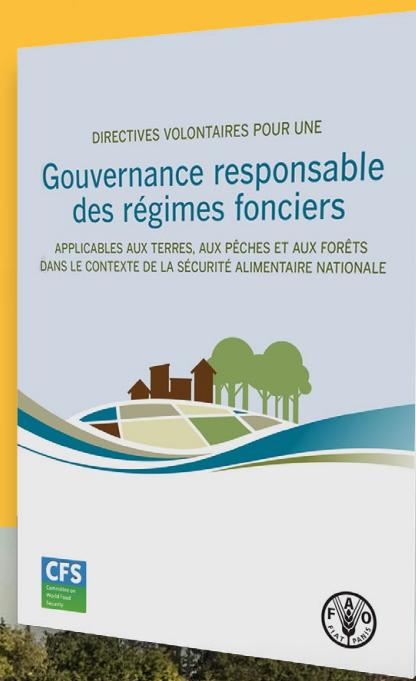




Food and Agriculture
Organization of the
United Nations

HANDBOOK

Respecting free, prior and informed consent in Tunisia



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الوكالة العقارية الفلاحية

AGENCE FONCIÈRE AGRICOLE

A TOOL TO
STRENGTHEN
LOCAL LAND
GOVERNANCE

Respecting free, prior and informed consent in Tunisia

This guide is the result of a series of capacity-building sessions on free, prior and informed consent (FPIC) organized by the Food and Agriculture Organization of the United Nations (FAO) and the Tunisian Agricultural Land Agency (Agence Foncière Agricole, the AFA) between May and November 2018.

At the sessions, 65 Agence Foncière Agricole (AFA) experts learned about the Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security (VGGT) and FPIC. The participants analysed FPIC applications and processes and, more broadly, the opportunities for the AFA to develop more participatory and inclusive approaches. The work led them to develop their own handbook so that, ultimately, they can improve their working practices and the services they provide to the beneficiaries of their projects.

What is free, prior and informed consent?

Free, prior and informed consent (FPIC) is a collective right that belongs to each member of a community. It means that communities have a right to make decisions through their own freely chosen representatives and customary or other institutions, such as local governments and locally elected representatives.

Furthermore, the reform allows stakeholders to negotiate the design, implementation, monitoring and evaluation conditions. FPIC therefore requires communities to negotiate a fair and enforceable agreement and to say "no" to any project that does not properly address the community's needs, priorities and concerns. FPIC means that communities have the right to decide their own future. Participation and consent are promoted in several development projects in Tunisia, and FPIC is a standard promoted by the international treaties that the country has ratified and adopted.

What national experiences have there been of participatory and consent-based natural resource management?

In Tunisia, Law 17/1977 of 16 March 2017 establishing the Agency for the Agrarian Reform of Public Irrigation Areas (the former name of the Agricultural Land Agency), as amended and supplemented by Law 29/2000 of 6 March 2000, underlines the importance of introducing users to the process of creating land consolidation and land development projects. Article 13 states:

"The Agency for the Agrarian Reform of Public Irrigation Areas shall strive to reconcile the desires and aspirations of owners with the legislation creating irrigation areas and the technical requirements of irrigation."

Further, Article 14 bis states that the AFA may intervene in irrigation areas equipped by the private sector only "at the request of the majority of landowners representing at least **half** of the land area" of the irrigation areas, and that it may intervene in **dry (or rainfed) areas with significant agronomic potential only** "at the request of the majority of landowners of areas representing at least **75%** of the surface area" of the irrigation areas.

Furthermore, the use of participatory methodologies has been tested and gradually rolled out under the following land consolidation and land development projects:

- **The Bricket El Argoub (dry area) land restructuring project located in the Kairouan governorate: 1 100 ha of agricultural land developed and registered by the property court (tribunal immobilier), with property certificates issued to the beneficiary farmers.**
- **The Hkim Sud (dry area) land restructuring project in the Jendouba governorate: 1 450 ha of agricultural land, of which 1 200 ha were registered by the property court and the remainder by the land ownership registry (Conservation de la Propriété Foncière) so that ownership certificates could be issued to the beneficiaries.**
- **The Sidi Shili (public irrigation areas) land consolidation project in the Béja governorate: 2 360 ha, of which 1 860 ha were registered by the property court and 470 ha by the land ownership registry.**

What international standards and frameworks exist?

FPIC is also part of other international standards and best practices that are relevant to Tunisia, such as the Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security (VGGT).

The Guidelines recommend active, free, effective, meaningful and informed consultation and participation with all those affected, including indigenous peoples and other communities with customary tenure, as set out in paragraph 3B.6:

"Consultation and participation: engaging with and seeking the support of those who, having legitimate tenure rights, could be affected by decisions, prior to decisions being taken, and responding to their contributions; taking into consideration existing power imbalances between different parties and ensuring active, free, effective, meaningful and informed participation of individuals and groups in associated decision-making processes."

(VGGT, Part 2 General matters, 3B Principles of implementation, p. 5)

FAO's Governance of Tenure Technical Guide No. 3, which addresses respecting FPIC, underlines the importance of putting communities at the centre of the process by which decisions regarding their rights and concerns are made and underscores that communities should play a decisive role in the outcomes of those processes:

"FPIC requires ensuring that communities can meaningfully participate in decision-making processes and that their concerns, priorities and preferences are accommodated in project designs, indicators, implementation and outcomes. FPIC...requires that communities can negotiate fair and enforceable outcomes and withhold their consent to a project if their needs, priorities and concerns are not adequately addressed. Consultations and negotiations that do not resolve a community's reasons for opposition or achieve consent will provide little assurance against potentially costly and disruptive conflict."

(Respecting free, prior and informed consent, Governance of Tenure Technical Guide No. 3, p. 10.)



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El Kef-Tejerouine, Tunisia. Said Touety's sheep herd. Said is a sheep breeder who lives in northwestern Tunisia with his 90-year-old mother in Tajerouine, in the governorate of El Kef, a dry and remote area on the border with Algeria. "This area is isolated and half of its population left, but I stayed," Said says.

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What links exist between international and national frameworks?

VGGT are legal documents that constitute the foundations for implementing a coherent policy for managing agricultural land resources in Tunisia. To ensure that land markets are properly regulated and supervised, agricultural land policy, investment policy and planning policies could include procedures such as public consultation. The aim would be to make transactions and arrangements more transparent, in line with the mandates of the various institutions.

The United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) states that FPIC must be obtained prior to the implementation of any measures that might involve forcibly relocating indigenous peoples (Article 10) or the approval of any project affecting the lands or territories and other resources of indigenous peoples, including the exploitation of mineral, water or other resources (Article 32). Bearing in mind the principle of self-determination and the provisions of the UNDRIP as a whole, states should obtain consent from communities on all matters concerning the rights, survival, dignity and well-being of indigenous peoples. FPIC should therefore be applied to all decisions that may affect their rights, and this duty falls under the state's duty to respect indigenous peoples' wider rights to be represented through their own institutions; to exercise their customary law; to own the lands, territories and natural resources they traditionally own, occupy or use; to self-identify; and to maintain their cultures. FPIC therefore concerns and includes the right to full participation as well as other rights contained in legally binding international treaties, including:

- the United Nations Declaration on the Rights of Indigenous Peoples;
- International Labour Organization conventions nos. 169 and 107 concerning indigenous and tribal peoples in independent countries;
- the International Covenant on Civil and Political Rights;
- the International Covenant on Economic, Social and Cultural Rights;
- the Convention on the Elimination of All Forms of Racial Discrimination;
- the Convention on Biological Diversity; and
- the African Charter on Human and Peoples' Rights.

Tunisia has adopted and ratified all these legal instruments and the government must respect these treaties, since Article 20 of the 2014 constitution states "*International agreements approved and ratified by the Assembly of the Representatives of the People have a status superior to that of laws and inferior to that of the Constitution.*" *The government has a duty to ensure that other stakeholders, including, in particular, the private sector, respect such rights by actively protecting them where necessary. Fulfilling this duty could involve taking action to create participatory and responsible management that would allow sustainable local and national development to be prioritized and planned for everyone's benefit.*



Defining FPIC



Consent: Consent is given by rights holders after communities' customary decision-making processes have taken place. Communities also have the prerogative to withhold or to give their consent subject to certain conditions and to compliance with the law. Parties seeking a community's consent must engage in active dialogue that allows them to find appropriate solutions in a climate of mutual respect and good faith and on the basis of full and equitable participation, allowing sufficient time for the community to make a decision. Communities can participate through their own, freely chosen representatives and/or through their customary or other institution representing them. The approach taken must incorporate gender equality, women's participation and, where appropriate, youth and children's participation. It is crucial to verify that stakeholders have understood consent from the perspective of the communities involved in the process.



Prior: Consent must be sought and obtained well before the authorization or the beginning of the activities.



Free: Consent must be given voluntarily, with no coercion, intimidation or manipulation, and must be the result of a process that involves the community in a meaningful way.



Informed: Local communities receive all information relating to the activity. The information must be objective, accurate, and presented in a manner or worded in a way that all members of the community can understand. Relevant information may include aspects such as:

1. the background and characteristics, scope, schedule, duration, reversibility and scale of any proposed project or activity;
2. the reason(s) or purpose(s) of the project or activity;
3. the location of areas that will be affected;
4. a preliminary assessment of the possible economic, social, cultural and environmental impacts, including potential risks and benefits;
5. personnel likely to be involved in the implementation of the project; and
6. the various procedures that the project may entail.

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Benefits of FPIC

Ultimately, respecting FPIC benefits both the state and companies in the long term by minimizing the risk of disputes escalating into conflict. This prevents the loss of investment opportunities that could disappear if investors chose to target other countries where they considered their investments to be more secure.

Respecting FPIC thus benefits all parties involved, protecting the livelihoods of local communities and strengthening the practical and financial viability and sustainability of operations. In turn, this increases investment possibilities and opportunities in developing countries.



Possible steps in the process of respecting FPIC

1. Identifying/understanding who lives in the area and who might be affected by development in the area.
2. Identifying representative institutions.
3. Holding community discussions.
4. Carrying out participatory mapping and surveys on land tenure relations.
5. Providing comprehensive, accurate, easy-to-understand information about issues in appropriate languages and through an appropriate medium, including using innovative and creative solutions. Facilitating access to other sources of information.
6. Initiating negotiations with people and representative institutions.
7. Conducting iterative negotiation (allowing communities to obtain legal, economic, social and environmental advice and NGO advice). Negotiations can address such aspects as:
 - land deals
 - benefit sharing
 - compensation
 - conflict management
 - protection of rights
 - financial and legal arrangements.
8. If community consent exists, it must be sealed by requests for community members to subscribe to the decision (for dry areas and privately managed irrigated areas).
9. Implementing the agreement.
10. Participatory monitoring of:
 - consent and dispute-resolution mechanisms;
 - ongoing communication with the people/organizations in charge of implementing the project;
 - participation in evaluation and monitoring;
 - participation and ongoing communication with the bodies responsible for dealing with land issues (the property courts, the Topography and Cadastral Office (Office de la Topographie et du Cadastre) and the land ownership registry).

Roles and responsibilities



Governments

Governments have a duty to protect the public interest while also protecting, and not ignoring, the rights of local communities.

Local communities

Local communities should help determine what shape the FPIC process will take, its pace and who will take part.

NGOs, CSOs, indigenous peoples' organizations

These organizations support local communities and monitor the FPIC process. They can also act as mediators and facilitators.

Companies and investors

Companies and investors have legal and ethical obligations to respect local communities' human rights.

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A first-hand account of FPIC's implementation in the Serrat public irrigated area

Following the FPIC training session, AFA expert Mahdi Ferchichi, who works in the Kef district, explained how he began putting his training into practice by applying the principles he studied to improve his work on the ground.

"Although AFA staff already try to obtain farmers' consent in the agency's three areas of intervention (public irrigation areas, rainfed areas and privately developed irrigation areas), they've never really thought about how that consent will eventually affect the AFA's work. The staff are often forced to design land-development projects in public irrigation areas (due to time constraints and a shortage of human and material resources), with only minimum consent, since the 'legitimacy' of those areas comes from their 'public' nature. Nevertheless, the AFA must deal with many conflicts, due in particular to no prior, explicit consent being obtained from certain farmers for certain projects.

Personally, as soon as I attended the training session, and as soon as they made me understand that FPIC and a participatory approach were important and would have a positive impact on my work and on the AFA's land restructuring practices, I stepped up my efforts to involve and bring on board farmers who own land in the Serrat public irrigated area, situated in the Besriana zone, cadastral sector B (1 100 ha), in the Kef governorate (in north-west Tunisia).

I was responsible for designing the land consolidation project in the Serrât area.

With support from farmers, I spent 4 months designing the project, which was how long I needed to obtain consent from as many beneficiaries as possible. I've managed to make good progress designing the project, finding new ways to explain concepts and developing a new methodology to convince the beneficiaries. This new approach has made my work easier and allowed me to make things clearer by openly discussing them with farmers. The new method is more effective and more fruitful for all parties at all levels."

Mahdi Ferchichi

AFA expert
(Kef district)

FPIC allows local communities and indigenous peoples to give or withhold consent for any project that affects them, their rights or their land. Once they have given their consent, they can withdraw it at any stage.





Annex

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Key aspects that government officials may consider before implementing a project

Based on all the relevant information and on advice taken from an independent expert (legal or otherwise), the entire community has the right to decide, using their own decision-making methods, whether they would like a project to be developed on their land or on land that may affect them, or whether they would like to cede those rights for a government project.

Government officials must therefore be able to answer certain questions before devising and implementing a project, namely:

- Who lives in the targeted project area, and what are their formal and informal statuses and rights under national laws and international principles?
- What is the track record of the company involved, and what voluntary standards must they abide by?
- What international instruments has the country signed, endorsed or ratified, and how are those instruments made consistent with or incorporated into national laws?
- Who represents the local communities, and how are these representatives chosen?
- For how long prior to the signing of the contract or the requests for community support are local communities involved in and informed about negotiations and decision-making processes?
- What is the legal status of the targeted project area, and under whose jurisdiction does it fall?
- What is the land base of the target intervention areas, and to what land tenure system are they subject?
- What happens to the land once the lease terminates? Has this been made clear to the local communities?
- What benefits will the project bring to the local communities?
- What risks do the local communities run by giving their consent to the project? How will they be compensated?
- How will you seek to make information about the project readily available to local communities and NGOs, in appropriate forms and languages?
- What voluntary standards must the company abide by, and how can existing national laws accommodate these?
- What criteria and procedures exist, or need to be developed, to clarify how governments should implement FPIC?
- How can you ensure that the benefits of the project accrue to local communities in an equitable, corruption-free way?
- To what extent do the relevant bodies and individuals have the human, physical, financial and knowledge capacities to perform their responsibilities?

Other information sources

This manual is based on the work of the Sustainable Development Institute (SID), Social Entrepreneurs for Sustainable Development (SESDev), the Forest Peoples Programme (FPP) and its partners, and in particular the FPIC Manual developed for communities in Liberia, which has been adapted to the context of Tunisia.

The following publications may be useful and may provide more information:

- 1** "A manual on Free, Prior and Informed Consent (FPIC): Communities in the Driving Seat", Sustainable Development Institute, Social Entrepreneurs for Sustainable Development, 2015.
- 2** Respecting free, prior and informed consent: practical guidance for governments, companies, NGOs, indigenous peoples and local communities in relation to land acquisition, Governance of tenure technical guide No. 3. FAO, Rome, 2014.

- 3** Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security, FAO, Rome, 2012.
- 4** "Note d'information, Le Consentement libre, préalable et éclairé : Un droit fondamental des communautés", Forest Peoples Programme, 2013.
- 5** "Bilan des expériences en planification locale participative : élaboration de plans de développement participatif communautaire", GIZ in partnership with Office de Développement Sylvo-Pastoral du Nord-Ouest (Office de Développement Sylvo-Pastoral du Nord-Ouest (ODESYPANO, Tunisia), Bonn, 2011.

Online training

Respecting Free, Prior and Informed Consent <http://www.fao.org/elearning/#/elc/en/course/FPIC>

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El Kef-Dahmeni, Tunisia

– Nabil Khiari. A plant nursery with a modern production system was established on 1 ha² of land and market gardening crops irrigated by the drip system are grown on another 2 ha of land.





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