



## Integrating the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) and Free Prior and Informed Consent (FPIC) into Hawai‘i’s Aha Moku System

The UN has identified that an estimated 400 million indigenous peoples exist in the world, present in over 90 countries. We have been present for thousands of years with languages, traditions, and cultures that have transcended technological advancement and colonization. Although only 5% of the world’s population, indigenous peoples account for 15% of the world’s poor. The UN has identified that an estimated 400 million indigenous peoples exist in the world, present in over 90 countries. Indigenous peoples have been present for thousands of years, developing and perpetuating their languages, traditions, and cultures. Although indigenous peoples account for only 5% of the world’s population, they make up 15% of the global poor.

There is more attention being brought to indigenous peoples’ issues. Indigenous people are continuously at the forefront of environmental injustice and continue to fight for their rights, land, and livelihood.



# The UNDRIP Applied in America's Domestic Laws and within Hawai'i's Aha Moku System

## Incorporating UNDRIP Guidelines for Consultation with Native Americans and Native Hawaiians on Historic Preservation Issues

In 2007, the UN created the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) to acknowledge "the urgent need to respect and promote the inherent rights of indigenous peoples" and to reaffirm that they should be free to exercise their rights. Under President Barack Obama's administration, the United States adopted the UNDRIP in 2010.

The federal Advisory Council on Historic Preservation (ACHP) provides guidelines to agencies on how to implement the UNDRIP. This is important because the ACHP also guides Section 106 consultation with Native Hawaiian organizations (NHOs) and Native American tribes whenever a "federal undertakings" may impact a historic site. Federal undertakings are defined as (1) any project that is carried out, funded, licensed or permitted by the federal government which (2) may impact a historic site listed or eligible to be listed on the National Register of Historic Sites.



The federal Advisory Council on Historic Preservation (ACHP) provided guidelines based on the UNDRIP for governmental agencies to follow when consulting with Native Americans and Native Hawaiians on important historic preservation issues.

## The State Aha Moku Advisory Committee (AMAC) Integrates the UNDRIP in its Final Rules of Practice and Procedure

The Aha Moku is operationalizing the UNDRIP through §§ 2-3(c)(1) and (2) of the 'Aha Moku Advisory Committee's rules of practice and procedure. The rules directly quote the UNDRIP:

*Indigenous peoples have the right to participate in decision-making in matters which would affect their rights, through representatives chosen by themselves in accordance with their own procedures, as well as to maintain and develop their own indigenous decision-making institutions.*

UNDRIP Article 18

*States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free, prior, and informed consent before adopting and implementing legislative or administrative measures that may affect them.*

UNDRIP Article 19



## Free Prior and Informed Consent

The UN recognizes that indigenous peoples and local communities can provide examples of sustainability to serve as global models, including by means of their traditional knowledge. The UN adopted an equitable framework of consultation and decision-making called Free, Prior, and Informed Consent (FPIC) as an approach that respects the rights of indigenous peoples when potential projects may impact their lands, territories, and culture.

FPIC is a principle stating that “all people have the right to self-determination – and linked to the right to self-determination – ‘all peoples have the right to freely pursue their economic, social and cultural development.’” FPIC recognizes that indigenous people may freely choose to give or withdraw their consent to a project that may affect them or their territories. Indigenous peoples may withdraw their consent at any phase of the process and are not handcuffed from changing their assessment once having given initial consent to a project. FPIC facilitates a process by which indigenous peoples exercising their right to self-determination may actively negotiate terms and conditions throughout the planning process.

## FPIC in Practice

1. The process is one by which indigenous peoples are able to conduct their own independent and collective discussions and decision-making.
2. The process is conducted in an environment where indigenous peoples do not feel intimidated.
3. The process must afford indigenous peoples with sufficient time to discuss in their own language and in a culturally appropriate way.
4. Matters discussed will be matters affecting indigenous peoples’ rights, lands, natural resources, territories, livelihoods, knowledge, social fabric, traditions, governance systems, and culture or heritage (tangible and intangible).



**FREE** from force, intimidation, coercion, or pressure by anyone

- ❖ The government, company, organization

**PRIOR** consent must be sought before the project begins

- ❖ Communities must be given enough time to understand and make an informed decision.

**INFORMED**

- ❖ Affected communities must be given the relevant information to make a decision on whether to agree or disagree to the project

**CONSENT**

- ❖ Affected communities have the right to give or withhold consent to a project
- ❖ This decision is to be made according to the decision-making process of the indigenous people’s choosing,

## Nations Disagree as to the Extent by which they Must Honor Indigenous Peoples' Right and Authority to "Consent" within the Meaning of FPIC

It is important to highlight that the FPIC process does not always guarantee consent as a result.

Results of the FPIC process may be any of the following outcomes:

1. Consent from the Indigenous Peoples' community on the proposed activity;
2. Consent after negotiation and change of the conditions under which the project will be planned, implemented, monitored and evaluated; or
3. Withhold consent (consent may be withdrawn at any stage)

### Further Information and Resources on FPIC

The FPIC principle is protected by international human rights standards and is backed by the UNDRIP, the Convention on Biological Diversity, and the International Labour Organization Convention 169. These are the most powerful and comprehensive international instruments that recognize, address, and defend indigenous peoples and their rights.

The UN created the FPIC Manual as a guiding tool to inform development organization project managers on the right to FPIC and how to implement it in their practices. The manual is a 52-page comprehensive guide that is divided into three sections: fundamentals of FPIC; implementing FPIC; and reflecting FPIC in your organization. It can be found at the link provided below:

<http://www.fao.org/3/a-i6190e.pdf>

## The Aha Moku System: An Expression of 'Ōiwi Governance and a Vehicle for Exercising FPIC

The 'Aha Moku is a traditional governance system of Kānaka 'Ōiwi. Recognizing the power of the UNDRIP, the Statewide Aha Moku Advisory Committee (AMAC) operationalized FPIC through §§ 2-1(d) and 2-3(c) of its AMAC rules.



*The purpose of this part is also to recognize the 'aha moku advisory committee as a global leader integrating Indigenous resource management models into modern legal and regulatory structures, serving as a vehicle for promoting the rights of Native Hawaiians as Hawaii's Indigenous people, and ensuring that their right to free, prior, and informed consent is respected.*

AMAC rules § 2-1(d)

*The legislature, in establishing the 'aha moku advisory committee, reaffirmed the customary laws of ancient pre-contact Hawai'i, from which the 'Aha Kiole (people's councils) formed. This being so, and with the formal adoption by the UNited States of the United Nations Declaration on the Rights of Indigenous Peoples, the committee and the respective island moky councils shall serve as vehicles for free, prior, and informed consent...*

AMAC rules § 2-3(c)

The Aha Moku Councils of each island may take inspiration from this and make best use of the UNDRIP and FPIC to advance mālama 'āina issues with the AMAC and federal, state, and county levels of government.