not controlled by expectations or timelines that are externally imposed. More specifically:

- Rights-holders determine the process, timeline, and decision-making structure.
- Information is offered transparently and objectively at the request of the rights-holders
- The process is free from coercion, bias, conditions, bribery, or rewards.
- Meetings and decisions take place at locations and times and in languages and formats determined by the rights-holders.
- All community members are free to participate regardless of gender, age, or standing.



Prior

Prior means that consent is sought sufficiently in advance of any authorization or commencement of activities, at the early stages of a development or investment plan, and not only when the need arises to obtain approval from the community. It should be noted that:

- Prior implies that time is provided to understand, access, and analyze information on the proposed activity. The amount of time required will depend on the decision-making processes of the rights-holders.
- Information must be provided before activities can be initiated, at the beginning or initiation of an activity, process, or phase of implementation, including conceptualization, design, proposal, information, execution, and following evaluation.
- The decision-making timeline established by the rights-holders must be respected, as it reflects the time needed to understand, analyze, and evaluate the activities under consideration in accordance with their own customs.

Informed

Informed refers mainly to the nature of the engagement and the type of information that should be provided prior to seeking consent and as part of the ongoing consent process. Information should be:

- Accessible, clear, consistent, accurate, and transparent
- Delivered in the local language and in a culturally appropriate format (including radio, traditional/local media, video, graphics, documentaries, photos, oral presentations, or new media)
- Objective, covering both the positive and negative potential of the proposed activities and consequences of giving or withholding consent
- Complete, including a preliminary assessment of the possible economic, social, cultural, and environmental impacts, including potential risks and benefits
- Complete, including the nature, size, pace, duration, reversibility, and scope of any proposed project, its purpose, and the location of areas that will be affected
- Delivered by culturally appropriate personnel, in culturally appropriate locations, and include capacity building of indigenous or local trainers
- Delivered with sufficient time to be understood and verified
- Accessible to the most remote, rural communities, including youth, women, the elderly, and persons with disabilities, who are sometimes neglected
- Provided on an ongoing and continuous basis throughout the FPIC process, with a view to enhancing local communication and decision-making processes



Consent

Consent refers to the collective decision made by the rights-holders and reached through the customary decision-making processes of the affected Indigenous Peoples or communities. Consent must be sought, and may be granted or withheld, according to the unique formal or informal political-administrative dynamic of each community. Indigenous peoples and local communities must be able to participate through their own freely chosen representatives while ensuring the participation of youth, women, the elderly, and persons with disabilities as much as possible. In particular, consent is:

- A freely given decision that may be a “Yes,” a “No,” or a “Yes with conditions,” including the option to reconsider if the proposed activities change or if new information relevant to the proposed activities emerges.
- A collective decision (e.g. through consensus or majority) is determined by the affected peoples in accordance with their own customs and traditions.
- The expression of rights (to self-determination, lands, resources and territories, culture).
- Given or withheld in phases, over specific periods of time for distinct stages or phases of the project activities. It is not a one-off process.

2. LEGITIMATE LAND USE RIGHTS

Requirement 5.8.2 states that.

The producer has legal and legitimate right to use the land. Upon request, this right is substantiated by ownership, leasehold, or other legal documents or by documentation of traditional or customary use rights.

In the event that indigenous peoples and local communities, current or former local residents, or other stakeholders validly dispute the right to use the land – including in relation to past dispossession, forced abandonment, or illegal action – legitimate right may be demonstrated if a conflict resolution and remediation process has been documented, implemented and accepted by the affected parties, including relevant authorities in the case of past illegal action.

This requirement always applies to all Certificate Holders and assures that the certified land users produce crops on land legally owned by them or appropriately obtained for agriculture production use. This is to ensure the certified production does not take place on land which is the subject of land conflicts with indigenous people and local communities with existing rights.

For large farms and individually certified farms, requirement 5.8.2 further specifies that:

If the dispute involves indigenous peoples and local communities, large farms and individually certified farms follow an FPIC process in accordance with the Rainforest Alliance FPIC Annex to attain the required conflict resolution and remediation.



3. APPLICABILITY

Projects or activities for which an FPIC process is required

FPIC is required if any of the following activities are proposed and could have detrimental effects on the rights, land, resources, territories, livelihoods, or food security of indigenous peoples or local communities. FPIC is required if the project or activity will:

1. Convert non-agricultural land into crop production.
2. Convert smallholder cropland used primarily for subsistence or local consumption into land growing crops for trade and consumption outside the local area.
3. Convert traditional grazing lands into other agricultural land uses that exclude or diminish the former grazing activities.
4. Increase water withdrawal in a location and to the degree that may significantly reduce the availability of water for other nearby or downstream human users.
5. Eliminate or diminish access of local peoples or communities to natural ecosystems or other areas currently used for hunting, fishing, or extraction of plants or their parts for food, fiber, fuel, medicines, or other products.
6. Take place on or near areas used by local peoples for traditional cultural or religious activities or is classified as High Conservation Value (HCV) areas under the following definitions:

HCV5: Sites and resources fundamental for satisfying the basic necessities of local communities or indigenous peoples (for livelihoods, health, nutrition, water, etc.), identified through engagement with these communities or indigenous peoples.

HCV6: Sites, resources, habitats and landscapes of global or national cultural, archaeological or historical significance, and/or of critical cultural, ecological, economic or religious/sacred importance for the traditional cultures of local communities or indigenous peoples, identified through engagement with these local communities or indigenous peoples.

For all operations planning to initiate any projects or activities for which an FPIC process is required (as defined above), shall apply Step 1 of Section 4 ('Conducting the FPIC,' see below). Based on the outcomes of Step 1:

1. If the proposed projects or activities do not diminish the rights of indigenous peoples and local communities, the applicant is considered **compliant** with requirement 5.8.1.
2. If the proposed projects or activities diminish the land or resource use rights or collective interests of indigenous peoples or local communities (including HCVs 5 or 6), the applicant is **considered compliant only if** steps 2 - 6 of Section 4 (conducting the FPIC) have been implemented.

Operations which do not require an FPIC process

Certified operations that held a valid Rainforest Alliance certificate as of June 1st, 2020 and **are not** planning to initiate any projects or activities for which an FPIC process is required (as defined in the section above), or scope expansions after June 1st, 2020, are considered to have complied with requirement 5.8.1 by virtue of having complied with critical criterion 4.20 of the 2017 Rainforest Alliance, Sustainable Agriculture Standard.

Requirement 5.8.1 is **not applicable** for Operations newly seeking certification from June 1st, 2020 onward, and which are not planning to initiate any projects or activities for which an FPIC process is required (as defined in the section above).



4. CONDUCTING AN FPIC PROCESS

A Free Prior and Informed Consent (FPIC) process should follow the six steps summarized below. For more detailed information about how to conduct FPIC processes, the technical guidance documents cited in the References section can be consulted.

FIGURE 1: STEPS FOR THE FREE, PRIOR AND INFORMED CONSENT PROCESS



Step 1 – Scoping

- a) Identify indigenous peoples and local communities with potential interests in the land or resources that the farm proposes to develop, appropriate, utilize, or who may be impacted by the proposed activity, project, or expansion.
- b) Identify any rights, claims, or interests of these communities to land or resources (e.g., water rights, water access points, or rights to hunt or extract forest products) in or adjacent to the site(s) or area(s) of the proposed activity, project, or expansion.
- c) Identify any sites, resources, habitats, and landscapes of global or national cultural, archaeological or historical significance, and/or of critical cultural, ecological, economic, or religious/sacred importance for the traditional cultures of local communities or indigenous peoples which may be impacted by the proposed activity, project, or expansion. These sites should be identified through engagement with these local communities or indigenous peoples.
- d) Identify whether the proposed activity, project, or expansion may diminish the rights, claims, or interests identified in Steps 1 – b and c. This is the case in circumstances including, but not limited to, the following:
 - i. Land currently used by communities, or members of a community, for primary subsistence activities would no longer be available to these people for these activities. For instance, if smallholder farm plots growing mainly crops for family or local consumption would be converted to plantation agriculture, or if traditional pastoral grazing lands would be enclosed and made unavailable to their former pastoralist users.
 - ii. Communities, or members of a community, would cease to have access, or would have diminished access, to natural resources used for local consumption or subsistence. For instance, if:
 - Access to streams or other water bodies for communities' drinking water, washing, or livestock watering would be eliminated or diminished,
 - Access to traditional hunting or fishing areas would be eliminated or diminished,
 - Access to, or rights to extract, plants or plant parts such as firewood, medicinal plants, or fruits would be eliminated or diminished
 - Statutory or customary allocation of resources, such as permissions to take water from local rivers, would change in a way that diminishes communities' allocation or use of these resources.



- iii. Communities, or members of a community, would cease to have access, or would have diminished access, to sites with religious/sacred or cultural importance. For instance, if they were unable to access sites where traditional ceremonies are held.

Step 2 – Planning, research and assessment

- a) Conduct participatory mapping of land and natural resource use.
- b) Assess potential impacts (positive and negative) of the project.
- c) Involve independent parties to support the mapping and assessment process. Communities have the right to choose an independent party that can support them in the FPIC process. These independent parties could include local NGOs. Independent parties should also be involved in the FPIC process in order to act as an impartial verifier of compliance with the steps and agreements of the FPIC process.
- d) Re-define and revise the project, if necessary, to address potential impacts relative to the rights of indigenous peoples and local communities.

Step 3 – Consultation

- a) Provide community representatives with a description of project activities, benefits, and impacts, presented in a manner that is accessible and appropriate to community representatives' education levels and to the cultural context.
- b) Allow time for the community to consult internally regarding the acceptability of the proposed project.
- c) Consult the community to determine if they will agree to the project (STOP / GO decision), and under what conditions.
- d) Re-define and revise the project, if necessary, to address the concerns raised by the community during the consultation.

Step 4 – Negotiation

- a) If the community is amenable to the project, negotiate terms of agreement for proceeding, including provisions such as continued access to the affected lands and resources, just and fair compensation for loss of use of land and resources, commensurate with such loss, and/or an equitable share in the project benefits.
- b) Facilitate access to legal advice for communities to support them in the negotiation process if necessary. Legal advice and access to independent parties should be available to communities throughout the FPIC process, but especially in the negotiation phase.

Develop a plan for participatory monitoring and conflict resolution, which includes an agreed mechanism for the community and its members to raise grievances and have these grievances duly considered and resolved



Step 5 – Agreement

- a) At the end of the consultation and negotiation process, agree clearly with community representatives whether they accept the proposed activity, project, or expansion (STOP / GO decision) and the conditions that must be met for their agreement.
- b) Finalize the agreement, including all the agreed conditions and secure endorsement from any other relevant stakeholders, such as the local authorities, as necessary.

Step 6 – Implementation

- a) Implement the agreement, including the agreed-upon forms of compensation, benefit-sharing, and/or continued access or other conditions (as applicable).
- b) Implement the participatory monitoring and conflict resolution plan.

REFERENCES

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