



Food and Agriculture  
Organization of the  
United Nations



HANDBOOK

# Respecting free, prior and informed consent in Mauritania

A TOOL TO  
STRENGTHEN  
LOCAL LAND  
GOVERNANCE



# Respecting free, prior and informed consent in Mauritania

**This guide is the result of a training event held in Boghé, Mauritania, from 24 to 25 April 2018 on FPIC and on sharing tools developed by local partners to improve the country's local land governance. About 50 participants attended the training event, including representatives of central government, local government, farmers' organizations and women's cooperatives. Throughout the event, participants analyzed how FPIC is applied and how its processes work in their local context and they developed this guide, which presents some ideas on the direction that future investment projects in Mauritania should take.**

## What national land frameworks exist to foster participation and consent?

The roadmap for the reform currently being implemented in Mauritania gives food security stakeholders an important role so that legislation can be developed in an inclusive and participatory manner that is adapted to the country's socio-economic context, that ensures gender equality and that takes into consideration the needs of all stakeholders, including the state, local authorities, civil society, private promoters, rural municipalities, pastoralists and crop farmers. The reform will benefit from the government's policy of decentralizing local-development decisions and funding, which will also boost social dialogue at the grassroots level.

## 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.

*FPIC allows local communities to give consent to any project that directly affects them or their land.*



The reform also allows stakeholders to negotiate the design, implementation, monitoring and evaluation conditions. FPIC therefore encourages giving communities the right to negotiate a fair and binding agreement and to protect themselves from any development action that might have an economic, social, health or environmental impact on them. It means that communities have the right to negotiate and protect their own interests.

FPIC is a standard that should be promoted through improvements to the country's Agricultural Land Policy (Politique foncière agricole) through amendments to the Law on Agricultural Land (Loi sur le foncier agricole) and through international treaties adopted by international organizations in agreement with states.

## What international standards and frameworks exist?

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

The sixth principle of implementation of the guidelines specifically promotes participatory decision-making:

*"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)

For responsible and peaceful tenure governance, FAO's Governance of tenure technical guide No. 3, on Respecting free, prior and informed consent, underlines the importance of putting communities at the centre of the process by which decisions regarding their rights and concerns are made, and it underlines that communities should play a decisive role in the outcomes of those peaceful and inclusive dialogue 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."*

The technical guide recommends that negotiations take place so that communities' needs, priorities and concerns are adequately addressed. Consultations and negotiations are the best way of ensuring that all stakeholders find durable, consensus-based solutions that clearly take into account the priorities of all stakeholders, especially communities. They prevent potentially costly and destructive conflicts that destabilize ancestral social relations within communities.

(Respecting free, prior and informed consent, Governance of tenure technical guide No. 3, p. 10.)



© IPAR/Joseph Diop

A radio interview with local stakeholders during a training event held in Boghé, Mauritania, from 24 to 25 April 2018 on FPIC and on sharing tools developed by local partners to improve local land governance. The interview was broadcast in local languages through regional radio stations in the Brakna region, one of the areas in which the project entitled "Improved Land Governance for Shared Prosperity in the Senegal River Basin" (Une gouvernance foncière améliorée pour une prospérité partagée dans le bassin du fleuve Sénégal) is being implemented.

# Respecting free, prior and informed consent in Mauritania

## What links exist between international and national frameworks?

The VGGT are legal documents that constitute the foundations for implementing a coherent policy for managing agricultural land resources (land, forests/pastoral areas and fisheries) in the country. For Mauritania's Agricultural Land Policy (which addresses land, forests, pasture and fisheries) to ensure good land governance, it must establish community consultation processes to make transactions more transparent, with the processes agreed by the institutions in charge of land management for all transactions carried out by agricultural companies, and it must introduce land registration notices to raise awareness among all stakeholders and ensure they are better informed. This policy also provides key guidance for the Agricultural Land Law (Loi sur le foncier agricole, which addresses land, forests, pasture and fisheries). For example, to ensure the legitimacy and legality of land institutions, an open consultation process needs to be organized.

**FPIC will apply to all decisions, and this duty falls under the state's duty to respect communities' 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 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.

Mauritania has adopted or ratified all these legal instruments. Through its land policy, the state can draw on these international legal instruments. In addition to these legal instruments, the African Charter on Human and Peoples' Rights, which is referred to in the preamble of the Mauritanian constitution, is a binding instrument that describes the principle of FPIC as being applicable more broadly to the customary rights of women and people. Resolution 224 of the African Commission on Human and Peoples' Rights calls upon states to "ensure independent social and human rights impact assessments that guarantee free prior informed consent", with a particular focus on women's and local people's rights.





© FAO/Giampiero Diana

A young farmer holding seeds for planting. Farmers in the region are still planting their crops, despite the arrival of locust swarms, because their livelihoods depend on their harvest.

## Defining FPIC



**Consent:** The decision made by rights holders after communities' customary decision-making processes have taken place. Communities also have the prerogative to negotiate their consent or to provide it subject to certain conditions. To obtain communities' consent, parties must engage in inclusive and peaceful 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, with sufficient time allowed for the decision to be made. The communities can participate through their own, freely chosen representatives and/or through their customary or other institutions. The approach taken should incorporate gender equality, women's participation and, where appropriate, youth participation. It is crucial to verify that stakeholders have understood consent from the perspective of the communities involved in the process.



**Prior:** Consent is sought and obtained long before the authorization or commencement of activities. This aspect concerns the time requirements for community consultation and consensus processes.



**Free:** Consent is given voluntarily, with no coercion, intimidation or manipulation, and is the result of inclusive dialogue led by the community and stakeholders.



**Informed:** Local communities receive information relating to the activity in question that is objective, accurate, comprehensive and presented in a manner or worded in a way that all members of the community can understand.

Relevant information includes:

1. the background and characteristics, scope, schedule, duration, reversibility and scale of any proposed project or activity;
2. the reason(s) for 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.



# Respecting free, prior and informed consent in Mauritania

© FAO/Giampiero Diana

A farming family planting a field that regularly feeds up to ten people. Farmers in the region are still planting their crops, despite the arrival of locust swarms, because their livelihoods depend mainly on their harvest.



## Possible steps in the process of respecting FPIC

1. Identify/understand who is developing the planned project.
2. Request information on people/organizations in charge of implementing the project.
3. Hold broad discussions with the community concerned.
4. Decide on the form and method for collective decision-making and create consensus-based consultation frameworks to ensure that follow-up evaluation takes place.
5. Initiate negotiations with the people/organizations in charge of implementing the project.
6. Request an independent opinion.
7. Make a decision as a community, as an active key stakeholder, and not as a stakeholder who is passively subjected to a decision, by:
  - discussing the matter among community members; and
  - making a decision that is truly community-driven.
8. Monitoring and evaluation:
  - creating a permanent consultation framework;
  - ensuring that consent is acquired and that dispute-resolution mechanisms are in place;
  - continually communicating with the people/organizations in charge of implementing the project; and
  - participating in the evaluation and monitoring of the project.

# 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.



# Respecting free, prior and informed consent in Mauritania

## Case study: A land tenure negotiation in Boghé

**Context** The development of the 4 000 ha Boghé plain, which was completed in 2017, followed on from the development of the Casier Pilote de Boghé, a union of 12 village cooperatives covering 740 ha of land that was launched in 1983. The local population submitted their request for information and support to the President of the Republic when he visited Boghé in 2013. The request was granted and implemented on the instruction of the head of state and financed in full by the Mauritanian government. Community participation in land governance for this development was based on the following principles:

1. **Informed** consent (the sharing of objective, accurate information in a way that can be easily understood) is a principle that was not respected, which blocked the work from taking place. Without being informed in advance, communities saw earthmoving machines suddenly parked in the plain that was to be developed. The people from all the adjoining villages immediately came together and stopped the work that had begun. The Hakem and the mayor of Boghé were informed about what had happened, but neither of them knew that the work had begun or that the earthmoving machines had been brought in. It should therefore be noted that there was a lack of communication among the main stakeholders, despite the high economic, social and political stakes and the major consequences of the events on local people's lives.
2. **Prior** consent, which involves seeking consent well before work is authorized and initiated, was not respected. The local population therefore contacted the Minister of Agriculture to request more information on the purpose and nature of the work. As soon as they were informed, all the landowners held a meeting and, with the support of economic and social interest groups, implemented the Boghé initiative. Formed of seven members, the commission is responsible for: (i) holding discussions with the administration on the allocation of developed plots, (ii) registering landowners, (iii) carrying out a topographical survey of the fields, and (iv) listing plots by village and by landowner.
3. **Free** consent (without coercion, intimidation or manipulation) was respected thanks to the inclusive participation of local communities, which facilitated reaching a lasting consensus-based agreement with the state on allocating the developed areas. In terms of the plots to be shared among the local population, respecting free consent also meant that the criteria that people must meet to be allocated an irrigated plot could be established internally, based on consensus. Eligibility is based on measurable criteria. Recipients of plots (i) must be Mauritanian nationals, (ii) must never have benefited from a state-developed plot developed in the department (moughataa) of Boghé, (iii) must be at least 25 years old and have at least one dependent, and (iv) must come from the municipality of Boghé.
4. **Informed** consent, which involves sharing objective, accurate information in a way that can be easily understood, was respected. The application of informed consent improved visibility for all stakeholders and landowners through a roadmap focused on (i) studying technical files, (ii) holding meetings with elected officials and other important figures, (iii) establishing a steering committee for the development work, and (iv) holding regular public consultations where the cooperatives and villages concerned by the project are located. Informed consent greatly helped improve technical aspects of the studies to be carried out and made it possible to identify the beneficiary families and the rights holders.
5. A collective decision made by rights holders after communities' customary decision-making processes have taken place. Applying the principle of consent has given all landless residents of villages benefiting from the project easier and lasting access. In terms of responsible land governance, this collective decision taken by tenure right holders following a customary process involving the local people has made the Boghé experience **a prime example of how inclusive and peaceful dialogue on land tenure can benefit states and tenure right holders.**



© FAO/Giampiero Diana

Everyday life in Kaedi, a village in  
the Senegal valley in Mauritania



A TOOL TO  
STRENGTHEN  
LOCAL LAND  
GOVERNANCE



# Respecting free, prior and informed consent in Mauritania

## Annex

### Key aspects for the community to consider when deciding whether to lease or lend its land to a company

Based on all the relevant information and on advice taken from an independent expert (legal or otherwise), the entire population has the right to decide collectively, using their own internal decision-making methods, whether they wish to lease or sell land to a company and what payments or benefits the population will receive in exchange. If a community leases out land that the law recognizes as belonging to it:

1. For how long can the community lease the land to the company?
2. What is the size of the land area reserved for the community and what portion of its land does it want to lease to the company?
3. Which zones and natural resources is the community willing to allow the company to use and which zones and natural resources is it not willing to lease?
4. Which land and resource uses will the community authorize and which will it prohibit?
5. What payments and benefits will the community demand from the company in exchange for the use of its land?
6. Will the land-use lease be exclusive to one company, or will it be appropriate to lease the land to more than one company?
7. The community will need to decide who will sign the lease on its behalf. If only a few community representatives are chosen, they must have obtained written authorization signed by the entire community as evidence that they are duly authorized to sign.

### Examples of payment types and benefits (combinations of any of the following are possible):

- Rental costs relative to the land area ("lease"), such as a monthly fee that the business pays to the community per hectare of land that it uses. Note that the regular payment of rent is an important legal indication that the land remains the community's property.
- Royalties, usually calculated as a percentage of the company's profits, and therefore variable according to how successful the company is, but with a floor to provide a certain level of income security if the company goes through hard times and profits fall.
- Social welfare benefits, such as contributions to a community development fund or company obligations in terms of building, improving or maintaining infrastructure such as roads, bridges, schools and healthcare facilities.
- Jobs and training, which are often restricted to certain members of the community.
- Dividends paid to shareholders when the community becomes a company shareholder and receives a portion of the company profits.
- Support for new and existing smallholder or outgrower projects, thus helping the community to cultivate its own land.
- In practice, private companies involved in implementing such systems sometimes require communities to sell their produce exclusively to them, and even if they contribute either to the costs of starting up agricultural production or to the running costs, those contributions might be deducted from the profits earmarked for the community.



## Other information sources

This manual is based on the work of the Sustainable Development Institute (SID), Social Entrepreneurs for Sustainable Development (SESDev) and 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 Mauritania. The following publications may be useful and may provide more information:

"A manual on Free, Prior and Informed Consent (FPIC): Communities in the Driving Seat", Sustainable Development Institute, Social Entrepreneurs for Sustainable Development, 2015.

[www.forestpeoples.org/sites/fpp/files/training/2016/02/Communities in the Driving Seat.pdf](http://www.forestpeoples.org/sites/fpp/files/training/2016/02/Communities%20in%20the%20Driving%20Seat.pdf)

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.

[www.fao.org/3/i3496e/i3496e.pdf](http://www.fao.org/3/i3496e/i3496e.pdf)

Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security, FAO, Rome, 2012.

"Note d'information, Le Consentement libre, préalable et éclairé: Un droit fondamental des communautés", Forest Peoples Programme, 2013.

Ordinance No. 83.127 of 5 June 1983 on land and farm restructuring.

"African Charter on Human and Peoples Rights" (Nairobi, 1981).

## Online training

Respecting Free, Prior and Informed Consent

[www.fao.org/elearning/#/elc/en/course/FPIC](http://www.fao.org/elearning/#/elc/en/course/FPIC)

© IPAR/Joseph Diop

Closing session of the FPIC workshop organized by IPAR and FAO in Boghé, Mauritania on 24 and 25 May 2018.





\* This publication was produced with the assistance of Germany.



HANDBOOK

# Respecting free, prior and informed consent in Mauritania

A TOOL TO STRENGTHEN LOCAL LAND GOVERNANCE



Some rights reserved. This work is available under a CC BY-NC-SA 3.0 IGO licence