

Code of Conduct for working with Indigenous and Local Communities

Gerard A. Persoon and Tessa Minter





Published by: Tropenbos International, Wageningen, the Netherlands
Copyright: © 2011 Tropenbos International, Wageningen, the Netherlands
Texts may be reproduced for non-commercial purposes, citing the source.
Citation: Gerard Persoon and Tessa Minter. 2011. Code of Conduct for working with Indigenous and Local Communities, Tropenbos International, Wageningen, the Netherlands. vi + 28 pp
Final editing: Patricia Halladay
Layout and design: Juanita Franco
Cover Photo: Indigenous Agta residents in San Mariano (the Philippines) approve an FPIC agreement for an ethnographic film documentary (Tessa Minter 2011).
Printed by: Digigrafi, Veenendaal, the Netherlands

Available from:
Tropenbos International
P.O. Box 232
6700 AE Wageningen, the Netherlands
e-mail: tropenbos@tropenbos.org
www.tropenbos.org

Contents

Preface	ii
Acronyms	iv
1. Introduction	2
International declarations, policy guidelines and ethical codes	4
2. Free, prior and informed consent	10
What is FPIC?	11
Who gives FPIC and to whom?	11
What is the proof that you have obtained FPIC and who accepts this?	13
3. Tropenbos International's position	16
4. Ad-hoc ethical commission and research protocol	20
Implementation of FPIC process	21
Meeting ethical requirements in publications	22
Working with third parties	23
Proposed TBI Research Ethics Protocol	24
5. References	27

Preface

This Code of Conduct was prepared at the request of the Board of TBI. Its purpose is to guide TBI and its researchers in the careful consideration of ethical issues in their field work and publication activities. It provides a concise background on ethical issues related to forestry research and is as a practical tool for TBI to deal with these issues responsibly. This Code of Conduct is meant to be a living document; its effective implementation will require reflection by those involved in its use. It will need to be revised periodically in response to new legal and policy developments.

Scientific research generally aims to gather and analyse information that will be brought into the public domain through peer-reviewed publications. Once this information is published it is freely available to an audience that includes researchers at academic institutions, policy makers, the general public and private companies. Policy recommendations may be formulated on the basis of this information.

The type of research in which TBI is involved — research related to tropical rainforests in the widest sense of the word — involves a great deal of field-based data collection. Much of this information gathering takes place in territories occupied by indigenous and other forest-based communities. Members of these communities are often used as sources of information for a wide range of topics, including the local use of plants and animals, and conditions of soil, water and forests. This information is often referred to as indigenous or local ecological knowledge.

The collection and publication of such indigenous and local knowledge are subject to dispute. As a result of numerous cases of bio-piracy and an increasing global discourse on the rights of indigenous peoples, researchers are urged or forced to obey specific rules and regulations. At this moment, however, no generally accepted set of regulations is in place.

In the absence of internationally accepted regulations, it is recommended that TBI adopt a position statement and research protocol that underscore its respect for indigenous and local communities. Such an approach will foster internal discussion regarding ethical issues and will offer some protection against liability issues emerging from field situations. It will also help ensure that TBI acts responsibly in this area. This is a process for which TBI as a whole, TBI's country programmes and individual TBI researchers share responsibility.

Chapter 1 provides a brief discussion of the importance of having a Code of Conduct with respect to the use of indigenous and local ecological knowledge. It also provides an overview of some existing codes of conduct and international policy guidelines in this field.

Chapter 2 discusses the instrument of Free, Prior and Informed Consent (FPIC) and recommends that TBI adopt FPIC as its main guiding principle in dealing with indigenous and local knowledge. This chapter also presents several issues in the application of FPIC and provides suggestions as to how TBI can deal with them.

Chapter 3 presents a brief position statement for TBI to adopt. Through this statement TBI will show that it recognizes the importance of internationally accepted conventions and regulations and of applying them to its research activities.

Chapter 4 presents a protocol that relates to the position statement. We recommend that TBI integrate this protocol in proposal formats for its country programme and that it be followed by all researchers who work under TBI's auspices.

The authors would like to thank the staff, in particular Hans Vellema, and the members of the General Board of Tropenbos International for constructive comments on earlier drafts of this document. They are also grateful to Prof. Dr. Roy Ellen of the School of Anthropology and Conservation of the University of Kent at Canterbury (UK) for sharing the school's ethical protocol.

Gerard Persoon & Tessa Minter

Leiden, September 2011

Acronyms

AAA	American Association of Anthropologists
CBD	Convention on Biological Diversity
CI	Conservation International
COP4	Conference of the Parties
EU	European Union
FAO	Food and Agriculture organisation
FPIC	Free, Prior and Informed Consent
FSC	Forest Stewardship Council
ILO	International Labour Organisation
IPRA	Indigenous Peoples' Rights Act
ISE	International Society of Ethno-biology
IUCN	International Union for the Conservation of Nature
MTCC	Malaysian Timber Certification Council
NCIP	National Commission on Indigenous Peoples
NGO	Non-governmental organisation
PEFC	Programme for the Endorsement of Forest Certification
SCB	Society for Conservation Biology
TBI	Tropenbos International
TNC	The Nature Conservancy
UN	United Nations
UNDP	United Nations Development Programme
UNESCO	United Nations Educational, Scientific and Cultural Organization
US	United States
WG8(i)	Working Group on article 8(i)
WIPO	World Intellectual Property Organization



A "Maloca", traditional indigenous house, in the Colombia Amazon (Daniel Matapí, 2008).

1. Introduction

TBI's research often involves field work in forests inhabited by indigenous and local people. As documented in an earlier TBI report (Persoon et al. 2004), forest dwellers' indigenous status may have specific implications for their rights under national and international legislation. In the context of an ethical code for TBI researchers, all forest-dwellers who are part of such research should be approached following the same ethical principles, regardless of whether they have indigenous status. This document applies to both local and indigenous forest-dwelling communities.

The relationship between a researcher and members of a forest-dwelling community is complex. The researcher collects information from the forest-based community and uses it for the purpose of scientific publication, policy development or both. The information collected may be sensitive in various respects: it may contain inconvenient facts about the community (such as involvement in illegal activities); it may reveal sacred knowledge that should remain within the community; or it may open the doors to commercial exploitation of local knowledge (see Box 1 and 2).

Box 1. Patents on taro varieties from Hawaii

There are hundreds of cases involving the appropriation of traditional knowledge from indigenous peoples by outsiders, who then obtain a patent, for example, on a new variety of plant based on genetic manipulation of traditional varieties. Indigenous organizations across the world are fighting such patents, but are often confronted by powerful global corporations and complex legal procedures.

A recent example of a successful protest against an existing patent is found in Hawaii. In 1999 the University of Hawaii submitted requests for patents to the U.S. Patent Office on three new varieties of taro. In 2002 the office issued these patents, which had worldwide patent rights.

For the indigenous people of Hawaii, taro is a sacred plant. Over the centuries, farmers in Hawaii have developed approximately 300 different varieties. One of these varieties, *Mauī lehua*, is the female parent of all patented varieties. Hawaiians do not recognize exclusive ownership over any of the traditional varieties. Ownership of this knowledge is collective, recognizing the efforts of their ancestors. Hawaiians did not want a university claiming

exclusive rights to what they consider their staple food. Farmers had not granted permission to the scientists of the university, and the procedures stipulated in existing ethical codes for ethno-botanists were not followed.

Hawaiian farmers and indigenous organizations protested and demanded that the university withdraw the patent application. They argued that the patents were invalidated by considerations of "prior art" (existing knowledge pre-dating the innovation). Initially, the university refused to comply with the request, claiming intellectual property rights over the work of its scientists. Later, however, it offered to hand over the patent to an indigenous organization. The protesters refused, stating that they did not want to patent a plant handed down to them from their ancestors. The matter was concluded when the university filed legal documents with the U.S. Patent Office disclaiming proprietary interests in the hybridized taro. In June 2006 the patents were cancelled.

Source: Ritte and Kanehe (2007)



Taro is considered a sacred plant in Hawaii (Gerard Persoon, 2006).

Box 2. Agarwood, a remarkable non-timber forest product

Agarwood, also known as eaglewood or *gaharu*, is the infected wood of various species of *Aquilaria* trees that grow in the lowland forests of South and Southeast Asia. The tree develops agarwood as a defence mechanism when it is damaged. The agarwood contains a fragrant oil that is used for a variety of products, including incense, perfumes, tea, wine and medicines. Agarwood markets are mainly located in the Middle East and Far East.

Because of its high value (one kilogram of high-quality agarwood can yield as much as US\$1,000) harvesting from the wild has spread quickly. Only a few areas remain where high-quality agarwood can still be harvested from primary forests. This scarcity has stimulated the artificial production of agarwood.

Throughout South and Southeast Asia farmers have developed various techniques to stimulate the production of agarwood, including damaging the tree through nailing, drilling holes and carving scars in the trunk. More sophisticated techniques include the use of insects, fungi and chemicals.

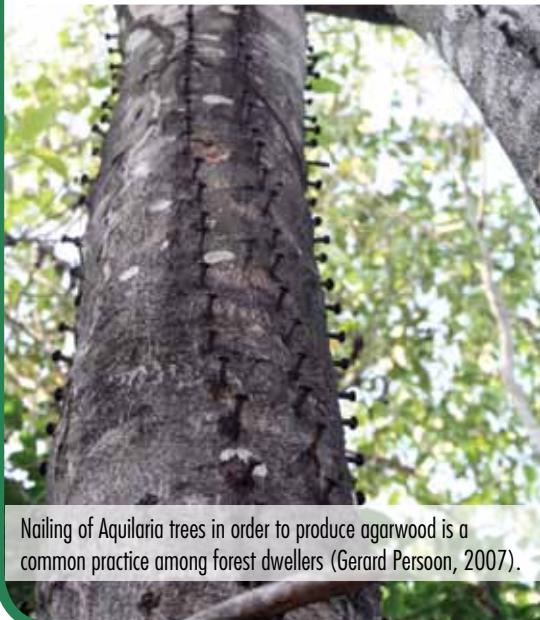
The amount of money involved in the international trade in agarwood products has attracted scientists as private investors. Extensive field tests and establishment of *Aquilaria* plantations have been undertaken to develop optimal conditions for agarwood production. Extensive plantations have even been developed in areas

such as Australia, where *Aquilaria* trees do not occur naturally. Patent applications have been submitted in a number of countries on the basis of this research, some of which have been granted.

The techniques for agarwood production all originate in forest-dwelling communities in countries such as Indonesia, Malaysia, Vietnam, Cambodia, Laos and Thailand. Forest-dwelling people developed techniques through trial and error and without claiming the right of intellectual property.

On the basis of these practices laboratories and research centres developed new and more elaborate techniques. Forest-dwelling communities run the risk of losing opportunities to generate income from this non-timber forest product if its production is taken over by others or transferred to new locations. In the future, patents granted elsewhere may further complicate the production of agarwood in areas where it was initially developed.

The example of agarwood shows how scientific research on traditional knowledge can potentially harm the livelihoods of the original knowledge holders if researchers or third parties use this knowledge to claim patents for commercial exploitation. This underscores the importance of protecting traditional knowledge and reaching benefit-sharing agreements by following sound guidelines for ethical research and publication.



Nailing of *Aquilaria* trees in order to produce agarwood is a common practice among forest dwellers (Gerard Persoon, 2007).



Bernaulus Saragih, a Tropenbos researcher, takes a close look at an agarwood distillery (Gerard Persoon, 2007).

The appropriation of traditional knowledge, which is known as bio-piracy, has become the subject of international discussion. It has also created resistance to research activities on the part of forest-dwelling peoples.

Discussions on the protection of indigenous and local knowledge can be understood only in the context of the long history of misappropriation of such local knowledge. There are countless cases where medicines and new varieties of plant species have been developed on the basis of knowledge and plant resources available within the territory of forest-dwelling

communities, without these communities enjoying any of the subsequent benefits (Laird 2002; Wynberg, Schroeder and Chennells 2009). Unfortunately, the current system for the protection of intellectual property rights offers little or no protection for the traditional knowledge held by indigenous communities. Such knowledge is often in the local public domain and is not written down, which complicates its protection.

International declarations, policy guidelines and ethical codes

In recent years, as a result of the broad awareness of the lack of protection of indigenous and local knowledge, various declarations and policy guidelines have been issued by national governmental organisations and international bodies. This protection can prevent others from exploiting knowledge or innovations that belong to indigenous peoples.

Regulations have come about for a range of reasons. Some represent efforts to undo the historical injustice done to indigenous peoples. Others emphasize the great potential economic value of traditional knowledge or the positive role that it can play in the conservation of biological diversity. In some cases poverty is brought up as an argument for recognizing ecological knowledge and other aspects of intangible culture.

In addition, indigenous peoples' organisations have become more vocal in determining the conditions under which they will allow research in their communities. They no longer want to be approached as mere subjects of research. They claim a more active and decisive role in the process.

A number of important institutions have issued policy guidelines and declarations for the recognition of the rights of indigenous peoples, including the protection of indigenous and local knowledge. A large majority of countries have adopted these policies.



During the CBD article 8(j) meeting in Montreal in 2004, the Akwe: Kon Guidelines were approved (Gerard Persoon, 2004).

The most relevant of these are discussed here¹:

1. CBD (1992): *Convention on Biological Diversity*, in particular the Akwe: Kon Guidelines (2004; Box 3), the Bonn Guidelines on Access and Benefit Sharing (2002), and recently, the Ethical Code of Conduct (2009) issued by the CBD Secretariat as a result of the Article 8(j) discussions.
2. UN General Assembly (2007): *Declaration on the Rights of Indigenous Peoples*.
3. FAO (2001): *International Treaty on Plant Genetic Resources for Food and Agriculture*, which includes provisions for farmers' rights, indigenous knowledge protection and guidelines for access and benefit sharing.
4. ILO (1989): *Convention 169 on Indigenous and Tribal Peoples in Independent Countries*.
5. WIPO (World Intellectual Property Organization) (since 2000): *Intergovernmental Committee on the Protection of Indigenous Knowledge, Genetic Resources and Traditional Cultural Expressions*.
6. UNESCO (2003): *Convention on the Protection of Intangible Culture*.
7. UNDP (2004): *Policy Guidelines Indigenous Peoples and Development*.

¹ The full convention texts are all available on line.

Two of these international conventions, the Convention on Biological Diversity (CBD) and the UN Declaration on the Rights of Indigenous Peoples, are discussed below in more detail.

The Convention on Biological Diversity and its draft Ethical Code

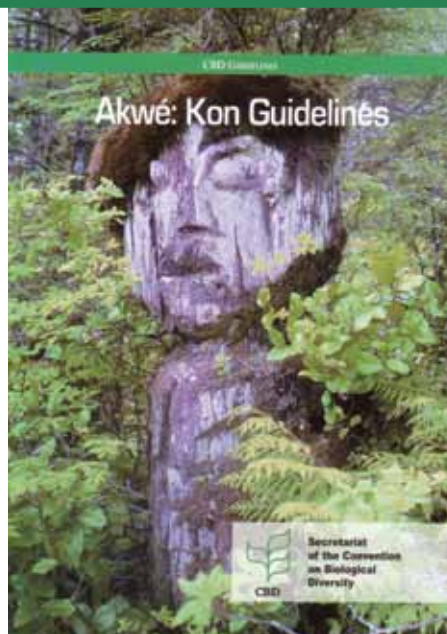
The Convention on Biological Diversity (CBD) recognizes the dependence of indigenous and local communities on biological diversity and their role in the conservation of this diversity. In Article 8(j) of the CBD, governments commit themselves to respect, preserve and maintain the knowledge, innovations and practices of indigenous and local communities.²

In order to implement the commitments of article 8(j) and to enhance the involvement of indigenous and local communities in achieving the objectives of the convention, a Working Group on article 8(j) and related provisions- WG8(j) — was established during the fourth meeting of the Conference of the Parties (COP4) in 1998. Over the years the WG8(j) has evolved into a meeting to which the Secretariat of the CBD invites not only official Parties but also indigenous and local communities and non-governmental organisations. Although only the parties can make final decisions, indigenous peoples’ representatives do take part in the discussions.

The main objective of WG8(j) is the protection of traditional knowledge with regard to biodiversity and genetic resources. It is, however, not only traditional knowledge as such that should be protected, but also the holders of such knowledge: the indigenous and local communities. WG8(j) supports the full and effective participation of indigenous and local communities in decision-making processes related to the use of their traditional knowledge. WG8(j) also encourages governments to take measures to enhance the capacity of indigenous and local communities and develop appropriate mechanisms, guidelines, legislation or other initiatives to foster and promote their effective participation.

Box 3. The Akwé: Kon Guidelines

In 2004 the Parties to the CBD adopted the Akwé: Kon Guidelines. These are “voluntary guidelines for the conduct of cultural, environmental and social impact assessments regarding developments proposed to take place on, or which are likely to impact on, sacred sites and on lands and waters traditionally occupied or used by indigenous and local communities.” One of the clauses contains the following description of prior informed consent: “Where the national legal regime requires prior informed consent of indigenous and local communities, the assessment process should consider whether such prior informed consent has been obtained. Prior informed consent corresponding to various phases of the impact assessment process should consider the rights, knowledge, innovations and practices of indigenous and local communities; the use of appropriate language and process; the allocation of sufficient time and the provision of accurate, factual and legally correct information. Modifications to the initial development proposal will require the additional prior informed consent of the affected indigenous and local communities” (Akwé: Kon Voluntary Guidelines 2004, 21).



² The full text of this article reads as follows: Article 8: In situ conservation — Each contracting Party shall as far as possible and appropriate: (j) subject to national legislation, respect, preserve and maintain knowledge, innovations and practices of indigenous and local communities embodying traditional lifestyles relevant for the conservation and sustainable use of biological diversity and promote their application with the approval and involvement of the holders of such knowledge, innovations and practices and encourage the equitable sharing of the benefits arising from the utilization of such knowledge, innovations and practices.

A major ongoing activity of the WG8(j) is the development of an ethical code of conduct to ensure respect for the cultural and intellectual heritage of indigenous and local communities. Developing the code has turned out to be much more complicated than expected. The highly diverse experiences of different countries make it almost impossible to develop a system that addresses this variety while maintaining compatibility with existing national legislation.

During negotiations, diplomats emphasized the compatibility of proposed texts with national legislation, while representatives of indigenous peoples focused on instances of bio-piracy and abuse of good faith. These two perspectives proved difficult to reconcile and discussions became defensive and non-constructive. After failed attempts to come to an agreement during a WG8(j) meeting in October 2007, results were better during the following meeting in April 2009, which resulted in a revised draft; this has yet to be approved, however.

When finalized, the code will apply to anyone who wishes to carry out research involving traditional knowledge with regard to biological and genetic resources within the territories of indigenous and local communities. The code will affect a broad spectrum of scientific disciplines, including biology, (ethno)botany, anthropology, archaeology, linguistics, medicine and pharmacology. Interestingly, although the code is likely to seriously limit research activities in the near future, it has largely been drafted without substantial input from the world of science. Moreover, discussions have not addressed either the coordination of the code with other professional codes within scientific disciplines, or the installation of an authority to oversee the implementation of the code and address its violations.

United Nations Declaration on the Rights of Indigenous Peoples

The UN Declaration on the Rights of Indigenous Peoples was adopted by the General Assembly of the United Nations in September 2007 after more than two decades of international negotiations. With 143 member states voting in its favour, 11 abstaining and four voting against it, the declaration is a new political fact. UN Secretary General Ban Ki-Moon described the adoption as “a historic moment when UN Member States and indigenous peoples reconciled with their painful histories and resolved to move forward together on the path of human rights, justice and development for all” (UN Secretary General 2007).

Throughout the world the declaration has been received with great enthusiasm by indigenous peoples and their support groups. Even though the declaration is non-binding, it underscores the individual and collective rights of indigenous peoples, as well as their rights to culture, identity, language, education and other issues.

The declaration contains various clauses that are particularly relevant in the context of TBI research. Article 31.1 establishes indigenous peoples’ right to “maintain, protect, control and develop their intellectual property over [...] cultural heritage, traditional knowledge, and traditional cultural expressions.’ This includes “[...] human and genetic resources, seeds, medicines [and] knowledge of the properties of fauna and flora [...]’. Moreover, under Article 11.2 States are obliged to rectify situations in which indigenous peoples’ “[...] cultural, intellectual, religious and spiritual property [was] taken without their free, prior and informed consent or in violation of their laws, traditions and customs.”

It is important to note that two of TBI’s major partner countries — Indonesia and Vietnam — have unexpectedly adopted the declaration. This came as a surprise, given that these countries had been very critical of the draft declaration, stating that it did not correspond to the conditions in their home countries.

Signs that Indonesia might change its position first appeared in August 2006. During the International Day of the World’s Indigenous Peoples, Indonesian President Susilo Bambang Yudhoyono said he would propose a law giving special protection to indigenous peoples.

The absence of such a law, Yudhoyono stated, was an important reason why their rights had so often been overlooked. Indigenous peoples had suffered for the sake of development while they had “shown their wisdom in the use and preservation of natural resources.” The announcement that he would propose a bill detailing the “rights and roles of indigenous people’ and requiring “local administrations to take them into account in carrying out development” was remarkable; never before had an Indonesian president delivered this kind of message.

Other policy guidelines and ethical codes

In addition to declarations and conventions that result from international negotiations between sovereign states, policy guidelines can steer the process of recognition of indigenous rights, including knowledge, practices and innovations. These guidelines are produced by major donor agencies, including the EU, World Bank, the Asian Development Bank and the InterAmerican Development Bank. Similarly, international non-governmental organisations in the field of nature conservation, such as WWF, IUCN, CI and TNC, have adopted guidelines for working in territories occupied by indigenous communities (an overview of these is provided in Persoon et al. 2004). There has, however, been considerable criticism of the implementation of these guidelines by both donor organisations and nature conservation agencies (e.g., Chapin 2004; Colchester and MacKay 2004).

Of particular interest to TBI is the fact that several organisations dealing with sustainable timber production have adopted criteria related to the recognition of the rights of indigenous peoples, including protection of knowledge. These include FSC, PEFC and national timber certification initiatives such as the Malaysian Timber Certification Scheme. The FSC (2002) and PEFC (2010) systems have formulated clear criteria in relation to local and indigenous communities’ rights, knowledge and resources. Both systems refer explicitly to FPIC as a guiding principle of sustainable forest management.

Over the years some professional organisations have issued a code of ethics for their members. Among these are universities, associations for anthropologists, ethno-botanists, and museums (see the list of references). It is not easy to determine the extent to which these regulations have been implemented and what procedures are in place to discipline members who violate them. Complaint procedures are poorly formulated and there are few cases of serious penalties. There is no equivalent of a disciplinary board (Dutch *tuchtraad*) within the organisations that deal with these issues. Moreover, not all academically trained anthropologists and ethno-botanists are members of organisations that have a code of ethics.



Marking of logs is an important element in the timber certification procedures (Gerard Persoon, 2006).

Given the multitude of declarations, guidelines and ethical codes the question arises: which set of moral and legal rules should take priority? International policy guidelines and professional ethical codes of conduct may be overruled by national legislation.

An example is the ownership of indigenous knowledge in Indonesia. Most policy guidelines and ethical codes refer to the indigenous and local communities of the holders of such knowledge. They are the ones who should give permission and agree on arrangements for access and benefit sharing.

Indonesian Copyright Law no. 2003 (articles 10.2 and 10.3), however, states that the State holds copyright over such knowledge and that any non-Indonesian citizen must seek permission from the State before publishing any results. Likewise, the Malaysian government claims to be the legitimate right holder and caretaker of the knowledge of the country's indigenous and local communities. In contrast, most ethical codes start from a radically different point, namely, that those who originally held the knowledge are the rightful owners of that knowledge.

In summary, it is not possible to refer to a single and undisputed set of regulations that would guide researchers in their use of indigenous and local knowledge obtained from forest dwelling communities. For several reasons it is not sufficient for TBI to refer to existing codes of ethics of professional organisations:

- » researchers working under the umbrella of TBI may not be members of such organisations;
- » researchers may consider themselves as something other than researchers and may not feel morally bound by such codes;
- » researchers working for universities, the private sector and government tend to follow slightly different codes of conduct, either implicitly or explicitly; and
- » professionals other than researchers, governed by other ethical codes, such as journalists, documentarians and photographers, may be involved in TBI activities.

This notwithstanding, it shouldn't be necessary for TBI to come up with its own distinct ethical code. Instead, a more general position statement and protocol should be developed that will promote TBI researchers' thorough consideration and approach of possible ethical issues related to their work, without making this work impossible. Chapter 2 recommends that the principle of Free, Prior and Informed Consent be the main guiding principle of the TBI protocol.



Meeting with Molui indigenous people in Indonesia (Tropenbos International, 2008).

2. Free, prior and informed consent

The right to Free, Prior and Informed Consent³ is a central element in many of the policy documents mentioned above. Originating in medical science experiments, the principle of FPIC is now also widely promoted in the context of research on traditional knowledge and indigenous and local communities. Its application is intended to put an end to a long history of land grabbing, cultural suppression, encroachment and bio-piracy.

It features in ILO Convention 169, the Akwe: Kon Guidelines of the CBD; the UN Declaration on the Rights of Indigenous Peoples and the WIPO requirements for the use of traditional knowledge or expressions of traditional culture (Fourmille 1998). In addition, it is of major importance in the context of development initiatives such as mining, logging and infrastructure projects (Colchester and Ferrari 2007).

The right to FPIC is stipulated in trade-related documents such as those for sustainable forest management under FSC (FSC 2002) and the Roundtable on Sustainable Palm Oil (RSPO 2006; Colchester 2008). It is also mentioned in the codes of conduct of numerous organisations whose members work with indigenous and local communities (e.g., ISE 2006; AAA 1998; and SCB 2004). A recent article in *Science* points to the importance of dealing carefully with issues of informed consent and benefit sharing in the context of genomic research among indigenous peoples (Hayes 2011).

In the context of research FPIC implies that consent is obtained from the local or indigenous community before the research begins. Before consent can be given, the aim of the research and the use of its results (by whom and for what purposes) must be clarified. If relevant, the process also results in an agreement with respect to the sharing of any benefits that arise from the research.

FPIC is the best available mechanism for securing community involvement, participation, decision-making and self-determination. It is suggested that Tropenbos adopt it as a basic principle in designing and conducting ethically just research. Implementing FPIC is a process for which TBI as a whole, TBI's country programs and individual TBI researchers share responsibility.

Even though FPIC is increasingly common in official policy documents, surprisingly little has been written about it from a practical point of view. An exception is an article by Firestone (2003) with the compelling title "You say yes, I say no." Firestone provides a well-crafted synthesis of the requirements for successful FPIC procedures on the basis of a large number of institutional guidelines, national and international laws and other documents focused on the use of traditional knowledge. Some of these are discussed in Chapter 4.

The following simple questions should be asked with respect to FPIC (Berlin and Berlin 2001). What is it? Who gives it? To whom is it given? What is the proof that you have obtained it? Who accepts this evidence?

³ The concept of FPIC is defined differently depending on the source. In some documents it is called "free and informed consent"; in others it is called "prior informed consent" or "free and prior informed consent." These differences imply slightly different meanings. The United Nations Declaration for the Rights of Indigenous Peoples refers to "free, prior and informed consent" and that is the term used in this document.

What is FPIC?

The terms used in FPIC all have specific meanings, but these are not always apparent (Firestone 2003; Colchester and Ferrari 2007; MacKay 2004). These concepts need to be clearly understood:

- a. Consent is to be given **freely**. Decision-making by a community about whether to accept a particular kind of intervention or use of knowledge or resources must be non-coercive and free from other forms of manipulation or intimidation.
- b. Consent must be given **prior** to the start of the activity being considered. This means that communities should be informed and consulted about the planned activities before they begin. Communities should not be forced to make decisions quickly. There should be ample time for consultation, internal discussion and decision making. The question of how long is long enough will differ for each project.
- c. Consent should always be **informed**. Before communities can make decisions they need to understand the implications of the planned activities. This includes an awareness of the short- and long-term effects of such activities, the potential impacts and risks, the benefits and gains and the legal implications. It also means that information should be provided in a way that is understandable to them (in terms of the presentation form, the **language** that is chosen and the specific wording used).
- d. It should also be clear what consent actually means once it is given: on what conditions, with what kind of compensation, and for what period of time. It should also be clarified if consent can be withdrawn if specific conditions are not met.

The implementation of FPIC involves numerous complexities and issues. **The right to veto** is one of the most often heard reasons that parties look for other ways to come to some kind of agreement. Some countries, agencies and companies have proposed using the concept of negotiated justice to arrive at an agreement acceptable to all parties. This negotiated justice should be a balanced process of negotiations that combines the rights of parties to personal autonomy and free choice with the right to bind themselves and others through formal agreements (see also Szablowski 2010).

Who gives FPIC and to whom?

Intuitively, it is clear that the local and indigenous communities whose living areas are being affected by activities should be the ones who give consent. In many cases, however, a third party is a facilitator in the FPIC process. Often it is this third party, and *not* the local or indigenous community, that issues a consent certificate.

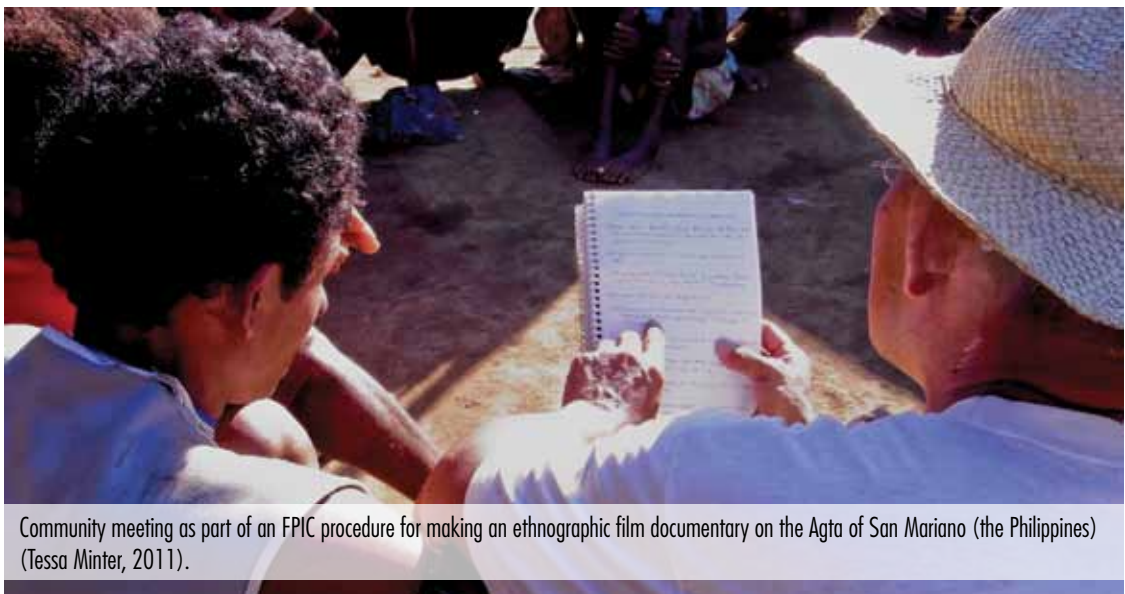


Community meeting as part of an FPIC procedure for making an ethnographic film documentary on the Agta of San Mariano (the Philippines) (Tessa Minter, 2011).

In the Philippines, for example, the National Commission on Indigenous Peoples (NCIP) oversees all interventions that may have an impact on indigenous communities. It is clear that governmental interests as well as those of indigenous communities play a role in the process, given the crucial role of the NCIP in areas that are also subject to mining and logging concessions (Minter et al. forthcoming). This situation runs counter to FPIC's objective of community involvement, participation, decision-making and self-determination.

Even when consent is obtained directly from the local and indigenous communities, challenges remain:

1. In many cases it is not obvious which communities should be approached, and where the social or cultural boundaries of these communities can be drawn. There may be a great deal of cultural diversity. When it comes to knowledge holders, or the bearers of cultural traditions, communities are often not unified. There may be internal divisions along lines of gender, age or labour specialization.
2. Indigenous and forest-dwelling communities often lack cohesive and effective social units with clear structures of representation and accountability. Consent given by one person does not automatically imply that others will accept that decision. There are some cases of false representation, where certain individuals claim to represent entire communities that are in fact unaware of such claims. There are also complications if the holders of such knowledge or cultural traditions are spread over large areas or across national boundaries. Who is to give consent in those cases and through which procedures? Indigenous and local communities may share a common history, as well as certain cultural traditions and language, but this does not imply that they also share a common vision regarding external interventions. Differences in power, which may reflect the scars of history, also tend to have a great impact on decision-making processes.
3. Procedures for FPIC tend to become very complex because they are drafted by legal experts in state-controlled bureaucracies. Most communities do not have the necessary legal background or the experience to fully understand the proposals affecting them. External interventions often involve the arrival of new actors and changes in the scale and intensity of resource use. They may have impacts far beyond the time horizon of the communities involved. Some concepts — patents, sale of land, and the exploitation of subsurface resources — may be culturally alien to the community.
4. FPIC procedures almost always take place in the context of highly unequal power relations. Those who aim to obtain consent usually have much more information, resources and legal support than the local and indigenous communities who are asked



Community meeting as part of an FPIC procedure for making an ethnographic film documentary on the Agta of San Mariano (the Philippines) (Tessa Minter, 2011).

to give consent. Often, the latter will give consent simply because they will receive something in return, regardless of whether that compensation makes up for anything they might lose as a result of the intervention.

5. In many countries the legal tenure of indigenous peoples is not clear. Land rights may be vague or contested. It may be unclear what belongs to collective (intellectual) property and what is already in the public domain. If the FPIC process starts in a context of vagueness — or even conflict — the outcome is unlikely to be clear-cut.

Not only is it relevant to ask *who* gives consent, it is equally important to ask to whom consent is given. This will depend on the applicable legal framework.

Consent procedures should always be related to a specific intervention, whether this is a mining operation, development project or scientific study. A project proponent needs to go through a consent procedure for each new project that it aims to undertake. This means, for example, that a mining company cannot apply for FPIC at the company level; it must do so for each specific mining concession. The same applies to a development NGO: instead of obtaining FPIC for the entire organisation, its individual project implementers must seek consent from the specific communities involved in each specific development project. Likewise, a research organisation such as a university — or indeed, TBI — must obtain consent for each of its individual research projects. It cannot do so for an entire programme or department. This means that those involved in implementing the proposed project, the researchers in TBI's case, should be the ones who seek consent.

This may best be explained by returning to the context in which FPIC first arose: medical experiments. Medical doctors have the moral obligation to fully inform the participants about an experiment's purpose and risk. This consultation process takes place between the participants and the doctor, as the latter is the most knowledgeable person about the details of the experiment. The hospital obviously also carries responsibility for the experiment, just as a mining company is responsible for its operations and a research institution is responsible for its research projects. Nonetheless, the process of consultation and obtaining consent primarily takes place between the person or people implementing the experiment and the participants.

What is the proof that you have obtained FPIC and who accepts this?

FPIC procedures are not always clear with respect to the type of proof to be obtained from those who give consent. Is an oral agreement sufficient, or should there be a written statement? What if the community members cannot read and write? How are they to know that what they agree on is reflected in the written statement to which they attach their thumb marks?

It is in this last stage of obtaining consent that manipulation often occurs. There are also examples of researchers who obtained consent following the official rules and regulations, after which they were illegitimately questioned about this consent by third parties (e.g., Berlin and Berlin 2002; Brown 2003).

A related question is this: who should oversee the FPIC process? Should stakeholders (individual companies or individual researchers) deal directly with the communities involved or should a governmental agency or an official representative of indigenous communities play a coordinating role? There can be no doubt that there is a need for coordination; the type of activities undertaken vary widely and are likely to generate conflicts between stakeholders.

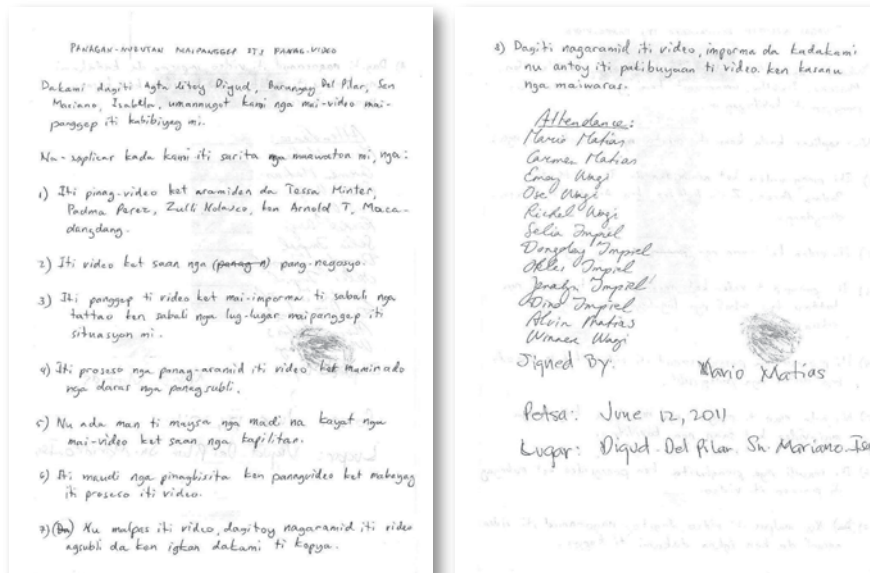
An intervention may relate to the domains of various governmental agencies. As mentioned above, in the Philippines the National Commission on Indigenous Peoples (NCIP) is an intermediary. Rules and regulations with respect to FPIC have been formulated in the country

in line with the *Indigenous Peoples' Rights Act* (IPRA) of 1997 (NCIP 2002; 2006). It is the NCIP, not the community involved, that issues the statement of FPIC. Being a centralized but relatively weak government-controlled body, NCIP has to cope with powerful departments, such as those dealing with logging and mining permits, or public works and irrigation.

In Indonesia there is no legislation dealing explicitly with the right to FPIC. In 2007, however, a new law dealing with corporate social responsibility was adopted that forces companies to take up certain responsibilities in relation to the communities in whose territories they are working. At present, it is left to the companies to deal with these requirements; proof of the fulfillment of these requirements does not have to be shown until a later stage. In such circumstances it is impossible to assess whether an applicant has obtained FPIC.

Given the legal complexity of the rules and regulations, it should come as no surprise that many parties involved in the process (such as mining and logging companies, but researchers too) create shortcuts. There are also reports of various forms of manipulation, including incorrect procedures with respect to invitations to consultation meetings, voting procedures, planning of meetings (place and timing), language and translations used, and even violent abuse (Colchester and Ferrari 2007; Colchester 2008). Various indigenous peoples' organisations now respond by organizing meetings and training⁴ to make communities knowledgeable about the various aspects of FPIC and increase awareness of the implications of consent once it is given (Leonen 2007).

In summary, there is increasing international recognition of the importance of indigenous and local communities' right to Free, Prior and Informed Consent. FPIC is seen as a mechanism to ensure these communities' involvement, participation, decision-making and self-determination in the face of external activities taking place in their territories. These activities include research. Although the implementation of FPIC raises practical dilemmas in each field setting, it is the best available process through which to guarantee the ethically just design of TBI research. Chapter 3 recommends that TBI endorse FPIC as a guiding principle. Chapter 4 offers suggestions on how to implement it as part of a research protocol.



FPIC agreement for making the film documentary (2011).

⁴ An interesting case study on prior informed consent and equitable access and benefit sharing was presented during a side event at the 9th Conference of the Parties to the Convention on Biological Diversity in Bonn, April 2008. This case dealt with the controversial use of *hoodia*, a medicinal plant from the Kalahari Desert in Southern Africa. After years of misappropriation of San bushmen knowledge of *hoodia*, an agreement has been reached between the parties involved. A trust fund for the development of San people has been established which manages the money earned through the licensed selling of *hoodia*. The case was later published in detail in an insightful book by Wynberg, Schroeder and Chennells (2009).



Indigenous man weaving a basket, Caquetá, Colombia (Tropenbos International).

3. Tropenbos International's position

The purpose of this Position Statement is to foster reflection among TBI staff on ethical aspects of their research activities. It is to be used in combination with the research protocol and ethics application form presented in Chapter 4. When coordinated with the TBI Ad hoc Ethical Commission, this will result in ethically just research design.

TBI's research mandate is to generate knowledge related to sustainable forest management. Such research implies field-based data collection in forests that may be inhabited by local and indigenous communities. Members of these communities are often asked by researchers to act as informants with respect to local ecological knowledge and other forms of traditional knowledge.

TBI is committed to working in respectful and genuine partnership with local and indigenous communities to avoid the perpetuation of past injustices to these communities in the context of research activities. It aims to maintain existing research relationships and build harmonious and mutually beneficial relationships. Data collection by TBI researchers among local and indigenous forest-dwelling communities can take place only in the context of respect for traditional customs and practices.

In setting its standards of conduct for research, TBI recognizes the ethical principles and rights of indigenous and local communities as laid out in the CBD Akwé: Kon Guidelines (2004); the UN Declaration on the Rights of Indigenous Peoples (2007); the WIPO Principles on the Protection of Traditional Knowledge (2010); and the ethical codes of the American Association of Anthropologists (AAA 1998) and the International Society of Ethno-biology (ISE 2006).⁵ This means that where national legislation in TBI's partner countries does not

⁵ In the UN Declaration on the Rights of Indigenous Peoples Free, Prior, and Informed Consent is mentioned in five of its 46 articles (10, 11.2, 19, 28 and 29.2). Article 11.2 is particularly relevant, and reads as follows: "States shall provide redress through effective mechanisms, which may include restitution, developed in conjunction with indigenous peoples, with respect to their cultural, intellectual, religious and spiritual property taken without their free, prior and informed consent or in violation of their laws, traditions and customs."

It is clear that FPIC is a key element in the implementation of the right of indigenous peoples. At the moment, the rules and regulations for the actual use of FPIC are being negotiated through numerous consultative meetings and workshops in various regions. This is very much a learning-by-doing process that draws lessons from good and bad examples all over the world.



Bernaulus Saragih and Jan van der Ploeg take a close look at the rice seeds that are sown in the fields of the people of Muluy in the Gunung Lumut Protected Area (Gerard Persoon, 2005).

safeguard the protection of local and indigenous communities, TBI will do so at a level demanded by these policy documents.

TBI research follows the principle that local indigenous knowledge or traditional knowledge can be obtained and made public only with the explicit approval of the knowledge holders. The original knowledge holders will remain the only rightful owners and any future commercial user of this knowledge must obtain permission directly from the local and indigenous communities from which it was derived. It is the obligation of TBI researchers, Country Program directors and TBI directors to ensure that the knowledge source is traceable, without compromising basic principles of confidentiality and anonymity.

TBI uses the right to FPIC as a main guiding principle when relating to indigenous and local communities in its activities. This principle requires TBI and its researchers to enter into a dialogue with the local and indigenous communities inhabiting the study area prior to the start of each new research project. This dialogue ideally takes the form of a three-step process:

1. Internal deliberation

The research project's potential impact on local and indigenous communities is discussed within the TBI country programme. Based on this deliberation the project proposal is adjusted as necessary until it is ready to be discussed with the community.

2. Dialogue with the community

The TBI country programme initiates and logistically supports a dialogue between the researcher of the specific project and the community. In this dialogue, the researcher (not the Country Program representative) introduces the project proposal to the community members in a language and form that is understandable to them.

The following matters need to be addressed in this process:

- a. the purpose of the research activity;
- b. the nature and scope of data collection;
- c. the foreseeable outcomes of the study;
- d. the foreseeable way in which TBI aims to use these results to inform policy;
- e. the foreseeable benefits of these outcomes;
- f. if appropriate, the way in which the community can share in these benefits; and
- g. the way in which community boundaries will be defined and community representation will be organized in relation to the study.

In the course of this dialogue, the community will express if and under what conditions they wish to support the study.

As mentioned in d) above, the dialogue needs to address the manner in which and the conditions under which the research results could eventually be used to inform policy. Given that the potential use of such data will likely emerge only in the course of, or after termination of, data collection and analysis, this dialogue needs to be an ongoing process.

3. Adjustment of proposal and seeking consent

Depending on the outcome of the dialogue, revisions in the project proposal may be needed. After these have been made and discussed with the community, there are two possible scenarios.

The first, and most likely, scenario is that the community supports the research project. Depending on the type of community and legal situation, this consent may be formalized in different ways. Unless national legislation requires it, the community decision does not necessarily need to take the form of a written statement. It is the quality of the decision-making process, not the format, that is important.

It must be remembered that even if consent has been given, individual community members may still decide not to participate in the research as informants.

Although the relevant TBI country programme also carries responsibility for the research and the way it is implemented, the agreement that is reached is primarily between the community and the specific researchers who carry out the study. As stated in Chapter 2, there are two reasons for this:

- » an agreement can be reached only in relation to a specific research project because each project carried out under the umbrella of a country programme has a distinct character and therefore raises specific challenges; and
- » since it will be the researcher who will be making crucial decisions in the field and interacting with informants on a daily basis, he or she is the one who needs to take full moral responsibility for the ethical implications of these decisions and interactions.

The second and much less likely scenario is that the community, or its individual members, does not accept the research project, even after adjustments have been made. In this case, the project will either not be implemented or will be reformulated in a way that is acceptable to the community.



Indigenous community of San Martín de Amacayacu, Colombia (Juanita Franco, 2002).

4. Ad-hoc ethical commission and research protocol

The goal is to provide a tool that will foster critical reflection on ethical issues related to TBI research and that will help make decisions. It is not to generate an overly restrictive ethical code. The suggestions below are based on the idea that each research setting in each country requires a specific approach. Following a rigid set of rules is not what matters; what is important is an outcome that is acceptable to all those involved.

It is recommended that the protocol be periodically reviewed on the basis of practical experiences of TBI researchers and on international developments in the field. It is clear that there is no one-size-fits-all solution, but by adopting a practical process and a learning approach, TBI will act responsibly.

It is suggested that TBI take the following steps: 1) install an Ad hoc Ethical Commission; 2) have country offices prepare a Research Ethics Protocol for their specific country and research sites; and 3) have country offices prepare yearly ethical reports.

1. Ad hoc Ethical Commission

The Ad hoc Ethical Commission should consist of one external member with extensive experience related to forest-dwelling indigenous and local communities and at least two TBI board members. The commission would carry out the following tasks:

- review the Research Ethics Protocols prepared by the country programmes on the implementation of FPIC in their specific country (see below);
- annually assess how each country office has implemented the TBI Code of Conduct by reviewing reports from these country offices and by providing feedback to the country offices on their performance in this regard;
- look into the issue and provide advice if a country office asks for advice regarding ethical dilemmas, or an ethical problem arises; and
- make a periodic compilation of experiences with the implementation of the TBI Code of Conduct and review it, based on these experiences and any new international developments in this field.

2. Research Ethics Protocol

The Research Ethics Protocol on page 24 should guide ethical decision-making. It should be used as a mandatory risk assessment to which each research project should be subjected. Each country programme should integrate the protocol in its proposal format. Depending on national and local legislation and policies, and on other specific conditions, adjustments may be needed.

3. Yearly ethical reports

The Ad hoc Ethical Commission should review yearly reports submitted by the country offices on how the TBI Code of Conduct was implemented. Ideally, these yearly reports will provide an overview of the steps taken in each research project to meet the ethical requirements outlined in this code of conduct.

The yearly reports should also reflect on any specific ethical problems that occurred and how these were dealt with.

A number of issues need to be kept in mind throughout the research process.

Implementation of the FPIC process

The main focus should be the way in which the FPIC procedure is implemented. It is recommended that researchers and country offices carefully document the steps taken in this process in order for these to be included in the yearly ethical reports.

It is important to note that the fulfillment of the FPIC process does not replace the need to carefully describe the research purpose prior to each interview with individual informants. Consent from the community at large does not make individual introductions obsolete.

The researcher is recommended to keep notes on how he or she resolves any ethical problems arising throughout the research process. These should be discussed and resolved with the country programme director, and if necessary with the Ad hoc Ethical Commission (see below).

In implementing the FPIC process, the TBI country programme and the researcher have specific responsibilities that may at times overlap. Table 1 clarifies this based on several guidelines suggested by Firestone (2003). As Table 1 shows, and for the reasons explained above, the core responsibility of the FPIC procedure lies with the researcher. However, TBI overall and TBI country programmes are a crucial part of facilitating and overseeing the process from beginning to end.

Researchers should never lose sight of the aim of the process relative to the type of activity or the scope of research. The process should be proportional to the activity. Large-scale interventions or research projects should have FPIC processes that are in line with their scope, size and potential risks and benefits. Otherwise, there is the risk that FPIC requirements will disproportionately burden relatively small-scale activities.

Table 1. Guidelines for obtaining FPIC and main TBI entity responsible.

Guidelines	TBI overall	TBI country programme	TBI researchers
Act in good faith	✓	✓	✓
Seek FPIC enough time in advance		✓	✓
Seek consent from the community and from any individuals involved			✓
Obtain FPIC according to the customary laws, practices and organisational structures of the community concerned			✓
Disclose the proposed project methodology to the community at large			✓
Disclose any foreseeable consequences of the project			✓
Provide information regarding the legal entity and affiliation of the applicant and its sponsors	✓	✓	✓
Indicate some form of benefit-sharing arrangements (if appropriate)		✓	✓
Disclose all discoveries made in the course of the research that might interest the community			✓
Identify any foreseeable uses and commercial interests		✓	✓
Provide the community with the option of saying no to the project			✓
Provide a copy of the guidelines the researcher is following			✓

Guidelines	TBI overall	TBI country programme	TBI researchers
Provide information in a language and form understandable to the community		✓	✓
Encourage participation of all segments of the community in decision-making, and (if appropriate) in the research activities			✓
Provide copies of relevant documents throughout the project (proposal, budget, approval ethics board or government agencies)			✓
Share findings and include the community in all stages			✓
Provide a complete copy of the research results, all discoveries, and all derived commercial products to the community		✓	✓
Ensure that a protocol of acknowledgements, citation, authorship and inventorship is agreed upon		✓	✓
Offer anonymity and confidentiality		✓	✓
Respect the privacy, dignity, culture, traditions and the rights of the community		✓	✓
Accept that if at any point the project is unacceptable to the community, the research should be suspended	✓	✓	✓
Ensure that consultations are well documented		✓	✓
Acknowledge the sources of all genetic material and knowledge that is obtained, indicating the community and geographic origin	✓	✓	✓

Source: adapted from Firestone 2003

Meeting ethical requirements in publications

In the final stage of the research, several measures should be taken to ensure the ethically just publication of research outcomes. The researcher should make the research results and discoveries available to the community. This reporting may take various forms, depending on the situation. For instance, if most of the community is literate, a concise written report summarizing the main findings in easily understandable language may be distributed among them. In case of a non-literate community, the researcher may consider organizing a meeting with some members of the community to orally present and discuss the main findings. If the community appreciates this, several copies of the final publication should be disseminated to them as well.

In coordination with the community, a statement regarding the ownership of knowledge should appear in the publication where the research appears. It should outline the responsibility of those using that knowledge for commercial purposes. The following general format is proposed:

The knowledge of [medicinal plants/.../...] presented in this publication was collected from [name of indigenous or local community] in [name of village and municipality and other relevant geographic unit and country] solely for the purpose of scientific publication. Anyone who wishes to commercially or otherwise exploit this knowledge must obtain the Free, Prior and Informed Consent directly from [name of community] in [name of village, municipality, other relevant geographic unit, and country].

In the methodological part of the publication, the researcher needs to outline the ethics procedure he or she followed throughout the process.

If appropriate, and depending on the agreements made as part of the FPIC process regarding benefit sharing, a system needs to be decided on — together with the community — to ensure that any potential material benefits arising from the research are shared with the community. (This will rarely be the case in the context of TBI research.)

Working with third parties

TBI aims to generate knowledge that is useful for improved forest policy formulation and implementation. This means that TBI often finds itself in a position where it transfers research results to third parties, such as government organisations or NGOs. This may have ethical implications in relation to the protection of local and traditional knowledge, and in the security of local people's livelihoods, especially when these include illegal activities. TBI researchers should make these possible implications explicit in their research proposals and reflect on how to deal with them on a case-by-case basis.

TBI and its researchers need to take precautionary measures at two levels.

1. At the community level, the aim of using data to inform policy needs to be explicitly discussed at various stages in the research process. It needs to be included in the community dialogue that is organized as part of the FPIC procedure. Since the possible ways in which data can contribute to informed policy may become clear only towards the end of the research period, this issue needs to be discussed on an ongoing basis in the course of the study. It is the individual researcher's responsibility to make sure that this issue is thoroughly discussed at the community level at the beginning and end of the data collection period. It is the TBI country programme's responsibility to facilitate this process.
2. Although the exact way in which the research results are used by third parties is beyond TBI's control, it is TBI's responsibility to actively make these third parties aware of potential risks and to urge them to deal with these sensitively. At this level the TBI country programme director and director are primarily responsible.



Agta youngsters in San Mariano receive a copy of the results of the research about their community (Jan van der Ploeg, 2007).

Proposed TBI Research Ethics Protocol

For MA and PhD STUDENTS:

Please complete this self-assessment with the assistance of your supervisor, and submit it to your country office director.

For STAFF:

Please complete, and submit to your country office director.

Project Title:		
Funder:		
Name:		
Supervisor's name (in the case of student research):		
This Project is for: <input type="checkbox"/> Masters <input type="checkbox"/> PhD <input type="checkbox"/> Staff research		
Proposed duration of research:	From: ___/___/___	To: ___/___/___
Proposed period(s) of field work:	From: ___/___/___	To: ___/___/___
Proposed location of field work and names of local and indigenous communities involved:		
Knowledge of professional guidelines and codes of conduct		
Has the researcher read and made himself or herself thoroughly aware of the TBI Position Statement and Research Protocol on Local and Indigenous Communities?		
Has the researcher read and made himself or herself thoroughly aware of the appropriate conventions and guidelines related to ethical research within his/her discipline (e.g., Association of American Anthropologists Code of Conduct (1998); International Society of Ethnobiology's Ethical Code (2006); Akwé: Kon Guidelines of the Convention on Biological Diversity (2004); UN Declaration on the Rights of Indigenous Peoples (2007)?		
YES (Please state which specific guidelines you consulted)		
NO		
Summary		
Give a brief project summary of 300 words or less. Please outline aim(s), participant group(s), method and possible outcomes of the research, and how you will address any ethical issues arising from the project.		
Does your research involve:		
Indigenous or local communities	YES ___	NO ___
Children/legal minors (under 18 years old)	YES ___	NO ___
Groups that may be vulnerable or at risk	YES ___	NO ___
Groups that may be involved in illegal activities	YES ___	NO ___
Participants in a dependent relationship with any of the investigators	YES ___	NO ___
NB If any of the above answers is Yes and you are in doubt how to proceed, you are encouraged to consult the Ad hoc Ethical Commission to seek their advice.		
Dissemination of results		
Results will be made available to participants as:		
Written summary of results to all (language?)	YES ___	NO ___
Verbal presentation to all	YES ___	NO ___
Copy of final manuscript (e.g. thesis, article etc) presented to representative participants	YES ___	NO ___
Other, or none of the above (please supply written explanation):		

Future use of the data

Please describe in fewer than 150 words potential uses and benefits of the data by you and others. Also reflect on the possibility of commercial exploitation of the data by third parties after publication.

Will the data collection involve

Questionnaire(s)	YES ___	NO ___
Interviews	YES ___	NO ___
Participant observation	YES ___	NO ___
Observation of participants without their knowledge	YES ___	NO ___
Audio-Visual material	YES ___	NO ___

Permits

Does the research require formal permission from local or national authorities?	YES ___	NO ___
If Yes , has permission been obtained, and from whom?	YES ___	NO ___

Please specify authority(ies):

Confidentiality and anonymity

Confidentiality and anonymity are basic principles of social scientific research. In some instances, however, participants may specifically wish to be named and acknowledged.

Are there participants who may wish to be named and acknowledged?	YES ___	NO ___
---	---------	--------

If **Yes**, list names of those participants in the document.

If **No**, how will the anonymity of informants be maintained? (Please give a brief account)

Free, Prior and Informed Consent

TBI respects the right to Free, Prior and Informed Consent (FPIC) as a guiding principle in relating to local and indigenous communities in its research activities.

Please specify in detail how you intend to obtain FPIC for this project and what you intend to tell informants about the purpose of your research; the foreseeable use of the data you obtain and the foreseeable benefits of these data.

Please specify a cost estimate for the FPIC process and indicate whether this has been included in the research budget.



Dutch student Sarah Doombos discusses local fishing practices with Agta residents (Jan van der Ploeg, 2007).



Woman in traditional canoe, Indonesia (Roderick Zagt, 2007).

5. References

- AAA (American Anthropological Association). 1998. Code of Ethics of the American Anthropological Association. www.aaanet.org/committees/ethics/ethcode.htm.
- Berlin, E.A. and B. Berlin. 2001. Prior informed consent and bio-prospecting research: The case of the Maya International Cooperative Biodiversity Group in Chiapas, Mexico. Unpublished manuscript.
- Brown, M.F. 2003. *Who owns native culture?* Cambridge (Massachusetts): Harvard University Press.
- CBD Secretariat. 2009. WG8j Draft Ethical Code. Montreal: CBD.
- CBD Secretariat. 2004. *The Akwé: Kon Guidelines*. Montreal: CBD.
- CBD Secretariat. 2002. *The Bonn Guidelines*. Montreal: CBD.
- Chapin, M. 2004. "A Challenge to Conservationists." *World Watch*. November/December: 17–31.
- Colchester, M. 2008) *Free, prior and informed consent and the Roundtable on Sustainable Palm Oil: A guide for companies*. Moreton-in Marsh: Forest Peoples Programme.
- Colchester, M. and M.F. Ferrari. 2007. *Making FPIC work: Challenges and prospects for indigenous peoples*. Moreton-in Marsh: Forest Peoples Programme.
- Colchester, M. and F. MacKay. 2004. *In search of middle ground. Indigenous peoples, collective representation and the right to Free, Prior and Informed Consent*. Moreton-in-Marsh: Forest Peoples Programme.
- FAO. 2001. *International Treaty on Plant Genetic Resources for Food and Agriculture*. Rome: FAO.
- Firestone, L.A. 2003. "You say yes, I say no: Defining community prior informed consent under the Convention on Biological Diversity." *Georgetown International Environmental Law Review* 16(1): 171–207.
- Fourmille, H. 1998. "Using prior informed consent procedures under the Convention on Biological Diversity to protect indigenous traditional ecological knowledge and natural resource rights." *Indigenous Law Bulletin* 27: 1–7.
- FSC. 2002. *FSC Principles and criteria for forest stewardship*. Bonn: FSC.
- Hayes, V.M. 2011. "Indigenous genomics." *Science* 332: 639.
- ICOM (International Council of Museums). 2006.* *ICOM Code of Ethics for Museums*. Paris: ICOM
- ILO. 1989. *Convention No. 169 on Indigenous and Tribal Peoples in Independent Countries*. Geneva: ILO.
- ISE (International Society of Ethnobiology). 2006. *ISE Code of Ethics (with 2008 additions)*. http://ise.arts.ubc.ca/global_coalition/ethics.php.
- Laird, S. 2002*. *Biodiversity and traditional knowledge. Equitable partnerships in practice*. London: Earthscan.
- Leonen, M.V.F. 2007. *The irony of social legislation: reflections on formal and informal justice interfaces and indigenous peoples in the Philippines*. Bangkok: UNDP.
- MacKay, F. 2004. *Indigenous peoples' right to Free, Prior and Informed Consent and the World Bank's Extractive Industries Review*. Moreton-in-Marsh: Forest Peoples Program.

- Minter, T., V. de Brabander, G.A. Persoon, J. van der Ploeg and T. Sunderland (forthcoming) Whose consent? Hunter-gatherers and extractive industries in the Northern Sierra Madre, the Philippines. (accepted with minor revisions) *Society and Natural Resources*.
- NCIP (National Commission on Indigenous Peoples). 2006. Administrative Order No. 01, Series of 2006: The Free and Prior Informed Consent (FPIC) guidelines of 2006. Quezon City: NCIP.
- NCIP (National Commission on Indigenous Peoples). 2002. Revised guidelines for issuance of certification precondition and free and prior informed consent. Quezon City: NCIP.
- PEFC. 2010. Sustainable Forest Management: Requirements. PEFC International Standard. PEFC ST 1003:2010. Geneva.
- Persoon, G., T. Minter, B. Slee and C. van der Hammen. 2004. The position of indigenous peoples in the management of tropical forests. Tropenbos Series 24. Wageningen: Tropenbos International.
- Ritte, W. and L.M. Kanehe. 2007. Kuleana no halao (responsibility for taro): protecting the sacred ancestor from ownership and genetic modification. In: Mead, A.T.P. and S. Ratuva (eds.) *Pacific genes and life patents*, pp. 130–137. Wellington: University of Wellington.
- RSPO (Roundtable on Sustainable Palm Oil). 2006. RSPO Principles and criteria for sustainable palm oil. Singapore: RSPO.
- SCB (Society for Conservation Biology). 2004. Code of Ethics. www.conbio.org/aboutus/Ethics
- Szablowski, D. 2010. "Operationalizing Free, Prior, and Informed Consent in the Extractive Industry Sector: Examining the Challenges of a Negotiated Model of Justice." *Canadian Journal of Development Studies* 30(1): 111–130.
- UN. 2007. UN Declaration on the Rights of Indigenous Peoples. New York: UN General Assembly.
- UN Secretary General, Ban Ki-moon. 2007. Statement attributable to the Spokesperson for the Secretary General on the adoption of the Declaration on the Rights of Indigenous Peoples. www.un.org/esa/socdev/unpfii/documents/Declaration_ip_sg.doc.
- UNDP. 2004. UNDP and Indigenous Peoples. A practice note on engagement. Bangkok: UNDP.
- UNESCO. 2003. UNESCO Convention for the Safeguarding of the Intangible Cultural Heritage. Paris: UNESCO.
- WIPO. 2010. The Protection of Traditional Knowledge. Revised Objectives and Principles. Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore. Geneva: WIPO.
- Wynberg, R., D. Schroeder and R. Chennells. 2009.* *Indigenous Peoples, Consent and Benefit Sharing. Lessons from the San-Hoodia Case*. Dordrecht/ Heidelberg/ London/ New York: Springer.

* Recommended for inclusion in the TBI libraries.

By making knowledge work for forests and people, Tropenbos International contributes to well-informed decision making for improved management and governance of tropical forests. Our longstanding local presence and ability to bring together local, national and international partners make us a trusted partner in sustainable development.