

PRIOR INFORMED CONSENT FOR ACCESS TO GENETIC RESOURCES AND TRADITIONAL KNOWLEDGE AS A MEANS FOR HUMAN RIGHTS

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Abstract

Prior Informed Consent and Human rights are harmonious to each other. Prior Informed Consent procedure is a mandatory part of access and benefit sharing system. The procedure is followed to obtain the consent of local persons while accessing the ‘genetic resources and associated traditional knowledge’ of particular area. It supports ‘the right to self-determination’, cultural identity, and sustainable use of biological resources without interference. It ensures that external parties respect the community's cultural heritage and that they have the right to information and judgment. It also ensures that indigenous groups have the freedom to obtain profit from their own knowledge while safeguarding it. Prior Informed Consent promotes sustainable development, prevents exploitation of bio resources, checks on practice of biopiracy and ensures the right to health. It also supports the right to a healthy environment and encourages nondiscrimination. It also promotes inclusive and culturally aware education. By integrating prior informed consent into legislative frameworks and practices, societies can engage with diverse populations more equitable and respectfully, upholding the values of independence, self-governance, and the freedom to participate in decision-making. This study is helpful in understanding the Prior Informed Consent through the glasses of Human Rights.

Key Words: - Consent, Education, Human Right, Indigenous, Natural, Resources,

I. Introduction

The right to ‘self-determination’ belongs to each and every single person today. In international law, this concept is incorporated in the “Charter of the United Nations¹, the International Covenant on Economic, Social, and Cultural Rights² and the International Covenant on Civil and Political Rights³”. These three documents include a version of this principle. ‘Free,

¹ United Nations, ‘United Nations Charter’ (1945) <<https://www.un.org/en/about-us/un-charter>>.

² UNHR, ‘International Covenant on Economic, Social and Cultural Rights’ (1966) <<https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-economic-social-and-cultural-rights>>.

³ UNHR, ‘International Covenant on Civil and Political Rights’ (1966) <<https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-civil-and-political-rights>>.

Prior, and Informed Consent (FPIC)' is a requirement that is entrenched within the universal right to self-determination. Indigenous peoples' rights to lands, territories, and natural resources are also included in this right. The standard framework of FPIC is comprised of a number of international legal instruments, such as the "Convention on Biological Diversity (CBD)⁴, the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP)⁵", and the International Labour Organization Convention 169⁶ (ILO 169), amongst many others. National legal frameworks also enshrined this concept.⁷

The FPIC is a particular right that is recognized in UNDRIP. It gives local and indigenous peoples opportunity to opt out their assent or dissent to a project that might potentially have an impact on them and/or their locality. They have the ability to revoke their consent at any point in prescribed time for which they have already consented. As an additional benefit, they are able to negotiate the conditions of the project's creation, implementation, monitoring, and assessment through FPIC. The institutions that have contributed into recognition of FPIC are of the opinion that all individuals who are impacted by a project have the right to participate in decision-making processes in a manner that is in accordance with the principles that underpin the right to fundamental public interest consultation. It is advised that organizations that are looking for FPIC, are required to make a contribution to the gradual facilitation of individuals exercising their "right to self-determination" and the governments (at all levels) are expected to facilitate a mechanism for exercise of the right. FPIC is not only the result of a procedure that is used to get consent for a specific project; it is also a process which facilitates human rights in one way, and it is a process that allows Indigenous Peoples to engage in their own autonomous collective deliberations and decision-making. The right is exercised in in an atmosphere in which local persons do not experience feelings of intimidation and they are provided with sufficient time to discuss issues about their land, resources, livelihoods, information, social network, customs, systems of government, and cultural and historical artefacts (both physical and immaterial) in an appropriate and culturally relevant way.⁸

⁴ UNEP, 'Convention on Biological Diversity' (June 1992) <<https://wedocs.unep.org/handle/20.500.11822/8340>>.

⁵ UN, 'United Nations Declaration on the Rights of Indigenous Peoples' (2007) <https://www.un.org/development/desa/indigenouspeoples/wp-content/uploads/sites/19/2018/11/UNDRIP_E_web.pdf>.

⁶ ILO, 'Indigenous and Tribal Peoples Convention, 1989 (No. 169)' (1989) <https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C169>.

⁷ OHCHR, 'International Covenant on Economic, Social and Cultural Rights, and the International Covenant on Civil and Political Rights' (16 December 1966) Article 1 "All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development." <<https://www.ohchr.org/en/instrumentsmechanisms/instruments/international-covenant-economic-social-and-cultural-rights>>".

⁸ UN FAO, *Free Prior and Informed Consent (U N Department of Economic and Social Affairs 2016)* <<https://www.un.org/development/desa/indigenouspeoples/publications/2016/10/free-prior-and-informed-consent-an-indigenous-peoples-right-and-a-good-practice-for-local-communities-fao/>>".

II. The concept of Prior and Informed Consent

There are three components that make up the framework for indigenous Peoples' participation for FPIC. These components are free, prior, and informed. Before any project or activity is carried out, free consent is sought out. When consent is independently agreed upon and is founded on information that is accurate, timely, and culturally acceptable; the process is carried further. This process is interconnected, and its components should not be considered independent of one another.⁹

Prior consent is the process of obtaining consent at an early stage in the planning process for a development or investment project, which is a sufficient amount of time before any authorization or beginning of operations requires it. Understanding, gaining access to, and analyzing information on the planned activity takes time, and it is important to do so while adhering to the schedule for decision-making that was established by the rights-holders. The term "informed consent" refers to the nature of the engagement as well as the kind of information that need to be presented prior to the process of obtaining consent and as part of the continuing consent procedure. Accessible, clear, consistent, accurate, transparent and relevant information should be communicated in a way that is respectful of local culture and language. Additionally, information should be objective, comprehensive, and accessible to communities that are located in distant and rural areas.¹⁰

In the context of this discussion, the term "consent" refers to the collective choice that is taken by those who possess rights and is accomplished through the customary decision-making procedures that are negotiated with indigenous peoples and/or communities that are affected. Depending on the particular formal and informal political-administrative dynamics of each community, it must be sought, given, or denied in accordance with the well-being of the locality. Consent is a choice that is voluntarily provided, determined by the peoples who are impacted in line with their own customs and traditions, and expressed in phases over certain periods of time for various stages or phases of the activities that are being carried out as part of the project.¹¹

III. Guaranteeing Human Rights through Free, Prior, and Informed Consent

⁹ Colchester M and Chao S, *Respecting Free, Prior, and Informed Consent (Food & Agriculture Organization of the UN (FAO) 2014)*

<http://books.google.ie/books?id=CBmYngEACAAJ&dq=Free+Prior+%0D%0Aand+Informed+%0D%0AConsent&hl=&cd=4&source=gbs_api>

¹⁰ Young Stephen, *Indigenous Peoples, Consent and Rights (Routledge 2021)* http://books.google.ie/books?id=N-plzqEACAAJ&dq=Free+Prior+%0D%0Aand+Informed+%0D%0AConsent&hl=&cd=6&source=gbs_api.

¹¹ Somia Sadiq, *'Understanding and Implementing Free, Prior, and Informed Consent (FPIC) in the Context of Indigenous Peoples in Canada'* (2017)

<https://umanitoba.ca/institutes/natural_resources/pdf/theses/Sadiq,%20Somia.MNRM%202017.pdf>.

International documents for human rights including the “International Covenant on Civil and Political Rights, the International Covenant on Economic, Social, and Cultural Rights, and the International Convention on the Elimination of All Forms of Racial Discrimination” make clear that ‘free, prior, and informed consent’ is a cornerstone of these documents, as it is based on the basic rights of self-determination and freedom from racial discrimination. No new rights are created for indigenous peoples by the Declaration's provisions, particularly those dealing with free, prior, and informed consent. Rather, as will be shown in the sections that follow, they provide a thorough analysis of universal human rights concepts and rights while also accounting for the unique social, cultural, and historical circumstances of indigenous communities.¹²

In accordance with the principle of “self-determination”, indigenous peoples have always possessed the inherent authority to establish agreements that are legally bound for both their own communities and other contracting entities. The current notion and implementation of a mutually agreed upon and consensual agreement between indigenous peoples and state governments is firmly rooted in the historical events like treaty-making that defined the relationship between indigenous communities and state authorities for many centuries in various parts of the world. This practice continues to exist in many areas where these treaties are still legally binding, despite frequent instances of disregard for their terms.¹³ Throughout history and in the present day, indigenous peoples have difficulties while engaging in negotiations with states due to colonialism and the many constraints that often define the circumstances of indigenous communities worldwide.¹⁴

According to Special Rapporteur Miguel Alfonso Martínez's final report, the most effective approach to guaranteeing that indigenous communities' rights and freedoms are acknowledged and restored is to involve them in the treaty-making process through negotiation and consent-seeking. In addition, it aids in the development of workable strategies to promote the exercise of their ancestral rights as well as those safeguarded by domestic and international law. The most suitable strategy to resolving conflicts related to indigenous problems at all levels is to seek the consent of indigenous individuals who are both free from prejudice and educated. This recommendation may be found in the document ‘E/CN.4/Sub.2/1999/20, paragraph 263’. Additionally, Miguel mentioned the strong inclination of indigenous communities to establish a firm and distinct type of connection, which is markedly different from the historically contentious and frequently bitter relationship they have had with the non-indigenous population in countries where they live

¹² “Lexis® - Sign In | LexisNexis” <https://advance.lexis.com/document/?pdmfid=1523890&crd=a9ba5d4e-ef7c-43a3-af2e-2d4b50f5ff59&pddocfullpath=%2Fshared%2Fdocument%2Fanalytical-materials-in%2Furn%3AcontentItem%3A5TFY-C2D1-JWR6-S1B0-00000-00&pdtoctnodeidentifier=AABABUAABAAJ&ecomp=pwqtk&prid=1eb7f15e-8646-48b2-9caf-27661b53e23f>.

¹⁴ OHCHR, ‘Free, Prior and Informed Consent: Report’ (2018) “<https://www.ohchr.org/en/calls-for-input/free-prior-and-informed-consent-report>”.

together. The principles for free, prior, and informed consent outlined in the Declaration hold significant relevance in the present and future of indigenous peoples' interactions with states.¹⁵

1. Protecting the Indigenous People's Rights

The concept of “free, prior, and informed consent” focuses on obtaining consent of Indigenous Peoples (IPs) before engaging in any activity on their property. Governments are not allowed to carry out any policy or program related to Indigenous Peoples' lands without first consulting and obtaining approval from the Indigenous community. This includes any state policy or program that aims to authorize a firm to carry out any activity on such grounds. Upon granting their consent, individuals retain the ability to revoke it at any point. Moreover, the provision of free, prior, and informed consent empowers individuals to engage in negotiations over the terms and specifications of the project's design, implementation, monitoring, and evaluation¹⁶.

The distinctive right of Indigenous Peoples to “Free, Prior, and Informed Consent (FPIC)” is recognized in the “United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP)”, which is in line with their fundamental right to self-determination. FPIC grants Indigenous Peoples authority to provide or refuse consent, at any stage, with regards to projects that affect their lands. FPIC grants Indigenous Peoples the opportunity to participate in discussions to influence the development, execution, oversight, and assessment of projects. FAO's policy on Indigenous Peoples is in accordance with the United Nations and the international legal framework. It places emphasis on the integration and advancement of Indigenous Peoples' concerns in its activities. The FAO Policy adheres to fundamental values including autonomous development, reverence for the knowledge, traditions, and traditional practices of Indigenous Peoples, along with the concept of FPIC. The Indigenous Peoples Unit (PSUI) is responsible for implementing the FAO Policy and the FAO Handbook on ‘Free, Prior, and Informed Consent’. It provides technical support to other units and initiatives.¹⁷

Recently, there has been seen an increase in protests from indigenous peoples and communities, expressing their dissatisfaction with the failure to adhere to “the ILO Convention” and “the UN Declaration on the Rights of Indigenous Peoples (UNDRIP)”. This is particularly evident in the lack of obtaining their “Free, Prior, and Informed Consent (FPIC)” before implementing projects on their territories. This is a defense of the indigenous people's ancestral lands and their vocal opposition to the encroachment of extractive companies into their territory, which is abundant in untapped natural resources. The relentless quest for financial gain has driven

¹⁵ ActionAid, ‘Free, Prior, Informed Consent (FPIC) a Brief Manual’ (2018) “<https://www.actionaidindia.org/wp-content/uploads/2018/12/Free-Prior-Informed-Consent-English.pdf>”.

¹⁶ “What Is Free, Prior and Informed Consent (FPIC)?” <https://www.ihrb.org/explainers/what-is-free-prior-and-informed-consent-fpic#:~:text=At%20the%20basic%20level%2C%20governments,any%20activity%20on%20such%20lands.”>

¹⁷ “Free, Prior and Informed Consent | Indigenous Peoples | Food and Agriculture Organization of the United Nations” <https://www.fao.org/indigenous-peoples/our-pillars/fpic/en/>.

voracious corporations to exploit energy supplies and natural resources, encroaching into the territories of indigenous communities. Companies' emphasis on profitability has led them to persuade local and national authorities to expedite extractive and commercial initiatives, disregarding the consent of indigenous communities that have inhabited those areas for centuries. This has resulted in a cascade of breaches of the human rights of indigenous peoples.¹⁸

The detrimental effects on the livelihood and ecological assets of indigenous communities are readily apparent. Furthermore, it is evident that there has been no consideration given to the condition of the land following any of these operations once the resources have been depleted. Examples of environmental and societal issues include desertification, land degradation, water pollution in both freshwater and marine ecosystems, alteration of river courses, decreased agricultural productivity, disease outbreaks, food insecurity, unemployment, child labor, gender-based labor law violations, privatization of communal lands, rural-to-urban migration, and urban unrest. Anthropogenic land degradation resulting from extractive initiatives has wide-ranging effects on civilization at both global and national scale. There have been unintended repercussions from projects like building hydroelectric dams, oil and biofuel plants, vast irrigation systems, and roads, bridges, and airports. In other words, development comes on its own cost. Indigenous communities from all over the world have approached to the 'UN Permanent Forum on Indigenous Issues' to complain about terrible things like the killing and torture of their leaders, the destruction of their sacred sites, the overthrow of their governments, the criminalization of their struggles for rights, and the displacement and manipulation of their land and property. When indigenous communities feel that commercial interests are violating their basic human rights, they can go to the 'United Nations Permanent Forum on Indigenous Issues' for a hearing. Many cases of government and corporate mistreatment of indigenous peoples have been brought to light as a result of the Forum's work.¹⁹

Simultaneously, it is evident that indigenous communities have not reaped any advantages from these enterprises or government endeavors, which are consistently presented as development projects. Undoubtedly, it has been challenging to discover a project that has brought about a fundamental change in thinking and led to tangible and authentic progress in the indigenous areas. Unsurprisingly, this has engendered heightened skepticism among international indigenous leaders over the motives of politicians and businesspeople in regard to projects within their lands, hence complicating the dynamic between indigenous communities, governments, and private enterprises. Similarly, it is evident that mankind needs resources for advancement. Insufficient or unavailable resources hinder the progress of technological advancement, welfare, and development settings.

¹⁸ ActionAid, 'Free, Prior, Informed Consent (FPIC) a Brief Manual' (2018) <<https://www.actionaidindia.org/wp-content/uploads/2018/12/Free-Prior-Informed-Consent-English.pdf>>.

¹⁹ Agnes Portalewska, 'Free, Prior and Informed Consent: Protecting Indigenous Peoples' Rights to Self-Determination, Participation, and Decision-Making' (27 November 2012) "<https://www.culturalsurvival.org/publications/cultural-survival-quarterly/free-prior-and-informed-consent-protecting-indigenous>".

Based on our observations, it is evident that although these resources are available, this progress fails to benefit the people who have been responsibly managing them for centuries. The following modifications are required: This manual significantly aids those who advocate for the human rights of indigenous peoples, offering a precise roadmap to accomplish these rights. Contemporary entrepreneurship and emerging politics must foster a culture of democratic discourse, complete dissemination of information, transparent governance, and collective support for all efforts aimed at benefiting the citizens of their respective nations. This is especially noteworthy when considering indigenous populations in light of the aforementioned circumstances. The pursuit of 'free, prior, and informed consent' from indigenous peoples is essential for the evolution of democracy towards decision-making processes that are firmly grounded in the principles of human rights. Indigenous and Local peoples have the potential to once again make valuable contributions to improving human relationships. Furthermore, it serves as a significant worldwide plea to reconsider the moral principles behind the generation of prosperity. The planet is on a trajectory towards self-destruction due to the existing course of entrepreneurship and resource management.²⁰

Despite one's utmost intentions and meticulously devised strategies, unforeseen complications arise. Furthermore, it demonstrates that the idea may sometimes be irrelevant due to the abundance of freely available information and resources that can no longer be traced to a particular originating group or country. Nevertheless, we should not jump to the conclusion that the absence of legal requirements implies the absence of moral obligations. Due to the complex and diverse connections between medication creation and commercialization, gaining prior informed consent may not effectively address the issue of biopiracy in its most comprehensive form. Nevertheless, it should not be inferred that this notion lacks use. Indigenous communities possess the entitlement to anticipate that bio prospectors will formally seek their consent. However, it is important to note that acquiring prior informed consent does not serve as a replacement for upholding fundamental human rights. Prior informed consent is an essential prerequisite for establishing fairer bioprospecting agreements. However, it is only considered sufficient if it is obtained through processes that are effective, culturally suitable, transparent, and adaptable.²¹

2. Avoidance of Exploitation of Genetic Resources

On the foundation of the interaction between the patient and the physician is the concept of informed consent. To put it another way, medical professionals are required to "disclose

²⁰ 'UN FAO, Free Prior and Informed Consent (U N Department of Economic and Social Affairs 2016)' ["https://www.un.org/development/desa/indigenouspeoples/publications/2016/10/free-prior-and-informed-consent-an-indigenous-peoples-right-and-a-good-practice-for-local-communities-fao/"](https://www.un.org/development/desa/indigenouspeoples/publications/2016/10/free-prior-and-informed-consent-an-indigenous-peoples-right-and-a-good-practice-for-local-communities-fao/).

²¹ Graham Dutfield, 'Protecting the Rights of Indigenous Peoples: Can Prior Informed Consent Help?', *Indigenous Peoples, Consent and Benefit Sharing; Lessons from the San-Hoodia Case* (Springer 2009) <<https://link.springer.com/chapter/10.1007/978-90-481-3123-5>>. https://doi.org/10.1007/978-90-481-3123-5_4.

information to the extent that a patient or subject understands and consents to the information." Patients have a right to be informed of any risks and consequences that may be associated with receiving medical treatment. Furthermore, the provision of medical treatment is typically not permitted without this 'informed consent'. The consent is concerned with limiting risk and "avoiding unfairness and exploitation." As stated in the previous sentence, The practice of demanding informed consent, on the other hand, has developed throughout time in order to safeguard the autonomy rights of both patients and subjects²².

The five-step protocol is followed for acquiring informed consent in the medical area, which is as follows: (1) competence; (2) disclosure; (3) comprehension; (4) voluntariness; and (5) consent. The process has been established as a vital instrument in managing the transboundary movement of chemicals which may create threats of prospective harm to national or local ecosystems. PIC has been effectively accepted into international environmental standards, and it has already become an effective instrument. The PIC has been incorporated into the regulations that govern the planet's ecosystem. As an illustration, 'the Basel Convention' stipulates that it is imperative to secure written permission from the importing state prior to exporting any hazardous waste. When a request for export hazardous trash is received, the state importing the waste has the option of responding over the request by either agreeing to the cross-border travel, or refusing the movement, or seeking further information. In addition, the recently established Cartagena Protocol on Biosafety has been of great assistance in contributing to the proper regulation of the worldwide movement of living modified organisms (LMOs). A process that is analogous to that of the Basel Convention is utilized by the Protocol in order to protect domestic health and the environment. This mechanism necessitates the requirement of an 'advance informed agreement' (AIA) prior to any movement of LMOs across international borders. In addition, the process of acquiring an ALA is similar to the regulations that are outlined in the Basel Convention.²³

To summarize, the observation of PIC by governments is a form of policy that might be described as "good neighbor." Instead of being used in general, forms of PIC that have been changed to fit the needs of specific 'multilateral environmental agreements' (MEAs) have been regularly used in MEAs as a way to protect the independence of states that are likely to be affected by activities that cross borders. Obviously, the implementation of PIC might also protect the

²² Kuei-Jung Ni, 'Legal Aspects of Prior Informed Consent on Access to Genetic Resources: An Analysis of Global Lawmaking and Local Implementation toward an Optimal Normative Construction' (2009) 42 *Vanderbilt Journal of Transnational Law* 227 <<https://scholarship.law.vanderbilt.edu/vjtl/vol42/iss1/5>>.

²³ Allan Sugerman KM, "Exploring the Nuances, Ethicality and Functionality of 'Consent': Prior Informed Consent as a Legal Mechanism to Protect Malaysia's Indigenous Communities' Rights to Genetic Resources and Associated Traditional Knowledge" (2013) 26 *Berkeley Undergraduate Journal* <http://dx.doi.org/10.5070/b3262019819>.

national public interest from the unfavorable effects that could be caused by transnational operations that are not controlled.²⁴

India is well-known for its rich genetic resources and its diverse array of plant and animal species. The GR in India, particularly plants like the neem tree and turmeric, have been investigated, recognized, and utilized in traditional ways for a very long time. In point of fact, there have been a number of noteworthy instances of GR biopiracy and theft that have occurred in relation to these plants. Given such a background, it is reasonable to see why India has been motivated to restrict access to GR to the greatest extent feasible in recent years.²⁵

It is quite obvious that the Indian government is making an effort to ameliorate the concerns that were related with the formerly lax regulation of GR by enforcing such stringent rules that limit access to GR. The Indian 'Biological Diversity Act' is a relatively recent piece of law that was enacted in 2002. Its purpose is to execute the demands of the CBD in a transparent manner. A legislation was passed that established the National Biodiversity body (NBA)²⁶, which is responsible for regulating, among other things, attempts to access resources. This was done in response to the Bonn Guidelines, which called for the establishment of a competent national body. For the sake of research, commercial usage, bio survey and bio-utilization, or any other reason, foreigners are not permitted to get any biological resources that are indigenous to India or any information relating to them without first obtaining authorization from the National Biodiversity Authority (NBA). Indian citizens, on the other hand, have the ability to get access to biological resources provided that they provide prior notification to the appropriate constituted authority authorities. Due to the fact that Indian legislation only permits the NBA to participate in "consultation" with local biodiversity committees, the NBA is able to literally control the PIC system and disregard the consent rights of other local stakeholders.²⁷

In addition, the procedure of issuing PICs does not include any specified roles of individual, local community, or local groups. In broad sense, the single-consent character of the regulating law is demonstrated by the fact that those stakeholders did not contribute to the process of approving access to the GR. In point of fact, the Indian access rule is a pretty typical example of the government's attempt to centralize control over genetic resources. The Indian statute that negates the consent rights of providers is not seen to be incompatible with either the 'CBD or the Bonn Guidelines'. This is the strict interpretation of the scenario. This is because the supranational rules do not specifically acknowledge the consent rights of such persons. A move of this nature,

²⁴ Uehara T and others, "Can Prior Informed Consent Create Virtuous Cycle between Biodiversity Conservation and Genetic Resources Utilization?" (2021) 300 *Journal of Environmental Management* 113767 <http://dx.doi.org/10.1016/j.jenvman.2021.113767>.

²⁵ Narasaiah ML, *Genetic Diversity and Food Security* (Discovery Publishing House 2005).

²⁶ Parliament of India, 'The Biological Diversity Act, 2002' (2002) <https://www.indiacode.nic.in/bitstream/123456789/2046/4/A2003-18.pdf>.

²⁷ Ganguly S, *Deliberating Environmental Policy in India* (Routledge 2015).

on the other hand, that disregards the consent rights of certain stakeholders appears to be a clear deviation from the growing momentum on the international stage to respect or recognize the right of indigenous and local peoples to participate in any decision or process that is related to the utilization of natural resources associated with their lives. This is because the move appears to be a clear violation of the right of certain stakeholders to give their consent. Similarly, "the paternalistic model" that Safrin describes is likely to pose a danger to "the autonomy and interests of individuals and indigenous communities." This is what Safrin is referring to.²⁸

3. Preservation of Cultural Integrity

The right to preserve and strengthen the unique spiritual and material link that indigenous peoples have with their lands, territories, and resources is a fundamental human right (UNDRIP, Article 25). Preservation of cultural integrity through Prior Informed Consent is an important principle that recognizes and respects the rights of indigenous and local communities in the context of cultural heritage, traditional knowledge, and practices. Prior Informed Consent is a concept rooted in the idea that any external entity or individual seeking to engage with or use the cultural resources of a community must obtain the free, prior, and informed consent of that community before proceeding. Here are key aspects of how Prior Informed Consent contributes to the preservation of cultural integrity²⁹:

- **“Respect for Autonomy:** Prior Informed Consent acknowledges the autonomy of indigenous and local communities. It recognizes that these communities have the right to make decisions about their cultural heritage without external interference³⁰.
- **Protection of Traditional Knowledge:** Many indigenous communities possess unique traditional knowledge related to medicinal plants, sustainable agriculture, and other areas. PIC helps protect this knowledge by ensuring that external parties cannot exploit or use it without the community's consent.
- **Cultural Heritage Protection:** Communities often have sacred sites, artifacts, and cultural practices that are integral to their identity. Prior Informed Consent safeguards these

²⁸ “Biswajit Dhar, Sachin Chaturvedi and RV Anuradha, *Regime of Intellectual Property Protection for Biodiversity: A Developing Country Perspective* (Distributor in India, Bookwell 2001)”.

²⁹ L. Daytec-Yaño MrC, “FPIC: A Shield or Threat to Indigenous Peoples’ Rights?” (www.un-redd.org)

“[https://www.un-redd.org/sites/default/files/2021-](https://www.un-redd.org/sites/default/files/2021-09/Indigenous%20Peoples%20Experiences%20on%20Free%2C%20Prior%20and%20Informed%20Consent%3A%20%20Collection%20of%20Case%20Studies%28Philippines%29.pdf)

[09/Indigenous%20Peoples%20Experiences%20on%20Free%2C%20Prior%20and%20Informed%20Consent%3A%20%20Collection%20of%20Case%20Studies%28Philippines%29.pdf](https://www.un-redd.org/sites/default/files/2021-09/Indigenous%20Peoples%20Experiences%20on%20Free%2C%20Prior%20and%20Informed%20Consent%3A%20%20Collection%20of%20Case%20Studies%28Philippines%29.pdf).”

³⁰ Vrdoljak A, *The Cultural Dimension of Human Rights* (Oxford University Press 2013)

http://books.google.ie/books?id=sTozAgAAQBAJ&pg=PA284&dq=The+Cultural+Rights+of+%0D%0AIndigenous+Peoples+%0D%0AAchievements+and+%0D%0AContinuing+Challenges&hl=&cd=3&source=gbs_api.

elements by requiring that any activities involving them, such as research, exhibitions, or commercial use, must be approved by the community³¹.

- **Avoidance of Exploitation:** PIC prevents the exploitation of indigenous and local communities for commercial or research purposes without their explicit agreement. This helps prevent the unauthorized use of cultural elements for profit.
- **Promotion of Sustainable Practices:** Communities are often the stewards of their environments and practice sustainable resource management. Prior Informed Consent encourages collaboration that respects and supports these sustainable practices, ensuring that any engagement aligns with the community's values and priorities.
- **Empowerment of Communities:** By requiring prior informed consent, Prior Informed Consent empowers communities to actively participate in decisions related to their cultural heritage. This can contribute to the revitalization and transmission of cultural practices within the community.³²
- **Legal Recognition and Protection:** Incorporating Prior Informed Consent into legal frameworks provides a formal mechanism for recognizing and protecting the rights of indigenous and local communities. This can be at the national or international level.
- **Cultural Sensitivity and Understanding:** Prior Informed Consent fosters a more culturally sensitive and respectful approach to engagement. It encourages dialogue and understanding between external entities and communities, promoting mutual respect.
- **Long-term Relationship Building:** Obtaining prior informed consent establishes a foundation for long-term and mutually beneficial relationships between external entities and communities. This can lead to collaborative partnerships that respect cultural integrity.
- **Inclusive Decision-Making:** Prior Informed Consent ensures that decision-making processes include the perspectives and voices of the affected communities, promoting inclusivity and avoiding top-down approaches”.

The imperative to preserve the cultures of indigenous peoples has given rise to regulations that not only forbid physical and legal intrusions upon the people, their languages, and customs, but also the lands that are intrinsically connected to their traditional ways of life. These regulations also require government initiatives to promote indigenous education in their original tongue, the incorporation of their culture into state media, and the creation of indigenous media in order to promote the flourishing of their cultural heritage. In conclusion, the implementation of prior informed consent is an essential mechanism that guarantees the preservation of cultural integrity

³¹ *First Gen Corporation, First Gen Corporation Cultural Heritage and Indigenous Peoples Policy* <https://www.firstgen.com.ph/static-assets/assets/file-uploads/corporate-governance/company-policies/Cultural-Heritage-and-Indigenous-Peoples.pdf>.

³² “Antonietta Di Blase and Valentina Vadi, *The Inherent Rights of Indigenous Peoples in International Law* (Roma TrE-Press 2020) <https://romatrepress.uniroma3.it/wp-content/uploads/2020/02/The-Inherent-Rights-of-Indigenous-Peoples-in-International-Law-1.pdf>”.

and the respect of the rights of indigenous and local populations. It creates a foundation for moral interaction, teamwork, and the preservation of traditional knowledge and cultural legacy³³.

4. Conservation of Biodiversity by prior informed consent

There aren't many real-world instances of benefit sharing in India, even though the 1992 “UN Convention on Biological Diversity (CBD)” mandates giving local biodiversity conservators and bearers of Traditional Knowledge (TK) the recognition and benefits they deserve. Given the significance of the necessity, a project on the indigenous methods of managing natural resources used by the tribal peoples of northeastern India was carried out in 2005 in a number of Arunachal Pradesh and Meghalaya locations. The project's main objective was to investigate the untapped knowledge of tribal peoples on the preservation of biodiversity and indigenous knowledge and practices. In order to get the opinions of TK holders about ‘prior informed consent (PIC) and intellectual property rights (IPR)’ in relation to their knowledge and practices, the project hosted workshops with TK holders and conducted in-person interviews with them. There are two main categories of incentives for knowledge holders: non-materialistic and materialistic. Non-materialistic incentives are necessary in a society with high ethical standards but low economic standing. For non-commercial and scholarly reasons, the majority of these individuals believed that their expertise may be displayed in full text. It is necessary to legitimize research on indigenous resources and capitalize on the notoriety and reputation of formal scientists via the community and knowledge holders, explicitly acknowledging their wisdom. The ethics and methods of accessing biodiversity were found to differ throughout groups due to the ever-changing and growing heterogeneity in geography, altitude, biodiversity, culture and social practices. Knowledge holders residing in high-altitude regions rich in biodiversity demanded the provision of a maximum benefit percentage for the preservation and well-being of community-based biodiversity. The level of benefit sharing, and the kinds of incentives recommended for TK holders were likewise influenced by gender diversity.³⁴

Based on the assessment of the local population, it may be determined that a reduction in biodiversity has frequently coincided with economic development in many locations. Furthermore, it is evident that the institutions in question must give the distribution of profits and benefits among various stakeholders resulting from the economic uses and added value of TK their urgent attention. The importance of non-monetary incentives for acknowledging the source of TK is becoming more well recognized than the importance of financial incentives and rewards⁵. It's

³³ Lourdes Amos, “*Cultural Integrity*”: Promoting Cultural Survival and Decentralizing Good Forest Governance in Ancestral Domains the Agta-Dumagat People: Province of Aurora, Philippines’
https://dlc.dlib.indiana.edu/dlc/bitstream/handle/10535/1292/Amos_Cultural_040327_Paper565d.pdf?sequence=1

³⁴ Ranjay K Singh, “*Implications of Prior Informed Consent for the Conservators of Indigenous Biological Diversity of Northeast India*” (“*Indian Journal of Traditional Knowledge* Vol. 7(4), October 2008, pp. 655-665”)
[https://nopr.niscpr.res.in/bitstream/123456789/2387/1/IJTK%207\(4\)%20655-665.pdf](https://nopr.niscpr.res.in/bitstream/123456789/2387/1/IJTK%207(4)%20655-665.pdf).

possible that not all conventional procedures are eligible for PIC and IPR disclosure. When taking the PIC, it is necessary to provide the scale that will be used to qualify the exceptional quality of IPR. If incentives are to be created to preserve not just the knowledge but also the institutions that facilitate its replication and generational transmission, then even traditional knowledge itself need to be protected in some way. Although most TK holders believe that acknowledging their wisdom is now necessary, the custom of professionals and scientists not appreciating local knowledge has not become valuable. In a given type of knowledge system, a reasonable mix of monetary and non-monetary incentives would be ideal, provided that the institutional arrangements are made explicit in the PIC. There is a paucity of information about benefit sharing trials and erroneous fears that the value-adding process would exacerbate the loss of local expertise. A clearer picture at the national level can be produced in this respect by more PIC investigations. The study's local communities and traditional knowledge holders agreed that community and private information should remain in the common/private realm and be shielded from monopolies by the private sector. As a result, guaranteeing the short- and long-term non-financial advantages resulting from indigenous knowledge systems can directly benefit the relevant society and increase the likelihood of maintaining indigenous biodiversity and the foundations of knowledge systems. The study's lessons demonstrated that village workshops led by exceptional traditional knowledge bearers and local wisemen could create a setting for the growth of intra- and intercommunal knowledge networks about indigenous methods of healing animals, people, and crops as well as natural resources and ethnic foods. Creating a vertical learning network between indigenous knowledge holders and the educational system, as well as allowing them to lecture in public forums and schools, can serve as effective non-materialistic incentives for the generational preservation and dissemination of indigenous knowledge systems³⁵. Customary law is strongly associated with traditional ways of managing resources and access to biodiversity in many regions of our nation, particularly in Northeast India. Tribal customs continue to be acknowledged as legitimate sources of information and are applied when addressing issues pertaining to biodiversity and natural resources. Therefore, customary law rights apply to both biological and genetic resources. These rights must be made clear at the time of PIC to avoid future conflicts between formal and informal constitutions and their impact on the legitimate benefits to holders of traditional knowledge.³⁶

Situations like geographic regions, sociocultural origins, and exposure to the contemporary materialistic world are examples of factors that influence TK holders' ethical standards and amount of motivation with regard to sharing the advantages of local knowledge. While local knowledge publications exhaust intellectual property rights (IPRs) and may deny the knowledge provider any benefits arising from value addition in local knowledge to the individual, community, or nation concerned, they also enable people facing similar problems to learn from the publications. Disclosure of any material, information, or other knowledge utilized in a patent application that

³⁵ "Nursadh Ali, *Natural Resource Management and Sustainable Development in North-East India* (New Delhi Mittal Publications 2007)".

³⁶ "Charles Lawson, Michelle Rourke and Fran Humphries, *Access and Benefit Sharing of Genetic Resources, Information and Traditional Knowledge* (Taylor & Francis 2022)".

was legitimately and lawfully received through PIC should be mandatory for all applicants relating to TK. In fact, it will not only make the Sui generis system—which calls for the transfer of indigenous genetic resources from TK holders to interested recipients—transparent while also facilitating fair benefit sharing. Northeastern India possesses a vast amount of indigenous knowledge that is exclusively transmitted orally, is enshrined in the native language among the people, and has not yet received the appropriate recognition. It is quite concerning that there have been cases when locals' good-faith communications of such information have been utilized to assert intellectual property rights without acknowledgment or reciprocity.³⁷

5. Right to Public Health and Prior Informed Consent

In the discipline of bioethics, informed consent is a well-established concept; yet, its practical application in the context of public health remains uncertain. The necessity to examine the extent of governmental authority in relation to personal choice arises from the growing prominence of public health initiatives. In order to prevent infectious diseases, public health interventions fall into three categories that are examined in this article: (1) environmental interventions; (2) traditional public health interventions; and (3) public health information reporting or usage. The rationale behind restricting informed consent varies based on the situation, as do the consequences for the extent of an exception. Analyzing the theoretical underpinnings of exceptions with care highlights the significance of information disclosure in nearly every scenario and might inspire creative solutions, such a "fair use" approach for health data. A single "public health exception" idea is too general and cursory. Rather, a more comprehensive discussion of informed consent requirements in the diverse range of public health settings is warranted.³⁸

Encouraging individual decision-making may make us a better society overall, but this may not always be the case. Act-utilitarianism is a cumbersome theory to implement and would let modifications of the norms to be decided on an individual basis. A more popular method is rule-utilitarianism, which looks for the general rule that would maximize utility. In this case, the general rule is seen to support personal preference. Even yet, rule-utilitarianism permits exceptions to general rules were doing so will increase overall benefit relative to applying the rule without the exception. (In other words, either the exception is included into the rule, or the rule is defined more narrowly to exclude it.) Consider the scenario of quarantine, when permitting individual choice might have serious negative effects on society. For example, an act-utilitarian might inquire as to whether isolating this specific individual would improve general utility³⁹. Regardless of the utility balance in a given event, a rule-utilitarian would inquire as to whether allowing the quarantine of any individual who finds herself in the specific circumstance would boost overall utility. In theory,

³⁷ "Brendan Tobin, *Indigenous Peoples, Customary Law and Human Rights – Why Living Law Matters* (Routledge 2014)".

³⁸ Jessica Wilen Berg, "ALL FOR ONE AND ONE FOR ALL: INFORMED CONSENT AND PUBLIC HEALTH" (2012) "https://scholarlycommons.law.case.edu/cgi/viewcontent.cgi?article=1013&context=faculty_publications".

³⁹ "John Jamieson Carswell Smart, *An Outline of a System of Utilitarian Ethics* (1961)".

both strategies would permit isolation without personal authorization, given that the utility ratio favored the strategy⁴⁰.

The last justification for obtaining each individual's informed permission is grounded in their rights and is directly related to how the legal theory has evolved. But on its own, it may not always offer a compelling argument—just like other rights-based defenses. From where does the right originate? Stated differently, why is it that someone has a right to decide what happens to their body? For some, using a natural rights framework might be the solution. Informed consent only acknowledges the fundamental rights that people have over their bodies. Even if we embrace the idea of natural rights, however, there are circumstances in which harm to the collective may outweigh an individual's right to govern their own health. Individual rights to physical integrity are not absolute. From a different angle, people have rights, such the right to decide what happens to their bodies, because those rights improve general utility (by promoting autonomy, for example, or because people are more qualified to make decisions about themselves than other people). Therefore, in this situation, rights theory might not be sufficient on its own; instead, the "rights" that emerge are those that have a utilitarian foundation. Assuming the rights at issue are grounded in utilitarian principles—for example, if they lead to a better society overall than when they are not—then the argument that the overall utility supports superseding the relevant right automatically arises.⁴¹

IV. Conclusion

In Conclusion, Prior Informed Consent is a critical tool for upholding the human rights of indigenous and local peoples. It recognizes their autonomy, preserves their cultural heritage, and ensures that external activities on their lands and with their resources are conducted with respect for their rights and well-being. Implementation and respect for PIC contribute to fostering a more equitable and just global society.

It is possible to refer to prior and informed consent as the "gold standard" due to the fact that it enables the maximum possible level of engagement of local community members in development initiatives. The experience of Kichwa peoples sheds spotlight on a number of significant aspects that are involved in the prior and informed consent level of participation. The state's role, expertise, capability, participation of local decision-making bodies, impartial and independent accountable procedures, and rights of concerned individuals to refuse consent are all part of these factors. Businesses in the Amazon can't always put their faith in governments to protect native peoples' rights. Thus, it is vital to include prior and informed consent in their operations. It is possible for a government that is more actively involved to guarantee that businesses conform to the framework

⁴⁰ "Canterbury v. Spence, 464 F.2d 772, 788-89 (D.C. Cir. 1972)".

⁴¹ "Institute of Medicine and others, *Informed Consent and Health Literacy: Workshop Summary (The National Academies Press 2015)* <https://nap.nationalacademies.org/catalog/19019/informed-consent-and-health-literacy-workshop-summary>".

of prior and informed consent and that the rights of indigenous peoples are honored. Regarding prior and informed consent, one of the most important aspects to consider is the level of awareness and capability of local stakeholders to take part. The experiences that have been had in the Amazon place a strong emphasis on the significance of telling the indigenous inhabitants about the potential hazards and advantages, both in the short term and in the long term and ensuring that they are aware of all the ramifications before they give their agreement. In conclusion, it is essential to involve local decision-making groups and to recognize the role that these bodies play in deciding whether or not to provide services. There can be disputes about the subject of the assignment if an informal decision-making body doesn't include all of its members.

Consultations with parties outside the impacted community should be avoided. Without the project proponent, corporate, or government representatives present or interfering, the community should be allowed to have its own discussion sessions. The NCIP should not dictate or interfere with community decisions about project entrance; it should simply be an observer. Attendance records shouldn't be kept as they might be mistaken for consent signatures. The NCIP should promote the right of indigenous peoples to be heard and to have their decisions respected, rather than acting as spokespersons or representatives of the corporation or project proponent. It should exhibit prejudice toward the indigenous community throughout the entire procedure. The memorandum of understanding should not be signed by elected authorities on behalf of the community. In regions where customary rules permit such councils, elective officials ought not to be included in them. Any funds or compensation need to be allocated to the community as a whole rather than to specific people. Gifts, bribes, and handouts ought to be outlawed because they foster 'utang na loob' or a sense of obligation. Liaison officers from the community or NCIP should not be hired by the firm or project proponent. Particularly throughout the FPIC process, the state should refrain from deploying law enforcement and military forces in regions impacted by extractive businesses. The Investment Defense Force should be disbanded by the government right away. Given that the state now routinely uses the military to protect mining sites, the NCIP need to keep a careful eye out for instances of human rights abuses and take proactive measures to stop them. The Commission on Human Rights should also request reports from NCIP and DENR on the state of human rights in places where mining applications have an impact on indigenous territory.