

## Module 1: Concept, Elements and Rationale for FPIC

### Introduction:

This module aims to orient the project personnel on the concept of Free Prior and Informed Consent. It provides general background on the overall context of indigenous peoples and how FPIC ensures their right to self-determination, protects their interests, and takes into consideration their concerns. It also elaborates on the features and key elements of FPIC, its relevance in Green-Ag project and Mizoram in particular with a hypothetical example for better understanding of users of this document.

### 1.1 Who are Indigenous Peoples?

There is no single universal definition of Indigenous Peoples due to diversities between the regions and the countries, and the differences in background, culture, history and conditions. However, there are certain set of common characteristics, shared by Indigenous Peoples across the world. They are as follows:

- They live within, or are attached to, geographically distinct traditional habitats or ancestral territories,
- They self- identify themselves as being part of a distinct cultural group, descended from groups present in the area before modern states were created and current borders defined;
- They are inheritors and practitioners of unique cultures and social identities handed down through generations. This may include aspects of languages, knowledge systems and beliefs, religion and spiritual values, laws and institutions, separate from the mainstream or dominant society or culture;
- They possess invaluable knowledge of practices for the sustainable management of natural resources;
- They have experienced or are experiencing subjugation, marginalization and exclusion

**Note:** The recognition or identification of certain groups as “Indigenous Peoples” is not dependent on whether the National/State Governments have recognized them as such.

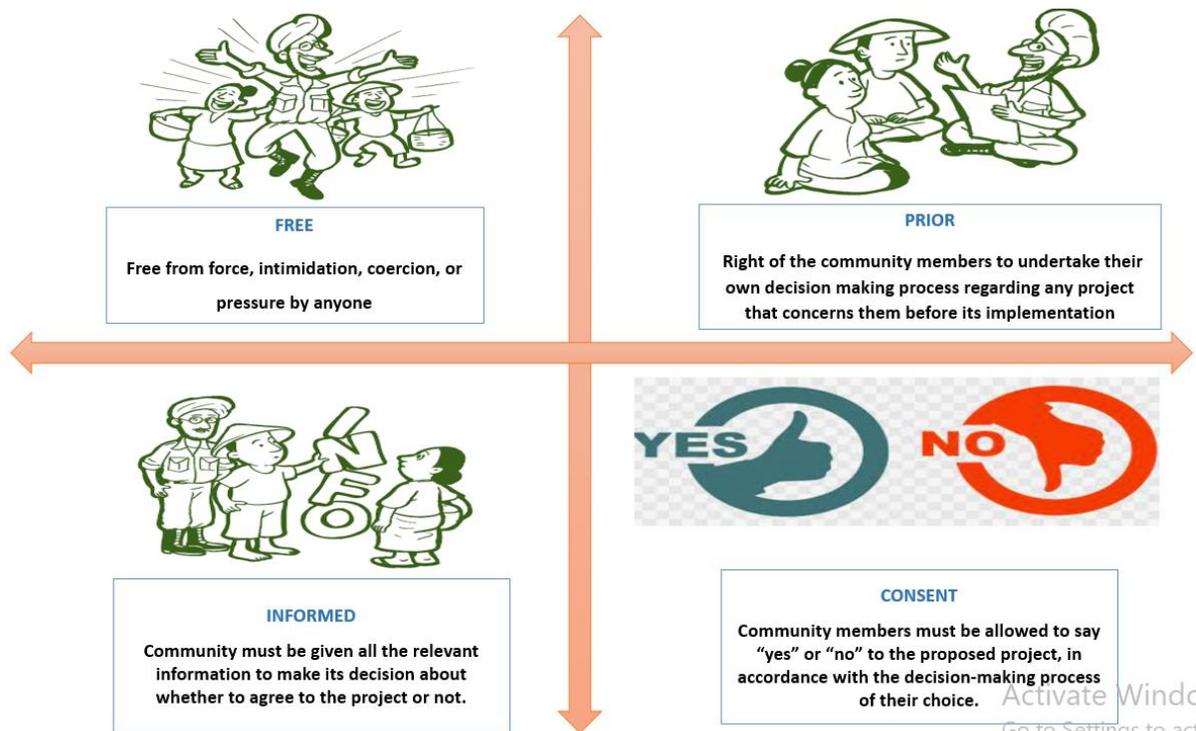
### 1.2 What is Free Prior Informed Consent?

- Free, prior and informed consent (FPIC) is a **right held by Indigenous Peoples**. It enables them to say a “yes” or “no” to a proposed project or intervention that affect their land, territories, natural resources and livelihoods.

- It empowers indigenous communities to **negotiate the conditions** under which a project will be designed, implemented, monitored and evaluated in their areas of inhabitation.
- It is a **collective decision and not an individual decision**. The decision is an outcome of collaborative discussions, deliberations and consensus building among the communities.
- It is an **iterative process and not a one off-process** and involves series of consultations, dialogues, exchanges and interactions between the project representatives and the indigenous peoples, throughout the project cycle, before arriving at a decision.

### 1.3 Key Elements of FPIC

- There are four elements in FPIC – **Free, Prior, Informed and Consent**.
- All the elements **are interlinked and complement each other** and hence, should not be treated separately.
- The first three elements (free, prior and informed) qualify and set conditions of consent as a decision-making process.



## 1.4 Understanding the Differences between Consultation and Consent

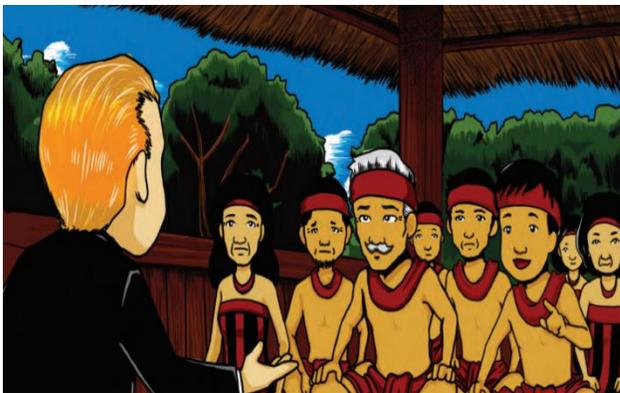
- When indigenous peoples agree to take part in the consultation process, it should not be presumed that they have given their consent to the proposed project.
- Consultations precede consent giving.
- Consent is arrived at through a collective decision making process after series of consultations, dialogues, exchanges and interactions among and between the communities and project representatives

### CONSULTATION

A mechanism for information sharing, discussions and for expressing and exchanging views and opinions on the proposed project activities between the indigenous communities and project representatives.

### CONSENT – YES or NO

An end product of a collective but independent decision-making process regarding the proposed project after series of iterative consultations between the indigenous communities and project representatives.



### 1.4.1 Different forms of Consent

Please note that consent from indigenous communities could be either of the following:

- 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 project emerges

**Consent, once given, can also be withdrawn at any stage of the project implementation**



## 1.5 Rationale – Why do we need FPIC?

- Indigenous peoples are providers of valuable knowledge and skills that contribute to sustainable development and natural resources management and their practices have demonstrated great adaptiveness and resilience and are custodians of rich biodiversity
- Despite their critical role in conservation, these indigenous peoples across the world face severe adversities with many communities being decimated, dispossessed of their lands and forcibly relocated.
- They typically have higher rates of poverty, food insecurity and malnutrition than non-indigenous populations. While accounting for only five percent of the world's population, they constitute 15 percent of its poor.
- There has been increasing global recognition for protecting the rights of indigenous peoples as they hold some of today's answers to tomorrow's challenges.
- FPIC as a process gives indigenous peoples the freedom to determine their own development path and builds sense of ownership among them towards projects.

### 1.5.1 Why in Green-Ag Project?

- India is culturally a highly diverse nation. The phrase “indigenous peoples” is not formally used in India. The Constitution of India has recognized special groups of people as “Scheduled Tribes” –and a 2011 Supreme Court ruling has equated these as indigenous peoples of India.
- The Green-Ag project's districts and landscapes have a diversity of ethnic and caste communities. As per the Ministry of Tribal Affairs, the number of tribal communities recognized as Scheduled Tribes in each of the project states are -- Madhya Pradesh (46), Mizoram (15), Odisha (62), Rajasthan (12) and Uttarakhand (5).
- The Fifth and Sixth Schedules of the Indian Constitution carve out a separate legal and administrative framework for certain designated tribal majority areas within the territory of India.

- The Fifth Schedule designates tribal majority areas in ten tribal minority States within peninsular India that also includes Green-Ag project's districts such as Morena in Madhya Pradesh and Mayurbhanj in Odisha.
- The Sixth Schedule designates such tribal majority areas in Northeastern States, including Assam, Meghalaya, Mizoram, and Tripura. Of these, Mizoram is one of the project States.

### **1.5.2 Why particularly in Mizoram?**

The State of Mizoram has 94.5% of population belonging to diverse tribal origins, who are designated as "Scheduled Tribes", as per Schedule VI of the Constitution. It is the State with highest proportion of Scheduled Tribes in the country. Hence, this warrants for a meticulous design and implementation of FPIC process in the project districts in this particular State.

The concept of FPIC has been further demystified with the help of hypothetical examples, in the context of Mizoram. Please refer to **[Annexure 1]**.

## Annexure 1

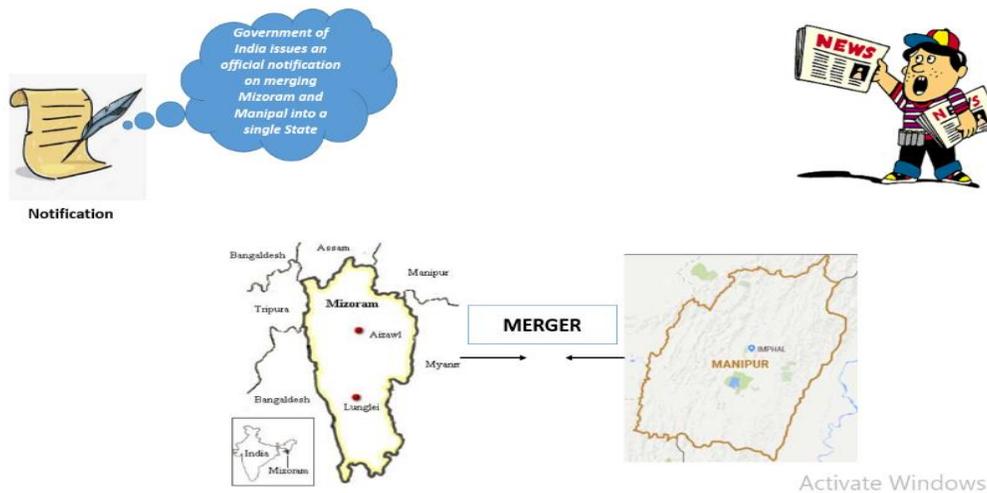
Below are set of hypothetical scenarios that explain the need and relevance of iterative consultations, consent-seeking, agreement and withdrawal of consent – the key aspects of FPIC.

### Scenario 1:

Let us supposedly assume that the Government of India (GoI) has released an official notification stating the merger of Mizoram and Manipur, without prior consultations with the State Government/political leadership, religious leadership (like Church), or any other representatives of local communities and other marginalized social groups in the State of Mizoram. Additionally, the GoI has announced a large economic package for the people of Mizoram, assuring them of increased economic development, employment and regional development

Please see the following illustrations for a better comprehension of the scenario.

### 1. Government of India (GoI's) notification on merger of Mizoram and Manipur



## 2. Reaction of People in Mizoram



*People in Mizoram are likely to be very angry and will protest against such a decision*

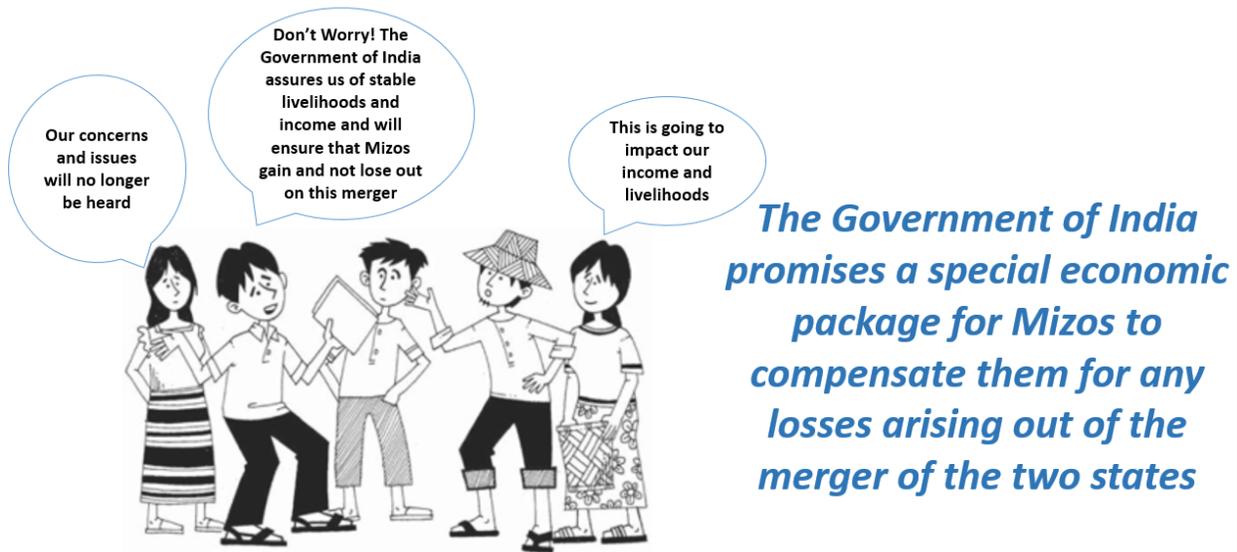
## 3. Why are people in Mizoram so angry about the GoI's decision?



*Known as land of diverse tribes and races of people living together, Mizoram has a rich culture and a distinct identity of its own.*

*Merging with another state may lead to erosion of such unique culture*

## 4. Announcement of Special Economic Package for Mizoram People



### Scenario 2:

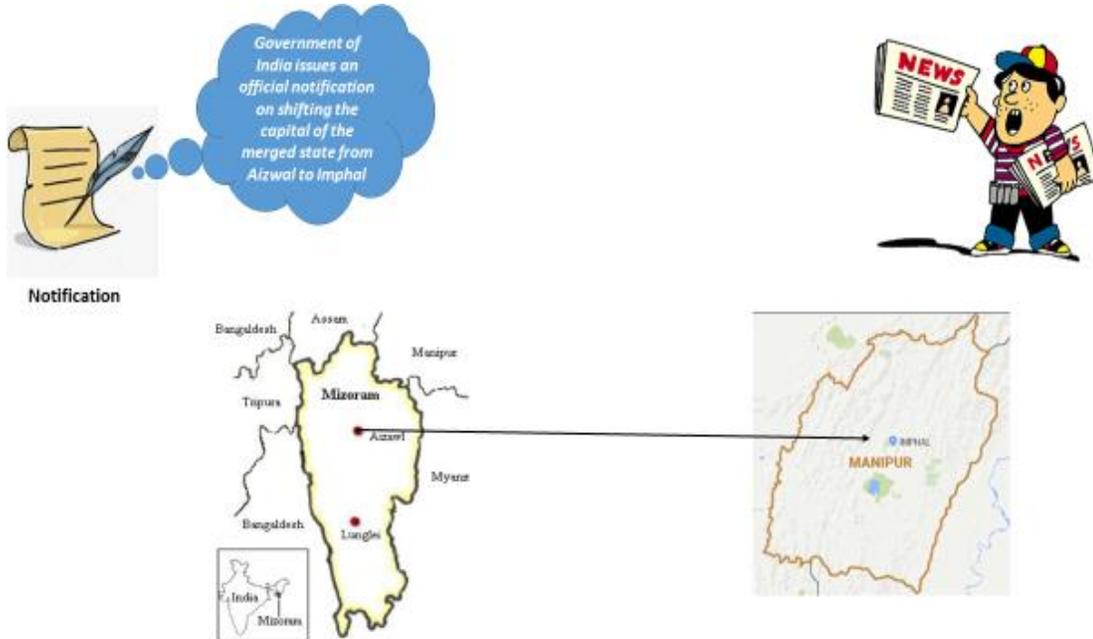
Let us suppose that, the Government of India (GoI) holds series of consultations and discussions with key representatives of stakeholders of Mizoram and Manipur and reaches an agreement with them for the proposed merger. All of them have mutually agreed to Aizawl as the designated Capital of the merged State. The written agreement is duly signed by both the parties (i.e. the representatives of the States and the GoI). The States of Mizoram and Manipur are finally merged.

Now, the Government of India issues an official notification stating the capital of the merged State will be shifted from Aizawl to Imphal for ease of governance and effective administration of the merged State. This decision was announced without any prior consultations and consent from the State Government or any key representatives from the State. Such a decision might result in erosion of rich heritage and culture of people in Mizoram and deny them of any special privileges or benefits that they might otherwise have enjoyed with Aizawl as their capital.

Further, the GoI expresses its inability to release the special package to the Mizoram people, stating deficit of funds with the exchequer. In this scenario, the actions of the GoI are clearly in contravention of the provisions in the agreement.

Please see the following illustrations for a better comprehension of the scenario.

## 1. Government of India's official notification to shift the capital of the merged State



## 2. Reaction of People in Mizoram



### 3. Shortage of Funds with the GoI for the Economic Package



*Sorry! No money for special economic package !  
Our reserves are dried up. Maybe we can consider this sometime later*

***The Govt. of India merges both the States and now says that there is no money for the promised economic package to the Mizos.***

### 4. Reactions of People



*We were promised so many benefits for accepting the merger and formation of a new State. Now that merger has happened, no one cares to talk about the economic package that was promised to us.*

*We feel alienated in this new land. We are not treated properly. It is the responsibility of the Government to regularly oversee how we are doing and have frequent interactions with us to know the ground realities*

*We would want to revoke our consent. No one has a right to infringe on our rights to our lands and territories*

*The Govt. of India has merged both the States. But after the merger, it has never reached out to the Mizo communities to listen to our concerns or problems*

*All this happened against our wishes. We feel cheated ! What about us ? Our tribal communities are the most neglected always.*

### **Learnings from both the scenarios for the project:**

As we analyze both the scenarios mentioned above and apply the same in the context of our project,

- It helps us determine important prerequisite requirements that a project needs to be mindful of during its implementation.
- Adherence to such requirements paves way for an effective FPIC process and minimizes risks (such as disputes and other forms of conflict) and allows building of a trust- based relationship between the project representatives and indigenous communities.
- Participatory and inclusive consultations and discussions with representatives of various stakeholders is a prerequisite, prior to implementation of any activities that might affect them
- Once consent given could be withdrawn at any stage by the stakeholders in case of clear contravention of the mutual agreement.



**This what FPIC talks about !**