

CASE STUDY

OPERATIONALIZING FREE, PRIOR AND INFORMED CONSENT WITHIN REDD+ PROJECTS IN KENYA

Kanyinke Sena, Member of Conservation International's Indigenous Advisory Group



CONSERVATION
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A Luta Continua!

INTRODUCTION

Free, Prior and Informed Consent (FPIC) is a requirement, prerequisite and manifestation of the fundamental, inherent right of indigenous peoples to self-determination. According to Colchester and Mackay, FPIC is the collective right of indigenous peoples to participate in decision-making and to give or withhold their consent to activities affecting their lands, territories and resources or rights in general.³ Considering FPIC in the context of REDD+ is particularly important, as REDD+ has the potential to impact—positively or negatively—the ownership and user rights of indigenous peoples over their lands, territories and resources, thereby influencing their survival, well-being, cultural, spiritual and physical sustenance, which are closely linked to their lands. As such, international human rights instruments should ensure that FPIC, a rights-based principle, be applied in REDD+ programs.

In this context, with the support of Conservation International's Social Policy and Practice department, I have undertaken a study examining the application of FPIC in Kenya's REDD+ processes. I chose this topic for its current interest among REDD+ practitioners both here in Kenya and internationally, for the importance of FPIC as a process to safeguard indigenous peoples in REDD+ and for the need to spearhead FPIC in Kenya's REDD+ process.

METHODOLOGY

To inform this study, both primary and secondary data were collected using several research methods: literature reviews of available subject material, field visits, personal interviews with individuals involved in the process, and participation in a national consultation process on FPIC.

1 www.act.or.ke/

2 www.pactworld.org/cs/africa/kenya

3 Marcus Colchester and Fergus MacKay, Office of the High Commission on Human Rights (OHCHR). Accessed May 2012. www2.ohchr.org/english/issues/indigenous/docs/.../WP1.doc

REDD+ IN KENYA

Kenya is located in East Africa and has a total land area of 5.8 million hectares with a population of nearly 40 million, representing over 70 different peoples and cultures. The United Nations Population Fund (UNPFA) estimates that Kenya has over 10 million indigenous inhabitants.

The national forest cover stands at 5.9 percent with an annual deforestation rate estimated at 12,000 hectares per annum. As part of achieving its national development strategy, Kenya's VISION 2030 intends to increase its forest cover to 10 percent of the total land area through programs such as REDD+.⁴ Kenya joined the World Bank's Forest Carbon Partnership Facility (FCPF) in early 2008 and is an observer in the United Nations REDD Program (UNREDD). Both these entities are committed to ensuring the rights of indigenous peoples, and FPIC has been a key element in national and sub-national REDD+ processes. Several forest carbon pilot projects based primarily on Climate, Community and Biodiversity (CCB) standards are helping to elucidate FPIC and safeguard processes in Kenya. In addition, the current national REDD+ coordinating secretariat, with the support of several partners, is dedicated to ensuring that a proper FPIC framework is developed for REDD+ in Kenya.⁵

LEGAL AND POLICY FRAMEWORK

The legal and policy frameworks for implementing REDD+ include the following:

- Kenya Constitution, 2010 – Identifies indigenous peoples within the context of marginalized communities and provides protections and affirmative actions to ensure their collective rights. These rights include, among others, the right to property and resources, clean environment, livelihoods, culture and to participate in decision-making. The constitution also provides for equitable cost and benefit sharing in the management of national resources. While the constitution does not specifically mention FPIC, it provides the necessary frameworks for anchoring an FPIC process.
- The Environmental Management and Coordination Act, 1999 – Establishes an appropriate legal and institutional framework to manage the environment and provides for the administrative coordination of all environmental initiatives being undertaken in different sectors (e.g., water, agriculture, land, etc.) to improve the national capacity for environmental management.
- The Forest Act, 2005 and Forest Policy – These legislations provide for participatory forest governance and management and regulate the use of forest products; however, the Forest Policy has yet to be adopted, and the Forest Act does not apportion carbon rights.

Other Applicable Laws

- The Water Act, 2002
- The Wildlife (Conservation and Management) Act, Cap 376
- The Agriculture Act, Cap 318
- The Antiques and Monuments Act, Cap 215
- The Local Government Act, CAP 265
- The Fisheries Act, Cap 378
- The Trust Land Act
- The National Land Act, 2012

4 "Kenya Vision," Republic of Kenya, accessed July 10, 2012, <http://www.vision2030.go.ke/>

5 A. Gichu, interview by Kanyinke Sena, Nairobi, April 14, 2012.

Forest management in Kenya is also determined by other national programs, such as Vision 2030, the National Climate Change Response Strategy, the Arid and Semi-Arid Lands Policy, Land Use Policy, Energy Policy, and charcoal regulation measures, to name a few.

Various international laws will also apply to REDD+ in Kenya. These include the Framework Convention on Climate Change (UNFCCC), the Convention on Biological Diversity (CBD), the Convention on International Trade in Endangered Species CITES, the Convention to Combat Desertification and others.

Note: The Kenya Constitution 2010 states that any international laws Kenya ratifies automatically become applicable in Kenya.

FPIC IN THE KENYAN CONTEXT

In the Kenyan context, the right to FPIC has been mostly understood within commercial transactions and commercial law. Agreements on environmental management, both nationally and locally, have largely been reached using other participatory decision-making processes in the territories of several indigenous peoples. Drawing a clear distinction between FPIC and other decision-making processes is, therefore, blurred in the Kenyan context.

The legal and administrative structures for making FPIC operational are also unclear in Kenya. The national REDD+ process has looked to UNREDD Guidelines for direction on making FPIC operational. But these guidelines do not answer pertinent questions, such as at what level FPIC should be sought, and who should give the consent between indigenous peoples and local communities; nor do the UNREDD guidelines prescribe clear structures for obtaining consent.

As there is no current law defining carbon rights, it is unclear who should grant consent to REDD+ carbon.⁶ The problem is compounded in a large part of the country where land tenure is unclear and most indigenous peoples' lands are thus held as Trust Lands by local authorities.⁷ In communities with clear tenure, capitalism and prior land laws have brought about the fragmentation of lands into individual freeholds, so that community decision-making structures that would have enabled FPIC have collapsed. However, on the other hand, it may be easier to obtain FPIC from a large group of individual land owners than from a community. Land fragmentation has also contributed to increased land sales, mostly to non-indigenous communities, further disintegrating the collective decision making structures of indigenous peoples.

Corruption, unclear land tenure, weak laws and policy implementation have exacerbated conflicts over land, territories and resources, further undermining the decision-making structures of indigenous peoples. The prospect of carbon credits money from REDD+ is adding to the risks.

Finally, the financial and human resources needed to make FPIC operational are in short supply in the country. Although Kenya's Readiness Preparation Proposal (RPP) allocates almost US \$600,000 to a consultation and participation process, this amount is insufficient to undertake FPIC in all the territories of indigenous peoples in the country.⁸

6 Gichu, interview.

7 K.D. Singoe'i, interview by Kanyinke Sena, Nairobi, May 1, 2012

8 Gichu, interview.

KEY QUESTIONS DRIVING KENYA'S REDD+ FPIC CONSULTATION

- What should be the criteria for determining which groups FPIC should be extended to?
- How can the national program support rights-holders in identifying and/or creating their own representative structures?
- What should be the criteria for determining the validity of groups claiming to be relevant rights-holders?
- What level is sufficient for an FPIC process (village, community, groups of communities, or self-elected regional/national platforms)
- What are the best processes to ensure a two-way information feedback?

Table: *Selected Questions and Responses*

Questions	Responses
How can the national program support rights-holders in identifying and/or creating their own representative structures?	<ul style="list-style-type: none"> • Facilitate consultation • Create structures • Provide resources • Register • Legally recognize
What should be the criteria for determining which groups FPIC should be extended to?	<ul style="list-style-type: none"> • Land ownership • Indigeneity • Marginalization • Recognition by government • Carbon rights • Nature-based livelihoods
What level is sufficient for an FPIC process (village, community, groups of communities, or self-elected regional/national platforms)?	<ul style="list-style-type: none"> • Community level • Project level • Sub-national level

OVERVIEW OF THE FPIC/DECISION-MAKING PROCESS IN KENYA'S REDD+ STRATEGY

The decision-making process that will inform Kenya's REDD+ strategy is outlined in Kenya's Readiness Preparation Proposal (RPP) of August, 2010. Component 1.a of the RPP outlines structures to manage REDD+ at the national level, while component 1.b outlines the consultation and participation processes that will be used. The policy, legal and institutional arrangements underpinning REDD+ strategies and measures will be designed within the institutional framework set out by the National Climate Change Response Strategy.⁹

⁹ Gichu, interview.

The national management of Kenya's REDD+ strategy will include a National REDD+ Steering Committee (RSC), which will be the highest decision-making body; a Technical Working Group (TWG), which will play a key advisory role for the National REDD+ Steering Committee, and a National REDD+ Coordination Office (NRCO), which will oversee the day-to-day operations of REDD+ in Kenya.¹⁰

At the local level, the REDD + process is structured such that indigenous peoples would engage in REDD+ through their Community Forests Associations (CFAs). These CFAs work with the 10 local conservancy officers across the country. The structure also ensures that a fulltime officer works on indigenous and gender issues at the national level. Indigenous peoples are also part of the Technical Working Group, but it is unclear how they will be represented in the National Steering Committee.

It is not clear how an FPIC process would work within this decision-making structure. A key question is what power would be conferred on the indigenous members of the Technical Working Group to make binding decisions that will affect the land and territories of indigenous peoples. It is hoped, however, that a thorough consultative and participatory process, especially at the local level, would address many of these challenges. Various REDD+ component taskforces will be established as and when the need arises to address key issues.

The consultative and participatory approach proposed by the RPP focuses on two main levels: active engagement and communication on the overall implementation of R-PP and REDD+ advances in the country, and, secondly, engagement in the design, testing and evaluation of targeted REDD+ strategies that R-PP will implement. It has been proposed that the consultative process will be done through existing government and sectorial channels, including those specific to indigenous peoples.¹¹ These include the Indigenous Peoples National Steering Committee on Climate Change (IPNSCCC), which was formed about two years ago by activists who follow climate change negotiations and provides an existing channel for indigenous people to influence environmental issues in Kenya. Although still in its nascent stages, the organization has a national steering committee that works with regional indigenous organizations across the country to champion the rights and interests of indigenous peoples in national adaptation and mitigation processes. The secretariat is currently hosted by the Manyoito Pastoralists Integrated Development Organization (MPIDO).¹²

Other organizations that work with indigenous peoples include national NGOs like the Pastoralist Development Network of Kenya and the Hunter Gatherer Forum, community-focused NGOs like Ogiek People Development Organization and Friends of Lake Turkana, church organizations and Community Forests Associations.

Traditional decision-making structures still exist in more rural settings, especially the territories of pastoral communities. Although traditional decision-making structures among hunter-gatherer forest communities are weak, there are efforts by some, like the Ogiek Council of Elders, to establish and support such community decision-making structures.

10 <http://www.kenyaforestservice.org/documents/Revised%20RPP.pdf>

11 Gichu, interview.

12 M. Soikan, interview by Kanyinke Sena, Narok, May 5, 2012.

Under Kenya's new constitution, the legislative process goes through nine stages that constitute a "participatory process with all stakeholders."¹³ This process starts with a raw draft bill, produced consultatively from a line ministry, and goes through the Attorney General (AG) and the Kenya Law Reform Commission (KLRC), and then to the Committee on the Implementation of the Constitution (CIC), which subjects the bill to public comment to seek consensus and fill any gaps of a constitutional nature that were not addressed during the line ministry public consultations. The CIC then convenes a roundtable over the draft bill to finalize it, incorporating the participation of the AG, the KLRC, the line ministries and any institution involved in its generation. The AG then prepares the bill and releases it to the Cabinet for approval. The Cabinet receives the proposed bill, makes any needed changes to it and finalizes it before it is approved. The AG then publishes the bill as approved by Cabinet, and it is tabled in Parliament for debate. After Parliament debates and passes the bill, it is taken back to the AG for preparation of the vellum copy. Finally, it is handed over to the President for assent, and the process ends when the President assents to the bill by signing it.¹⁴

The REDD+ process will not involve the formulation of a law, as it is instead a cross-sectoral process. However, parts of the Kenya RPP may have to be realigned with the new constitution, as it was formed while Kenya was operating under the old constitution.

13 "Commission for the Implimentation of the Constitution," <http://www.cickenya.org/index.php/about-us#.UMbKoWcZi4w>.

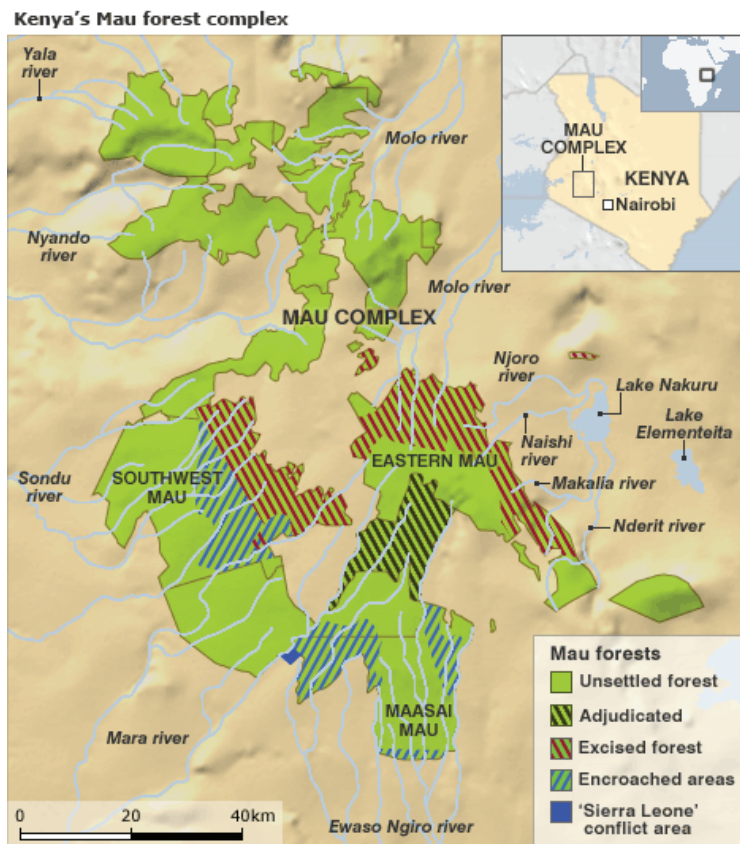
14 "Commission for the Implimentation of the Constitution."

FREE, PRIOR AND INFORMED CONSENT AND OTHER DECISION-MAKING PROCESSES IN THE ENOOSUPUKIA FOREST CARBON PILOT PROJECT

Kanyinke Sena and Tove Holmstrom

INTRODUCTION

Enoosupukia Forest is part of the Mau forest complex, a critical water catchment in the Rift Valley of Western Kenya.¹⁵ Enoosupukia Forest itself forms the water catchment area for the Enoosupukia and Enooseyia Rivers, which drain into Lake Natron in northern Tanzania. The area has been badly degraded and deforested by long standing illegal and ill-planned settlements, as well as by illegal extractions of forest resources.¹⁶ This has led to the drying up of rivers, massive soil erosion and, consequently, increased community vulnerability to drought and famine.¹⁷ Scarcity of water has been identified as a major source of conflict among the communities residing in the area.¹⁸ Other major challenges faced by Enoosupukia's indigenous and local communities include high levels of poverty, low levels of education, few employment opportunities to escape poverty and lack of basic infrastructure and facilities such as healthcare (in particular maternal health facilities), schools and roads.¹⁹ The indigenous people living in the area are the Ogiek and the Maasai, with the local community being the Kikuyu, who moved to the region in the mid 1980s.



The land tenure situation has been precarious: The land is held in trust by the Narok County Council, with both indigenous communities and the immigrant community laying claim to it. The growing population coupled with land grabbing and ethnic rivalries between the communities has resulted in a long

15 "Forest carbon project feasibility in Enoosupukia," LTS International and Ecometrica, 10

16 Forest carbon project feasibility in Enoosupukia, 11.

17 Forest carbon project feasibility in Enoosupukia, 11.

18 Ogiek community member, interview by Tove Holmstrom, Enoosupukia, Kenya, July 2012.

19 Local community members, male and female, interviews by Tove Holmstrom, Enoosupukia, Kenya, July 2012. Women in particular requested that the carbon credits be used to construct a maternal health facility in the area.

standing history of social conflict that plays out on three fronts,²⁰ pitting the indigenous communities against the Narok County Council, the indigenous communities against the immigrant community, and the Narok County Council against the immigrant community. This conflict took a political dimension that led to the eviction of illegal settlers from 1991 to 1993 and a human rights crusade, spearheaded by the Greenbelt Movement, from 1993 to 1996.²¹ Against this background, the engagement of indigenous and local communities therefore becomes vital in designing and implementing activities for forest conservation in Enoosupukia.²²

ENOOSUPUKIA FOREST CARBON PILOT PROJECT²³

Enoosupukia Forest Carbon Project aims to contribute to the restoration of the Enoosupukia Forest through the reforestation of 1,382 hectares of land. Local species endemic to the region will cover 1,246.22 of these hectares, while the remaining 105 hectares will be covered by managed woodlot consisting of native and naturalized species to provide timber for housing, fuel and income for the local community. It is estimated that the project will reduce emissions by 423,446 tons of carbon dioxide equivalent (CO₂e) over a sixty-year credit period, starting on Nov. 19, 2009 and ending on Nov. 18, 2069. The project falls under Voluntary Carbon Standards Sectoral Scope 14: Forest and Land Management under the Afforestation/Reforestation Agriculture, Forest and Other Land Use (AFOLU) Project category.

The project proponents are the Enoosupukia Paranae Community Forest Association and Narok County Council. Their role is to undertake the tasks of planting the forest area, including establishing nurseries, protecting the forest, sustainably managing the woodlots, engaging a Project Manager, acting as custodians of Trust Land, conducting security patrols of the project boundary, and regular engagement with the project manager (Narok County Council). Both proponents will be involved for the entire term of the project.

The project manager is the Green Belt Movement (GBM), whose role includes training and building capacity among locals to establish forest areas, monitoring, reporting and verification (MRV), registering credits, distributing financial benefits to project proponents, and maintaining communication between the project proponents and stakeholders. GBM's performance-based contract is subject to renewal in November 2029.

The establishment of the local nurseries and the development of project documentation and validation was funded by the Clinton Climate Initiative (CCI) whose role is to provide direction and funds to enable the project to overcome initial financial barriers. Its involvement will end in 2042 when they repay the loan amount.

A benefit sharing agreement was made, with the project proponents taking the lion's share, and the project manager (GBM) taking a small percentage to cover administrative costs.

20 "Forest carbon project feasibility in Enoosupukia," 8

21 S. Ngayami, interview by Kanyinke Sena, Enoosupukia, Kenya, April 2012

22 Enoosupukia Forest Carbon Pilot Project, LTS International and Ecometrica and Environmental accounting services, 2010, 12

23 Dr. Carly Green, Enoosupukia Forest Carbon Pilot Project, Version 1.0, 13th September, 2011.

FPIC AND OTHER DECISION-MAKING PROCESSES IN THE ENOOSUPUKIA FOREST CARBON PILOT PROJECT

To ascertain the process that was used to establish community agreement on the project, we collected data from a variety of sources:

- Review of available project materials
- Interviews with officials from Narok County Council
- Two field visits to collect primary data from the community. The first visit (April – May 2012) sought to ascertain the process used and collected data through 20 questionnaires over a two-week period. The second visit (July 2012) focused on the involvement of women in the FPIC/decision-making process and in the implementation of the project, as they are the primary users of forests, and their roles, rights and responsibilities shape their experiences differently from men.²⁴ As such, the second visit was meant to address a discrepancy from the first visit, in which only two of the 20 respondents were women. In the second visit, six women were interviewed over a two-day period, making the total number of female respondents eight, compared to 18 male respondents. All 26 respondents were chosen at random.

The 26 questionnaires were analyzed against the background of the Enosupukia Forest Management Plan (prepared by the Narok County Council and spanning the years 2012 – 2072), the technical feasibility study carried out by LTS International and Ecometrica (2009), as well as the project document describing the Enosupukia Forest Carbon Pilot Project (prepared and released by LTS International, Ecometrica and Environmental Accounting Services in 2011).

CHALLENGES IN COLLECTING AND ANALYZING THE DATA

The following challenges were encountered:

- Inadequate prior knowledge of the project against the time allocated for data collection hampered the data collection and required hiring a local assistant.
- Because the assistant for the second field visit had no knowledge of the local languages, we had to hire a local interpreter to help collect the data. Although we requested a female interpreter, knowing that the fieldwork would concentrate on women's perspectives, none was found, so we contracted a local male to arrange meetings with women and to interpret from the local languages to English during the meetings.
- Interpreter bias or interest. The interpreter we contracted has played a significant role in implementing the forest carbon project and is currently employed by GBM as the project manager. Because of his active involvement in the project and him being a man (as opposed to a female interpreter as we had requested), many of the female respondents may not have provided entirely honest answers, particularly on questions relating to their (women's) input and participation in the decision-making process.²⁵

24 Kathleen Rutherford, "The business case for mainstreaming gender in REDD+," (Working Draft Report, UN-REDD Programme, 2011), <http://www.undp.org/content/dam/undp/library/gender/Gender%20and%20Environment/Business%20Case%20for%20Mainstreaming%20Gender%20in%20REDD+%20REV.pdf>

25 This became evident when local Maasai and Ogiek women were interviewed, albeit for a different purpose, with a female Maasai interpreter present.

- The second onsite visit focusing on women’s input coincided with a market day, so many of the local women were at the market and unavailable to meet.
- Given the difficult, rather technical language in the questionnaire and the low level of literacy and education in the area, many respondents sometimes misunderstood the questions and provided unclear answers.

ENGAGING THE ENOOSUPUKIA COMMUNITY IN THE PROJECT

The process of preparing the Enoosupukia community for this project began in the early 1990s when the idea to restore the forest started, although the actual forest carbon project began only in September, 2009 when the Clinton Climate Initiative (CCI) identified three principal activities for the Enoosupukia project: reforesting trust land with indigenous tree species, encouraging agro forestry on adjacent private farms and establishing community woodlots. After conducting a participatory rural appraisal, stakeholder mapping and a needs assessment, the organization drafted a feasibility study and finally a management plan. These involved many meetings at the community level and in Narok. The next few pages assess the process, including its gender dimension.

FPIC/Decision-Making Map in Enoosupukia

The FPIC decision-making process is continuous: From the finances (CCI), to project administration (GBM), to land rights, livelihoods and security (NCC, CFA, communities), the wheel must turn smoothly. If, as in the case of Enoosupukia, one part does not move as smoothly as it should, the flow of the entire structure is compromised.

The Role of Women

To understand the responsibilities placed on local women and how these roles were delegated within the project management, we examined the Enoosupukia Main Report 2010 prepared by LTS International and Ecometrica and conducted interviews with women in the field. The report states that “men and women differed in their preferences relating to the scope of tree planting activities. These differences were associated with the traditional allocation of resource use: men control most resources, while women are responsible for agricultural resources. In two of the communities, Sintakara and Impeuti, women had previously planted Eucalyptus and Podocarpus, but then became frustrated when they did not have the authority to use the trees, or because men sold them without the women benefiting from the sale. Women said that for them to benefit, the planting should include fruit trees, which men traditionally have little interest in, and they should preferably be planted in cultivated areas.”²⁶

According to one female respondent, Ogiek men have traditionally spent more time in the forest than women, “because the men were doing the hunting and maintaining the beehives.”²⁷ Women collected firewood, herbs, medicinal plants and building materials for the construction of houses. One respondent stated that with the degradation of the forest, “men have become enemies of the forest because the men burn charcoal and clear the forest to earn money.” The same respondent maintained that women are not engaged in such activities because “they do not have the mandate to cut down trees or to bring in others to do so.”²⁸ Women still collect firewood, but because of the poor condition of the forest and the “decline

26 “Forest Carbon project feasibility in Enoosupukia” LTS International and Ecometrica Main report, 2010, 23

27 Ogiek female respondent, 42, Interview by Tove Holmstrom, Enoosupukia, Kenya, July 13, 2012

28 Ogiek woman, age 42, Interview by Tove Holmstrom, Enoosupukia, Kenya, July 13, 2012.

in the availability of the best firewood species,²⁹ they must do so much more frequently, as the wood that is available burns very quickly.³⁰

As reported by the female respondents during our interviews with them in July 2012, women's roles and responsibilities in the forest and in the project included planting the seedlings and weeding the forest area, whereas men were to do the preparations for the planting (digging the holes for the seedlings). One female respondent held that it was also the women's responsibility to protect and monitor the seedlings.

Another woman (Maasai, 43) said that “women do the simple work, and men the hard work, and that is OK.” Another woman (Ogiek, 52) stated that their (women's) roles and duties in the management had been assigned to them by the local men. Based on these interviews, the majority of the women seemed clear on what their duties and responsibilities were in the project. Only one female respondent said that she would like to know what, if any, her responsibilities were other than just planting the seedlings.

Women in the FPIC and Decision-Making Process

The women respondents reported that the community meetings held to discuss the project had been “mixed,” with both men and women attending. Many of the female respondents wished that women-only meetings and workshops had been held, seeing that “many women are still afraid to speak in front of men.”³¹ It was perceived that women-only meetings would give women more freedom to discuss the project. Simply put: The fact that women had attended meetings did not always amount to them actually voicing their expectations and concerns or getting their views heard and taken into account.

Although most female respondents said that they had attended the local meetings (known as Barazas), they reported that very few women had gotten the chance to attend the “bigger meetings” held in Narok. Because of this, the women were concerned that not all information was passed down to them—that is, that the community representatives who attended the higher-level meetings did not share the information with the rest of the community.

The female respondents also requested that more meetings be held once the project started to inform the communities—in particular the women—how it and the carbon credits would benefit them. One of the female respondents made it clear that “if more meetings are arranged, then more women should go.”³²

Despite some disagreement on the extent to which women's viewpoints were taken into account by their spouses or other male community members in making the decision,³³ the majority of female respondents seemed pleased with both the decision-making process and the carbon forest project itself.

With regards to paying out the carbon credits (of which one male community member said the communities will receive 80 percent), some women mentioned that they want the money to be divided equitably between women and men, with 50 percent of the revenue going to women, and the other 50 percent to men.

29 “Forest Carbon project feasibility in Enoosupukia,” 16

30 “Forest Carbon project feasibility in Enoosupukia,” 16

31 Ogiek woman, 42, interview by Tove Holmstrom, Enoosupukia, Kenya, July 13, 2012.

32 Ogiek woman, 31, Interview by Kanyinke Sena, Mpeuti, Kenya, July 13, 2012.

33 One Ogiek woman, age 58, stated that women in the area they need to be empowered to make their own decisions, and that women should decide for themselves, rather than having men decide for them.

DATA ANALYSIS

A total of 26 respondents comprised of 18 men and eight women were interviewed. They were chosen at random from six villages around Enoosupukia (Kokot, Mpeuti, “C” section, Sintakara, Enoosupukia and Olanka), and their ages ranged from 27 (youngest) to 76 years (oldest).³⁴ The majority of respondents were in the 50-60 age brackets. A major challenge was finding younger respondents, especially young female respondents. The respondents were drawn from the Ogiek community (11), Maasai (9), Kikuyu (4) and mixed (2). Twenty-four respondents had heard about FPIC, while two had not. Of those who did not know about FPIC and were asked whether they knew what decision-making process had been used in the Enoosupukia REDD+ project, the respondents replied that they had not been present at the workshop (1), or that they did know about it (whether they meant the project or the decision-making is unclear because they had been told about the project before). Four respondents had not participated in the decision-making processes on any level. One respondent who had not participated said that others from his community had been present, and that he had heard that the idea (i.e. planting trees) would prove to be good for his community in the future.³⁵

Many respondents did not answer the question regarding their level of participation in the FPIC/decision-making process. For those who did, the responses ranged from “participation in seminar/workshop (1)” “lower level” (7)³⁶ “middle level” (1) to “deciding the plan for or fate of the Enoosupukia forest” (2).

Almost all respondents (22 of the 26) said that the community was the target of the FPIC/decision-making process. Two stated that it was Narok County Council, and one each stated that it was the Clinton Foundation and GBM, respectively.

Most respondents were of the view that the FPIC/decision-making process should be undertaken with a wider group rather than having a few chosen representatives decide on the best course of action.

There was near consensus among the respondents that the whole community should give their consent or make decisions regarding the project. Only one respondent (female Maasai, age 43) said that (only) the men in the community should give consent or decide on the project. This is because “according to our customs, only men can decide on the plans.”³⁷

How Would FPIC/Decision-Making Processes Produce the Best Results?

At the community level:

1. By hearing, discussing and respecting the opinion of others (Female, 53)
2. People will sit together and decide for the future in the project (Male, 36)
3. The whole community will be included in decision making fairly (No information provided)

34 The youngest female respondent was 31 years old, the oldest 70. The youngest male respondent was 27 years, the oldest 76.

35 Male respondent, age 48, who did not know about FPIC.

36 Seven respondents, six of whom were women, had, in their point of view, partaken in FPIC/decision-making by attending meetings on the local level (Barazas).

37 Maasai woman, 43, Interview by Kanyinke Sena, Enoosupukia, Kenya, July 13, 2012.

4. By deciding on the project (Male, 76)
5. By all participating in seminar of the same (Male, 56)
6. Through participatory process (Female, 56)
7. By addressing or telling the community in a common meeting (seminar or Baraza) (Male, 57)
8. By allowing them to decide for their fate (Male, 27)
9. By discussion process (Male, 41)
10. Through discussion (Female, 39)
11. The community will fully participate in all decision making (Male, 52)
12. Through making the community informed (Male, 60)
13. By letting all members contribute in the project (Male, 55)
14. By inviting all the forest associated groups (Male, 50)
15. Educating them on the project plan/mission (Male, 67)
16. Because chance will be available for everyone to decide (Male, 48)
17. The whole community will decide for the new plan and the future use of their resources (Female, 70)
18. Everybody will participate in project progress, sharing of resources in tree planting and weeding (Male, 69)
19. By educating members through seminars (Male, 61)
20. The community will decide how they want to be in the process (Male, 28)
21. First the families discuss, then they go to Barazas (Female, 57)
22. Family consultation, then Baraza (Female, 31)
23. First through consultation in the family, then to local meeting (Female, 58)
24. Through consultation, because when people are consulted they can agree or disagree to go on with the project (Female, 42)
25. All of the community should be involved (Female, 52)
26. Men are the decision-makers in the community, so they should decide the future of the community (Female, 43)

For your community specifically:

1. Everybody will be free to contribute on decision making for their future (Male, 28)
2. There will be forest to shelter and graze our livestock during dry spell (Male 61)
3. Don't know (Male 69)

4. Hunting and gathering will be as there before because there will be plenty of tress for nectar and fruits (Female, 70)
5. Through restoration of the forest will be a gain because all will get herbs, fruits and honey so need to participate in decision making (Male 48) – Author’s Note: INTERESTING: idea is that all benefit, therefore all should partake in making the decision.
6. No idea (Male, 67)
7. By knowing the interest of each community and taking it into consideration (Male, 50)
8. Through questionnaire, i.e. asking their views and counting off the votes accepting against those who no not (Female, 39)
9. Ogiek/Dorobo will decide what kind of trees and vegetation will be good for thay specific community. (No information provided)
10. Don’t know (Male, 76)
11. No idea (Male, 41)
12. By them to specify how they should use their share (Male, 27)
13. Through discussion in a community gathering (Male, 57)
14. Don’t know (Female, 56)
15. By all participating in seminar of the same (Male, 56)
16. By letting them fully participate in decision making (Female, 53)
17. I don’t know (Male, 36)
18. Don’t have an idea (Male, 55)
19. No idea (Male, 60)
20. Through sharing resources (Male, 52)

What conditions should be in place to ensure that consent/decision-making is free?

1. By involving all people (Male, 52)
2. By considering gender, age, responsibility i.e. leadership (Male, 60)
3. Participatory condition amongst others (Male, 55)
4. By letting them be informed on what is there and what will come next and who will be doing what and why (Male, 36)
5. By agreeing to all to participate and teaching them (the community) that they own the project (Female, 53)
6. All members or stakeholders must be associated (Male, 56)

7. By inviting the leaders, community members and CFA representatives to awareness creation seminar (Female, 56)
 8. Through discussion in a common gathering (Male 57)
 9. By respecting others opinion and allowing them to decide for how the project should work (Male, 27)
 10. The condition will be by ensuring that all the stakeholders are invited for the discussion (Male, 41)
 11. Through involvement of all people (Male, 76)
 12. Through agreement signing among the parties concerned (No information provided)
 13. By considering all gender, tribal lines, ages etc. (Female, 39)
 14. All members should be present (Male, 50)
 15. Through involvement of all people in decision making (Male, 67)
 16. By making the FPIC free to all for decision (Male, 48)
 17. By letting everybody in the community know and participate in the decision making about the project (Female, 70)
 18. Through participatory process (Male, 69)
 19. By making the project that it belongs to the community (Male, 61)
 20. Freedom of expression in decision making (Male, 28)
 21. Through consultations you have a discussion and there is agreement or disagreement (Female, 42)
 22. It is hard because we do not make the decisions (Female, 43)
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What conditions should be in place to ensure that consent is prior?

1. To educate or make the community be aware of the project (Male, 28)
2. By allowing decide us for our future (Male, 61)
3. Through the acceptance of the community (Male, 69)
4. By letting the communities know that the project belongs to them but not governments or non-governmental project (Female, 70)
5. Have no idea (Male, 48)
6. By letting everybody be informed on the same (Male, 67)
7. Bringing to account the views of the participants (Male, 50)
8. By considering all gender, tribal lines, ages, etc. (Female, 39)

9. By making the relevant parties to decide for themselves (No information provided)
 10. All the concerned parties should be involved to ensure that nobody is left out in decision making (Male, 76)
 11. Through discussion (Male, 41)
 12. When all are informed on the same (Male, 27)
 13. By allowing the parties to discuss and agree on one thing or issue (Male, 57)
 14. Making all to be informed on the project (Female, 56)
 15. Through respecting ideas of others, good or bad (Male, 56)
 16. By participation of all opinion leaders and deciding for the future by accepting or not accepting the project (Female, 53)
 17. Freedom on decision making (Male, 36)
 18. By allowing people/members to decide for their fate (Male, 55)
 19. Through participatory system (Male, 60)
 20. Have to allow a meeting for all to know what is happening (Male, 52)
 21. Everyone should be involved in decision making (Female, 42)
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What conditions should be in place to ensure that consent/decision-making is informed?

1. Through seminars for the community forest association (CFA) (Male, 52)
2. Through workshop or seminar (Male, 60)
3. By training them on the project, i.e. the importance/benefit, duration etc. (Male, 55)
4. By empowering the community through seminar/workshop, etc. (Male, 36)
5. Through education of all stakeholders (Female, 53)
6. Through education (Male, 56)
7. By educating or teaching them (community) on the project (Male, 57)
8. By educating or informing them the importance and how benefits will be shared among or between the stakeholders (Male, 27)
9. Through educating us on the plan (project) (Male, 41)
10. By facilitating on empowerment idea (Male, 76)
11. Through the seminar, workshop of the community/its members (No information provided)
12. Through Baraza or seminar (Female, 39)

13. By taking leaders and community representatives to seminar or workshops for empowerment (Male, 50)
 14. By educating the communities on the mission (Male, 67)
 15. Through seminar and big Baraza that all are invited to (Male, 48)
 16. Empowering the representatives so that they will do the rest their members (Female, 70)
 17. Through intensive empowering of the community, by educating them through seminars (Male, 69)
 18. By the positive show/response of the community to the project, i.e. participating in the conservation, protection, management of the project (Male, 61)
 19. Through workshops, empowerment (Male, 28)
 20. Through education (Female, 56)
 21. When everybody is involved in decision-making (Female, 42)
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At what stage will it be satisfactorily agreed that there has been consent or a decision?

1. By agreeing on the project plantation in the area (Female, 56)
2. By agreeing in collection, i.e. in one voice (Male, 56)
3. Final stage will be agreement signing (Female, 53)
4. Through agreement (signing) (Male, 36)
5. Agreement through community representatives and others (Male, 55)
6. Contract agreement (Male 60)
7. Signing of the agreement contract, i.e. specification of responsibilities to all (Male, 52)
8. By having a common agreement (Male, 57)
9. By production of a legal document that will guide either party towards responsibilities (Male, 27)
10. By agreement by all (Male, 41)
11. Through document agreement signing (Male, 76)
12. When all the parties participate in signing the agreement document or contract document (Anonymous)
13. By resolution of agreement (Female, 39)
14. By the community/communities agreeing on project plantation (Male, 50)
15. By signing agreement letter (Male, 67)

16. Having a common agreement and respecting others' ideas or opinions (Male, 48)
17. Through the agreement, i.e. signing the contract with Narok County Council (NCC) and the Green Belt Movement (Female, 70)
18. By signing the contract (Male, 69)
19. Having a legal agreement on the project, who , when , where, why and which process (Male, 61)
20. By the voting of who like and who do not (Male, 28)
21. When there is discussion because people will say and some will say no (Female, 57)

KEY FINDINGS

- For FPIC to be successful, there must be unity of mind as to what is being agreed. This necessitates a thorough consultation process with all stakeholders in a manner that ensures the open sharing of all information. Adequate time, resources and human expertise are critical.
- The different roles and responsibilities of each participating group should be clearly understood by all from the onset.
- The decision-making structures of many indigenous communities are breaking down because of westernization, foreign religion, intermarriages and migration, among other factors. It is therefore important that clear structures be established and supported where traditional structures are non-existent, collapsing or mixed,
- Special efforts should be made to bring out the voices of historically disadvantaged constituencies like women, youth and persons with disabilities.
- Consistent and regular sharing of information is critical to keep the fire burning.
- Credibility of all participating partners is critical to promote trust and the necessary goodwill in the communities.
- Adequate resources, including human as well as financial capital, must be allocated for the FPIC process.

CONCLUSION

The right to free, prior and informed consent is critical if indigenous peoples are to achieve the right to self-determination in controlling and managing their lands and resources. FPIC ensures their consultation and participation in decision-making and can no longer be ignored in conservation programs. However, there is a huge lack of information about how FPIC processes should function at the community level, especially vis a vis other decision-making processes. More research into this topic is necessary. Indigenous peoples themselves can generate more good practices on this subject. The role of women, youth and persons with disabilities in FPIC processes also needs to be studied more deeply.

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ABOUT CONSERVATION INTERNATIONAL'S INDIGENOUS ADVISORY GROUP:

Launched at Conservation International's (CI) Board of Directors Meeting in November of 2009, the purpose of CI's Indigenous Advisory Group (IAG) is threefold. First, it is intended to build upon and strengthen existing collaborations between indigenous peoples and NGOs on REDD+ at the local, national and global scale. Secondly, it brings direct advice and feedback from indigenous experts into the climate change strategies of conservation and development NGOs, including Conservation International. Finally, the IAG promotes understanding of the needs, priorities, concerns and programs of indigenous peoples related to REDD+.