

**INTERGOVERNMENTAL COMMITTEE ON INTELLECTUAL  
PROPERTY AND GENETIC RESOURCES TRADITIONAL  
KNOWLEDGE AND FOLKLORE**

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**WIPO INDIGENOUS PANEL ON FREE, PRIOR AND INFORMED CONSENT: EXPERIENCES  
IN THE FIELDS OF GENETIC RESOURCES, TRADITIONAL KNOWLEDGE AND  
TRADITIONAL CULTURAL EXPRESSIONS: EXPERIENCES FROM UKRAINE**

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The purpose of this presentation is to clarify how we understand free, prior and informed consent as it relates to traditional knowledge, traditional cultural expressions and genetic resources.

Any activities, either state- or corporate-initiated, related to indigenous traditional knowledge, traditional cultural expressions and genetic resources may pose serious threats to indigenous peoples' identities and livelihoods.

As a part of indigenous peoples' right to self-determination, indigenous peoples have a collective right to protect and control the use of their traditional knowledge.

Consultation with and participation of indigenous peoples are key to the process of obtaining free, prior and informed consent of indigenous peoples to activities that impact their life.

In terms of conceptualization, meaning and interpretation of the principle of FPIC, we see it as a collective right of indigenous peoples exercised through their chosen representatives or representative bodies in accordance with their customs and traditions and refers to both activities that are addressed to indigenous peoples directly and those that are not addressed to them directly but eventually affect them.

“Free” implies that it is given without any pressure, manipulation or fraud.

“Prior” means that consent is given before any decisions are made or any activities are planned. Indigenous people/community concerned must be given sufficient time for their internal agreement on activities for which consent is sought in accordance with their customs.

Indigenous people's consent has to be obtained at all stages of an activity.

“Informed” implies that indigenous people concerned is provided in accessible way (language, format) with comprehensive information on proposed activities, including their economic, social and cultural impacts, as well as their possible consequences.

For the purposes of the consent process certain procedures should be established. These should be transparent and ensure dialogue with equal participation of parties, including equal access to resources, at all stages of activities for which consent is sought.

They also should be complemented by certain review procedures ensuring that all aspects of FPIC are respected. The issue of ensuring power balance between indigenous peoples and other parties should be addressed through building capacity of indigenous peoples to equally participate in the consultation process.

The importance of obtaining free, prior and informed consent can not be undermined in situations when domestic law denies recognition of indigenous peoples' rights.

In Ukraine, despite of Article 11 of the Constitution stating that the State shall promote ethnic, cultural, linguistic and religious identity of all indigenous peoples in Ukraine, indigenous peoples are denied official recognition as such.

However, in 1999 the State took some steps to respond to the needs and claims of Crimean Tatar people to participate in decision-making process that affects the community. That was the establishment of Council of Representatives of Crimean Tatar People under the President of Ukraine with the aim to consult Crimean Tatar people on all issues that address them. The members of the Council are 33 members of Mejlis - a Crimean Tatar representative body – elected by Qurultay – Crimean Tatar Congress.

Thought this mechanism did allow to establish a dialogue with the State (and other third parties through the State) with regard to activities affecting Crimean Tatars, there is a number of serious concerns related to the functioning of the body. Among them, respect of customary law and practice. For Crimean Tatars these are based on religious and spiritual, as well as legal and moral traditions. Incorporation of the customary law in the consultation process would also ensure better representation through inclusion of traditional and religious institutions, as well as indigenous civil society organizations.

There is a need for effective legal procedures and mechanisms ensuring implementation of international standards on the protection of rights of indigenous peoples, fair consultation with the community, their full and equal participation, respect of customary law, and eventually ensuring truly free, prior and informed nature of the community's consent.

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