

Public Consultation and Participation

What is public consultation and participation?

The overall goal of public consultation is to engage key stakeholders' groups such as citizens, NGOs, agencies, authorities and interest groups to provide their input into the planned development and especially on those impacts that directly or indirectly affect people's livelihoods. Moreover, by involving key stakeholders' inputs in the EIA the planned project is strengthened by these inputs. Effective public participation requires that project planners (Aschemann, 2004):

- Inform and involve interested and affected actors like citizens, public authorities and interest groups.
- Explicitly address their comments, concerns and inputs, both, in documentation and decision making.
- Ensure that all relevant actors and parties are involved or at least represented.
- Safeguard sufficient access to all relevant documents and information concerning the project and the EIA documentation.

In most countries the EIA legislation often mandates the form and extent of public participation. The extent of participation mandated by legislation can vary from only informing stakeholders' groups to actually working with them to improve the EIA. Unfortunately, the legislation is sometimes ambiguous and allows the proponents to decide about the extent of their participation. Agencies, ministries, and project proponents then can take advantage of this ambiguity to minimize or even eliminate public participation in the decision-making process. However, in most cases EIA legislation requires that EIA documents must be made available for public review. There is likely to be at least one designated public place where an EIA will be made available. Some EIA laws require that the public have access to background information or supporting documents used to prepare the EIA. If it is not clear, citizens should insist that they have the right to access these documents. This can be done by laws on access to information that many countries have adopted.

Overall, it is important that engagement with stakeholders will start at the early stages of the planned project and the EIA process. But the specific stages of the EIA when participation is required include scoping and impact assessment and mitigation. During the scoping phase the focus is on the following list of activities (World Bank, 2010):

- Initial announcements about the scoping process in local or national newspapers.
- Posting notices announcing the scoping process at the site, in the neighbouring area and at the offices of local authorities.
- Preparing a leaflet or brochure about the project giving brief details of what is proposed with a plan or map, describing the EIA process and the purpose of scoping, and inviting comments.
- Distributing letters or questionnaires to potentially interested organizations.
- Telephone discussions or meetings with key organizations, groups or individuals.
- Articles in newspapers, on radio or on television.
- Public meetings (it may be helpful to invite an independent person to chair public meetings).
- Public exhibitions (an exhibition may be preferable to a public meeting as people are nervous about standing up and speaking at a public meeting).



- A Scoping Workshop at which participants work together through a structured program to identify matters to be addressed by the EIA process.
- Establishing an expert or community-based Scoping Group who will continue to oversee the environmental studies throughout the process.
- Collecting information, baseline data and other sources to gain deeper insights on the current situation of the stakeholders' and potential impacts of the development that would require further assessment.
- Publishing a draft Scoping Report for review and comment before completing the process.

During the impact assessment and mitigation phase, stakeholder participation has the following roles and contributions:

- To identify specific impacts relevant for the stakeholders' groups.
- To explore cumulative impacts on stakeholders' groups that are caused in conjunction with already ongoing other developments and projects in the area.
- To review, modify, add and remove mitigation measures that are not relevant or effective to address the impacts of the development based on the stakeholders' views.
- To review together with stakeholders the environmental management plans and other relevant plans.
- Agree on the follow-up in terms of regular review, sharing outcomes of monitoring and other means as agreed with the stakeholders.
- Finally, to document the outcomes of the conclusions and place them in the EIA.

To address stakeholder participation, the EIA often includes a consultation plans that outlines:

- Stakeholder groups that need to be consulted; when and how they will be reached out to and which ways of involvement will be considered during the EIA.
- Information dissemination about the project (and the aspects of the EIA) to the stakeholders.
- Summary of the initial interests from the stakeholders based on their input.
- Key steps and ways of consultation during the scoping phase and assistance provided to the stakeholders in establishing mechanisms for consulting with communities and representative groups.
- Key steps and ways of consultation during the scoping phase.
- Summary of the consultation outcomes and how they were integrated into the EIA.
- Summary of the follow-up and future engagement.

Overview of the legislative guidance on participation and consultation in the EIA

In accordance with regulation, in cases of projects, works or activities designated as Category 2, 3 and 4, the proponent is required to place a notification on the eighth page of local newspapers (if any) and provide other national coverage about the EIA process. Furthermore, an announcement must be made on a national and local radio stations. Additionally, a sign is to be placed on the land where the project is located, indicating the name of the project, work or activity, location, phone and the address of the proponent where the public can obtain more information. In cases of projects, high-impact works or activities in Category 4, the Proponent must also publish the complete research results of the EIA in the local and/or national newspaper.

In accordance with Article 52 of Regulation SINEIA, in cases of Category 4 EIS, the proponent shall submit the results of the EIA in open meetings, public forums and be open to all means of allowing



discussion and the exchange of ideas. The proponent is also required to make a copy of the EIA available for public consultations. Members of the public have 30 working days after notification of completion of the EIA to present comments regarding the EIA report, e.g., if it did not address significant impacts, does not propose appropriate mitigation measures, or if they have questions, complaints or other objections. These must be submitted in writing to the MiAmbiente and will be part of the review report. In all cases, they must receive a response within no more than 30 working days. During the review:

- a. The technical team responsible for the review of the EIA will review the observations submitted and verify whether they are unfounded or should be included as part of the technical report.
- b. Where observations are consistent with the report, the team will consider including them as part of the technical opinion of the EIA.
- c. In the event that the observations are not considered appropriate or have already been integrated on the initiative of the team's review, they will be classified as "un-included observations," with the reason for this noted as part of the annexes to the technical opinion.

Case study: Honduras: Participation and the Rights of Indigenous Communities in the EIAs

According to the national government, Honduras is a multilingual, multicultural and multiethnic state. Within the country there are nine indigenous and Afro-descendent groups dispersed across the country. These groups have cultural practices and traditional ways of life that are distinct from the majority of the population. This includes languages, food and traditions as well as social and daily customs, and laws unique to the community. Indigenous and Afro-descendent communities are found in about 50 per cent of Honduran territory. In 2007 there was an estimated population of about 1,200,000 indigenous people living in native communities on ancestral lands. There are an additional 300,000 indigenous and Afro-descendent people living in the country's major urban centres such as Tegucigalpa and San Pedro Sula (Camera de Turismo de Honduras de La Ceiba, n.d.,a).

Groups include:

- **Lenca:** Approximate population, 72,000, with 2,500 communities. Lenca are located primarily in the southwest part of Honduras in the Departments of Valle, Francisco Morazán, Intibucá, Lempira and Santa Barbara.
- **Miskitu:** Approximate population 76,000, with 420 communities. The Miskitu are located in the east of the country in the departments of La Mosquitia y Gracias a Dios.
- **Tawahka:** Approximate population 1,500 and seven communities. The Tawahka are located in the west centre of the country in the departments of Olancho and Gracias a Dios.
- **Chorti:** Approximate population 10,600 and 52 communities. This Mayan group is located in the west of the country in the department of Copan and Ocotepeque.
- **Tolupan:** Approximate population 18,000, with 10 tribes. The Tolupan—of whom the Xicaques are a tribe—are located in the north west of the country (inland), in the department of Yoro y Francisco Morazán.
- **Pech:** Approximate population, 3,800, with 10 tribes. The Pech are located in the west centre of the country in the departments of Olancho and Colon.



- **Nahua:** Approximate population, 19,800 with 18 communities. The Nahua live in the south centre of the country, near the board with Nicaragua in the department of Francisco Morazán.
- **Garifuna:** Approximate population 300,000, with 47 communities. This Afro-Honduran group is located on the Atlantic coast (north) in the departments of Atlántida, Colon, Cortez and parts of Misquitia and the Bay Islands.
- **Negro Creoles:** Approximate population, 80,000 with 46 communities. This Afro-descendent group is located in the Bay Islands off the Atlantic coast. This group is distinct in that they speak English.

In 1995, Honduras ratified International Convention 169 of the International Labour Organization’s (ILO’s), Indigenous and Tribal Peoples Convention (Camera de Turismo de Honduras de La Ceiba, n.d.,b). Under this Convention, these groups have the right to define what it means to be indigenous according to their personal worldviews, legal criteria, including political organizations, and possibly autonomous territories to recognize and define their group as an indigenous identity and the right to be explicitly recognized by the national government under law. Convention 169 of the International Labour Organization is listed below along with other international and national laws.

Laws and Regulations pertaining to Indigenous Rights in Honduras

Law	Article	Theme
ILO Convention 169	<ul style="list-style-type: none"> • 13 • 14 • 15 • 16 • 17 • 18 • 19 	<ul style="list-style-type: none"> • Special relationship with land and territory • Right to property and land possession • Territories and natural resources • Relocation • Land trade (sale, movement, inheritance) • Sanctions against people how appropriate indigenous lands • Agriculture programs
Biodiversity Convention	<ul style="list-style-type: none"> • 8 	<ul style="list-style-type: none"> • Traditional knowledge
UN declaration on the Rights of Indigenous peoples	<ul style="list-style-type: none"> • 25 • 26 • 27 • 28 • 32 	<ul style="list-style-type: none"> • Spiritual relationship with the land • Possess, use, develop and control indigenous territories, legal acknowledgement of land rights • Land adjudication • Legal recognition and protection with respect to customs, traditions and tenancy systems • Additional components of land and, • <i>Processes that are equal, independent, impartial, open and transparent for consultations in the case of exploration and exploitation projects</i>



Law	Article	Theme
Law for modernization and development in the agriculture sector	<ul style="list-style-type: none"> • 34-37 • 50-53 • 54-58 • 64 • 65-70 • 68 • 70-72 • 108 • 125 	<ul style="list-style-type: none"> • Agriculture credit • Disallowance of land redistribution • Leasing and co-investing • Adjudication with others and indigenous groups • Titles with others and indigenous groups • Municipal lands • Urban lands • Non-applicability of municipal goods and the prohibition of land titles in protected areas • Urban perimeters
General Law of Municipalities (1992)	<ul style="list-style-type: none"> • 68 • 70-72 • 108 • 125 	<ul style="list-style-type: none"> • Municipal lands • Urban lands • Non-applicability of municipal property and a ban on titles to protected areas • Urban perimeters
General Regulations for the Law of Municipalities	<ul style="list-style-type: none"> • 65,66 	<ul style="list-style-type: none"> • Procedure to define urban perimeters
Law of forests, protected areas and wildlife	<ul style="list-style-type: none"> • 45-50 • 51-62 	<ul style="list-style-type: none"> • Forest property • Regularization of forested areas
Land use law	<ul style="list-style-type: none"> • 9 • 22 • 23-32 	<ul style="list-style-type: none"> • Ethnic representation in CONOT • Scope for land use • Institutional competencies in land-use planning
General regulation of the Land-use law	<ul style="list-style-type: none"> • 26.2.c 	<ul style="list-style-type: none"> • Opinions about creation and growth of urban perimeters
Property law, Cap III	All articles	<ul style="list-style-type: none"> • Land under communal title is to be protected under law • It is the responsibility of the state to consult with indigenous and afro-Honduran communities prior to exploiting natural resources in their territories.
General law of the environment	<ul style="list-style-type: none"> • 48-50 • 70-73 	<ul style="list-style-type: none"> • Forest and agriculture land use • Cultural patrimony and tourism resources
Law of cultural and natural patrimony of the nation	<ul style="list-style-type: none"> • 2-4 • 8 • 20 • 24 	<ul style="list-style-type: none"> • Cultural patrimony • Who the law applies to • Ban on land ownership • The right to propose patrimonial items
Law of Cloud Forests	Entire law	<ul style="list-style-type: none"> • Administration and management of protected areas
Law for the declaration of tourism zones	<ul style="list-style-type: none"> • 02-14 • 15 • 16-18 • 19 • 20-22 	<ul style="list-style-type: none"> • Generalities about tourism zones • Attributes of IHT • Use and ownership of land in tourism zones • Leasing land • Expropriation in tourism zones



Law	Article	Theme
Law for the protection of coffee production	<ul style="list-style-type: none">• 1-3• 4-6• 6-9	<ul style="list-style-type: none">• Inafectability of coffee• Ban on expropriating properties• Land titles for coffee properties
Constitution of the Republic	<ul style="list-style-type: none">• Cap III, Art 15-21, 346	<ul style="list-style-type: none">• Treaties and agrarian reform

Source: Camera de Turismo de Honduras de La Ceiba (n.d.,b)

Participation and Consultation with Indigenous Groups

Consultation with indigenous groups is important because indigenous cultures are connected to their surrounding environment: this helps them sustain their way of life and is the focus of many important aspects of their cultural identity, social make up and livelihoods. Creating an impact on the environment can have negative consequences for the entire indigenous population in the affected area. Also, because the natural resources within traditional territories have often yet to be exploited, these lands have pressure placed on them from many parties. Many projects may be looking to exploit the same area which can place an unacceptable amount of pressure on the environment, local indigenous communities, their customs, traditions and ways of life.

Convention 169 of the ILO speaks of the need for consultation and participation in all matters that may affect an indigenous community; this may include all policy and development processes, including EIAs. Specifically, public consultations with indigenous groups prior to starting a project need to be initiated under the following circumstances. 1) Any changes in administrative or legislative laws or decrees that affect indigenous groups or their territories; 2) projects that affect the use, administration and conservation of the resources found within indigenous territories; 3) any impact, change or use of cultural patrimony including sacred and cultural sites, customs and protected areas and; 4) if any violations of rights occur, consultation with the affected groups to rectify and compensate is crucial. Lastly, a point of utmost importance is that free and informed consent must be given prior to relocating a community from their current location. Under the convention guidelines, consultations must include the following elements:

- 1.) Be conducted in *good faith* through appropriate procedures, through the representative bodies of the various groups. Good faith refers to an open and genuine dialogue between all parties.
- 2.) All groups should have the opportunity to *participate freely* at all levels of decision making, implementation and evaluation.
- 3.) Information must be *timely and appropriate*.
- 4.) Information must be *accurate*.
- 5.) Issues and topics to be submitted under the consultation process must be *comprehensive*.

Just as importantly, the consultation must:

- Provide equal opportunity.
- Provide participation to all affected parties.
- Be transparent about information including but not limited to: potential impacts, activities information gaps, benefits, longevity of the project.



- Have territoriality, meaning that all indigenous peoples living within the affected area or who access resources in the area must be consulted.
- Autonomy and representation through appropriate Indigenous organizations.
- The location of the consultation must be accessible in terms of location and venue.
- Legality and enforceability of the consultation.
- Be culturally appropriate, following norms and customs of the indigenous group.
- Allow accountability for individuals responsible for bad faith.
- Provide freedom for all parties to speak and share opinions.

Agreement from communities must come from consensus, consent must be informed as per the stipulations in the consultation and be free from coercion from any third parties.

List of Indigenous Organizations in Honduras

CONIMCH- Consejo Nacional Indígena Maya Chorti
CONPAH- Confederación de Pueblos Autóctonos de Honduras
COPINH- Consejo Cívico de organizaciones Populares e Indígenas de Honduras
MASTA- Mosquitia Asla Takanka/ Unidad de la Mosquitia
OFRANEH- Organización Fraternal Negra Hondureña
ONILH- Organización Nacional Indígena Lenca de Honduras
FETRIPH- Federación de Tribus Indígenas PECH de Honduras
FETRIXY- La Federación de Tribus Xicaques de Yoro
FINAH- Federación Indígena Nauhas de Honduras
FITH- Federación Indígena Tawahka de Honduras

Source: Armando Cordoba, J., Barahona, A., Ecuaceda, C. (2003).

Rights to Land and Natural Resources

The ILO Convention 169 makes a distinction between land and territory. Where land is a clear, delineated area where legal individual or collective titles are typically held, territory is a more diffuse area that indigenous groups rely on to carry out their livelihoods, cultural and spiritual practices. Under the Convention, any project to occur on land and/or in territories requires a consultation regardless of the legal status of the land. In Honduras, collective lands are held in common, especially within the Garifuna community. While Convention 169 does not explicitly protect this land from exploitation, there are many instruments—including the International Pact on Economic, Social and Cultural Rights and the International Pact on Civil and Political Rights—that order all signatory states to respect and protect the right to collective land to preserve the culture and well-being of indigenous groups. Further to this point, the United Nations Declaration of the Rights of Indigenous Peoples grants indigenous peoples the right to maintain, protect and reinvigorate their ancestral territories and to maintain their spiritual connection to the land. Under Convention 169 and other international agreements, it is the responsibility of the state to adjudicate any disputes over indigenous land, protect those lands from third parties infringing on indigenous land rights and provide sufficient resources to help indigenous people reclaim land in the case of violations or loss of land to third parties.



The question of land title and land rights in Honduras is one that needs to be handled delicately. Ongoing disputes over land between the Garifuna community of Vallecito in Bajo Aguan, Colon and those claiming the land have led to violent clashes, with casualties on both sides. Garifuna communities have collective land rights on their ancestral lands, as such no land title can be transferred, either purchased or sold, within these territories without the explicit agreement of the entire community. Through Presidential Agreement No. 035-2001, the inter-sectoral commission for the protection of the land rights for Garifuna and Miskitu populations enables the National Agriculture Institute (INA) to resolve any conflicts in regards to land.

As with land rights, under Convention 169, the government is obligated to legally recognize, protect and prohibit third parties from exploiting natural resources without prior informed and free consent from indigenous groups.

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Source: EIA Online Learning Platform - <http://www.iisd.org/learning/eia>