

Tool 3

SOURCES OF LAW AND GOOD PRACTICE FOR WOMEN'S INCLUSION IN COMMUNITY ENGAGEMENTS

HOW TO USE TOOL 3

This tool is part of the [Enhancing Women's Meaningful Participation in Community Engagements Toolkit](#).^{VII} Information about word use and context can be found in the *Introduction* of the toolkit. **Tool 3** can be used as a reference point for advocacy efforts that support the meaningful participation of women in community engagements.

^{VII} Toolkit landing page: https://ccsi.columbia.edu/content/women_participation_toolkit.

Obligation / Action / Principle	Source or Example
International & regional law & good practice	
<p>Governments must respect, protect, and fulfil human rights including the right of access to information.</p> <p>Governments must respect, protect, and fulfil women's rights such as gender equality and the elimination of all forms of discrimination against women.</p>	<ul style="list-style-type: none"> Universal Declaration of Human Rights (1948), Recital and articles 2, 7 and 19 International Covenant on Civil and Political Rights (1966), articles 2(1), 3 and 19(2) International Covenant on Economic, Social and Cultural Rights (1966), articles 2(2) and 3 African Charter on Human and Peoples' Rights (1981) (ACHPR), articles 9.1 and 18.3 American Convention on Human Rights (1969), articles 1.1 and 13.1 Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) (1979)
<p>Indigenous and Tribal People have the right to participate in the use, management, and conservation of the natural resources pertaining to their lands. In cases in which the State retains the ownership of mineral or subsurface resources or rights to other resources pertaining to lands, governments shall establish or maintain procedures to consult these people, with a view to ascertaining whether and to what degree their interests would be prejudiced before undertaking or permitting programs for the exploration or exploitation of such resources pertaining to their lands. Where the relocation of Indigenous and Tribal People is considered necessary, such relocation shall take place only with their free and informed consent.</p>	<ul style="list-style-type: none"> Indigenous and Tribal Peoples Convention (No. 169) of the International Labour Organization (ILO) (1989) (ILO 169), articles 15 and 16.2
<p>Women have the right to participate at all levels of decision-making, and to participate in and benefit from rural development and to participate in all community activities.</p>	<ul style="list-style-type: none"> Protocol to the ACHPR on the Rights of Women in Africa (2003), articles IX.2 and XIX.b - including women with disabilities (article XXIII.a) CEDAW, article 14.2(f)
<p>Governments should recognise the collective rights of Indigenous women over their customary lands and require their Free, Prior, and Informed Consent before authorising economic, development, and extractive projects on their lands and territories and affecting their natural resources.</p>	<ul style="list-style-type: none"> CEDAW, General recommendation No. 39 (2022) on the rights of Indigenous women and girls, paragraph 57

Obligation / Action / Principle	Source or Example
<p>Free, Prior, and Informed Consent is required in cases of relocation of Indigenous People from their lands; before adopting and implementing legislative or administrative measures that may affect them; and before the approval of any project affecting their lands or territories and other resources, particularly in connection with the development, utilisation, or exploitation of mineral, water, or other resources. Particular attention needs to be paid to the rights and special needs of Indigenous women. States are required to take measures to ensure that Indigenous women enjoy the full protection and guarantees against all forms of violence and discrimination.</p>	<ul style="list-style-type: none"> United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) (2007), articles 10, 19, 22 and 32.2
<p>Before adopting and implementing decision-making processes that may affect the rights of peasants and other people working in rural areas, States are required to consult and cooperate in good faith with peasants and other people working in rural areas through their own representative institutions: engaging with and seeking the support of peasants and other people working in rural areas who could be affected by decisions before they are made, and responding to their contributions, taking into consideration power imbalances between different parties and ensuring active, free, effective, meaningful, and informed participation of individuals and groups in associated decision-making processes.</p>	<ul style="list-style-type: none"> United Nations Declaration on the Rights of Peasants and Other People Working in Rural Areas (2018), articles 2.3, 4 and 10.1
<p>States are also required to take all appropriate measures to eliminate all forms of discrimination against peasant women and other women working in rural areas and to promote their empowerment in order to ensure, on the basis of equality between men and women, that they fully and equally enjoy all human rights and fundamental freedoms and that they are able to freely pursue, participate in and benefit from rural economic, social, political, and cultural development. States are required to ensure that peasant women and other women working in rural areas enjoy without discrimination the rights to participate equally and effectively in the formulation and implementation of development planning at all levels; to participate in all community activities; to equal access to, use of and management of land and natural resources, and to equal or priority treatment in land and agrarian reform and in land resettlement schemes; and to be free from all forms of violence.</p>	

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<p>Governments should comply with international good practice to ensure gender equality, non-discrimination, and transparency.</p> <p>Any project affecting the resources for which the communities hold rights should ensure active, free, effective, meaningful, and informed participation of individuals and groups in associated decision-making processes and for Indigenous Peoples, should be based on an effective and meaningful consultation to obtain their Free, Prior, and Informed Consent under UNDRIP.</p>	<ul style="list-style-type: none"> Sustainable Development Goals, including goal 5 Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries, and Forests in the Context of National Food Security, paragraphs 3B.4, 3B.6, 3B.8, 4.4, 4.6, 9.2, 9.6, and 9.9
<p>Business enterprises have the responsibility to respect human rights in light of international law, including women's rights.</p> <p>States should provide assistance to business enterprises to assess and address both gender-based and sexual violence.</p> <p>When business enterprises may adversely affect Indigenous women, they should take into account the rights, including to self-determination and of Free, Prior, and Informed Consent, set out in ILO 169 and UNDRIP.</p>	<ul style="list-style-type: none"> United Nations Guiding Principles on Business and Human Rights (GPBHR), principles 7(b) and 12 Gender dimensions of the GPBHR (2019), illustrative action under principle 12
<p>The client needs to conduct an informed consultation and participation process that will result in the affected communities' informed participation. The consultation process should (i) capture both men's and women's views, through separate forums or engagements if necessary, and (ii) reflect men's and women's different concerns and priorities about impacts, mitigation mechanisms, and benefits, as appropriate. The client is also required to obtain the Free, Prior, and Informed Consent of Indigenous communities.</p>	<ul style="list-style-type: none"> International Finance Corporation, Performance Standard (PS) 1, Assessment and Management of Environmental and Social Risks and Impacts, paragraph 31; PS 5 and PS 7

Obligation / Action / Principle	Source or Example
Domestic laws	
<p>Many states have domestic laws that prohibit discrimination against women, recognise women's human rights, and require proactive action by the government to realise these rights.</p>	<p>See, for example:</p> <ul style="list-style-type: none"> Sierra Leone's Customary Land Rights Act (2022) guarantees the right to own, hold, use, inherit, succeed to or deal with land under customary law to women and men equally, states that any customary law that excludes, limits or inhibits women from owning, holding, using, transferring, inheriting, succeeding to or dealing with land subject to customary law shall be void, provides that male and female adult members of a community must have equal opportunities to appointment for membership to land committees, at least 30% of each land committee must be women, and a land committee must ensure adequate protection of and respect for the rights of women (articles 5 and 8). Community members, particularly women and youth, must be consulted and meaningfully involved in the processes leading to their displacement and resettlement (article 43.8). Kenya's Community Land Act (2022) states that women have the right to equal treatment in all dealings in community land and that every woman married to a member of the community shall gain automatic membership of the community (section 30). The Gambia's Women's Rights Act (2010) expressly prohibits discrimination against women and requires the government to take special measures in this regard for rural women and women with disabilities. Every Ministry, Government department, agency or organ of Government is in particular required to take all appropriate measures to ensure full and equal participation of women including in rural development projects. The Act also recognises women's rights to property, food security, adequate housing, a healthy and sustainable environment, and sustainable development. See sections 9, 10, 11, 14, 33, 48, 49, 51, 52, and 54. The Mozambican National Land Policy (BR 45/2022, 28 November 2022) promotes and guarantees access to land for women, young people, and marginalised social groups, as a mechanism for achieving equality, social justice, and equity (fundamental principles, point 40.iv). For more examples, see this publication: UN Women and OHCHR, <i>Realizing Women's Rights to Land and Other Productive Resources</i> (2nd edition), 2020.^{VIII}

VIII <https://www.unwomen.org/en/digital-library/publications/2020/10/realizing-womens-rights-to-land-and-other-productive-resources-2nd-edition>

Obligation / Action / Principle	Source or Example
The constitutions of many host states enshrine the right of access to information.	<ul style="list-style-type: none"> • Bolivia (2009) (article 21.6) • Indonesia (1945, amended in 2002) (article 28F) • Kenya (2010) (article 35) • Mozambique (2004, amended in 2018 (article 4) • South Africa (1996, amended in 2012) (article 32) • Uganda (1995, amended in 2018) (article 41) • Zambia (1991, amended in 2016) (article 173)
The constitutions and/or laws of several states enshrine the right to Free, Prior, and Informed Consent.	<ul style="list-style-type: none"> • Bolivia: Constitution (2009) (articles 3, 30(II)15, 32, 352 and 403(I)). The Bolivian Constitution requires the Free, Prior, and Informed Consent for all affected populations, including Afro-Bolivians and Indigenous Peoples. • Chile: Ley N° 21.151 of 8 April 2019, granting legal recognition to Afro-Chilean Peoples (article 5). This law recognises the right of Free, Prior, and Informed Consent for Afro-Chilean Peoples. • Ecuador: Constitution (2008, amended in 2021) (articles 56 to 60) and Public Participation Act of 20 April 2010 (article 81). Read together, the Constitution and the Act recognise the right to Free, Prior, and Informed Consent for Afro-Ecuadorian and Indigenous Peoples and local communities. • Nicaragua: Constitution (1987, amended in 2014) (articles 5, 89, 91, and 181), Autonomy Statute for the Regions of the Atlantic Coast of Nicaragua (Law 28) of 2 September 1987, Decree of the National Assembly 3584 (Regulation to Law No. 28) of 2 October 2003, and Law of the Communal Property Regime of the Peoples of the Caribbean Coast of Nicaragua (Law 445) published on 23 January 2003. These instruments, read in light of ILO 169, UNDRIP and other international human rights instruments to which Nicaragua is a party require Free, Prior, and Informed Consent for Indigenous and Afro-descendant Peoples.⁴⁰ • Colombia: Free, Prior, and Informed Consent rights of Afro-descendant communities are derived from several legal frameworks, including the Constitution (1991, amended in 2015); Law 21 of 1991 ratifying ILO 169; Law 70 of 1993; Law 99 of 1993 (article 76); Decree 1320 of 1998, regulating prior consultation with Indigenous and Black communities for the exploitation of natural resources within their territory; and rulings from the Constitutional Court, such as Judgment T-576/14 of 4 August 2014.⁴¹

Obligation / Action / Principle	Source or Example
The constitutions of many host states enshrine the right to equality.	<ul style="list-style-type: none"> • Bolivia Constitution (2009) (article 14(II)) • Indonesia Constitution (1945, amended in 2002) (articles 27 and 28I) • Kenya Constitution (2010) (article 27) • Mozambique Constitution (2004, amended in 2018) (articles 35, 36 and 39) • South Africa Constitution (1996, amended in 2023) (article 9) • Uganda Constitution (1995, amended in 2017) (article 21) • Zambia Constitution (1991, amended in 2016) (articles 11 and 23)
An increasing number of home states have adopted mandatory laws for companies to undertake human rights and environmental due diligence when investing abroad.	<ul style="list-style-type: none"> • Including France (Law 2017-399 of 27 March 2017, on the corporate duty of care), Germany (Supply Chain Law of 22 July 2021) and Norway (Transparency Law of 10 June 2021) • See also: https://www.business-humanrights.org/en/big-issues/mandatory-due-diligence
Industry standards	
Investor companies increasingly have their own standards that require them to ensure their investments respect women's rights.	<ul style="list-style-type: none"> • Example: Coca-Cola's guidance on responsible land acquisition and Free, Prior, and Informed Consent (FPIC)^{IX}: "Entities acquiring land should consult landholders and users who may be affected by the project. Enabling communities and individuals to freely choose their representative(s) is critical to ensuring their active participation. Particular attention is placed on the inclusion of women in the process. [...] FPIC requires the full and effective participation of women who are affected by the project. While there may be cultural challenges to overcome, some simple steps can have a dramatic impact on whether women are involved. For instance, offer women-only meetings and, if applicable, ensure the interpreter is a female to foster more insightful and effective consultations. Additionally, ensure there are not barriers to participation – such as holding the consultation on a market day when women may not be able to attend."

IX The Coca-Cola Company, Responsible Land Acquisition (and Free, Prior, and Informed Consent) Guidance (2017), <https://www.cocacolacompany.com/content/dam/company/us/en/policies/pdf/human-workplace-rights/supplier-guiding-principles/responsible-land-acquisition-guidance-2017.pdf>.