

1 **Effective Engagement of Indigenous Peoples and of**
2 **Local Communities in the Development,**
3 **Implementation and Review of National Action Plans to**
4 **Reduce and, Where Feasible, Eliminate Mercury Use in**
5 **Artisanal and Small-Scale Gold Mining**
6

7 Draft supplemental guidance¹

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1 In response to paragraph 7 of decision MC-5/7 adopted by the fifth meeting of the Conference of the Parties to the Minamata Convention on Mercury, this document provides supplemental guidance to the “Guidance Document: Developing a National Action Plan to Reduce and, Where Feasible, Eliminate Mercury Use in Artisanal and Small-Scale Gold Mining” as updated and adopted by the Minamata Convention decision MC-4/4 and available at <https://minamataconvention.org/en/documents/artisanal-and-small-scale-gold-mining>.

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35 INTRODUCTION

36 The Minamata Convention on Mercury (hereafter referred to as the Convention) aims to
37 “*protect human health and the environment from anthropogenic emissions and releases*
38 *of mercury and mercury compounds.*”² The largest source of emissions of mercury
39 globally is from its deliberate use in artisanal and small-scale gold mining and
40 processing (ASGM).³ ASGM is defined under the Convention as gold mining conducted
41 by individual miners or small enterprises with limited capital investment and production.
42 While the term refers to artisanal and small-scale, the scale of operations on the ground
43 at times are not small and may exceed the limits of the definition. ASGM is conducted in
44 many countries, across national and sub-national jurisdictions, by thousands of people
45 spread over vast areas, which are often also remote. These operations are often
46 informal, and depending on national law definitions may be considered illegal. ASGM is
47 also a critical source of income for many communities which, lacking awareness or
48 feasible alternatives, rely on mercury.

49 Mercury has been commonly used to extract gold from ore because of its availability
50 and ease of use. ASGM miners with little capital can process ore using mercury with
51 very minimal equipment. With little equipment and mercury, miners can work in locales
52 that are not easily accessible, and it affords them mobility to move from one mining spot
53 to another. The Convention requires Parties to take steps to reduce, and where feasible,
54 eliminate the use of mercury in ASGM⁴. Countries with “more than insignificant” ASGM
55 are required to develop and implement a comprehensive national action plan, including
56 national objectives and reduction targets, actions to eliminate the worst practices, and
57 various strategies to reduce the use and impacts of mercury.

58

59 Many of the people who are most affected by mercury pollution belong to Indigenous
60 Peoples⁵, or are from local communities,⁶ including women and girls among them.
61 Parties to the Convention, in decision 5/1, noted with concern that Indigenous Peoples,
62 as well as local communities, are particularly vulnerable to mercury exposure and are

2 Article 1, Minamata Convention on Mercury (hereinafter the Convention).

3 Depending on the circumstances, the abbreviation ASGM is used as a noun that refers to the activity and as a verb which refers to people engaged in the activity (i.e. Artisanal and Small-Scale Gold Miners).

4 Article 7, paragraph 2 of the Convention.

5 In their statement from July 2023 ([https://social.desa.un.org/sites/default/files/Statement-Three%20Mechanisms%20\(002\).pdf](https://social.desa.un.org/sites/default/files/Statement-Three%20Mechanisms%20(002).pdf)), the UN Permanent Forum on Indigenous Issues, Special Rapporteur on the Rights of Indigenous Peoples and the UN Expert Mechanisms on the Rights of Indigenous Peoples, requested the term Indigenous Peoples should not be used alongside or associated with local communities as the origin of the rights of Indigenous Peoples are different from other groups

6 For the purpose of this supplemental guidance, the term “local communities” is being used to refer to non-Indigenous communities that embody traditional lifestyles but do not self-identify as Indigenous Peoples. Similarly, according to the Intergovernmental Science-Policy Platform on Biodiversity and Ecosystem Services (IPBES), “‘local communities’ refers to non-indigenous communities with historical linkages to places and livelihoods characterized by long-term relationships with the natural environment, often over generations” (source: IPBES glossary <https://www.ipbes.net/node/41450>).

63 among the first to face the serious health and environmental effects resulting from
64 mercury pollution owing to their close relationship with the environment and its
65 resources, and welcomed the role of Indigenous Peoples, as well as local communities,
66 and particularly the engagement of women and girls, who have faced the effects of
67 mercury with resilience, in achieving the objective of the Minamata Convention and the
68 targets and goals of the 2030 Agenda for Sustainable Development. In the same
69 decision, Parties noted the importance of broadening participation of Indigenous
70 Peoples, as well as local communities, in the implementation of projects and
71 programmes undertaken under the Minamata Convention.

72

73 As many Indigenous Peoples and local communities rely on ASGM as their main or sole
74 source of income but are also negatively and disproportionately impacted by ASGM,
75 effective engagement and participation of Indigenous Peoples and of local communities
76 in the implementation of the Convention is essential, especially related to the
77 development and implementation of national action plans pursuant to Article 7 and
78 Annex C of the Convention (NAP).

79

80 To this end, the fifth meeting of the Conference of the Parties, in its [decision MC-5/7](#),
81 requested the Secretariat to prepare a supplemental section of the guidance document
82 on developing a national action plan to reduce and, where feasible, eliminate mercury
83 use in artisanal and small-scale gold mining, on the effective engagement and
84 participation of Indigenous Peoples, local communities and other stakeholders in the
85 development and implementation of national action plans. This document has been
86 prepared in response to this request (hereafter referred to as the “supplemental
87 guidance”).

88

89 The purpose of the supplemental guidance is to provide support for governments to
90 establish, build and maintain partnerships with Indigenous Peoples and with local
91 communities, who may find themselves across a range of relationships with and/or
92 impacted by ASGM, for the development and implementation of an inclusive NAP.

93

94 According to a previous report by the Secretariat,⁷ there are five categories describing
95 the relationships between Indigenous Peoples, local communities, and ASGM. These
96 categories are based on scenarios of interaction, varying by factors such as mining
97 location, the actors involved, and the level of community consent. Some Indigenous

⁷ UNEP/MC/COP.5/INF/8 Needs and priorities of Indigenous Peoples and local communities with regard to the use of mercury in artisanal and small-scale gold mining.

98 Peoples or local communities may belong to multiple categories or none at all. The
99 categories (shown as groups A – E) are as follows:

- 100 • **Group A:** ASGM is conducted on Indigenous Peoples' lands and territories by
101 Indigenous Peoples or in local communities by their members, with community-
102 based consent.
- 103 • **Group B:** ASGM is conducted on Indigenous Peoples' lands and territories or in
104 local communities by external miners, with community-based consent.
- 105 • **Group C:** ASGM is conducted on Indigenous Peoples' lands and territories or in
106 local communities by external miners, without community-based consent.
- 107 • **Group D:** ASGM occurs near Indigenous People's lands and territories or local
108 communities, resulting in mercury contamination impacts.
- 109 • **Group E:** ASGM occurs far from Indigenous Peoples' lands and territories or
110 local communities, but communities are exposed to mercury through long-range
111 transport.

112 Depending on the local context, the national action plans developed by Parties pursuant
113 to Article 7 of the Convention and the present supplemental guidance may be most
114 relevant to groups A – D above, where the degree of importance assigned to different
115 strategies, including those listed in Annex C, will vary among the groups. As such,
116 before starting to develop their NAP or reviewing the progress made in meeting its
117 obligations under Article 7 of the Convention, Parties may need to adapt the
118 supplemental guidance to their particular social, political, legal and cultural
119 circumstances, as well as to the needs and priorities of the affected Indigenous Peoples
120 and of the affected local communities with regard to the effects of mercury on their
121 health, livelihoods, culture and knowledge. Variation between Parties in topics that may
122 affect the engagement with Indigenous Peoples and with local communities may
123 include: existing legislation pertaining to the need for consultation and consent,
124 including the right of Indigenous Peoples to provide or withhold their free, prior and
125 informed consent⁸; previous government experience in consultations with right holders
126 and stakeholders, Indigenous Peoples' traditional and customary consultation
127 approaches, existing Indigenous Peoples' and local communities' representative bodies
128 and organizations at different jurisdictions and the level of acceptance or marginalization
129 of Indigenous Peoples and of local communities in society. Parties should also refer to
130 the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) and the
131 relationship between Indigenous Peoples and their territories⁹. Related to local
132 communities, the United Nations Declaration on the Rights of Peasants and Other
133 People Working in Rural Areas recognizes peasants and other people working in rural
134 areas right to land.

135 Through the implementation of the present supplemental guidance effective
136 engagement of Indigenous Peoples and of local communities can strengthen the

⁸ In accordance with the [UN Declaration on the Rights of Indigenous Peoples](#), art 10, 11.1, 19, 28, 29, and 32.

⁹ [UN Declaration on the Rights of Indigenous Peoples](#), art 8, 10, 25, 26, 27, 28, 29 and 32

137 implementation of the provisions in Article 7 and strategies listed in Annex C of the
138 Convention.

139 Although the present supplemental guidance is not legally binding nor does it elaborate
140 or provide official interpretation of the Minamata Convention, it is intended to provide
141 useful information for use by Parties and other governments. Given the impact that
142 ASGM has on Indigenous Peoples and on local communities, as well as the important
143 roles they play in the sector, the degree of success in addressing challenges related to
144 ASGM may well be hinged on how effectively Indigenous Peoples and local
145 communities can participate during the development and implementation of NAPs.

146 Thus, the supplemental guidance offers an opportunity to enhance and institutionalize
147 the engagement of Indigenous Peoples and local communities, thereby improving
148 governance and driving positive change towards achieving the objective of the
149 Convention and Sustainable Development Goals (de Haan, Jorden et.al, 2020).
150 Importantly, the supplemental guidance lays out how Indigenous Peoples' and local
151 communities' engagement and participation is iterative and evolving and highlights that
152 without their active and voluntary support, and full partnership in the process, the
153 complete benefits of the Convention cannot be reached.

154 In relation to the Convention's "*Guidance Document: Developing a National Action Plan*
155 *to Reduce and, Where Feasible, Eliminate Mercury Use in ASGM*" (hereafter referred to
156 as "*NAP Guidance*") the present supplemental guidance supports Chapter 4 "Steps for
157 Developing a National Action Plan", Chapter 5 "Contents of the National Action Plan",
158 and Annexes 3 and 4. Some governments may have completed their NAP, others may
159 be in progress and some NAP could be coming under review and update. In any of
160 these contexts, the supplemental guidance steps and stages can be integrated into
161 development of the NAP with governments selecting what part of the supplemental
162 guidance applies to their NAP status. Additionally, the supplemental guidance and
163 consultation process can help governments understand what supports are needed for
164 communities to voluntarily reduce or eliminate mercury use, including understanding
165 feasible options for alternative livelihoods in their communities.

166 The supplemental guidance is structured into the following main sections:

- 167 1. **Setting the scene:** lays out the main topics and principles for successful
168 consultations with Indigenous Peoples and with local communities in the context
169 of the Minamata Convention and NAP.
- 170 2. **Preparing for consultations:** looks at the general steps in a stakeholder
171 engagement plan and then more specifically in the context of ASGM the who,
172 when and where of consultations.
- 173 3. **Consultation process:** considers the 'how' of the engagement and consultation
174 process.
- 175 4. **Implementing the NAP and the roles of Indigenous Peoples and local**
176 **communities:** focuses on the different roles of Indigenous Peoples and of local
177 communities and provides options for actions for how Indigenous Peoples and/or

178 local communities can be involved in the actual implementation of NAPs and how
179 their participation can contribute to the NAP's effectiveness.
180 5. **Review of implementation:** focuses on the roles of Indigenous Peoples and local
181 communities in reviewing the progress in implementing Article 7 of the
182 Convention.

183 **SETTING THE SCENE**

184 **Consultation principles**

185 In most contexts, the development of an inclusive and practical NAP and, ultimately, the
186 successful implementation of Article 7 of the Convention, will depend on the active and
187 meaningful participation of Indigenous Peoples as well as local communities. The
188 foundation for this is for Parties, and other involved organizations, to embrace certain
189 principles in their approach to engagement. Building on these principles allows for
190 genuine shared decision-making and mutual understanding.

191 **Recognition** that, in some contexts, ASGM plays a critical role in the livelihoods
192 of Indigenous Peoples and of local communities while, in other contexts, ASGM is
193 a vehicle for human rights violations of the rights of Indigenous Peoples and of
194 local communities.

195 **Respect** for the essential role that Indigenous Peoples, as well as local
196 communities, play in achieving the Convention's objective.

197 **Partnership** in co-creation of inclusive and realistically achievable NAPs that are
198 tailored to the specific contexts and upholds the rights of Indigenous Peoples and
199 of local communities.

200 **Commitment** to culturally and linguistically appropriate engagement that is
201 focused on mutually agreed terms.

202 **Women's participation** as key contributors and holders of Indigenous
203 knowledge and local knowledge valuable in the planning and implementation of
204 NAPs.

205 **Support** for transitioning to safer mining practices or alternative livelihoods in a
206 manner that is aligned with the priorities of Indigenous Peoples and of local
207 communities.

208 **Safeguards** for conducting social and environmental impact assessments, with
209 the participation of Indigenous Peoples and local communities, to uphold their
210 human rights and respect their knowledge, culture and traditions.

211 **Institutionalization** of Indigenous Peoples' and local communities' perspectives
212 and inputs into NAP via formal governance structures.

213 **CARE Principles for Indigenous Data Governance** for asserting greater control
214 over the application and use of Indigenous Peoples’ data and knowledge for
215 collective benefits.

216 **Establishing governance systems for consultations with Indigenous Peoples and**
217 **with local communities**

218 In addition to adopting the above principles, one of the most enabling actions a
219 government can take and one that is a general prerequisite for effective participation, is
220 institutionalization of the consultation process. This refers to the establishment of bodies
221 (e.g. committees, groups, teams) with a specific mandate for governing and/or
222 facilitating the consultation process, that includes representation from the relevant
223 Indigenous Peoples and/or local communities, for a specific time frame (temporary and
224 permanent). The purpose of such bodies is to ensure the effective integration of the
225 consultation outcomes into an overall process and into the goal (i.e. NAP).

226 Following the proposed steps for the development of a NAP in the *NAP Guidance*, it is
227 recommended that a “national ASGM overview” be conducted (see below). Since the
228 national ASGM overview sets the baseline estimates for the extent of ASGM and
229 mercury use in a country and is also the basis for deciding what actions can be taken to
230 reduce or eliminate mercury, the inputs of Indigenous Peoples and local communities
231 into the national ASGM overview are very relevant. This is especially true for
232 understanding how ASGM is interwoven with Indigenous Peoples and local
233 communities’ livelihoods and how changes in the ways they conduct mining can impact
234 them or how economic alternatives to ASGM can benefit them. To ensure this
235 information is included in the national ASGM overview, the *NAP Guidance* recommends
236 (in Chapter 4) the establishment of two governing bodies:

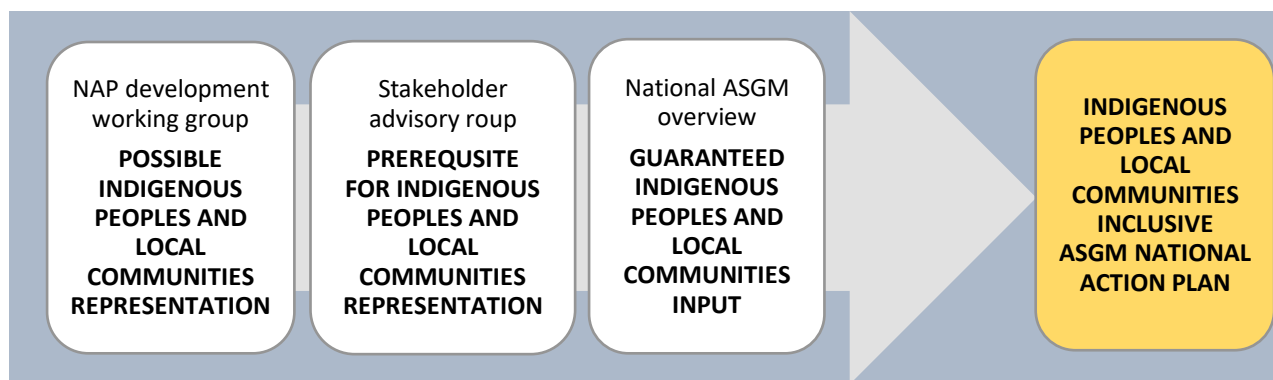
- 237 i) NAP development working group (hereafter “NDWG”) and
- 238 ii) Stakeholder advisory group (hereafter “SAG”).



239 **Figure 1.** Recommended steps in the process of developing a National Action Plan
240 (source: NAP Guidance)
241

242 When establishing the NDWG and/or SAG, governments should aim to set criterion for
243 representation of Indigenous Peoples and local communities engaged in or affected by
244 ASGM and the use of mercury.¹⁰ Examples of where these representatives could come
245 from include Indigenous Peoples and local communities ASGM associations through
246 representatives chosen by themselves in accordance with their own procedures and
247 decision-making institutions, and local civil society organizations. It is important that
248 Indigenous Peoples and local communities consider the representatives as legitimately
249 having a position on these governing bodies and that there is acceptance of traditional
250 governance and decision-making structures. Where Indigenous Peoples are living in
251 voluntary isolation and are impacted by mercury, they can be represented by a
252 mandated Indigenous Peoples organizations or government agency working outside of
253 these communities. Representation of Indigenous Peoples and local communities by
254 these groups needs to be documented (e.g. Terms of Reference) and include their roles
255 and responsibilities related to communications with consultation facilitation teams and
256 consultation results, reporting and monitoring.

257 The SAG is best established before the start of the national ASGM overview or this can
258 be done, along with Indigenous Peoples’ and local communities’ representation,
259 respectively, when it is in progress or when a NAP is under review. Although the NDWG
260 consists mainly of government agencies there is space for “Miners associations, unions,
261 organizations, and representatives” this could include Indigenous Peoples and local
262 communities’ representatives. In the countries where these representatives exist and
263 they are qualified to join, governments may consider reserving space on the NDWG for
264 them. The below diagram shows Indigenous Peoples and local communities’
265 involvement and perspectives in these groups.



266
267 **Figure 2.** Representation of Indigenous Peoples and of local communities in the NAP development working group, the stakeholder
268 advisory group and the national ASGM overview leading up to the development of an including ASGM National Action Plan.

269

¹⁰ Other representatives on the SAG could come from different levels and jurisdictions of government, gold processors, community leaders, environmental and human health organizations, academic and research organizations, ASGM associations, representatives from large scale mining and other relevant groups.

270 PREPARING FOR CONSULTATIONS

271 Acknowledging the context

272 Governments and/or other facilitators need to appreciate that they are reaching out to
273 engage with communities and requesting them to contribute and possibly make
274 changes to their livelihoods and environment. And that when they are contacted, there
275 will be wide differences between communities and government about why contact is
276 occurring. This places the responsibility on governments – directly or through other
277 facilitators – to fully inform communities about the purpose for the consultations and the
278 possible effects of the NAP on their livelihoods. The most effective approach for doing
279 this is to apply the principles of Free Prior and Informed Consent (FPIC). Only after the
280 purpose of the consultations is understood by communities and with their willingness
281 (consent for Indigenous communities) to engage further made clear, should facilitators
282 begin to work more closely with communities to understand each other’s perspectives
283 and goals related to ASGM and what this means to the NAP.

284 The government’s invitation to engage will likely result in various levels of interest from
285 different communities depending how the ASGM benefits and negatively impacts them.
286 There may also be variation in interest within communities among sub-groups such as
287 those benefiting from the use of mercury and those negatively impacted. Such cases
288 need to be carefully managed so as not to create conflict between groups. Some people
289 may even feel internally conflicted as they and their families could both benefit from
290 ASGM and therefore want no change but also incurring negative impacts and want
291 change. Facilitators need to appreciate the complexities they may encounter at the
292 community level and be prepared to navigate through these.

293 One aspect to consider when preparing for community consultations is the different
294 categories (Groups A – E above) that describe the relationship of Indigenous Peoples
295 and local communities with ASGM and link these to the contents of Annex C of the
296 Convention and other relevant documents. An example of this is Convention Annex C,
297 Section 1, point c: “Steps to facilitate the formalization or regulation of the artisanal and
298 small-scale gold mining sector” which would only be relevant to Indigenous Peoples or
299 local communities engaged in mining on their lands with or without the use of mercury
300 or when non-community members (i.e. outsiders) are mining on Indigenous Peoples’
301 lands and territories or in local communities with their consent (Group A and B).
302 Consultation facilitators will need to review the categories or group of the communities
303 they will engage with to determine the relevancy of the consultation topics as included in
304 Annex C and other Convention provisions.

305 Creating consultation foundations

306 Due to each country’s unique legal, cultural and historical contexts, the actual
307 consultation steps applied at the community level will vary widely from country to
308 country and even within a country. However, with the goal of this supplemental
309 guidance to support the establishment of partnerships and hold meaningful engagement

310 with Indigenous Peoples and local communities (noting peasants as local communities),
311 the consultations process needs to be based on some initial actions and approaches as
312 follows. Documenting these (written as terms of reference or wide agreement verbally)
313 early on can help make them a touchstone for the consultations.

- 314 ▪ **Mutually, acknowledge that it is the responsibility of the State to consult.** All
315 stakeholder groups need understand that the State, as the signatory to the
316 Convention, is ultimately responsible for ensuring consultations.
- 317 ▪ **Define the problems and challenges together.** All groups need to state what
318 they think the problem is for them and what their expectations of the
319 consultations and of each other are. If possible, agree on a common goal, or
320 respectfully acknowledge that there are different goals.
- 321 ▪ **Open and transparent dialogues:** No hidden agendas. Candid conversation and
322 clear expectations. Commitment to sharing information.
- 323 ▪ **Free, Prior and Informed Consent:** Accept that the principle of free, prior and
324 informed consent applies under some circumstances when conducting a
325 consultation process. FPIC is required prior to initiation or expansion of activities
326 that may impinge on the rights, lands, resources, territories, livelihoods, or food
327 security of Indigenous Peoples¹¹. FPIC is enshrined under international human
328 rights law for Indigenous Peoples and can be used as a best practice for
329 meaningfully engagements. (see the below box for additional details). Local
330 communities have the right to active and free participation and should be
331 consulted in good faith in any initiative that may affect their lives, land and
332 livelihoods¹².
- 333 ▪ **Defined roles:** Clearly define who is responsible for what and avoid ambiguity or
334 false expectations that can lead to misunderstandings. Facilitators must explain
335 their roles (facilitate, inform, collect, transmit) and their duties (balanced,
336 unbiased, fair). They need to assist communities define their roles but also let
337 them question, contemplate and define their own roles.
- 338 ▪ **Build accountability:** Make sure both sides are accountable for performing their
339 roles and their contributions to the engagement process. Noting that the end goal
340 of accountability is not punishment but to make improvements and positive
341 change. Use tools or agreed-upon methods for the consultations and tracking
342 progress.
- 343 ▪ **Be willing to compromise:** Be open to alternative solutions and flexible
344 approaches.
- 345

¹¹ [Free, prior and informed consent: a human rights-based approach](#), Study of the Expert Mechanism on the Rights of Indigenous Peoples (2020).

¹² United Nations Declaration on the Rights of Peasants and Other People Working in Rural Areas. Art 5 &10.

Free, Prior and Informed Consent in the development of a National Action Plan

In the context of the NAPs, consent relates to Indigenous People’s decision on whether or not to engage in the development of a NAP, to grant or withhold permission for mining activities on their lands and territories, and for some aspects of the implementation of NAPs, such as monitoring of mercury levels in their members or their lands, conducting awareness raising activities, combating illegal trade of mercury into their lands, and the use of Indigenous knowledge. The right of Indigenous Peoples to provide or withhold their free, prior and informed consent (FPIC) is enshrined in the United Nation Declaration on the Rights of Indigenous People (UNDRIP) and ILO 169¹³. How Indigenous Peoples reach a decision on consent will depend on their own context and priorities and many have developed their own FPIC protocols. If Indigenous Peoples do not consent to engagement or other actions, either during the development or implementation of NAPs, this needs to be recorded, and alternatives sought. In cases where Indigenous Peoples choose not to engage it may indicate distrust in the consultation process. Realistically, the meaningful and willing participation of Indigenous Peoples can only happen when there is genuine interest and mutual respect. Other than consent, the remaining principles of FPIC (free, prior and informed) are also essential for meaningful engagement with Indigenous Peoples. The planetGOLD¹⁴ Guyana “Guideline for Follow FPIC for Indigenous Peoples – An approach for use under the Eldorado Gold Responsible Mining Initiative” is a useful document that provides details on implementing FPIC in the context of ASGM.

346

347 **Indigenous Peoples and local communities’ consultation protocols**

348 As early as possible, the consultation facilitators should coordinate with the SAG and/or
349 the NDWG regarding all aspects of the consultation and with their input, draft an
350 Indigenous Peoples and local communities’ consultation plan.

351 Many Indigenous Peoples and an increasing number of local communities have
352 developed their own consultation protocols, and, in such autonomous cases, these
353 protocols should also be followed in the context of NAPs.

354 In the absence of an existing consultation protocol, the general steps shown below can
355 guide the consultations and may be adapted to specific needs and context when
356 creating country specific plans.

357

358

359

1. Identify relevant rightsholders and stakeholders
2. Define the objectives and interests of rightsholders and stakeholders

¹³ International Labour Organization Convention. Articles 1, 6, and 19

¹⁴ The planetGOLD programme (planetGOLD) works in partnership with governments, the private sector, and ASGM communities to significantly improve the production practices and work environment of artisanal and small-scale miners. planetGOLD supports the commitments under the Minamata Convention on Mercury, and is supported by the Global Environment Facility, and led by the United Nations Environment Programme and implemented in partnership with the United Nations Industrial Development Organization, United Nations Development Programme, and Conservation International. It has projects in 23 countries.

- 360 3. Establish engagement goals
361 4. Agree on engagement methods and frequency
362 5. Develop communication strategies
363 6. Assign roles and responsibilities
364 7. Create an engagement schedule
365 8. Establish feedback mechanisms
366 9. Monitor and adjust engagement
367 10. Document and report engagement outcomes

What are consultation protocols?*

Consultation protocols create a process for Indigenous Peoples and governments to follow when addressing the duty to consult on potential impacts that may affect Indigenous Peoples. They may also be used to facilitate engagement on other matters of interest and concern to communities. Protocols promote relationship building and clarify the roles and responsibilities between governments and Indigenous communities.

There are several consultation protocols already in place across different countries. For example, Australia and Canada¹⁵ have official consultation protocols that were co-developed by their Indigenous Peoples. In the USA, many federal agencies have developed their own consultation policies tailored to their missions.

In some countries, Indigenous Peoples and/or local communities have developed their own consultation protocols. The purpose of these protocols is to facilitate and ensure the effective participation of Indigenous Peoples in the government's decision-making processes related to policies and initiatives that directly or indirectly affect them. The protocols reflect each Indigenous People's unique forms of social organization and establish the rules by which they are to be consulted.

Consultation protocols developed by Indigenous Peoples vary depending on their unique cultures, traditions, and governance systems, but they often follow a set of common steps designed to ensure meaningful and effective participation. These steps may include:

- Background on the Indigenous People and the context in which the protocols were developed.
- Introductory sections that provide some historical context.
- Process through which the protocols were created and the scope.
- People's expectations for the protocols and consultation.
- Those that have the right to be consulted.
- How Indigenous Peoples should be consulted, normally including FPIC.
- A framework for decision-making.
- Feedback and monitoring mechanism.

368

¹⁵ [UN Declaration on the Rights of Indigenous Peoples](#). Article 8, 11, 32 and 40.

369 **Who to consult and who facilitates?**

370 Prior to starting community level consultations with Indigenous Peoples and with local
371 communities, governments and/or the SAG, need to accurately identify who in their
372 national boundaries needs or has the right to be consulted. At the broadest scope, all
373 Indigenous Peoples as well as local communities that are engaged in or affected by
374 ASGM – including those who are involved in the mining or processing of gold and those
375 who are impacted by the use/emissions of mercury from mining and processing – need
376 to have their voices heard and acted upon.

377 Government agencies involved in the development and implementation of NAPs may
378 already understand which of these groups that are practicing ASGM or may be
379 impacted by ASGM. The SAG, with Indigenous Peoples’ and local communities’
380 representation and their local knowledge, can also help identify which Indigenous
381 Peoples’ groups and local communities to include. This can be done as part of
382 preparations for the national ASGM overview that starts with a **mapping exercise** aimed
383 at identifying Indigenous Peoples and local communities, as well as local civil society
384 organizations, international non-government organizations and recognized individual
385 experts working with them. Facilitation of the mapping exercise it best led by a team of
386 Indigenous Peoples or local communities from the areas where ASGM is done. To
387 expand and refine the group of relevant Indigenous Peoples and local communities,
388 mapping should be an iterative process with those identified assisting to further identify
389 additional Indigenous Peoples as well as local communities and community level sub-
390 groups. Several groups that will likely be identified are:

- 391 ▪ Indigenous Peoples and local communities conducting ASGM using mercury.
- 392 ▪ Indigenous Peoples and local communities affected by others conducting ASGM
393 using mercury.
- 394 ▪ Indigenous Peoples and local communities affected by secondary economy (i.e.
395 communities that rely on the buying and selling of mercury located at different
396 locations other than where mining or processing occurs).

397

The case for engaging Indigenous women and women of local communities

Mercury has been shown to have specific and cumulative negative impacts on pregnant women, their children and pre-natal infant health. Even just living in ASGM communities is associated with higher blood total mercury levels in pregnant women which could be associated with increased reproductive risk in the women and poorer neurodevelopmental outcomes in children that has negative impacts on their ability to listen/concentrate, read, and write. As exposure increases through working with mercury or consumption of food (e.g. fish) contaminated by it, mercury levels increase causing even great irregular fetus development damage or results in spontaneous miscarriage, premature birth and congenital disability. Indigenous women, who are often responsible for feeding their families through collection of aquatic resources (i.e. fish) and rely on these as an important source of nutrition during pregnancy, are at particular risk.

Noting these heightened risks and their threats to health and life, justifies specific efforts and actions on the part of government and consultation facilitators to create the space for consultations dedicated to women, particularly those who are pregnant or of child-bearing age, as well as of women elders given their role in advising members of the community as knowledge bearers. Doing so creates the opportunity for them to more freely express themselves by removing any cultural barriers they may face. Inputs specifically from women and especially those with children, will help design and support NAP implementation actions that directly reduce these risks and protect the health of women and children.

398

399 **Who facilitates community level consultations** should be collectively decided by the
400 members of the NDWG and/or the SAG including their Indigenous Peoples' and local
401 communities' representatives. There are options for who facilitates which will depend on
402 each country's political system, civil society freedoms and existing Indigenous People
403 organizations. Options for facilitators include:

- 404 ▪ Government is solely responsible;
 - 405 ○ A government agency (national, regional, district) responsible for
406 facilitating and authoring the NAP.
 - 407 ○ A government agency responsible for indigenous affairs, rural
408 development or related topics but not authoring the NAP.
- 409 ▪ A non-government formal or informal organization (local civil society,
- 410 associations, Indigenous People's networks) is delegated by the government.
- 411 ▪ There is co-facilitation between government and non-government organizations.

412 There are pros and cons to government and non-government facilitation. Government
413 facilitators will likely be better positioned to communicate consultation results to NAP
414 authors than non-government organizations. They may have district/regional offices but
415 still be distant from communities or lack local experience. In some countries, non-
416 government organizations will have grassroots networks in Indigenous communities with
417 established and trusted relations. However, these organizations may struggle to
418 effectively communicate communities' inputs to the central level government agency
419 writing the NAP, they may not have direct access to funding or may not be known
420 nationally by all Indigenous Peoples and local communities involved or impacted by
421 ASGM

422 The most effective approach leading consultations could be to have qualified Indigenous
423 Peoples formal or informal organizations from or working in ASGM areas that were
424 identified during stakeholder mapping. Governments' input could be included when
425 needed. These organizations would add value through their experience in how local
426 customs, behavior and actions relate to consultations with outsiders and how local
427 norms (e.g. ceremony, symbolism, gifts, gender) apply to consultations. Crucially, they
428 may have the ability to communicate (verbal and written) in local languages which is
429 highly beneficial to facilitate and communicate effectively. Government involvement in
430 the partnership would indicate the formal status of the consultations and signal the
431 importance of the Indigenous Peoples and local communities' inputs into the NAP. In

432 some countries, communities involved in ASGM may have organized themselves into
433 formal or informal association which have already taken on a representative role in
434 consultations with outside groups. Examples include groups organized specifically
435 around ASGM such as the “Ghana National Association of Small-Scale Miners” or in the
436 Philippines the “Banao Bodong Association” a tribal group involved in ASGM.

437 Regardless of what group or groups facilitate the consultation process, women
438 facilitators need to be included. The reason for this is that within ASGM communities,
439 women likely have specific gender segregated roles and work and therefore experience
440 the negative and positive impacts of mercury use differently than men. Expressing
441 themselves directly to male facilitators from outside the community may be difficult due
442 to cultural barriers. Women facilitators – especially if they are indigenous and can speak
443 the community’s language – can help ease these barriers clearing a path for women’s
444 participation.

445 [Where to consult](#)

446 Consultations can be organized at a variety of locations, but it is important that
447 organizers recognize that the onus and responsibility is theirs for collecting the
448 perspectives of Indigenous Peoples and local communities. Therefore, consultations
449 should occur where the greatest number of people are able to attend regardless of the
450 difficulties (i.e. bad road conditions, weather, distance) in doing so. Below are the main
451 locations where consultations should be held.

- 452 1. As the stakeholders to be consulted are Indigenous Peoples and local
453 communities involved in ASGM that reside in their communities which are largely
454 located in rural areas, consultations need to be organized at the community level.
- 455 2. Noting that many Indigenous Peoples or members of local communities may
456 work for extended periods at ASGM sites, consultations may need to be
457 organized at that those sites, even if they are difficult to reach.
- 458 3. As a gender division of labour in Indigenous Peoples and local communities may
459 result in women residing or working in different locations than men, specific
460 attention needs to be given to organizing consultations at the locations where
461 women are. As part of the consultation organizing process with communities,
462 facilitators need to learn where women will be during the consultation period and
463 organize accordingly.
- 464 4. Under certain conditions, another option is a centralized approach that involves
465 bringing community leaders/representatives to consultation meetings at a specific
466 village, district capital or hub of some type. To be effective, the validity of the
467 attending representatives at accurately and genuinely representing their
468 communities needs to be researched and ensured.

469

470 When to consult

471 When actual community level consultations are best done will depend on local
472 conditions such as accessibility (e.g. the rainy and dry seasons) and people’s annual
473 calendar (e.g. agriculture season, holidays) and when most people are available. The
474 specifics can be understood and agreed through initial consultations with communities.

475 In the context of NAP development, the inputs of Indigenous People and local
476 communities is most effective when planning the NAP process as it builds trust and
477 respect. Community level consultations should only begin when the planning and
478 preparations noted in this supplemental guidance are complete. Depending on a
479 country’s NAP progress, below are possible times when consultation results can be
480 included in NAPs.

- 481 1. For greatest effectiveness, consultations with Indigenous People and local
482 communities should start during the NAP planning stage. As part of the
483 “Establishing a coordinating mechanism and organization process” step above,
484 the responsible government bodies should immediately establish the SAG and
485 begin the stakeholder mapping activities. With consultation results regularly being
486 transmitted from consultation facilitators to the SAG and authors of the NAP.
- 487 2. When a NAP is initially written and has been submitted but before a formal review
488 process, consultations can be done with the results included as an annex to the
489 main document.
- 490 3. When planning a NAP or implementation of Article 7 review process is also a
491 good time to initiate a consultation process with establishment of a SAG and
492 stakeholder mapping with a focus on Indigenous Peoples and local communities.
- 493 4. Less preferred is when drafting of the NAP has already started and is on-going. In
494 these cases, pausing the NAP development process to organize the SAG and
495 include consultation can be done.
- 496 5. Even after completion of the NAP, Indigenous Peoples and local communities’
497 consultation should be continued to monitor community level progress and
498 inform communities about policy related progress. The below section on
499 monitoring provides more details on this.

500 Institutionalization of the participation process

501 The effectiveness of a stakeholder process, as part of a larger process and goal, is
502 greater than ad hoc consultations when it is institutionalized as part of that process.
503 Institutionalization of consultation processes are essential for ensuring that diverse
504 perspectives are continuously included in decision-making, particularly in policy
505 development. More specifically, as part of the Convention’s Annex C Paragraph 1 (c), it
506 is required that each NAP must include “steps to facilitate the formalization or
507 regulation” of the ASGM sector. However, formalization or regulation will not be relevant

508 where ASGM is done on the territories of Indigenous Peoples or lands of local
509 communities without their consent or where the mining activities are against existing
510 government laws and/or regulations. As discussed above, the establishment of a NDWG
511 and particularly the SAG, are two highly recommended steps toward institutionalization
512 that go hand in hand with formalization. Additional steps for institutionalizing and
513 embedding the stakeholder process and Indigenous Peoples and local communities'
514 inputs in a NAP are described below.

515 **1. Secure support for stakeholder/rightsholders consultations from NAP**
516 **development leadership**

- 517 ▪ Work with the leaders responsible for overseeing NAP development so that they
518 understand and value the stakeholder process and are committed to full and
519 long-term support (e.g. from stakeholder mapping to monitoring stakeholder
520 inputs).
- 521 ▪ Make stakeholder inputs a core value in the NAP process and a prerequisite for
522 successful implementation of the Convention.

523 **2. Commit financing and resources for a multi-year consultation plan**

- 524 ▪ Include a “Indigenous Peoples and local communities’ consultations” budget line
525 in larger budgets, create and fund a full-time facilitators team or hire external
526 consultants to ensure that the stakeholder process progresses and is sustainable.
- 527 ▪ Allocate multi-year funding to Indigenous Peoples and local communities’
528 consultations that include NAP implementation monitoring.
- 529 ▪ Always include stakeholder planning as part of NAP strategic planning.
- 530 ▪ Select participation approaches: With Indigenous Peoples and local communities’
531 representatives, the SAG, experts and the communities decide what methods will
532 be used to collect inputs (meetings/workshops, surveys, specific focus-group
533 interviews with women, people living with a disability, role or job in ASGM
534 process).
- 535 ▪ Invest in appropriate technology when it adds value such as stakeholder
536 management apps and software, online open-source platforms, and consultations
537 tools and equipment (microphone and speakers, projectors and screens,
538 electrical generators).

539 **3. Commit to supporting Indigenous Peoples and local communities in**
540 **transitioning away from mercury use in ASGM by fostering more sustainable**
541 **practices and in developing alternative or complementary economic activities**

- 542 ▪ Build on the outcomes of the national ASGM overview and community
543 consultation results with the formulation of a “community livelihoods transition
544 roadmap and strategy” that is endorsed by the Chair of the NDWG and included
545 in the NAP.

- 546 ▪ Support Indigenous Peoples’ traditional knowledge of sustainable land and
547 resource management to mercury reduction strategies, and low-impact mining
548 techniques that can lead by example in transitioning to mercury-free methods.
- 549 ▪ Support Indigenous community-driven projects to transition away from mercury,
550 such as cooperative mining initiatives, alternative livelihoods, and environmental
551 restoration.
- 552 ▪ Cooperate with Indigenous Peoples on capacity-building including programs for
553 mercury-free mining that respect their cultural values and livelihoods,
- 554 ▪ Ensure access to funding, technology, and capacity-building programs tailored to
555 indigenous contexts.
- 556 ▪ Commit to sustained funding for mercury-free initiatives that are co-designed with
557 Indigenous Peoples, as well as local communities.
- 558

559 **4. Define roles and responsibilities within the governance structures**

- 560 ▪ Within the SAG structure, create positions and assign clear roles for managing
561 internal and external stakeholder relations, managing community level facilitators,
562 communications and record-keepers, decision-making and monitoring.
- 563 ▪ Ensure linkages between the SAG and NDWG by making a member from each of
564 these responsible for communications and reporting between the two groups.

565 **5. Formalize stakeholder approaches with documented procedures**

- 566 ▪ Ensure the consultations process aligns with existing government policy on
567 stakeholder engagement (sometimes included as mandatory steps in
568 environmental impact assessment legislation).
- 569 ▪ Have government agencies issued specific instructions, directives or other
570 legislation recognizing the NAP development process or stakeholder
571 engagement and consultations with Indigenous Peoples and local communities
572 (examples from consultations by countries’ engagement in the Convention on
573 Biological Diversity or climate initiative such as REDD+). If so, disseminate these
574 within the SAG and NDWG.
- 575 ▪ Adopt supporting policies or protocols on how stakeholder engagement should
576 be conducted (anti-discrimination policies, rules on transparency, confidentiality,
577 ethical standards). Consider a “Indigenous Peoples and local communities ASGM
578 Consultation Guideline”
- 579 ▪ Communications Design and Management: Define communication protocols and
580 establish two-way communication channels for feedback and information sharing
581 that are transparent (e.g. meeting minutes that are reviewed, signed and
582 circulated) two-way communication channels (i.e. who to contact and how) for
583 continuous dialogue. Agree upon common languages for communications or
584 provide translation.

585 6. Monitor and Evaluate the Stakeholder Engagement Process

- 586 ▪ Recognize and make Indigenous Peoples and local communities' active partners
587 in the front line of monitoring for changes to their livelihoods and their voluntary
588 transition away from mercury.
- 589 ▪ The importance given to Indigenous Peoples and local communities consultations
590 is reflected in how governing bodies accept and prioritize their inputs which is an
591 indicator of effectiveness.
- 592 ▪ Consultation effectiveness can be monitored by tracking key Indigenous Peoples
593 and local communities' recommendations into the SAG, NDWG and their
594 consideration and inclusion in the NAP.
- 595 ▪ Establish monitoring metrics (e.g. key performance indicators) for evaluating the
596 effectiveness of stakeholder engagement, such as the number and diversity of
597 stakeholders involved and women's participation and inputs.
- 598 ▪ Create feedback loops that regularly assess the process through surveys, focus
599 groups, or evaluations, and adjust based on stakeholder feedback.

600

601 CONSULTATION PROCESS

602 General consultation structure

603 The consultation stages included in the below table begin after stakeholder mapping
604 and research has accurately identified the Indigenous Peoples and local communities to
605 be consulted and what organizations will facilitate the consultation process. They are
606 supported by the above protocols, follow the general approach of a FPIC process and
607 are open for adaptation to local contexts. It is important that the facilitators identify
608 consultation sub-groups (e.g. women) and adapt the content of stages to collect their
609 input. Additionally, it is critical that decisions regarding the structure and implementation
610 of the consultation processes involves Indigenous Peoples, as well as local communities,
611 in the discussions.

612 A critical aspect of the consultation process is agreement on how grievances
613 encountered between Indigenous Peoples and local communities and the State of other
614 parties at any stage of the consultation will be resolved. Grievance resolution
615 mechanisms need to be in place prior to starting consultation and have the support of
616 Indigenous Peoples and local communities but also be accepted by other stakeholders
617 to be effective. They need to be culturally sensitive aligning with customs and traditions,
618 address collective and individual rights and be accessible (e.g. indigenous languages)¹⁶.

¹⁶ [UN Declaration on the Rights of Indigenous Peoples](#). Article 8, 11, 32 and 40.

| Stage | Purpose | Outcomes |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p><i>1. Initial Contact</i></p> <p>Done via phone or other long-distance communications. Or in remote areas, using local mail or informal channels.</p> | <p>To ask community representative/leaders for permission for the facilitation team to visit and meet them.</p> <p>To provide general information about the purpose of the visit (#2).</p> | <p>Community leaders/representative understand the purpose of the requested meeting and respond.</p> <p>If a visit is agreed to, move to Stage 2.</p> |
| <p><i>2. Village Representatives Meeting</i></p> <p>Depending on distance and travel times, facilitation teams and community representatives may agree to combine Stage 2 and 3.</p> | <p>Inform community representative/leaders about the NAP and the roles of their community.</p> <p>Confirm interest and willingness to consult. Seek consent where needed. Record consent or agreement to proceed.</p> <p>Consensus on how consultations can be done, when and organized. If rejected by Indigenous People, negotiate to reach agreement.</p> <p>To resolve potential grievances that arise during negotiations.</p> <p>Discuss and agree on communications strategy (e.g. documentation, languages, sharing).</p> <p>Example: Leaders or facilitator introduce to all community members.</p> | <p>Decision (who, when, where) reached on next steps for wider community consultation.</p> <p>People express their interest and concern to representatives.</p> <p>Representatives communicate meeting results to facilitators.</p> |
| <p><i>3. Initial community wide consultations</i></p> | <p>To open dialogue and introduce the purpose of the consultations.</p> | <p>Agree to a consultation roadmap that includes (examples):</p> <ul style="list-style-type: none"> - Overall goal - Expectations |

| | | |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| | <p>To create understanding and mutual trust between facilitators and communities.</p> <p>To facilitate a community decision or consensus on how/if they would like to proceed.</p> <p>To open engagement/consult with all community members regarding how future consultation can be done.</p> <p>Set a timeframe for: the consultations process and community inputs and NAP completion.</p> <p>To refine (if needed) community consultation sub-groups (women, ethnic minorities, ASGM workers).</p> | <ul style="list-style-type: none"> - Roles and responsibilities (facilitators, leaders, community members) - Long and short-term outcomes embedded in overall time frame - How to communicate (verbal, written) - Management of communications (who records, sharing, verification) - Agreement on grievance resolution mechanism. - Monitoring and feedback on community inputs. <p>Stakeholder Advisory Group (if established) review roadmap and provides suggestions.</p> |
| <p>4. <i>Select people from Indigenous and local communities to become designated “community educators” or “community monitors”.</i> <i>(optional stage)</i></p> | <p>To provide focused in-depth training to people (women and men) to become effective community educators. Specifically related to paragraph 8 of MC-5/7: Artisanal and small-scale gold mining</p> <p>For community educators to prepare communities members for engagement in NAP preparation and implementation.</p> | <p>Community educators that are formally recognized by government and their community as knowledge two-way communicators.</p> <p>Community members understand the intentions of NAP, how they are involved and what actions they can take to fully engage and maintain or improve their livelihoods.</p> |
| <p>5. <i>Continued consultations (sub-group specific if needed).</i></p> | <p>Conduct iterative consultation process based on the context of the communities (sub-groups present, complexity of issues).</p> | <p>Community level inputs and concerns are being communicated to the Stakeholder Advisory Group and review and organizing.</p> |

| | | |
|---------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p>Note: As an iterative process, the number of community level consultations is not limited.</p> | <p>Planning (time and topic) with communities and sub-groups on next round of consultations.</p> <p>Summary presentations of consultations and community endorsement.</p> | <p>Planning for continued consultation (time and topic).</p> <p>Verified community inputs are communicated to SAG and/or NDWG and into the NAP.</p> |
| <p>6. <i>Monitoring and feedback of the consultation process.</i></p> | <p>To determine if:</p> <ul style="list-style-type: none"> i. community inputs are being communicated; ii. if inputs are being consider and included in the NAP and iii. identify any issue or problems with the consultation and/or monitoring process. <p>To document when comments are included and when they are not and why? Justification for decision made and actions taken.</p> | <p>Communities understand how their inputs are being used and valued.</p> <p>Disagreements (e.g. livelihood changes) are discussed and resolved.</p> <p>Effectiveness of the consultation process is improved.</p> |
| <p>7. <i>Grievance Resolution Mechanism.</i></p> | <p>To resolve grievances as identified by those engaged in the consultation process.</p> | <p>The engaged groups are satisfied to the extent that consultation process can continue.</p> |

620

621 **Consultation tools**

622 With consultation foundations and a general structure reached via consensus in place,
623 more specific approaches, protocols and tools can be used for guiding consultations. A
624 decision on what approaches will be used also must involve reaching consensus with
625 Indigenous Peoples and/or their mandated representative. These tools are essential for
626 gathering feedback from people and making inclusive decisions. There is a wide variety
627 of participatory consultations tools available with some listed here. Due to diversity in
628 local cultures, facilitators will need to assess and decide which tools are best suited for
629 their context. Important to keep in mind is that the effectiveness of tools largely depends
630 on the ability of the facilitators to use them. Facilitators starting and maintaining a
631 positive and respectful attitude towards the people they are consulting with and a belief
632 in the value of their opinions is essential.

633

634 *Consultation tools/methods*

- 635 ▪ Public meetings and town halls (opening consultations)
- 636 ▪ Surveys and questionnaires (house to house private, open public voting)
- 637 ▪ Workshops (focused or more public)
- 638 ▪ Focus groups (semi-private: women, miners, suffering health issues)
- 639 ▪ Key informant (very private and focused: e.g. pregnant women)
- 640 ▪ Community advisory committees (public sanctioned representation)
- 641 ▪ Community walks and site visits (public, to confirm inputs, verification)
- 642 ▪ Gender sensitive livelihoods assessment tools.
- 643 ▪ Social Impact Assessments¹⁷ and Rapid Health Assessment¹⁸
- 644 ▪ Local media outreach: (use local newspapers, radio, or TV to communicate
- 645 with a broader audience).

646 To increase the effectiveness and accuracy of the consultations another important
647 consideration for facilitators is what consultations mean in local contexts and how they
648 are normally conducted. Within communities, different people and groups (leaders,
649 elders, wealthy, less wealthy, men, women) have different amounts of power and control
650 or influence over decision-making. These differences may affect people’s comfort and
651 willingness to engage publicly depending on which tools are used. To address this, the
652 “creation of space” for these groups when using consultation tools and methods needs
653 to be considered. Facilitators need to decide, in their context, which tools will be most
654 effective at attracting people’s participation, overcoming barriers to their participation
655 and putting them at ease for expressing themselves.

656 An example of differing opinions between groups that often arises at the community level
657 is that of women and men. In the context of ASGM this could be even more pronounced
658 as women and their unborn infant’s health are at higher risk from the effects of mercury.
659 Providing women with the option of women only focus groups, workshops or
660 committees needs to be promoted by the facilitation team.

661 The Global Environmental Facility (GEF) has a full complement of consultation and
662 safeguard tools that can help prepare for and conduct consultations. This supplement
663 guideline is not directly based on these but touches on many of the same topics,
664 facilitators are encouraged to explore these if they feel additional information is needed.

- 665 ▪ Policy on Stakeholder Engagement (GEF/C.53/05/Rev.01)
- 666 ▪ Stakeholder Engagement Guidelines (SD/GN/01)
- 667 ▪ Environmental and Social Safeguards (SD/PL/03)
- 668 ▪ Application of Environmental and Social Safeguard Standards (SD/GN/03)

¹⁷ <https://www.usaid.gov/sites/default/files/2022-05/USAID-Social-Impact-Assessment-508.pdf>

¹⁸ <https://www.afro.who.int/publications/rapid-health-situation-assessment-report-mozambique>

- 669 ▪ Gender Equality Policy (SD/PL/02)
- 670 ▪ Gender Equality Guidelines (SD/GN/02)
- 671 ▪ Principles and Guidelines for Engagement with Indigenous Peoples

672

673 **IMPLEMENTING THE NAP AND THE ROLES OF**

674 **INDIGENOUS PEOPLES AND OF LOCAL**

675 **COMMUNITIES**

676 **Ensuring effective implementation of NAPs with Indigenous Peoples and local**

677 **communities**

678 The above sections described how to effectively engage with Indigenous Peoples and
679 local communities for creating countries' NAP. Another aspect that is equally important
680 is how they can be actively involved in the actual implementation of NAPs such as
681 through direct participation in various activities and in assessing the progress in
682 implementation. Important to implementation is, depending on the context of a
683 country's NAP, who from those engaged in ASGM or affected by it, should be involved.
684 Through stakeholders and rightsholder mapping, Parties will need to consider what
685 groups (A – E) of Indigenous Peoples and local communities involved in ASGM are most
686 relevant and legitimate for actualizing their NAP. Regardless of what stakeholder groups
687 are involved in implementation, it is important for Parties to acknowledge that
688 Indigenous Peoples and local communities often have limited access to clear,
689 accessible, and culturally-appropriate information about the risks of mercury exposure
690 or that roles they can have in the implementation of their country's NAP. Therefore,
691 before they can have active and meaningful involvement in the implementation of NAPs,
692 there is a need of education and awareness programs that are tailored specifically to
693 their languages, cultures, and circumstances. With the onus on Parties, this is meant to
694 be achieved through an iterative FPIC process, as described above, that thoroughly
695 informs and prepares communities for NAP implementation.

696

697 **The involvement of Indigenous Peoples and local communities in NAPs**

698 **implementation**

699 Support for what implementation can include is based on the linkages between this
700 supplemental guidance and other key Convention related documents. Below are
701 examples of activities taken from Convention's related documents that provide ways in
702 which Indigenous Peoples as well as local communities can have active roles in
703 implementing their countries' NAP. What activities are included and how exactly these

704 are implemented with Indigenous Peoples and local communities will depend on each
705 country's national ASGM overview and approach to NAP implementation.

706 Article 7 of the Convention – “Artisanal and small-scale gold mining” – calls for
707 development of strategies to prevent the use of mercury in ASGM, education, outreach
708 and capacity building, promotion of alternative non-mercury practices and forming
709 partnership to assist in the implementation of their commitments under this Article.
710 Annex C is more specific Section 1 (g) and states that NAPs should include “Strategies
711 for involving stakeholders in the implementation and continuing development of the
712 national action plan” and Section 1 (k) requires “a schedule for the implementation of
713 the national action plan that could specifically and formally include when and on what
714 Indigenous people and local communities are involved.”

715 Paragraph 6 of decision MC-5/7, paragraph 6 offers actions which Parties can take to
716 include Indigenous and local communities in NAP implementation, particularly:

- 717 ▪ Engage with Indigenous Peoples and local communities in decision-making
718 processes regarding artisanal and small-scale gold mining;
- 719 ▪ Protect and strengthen traditional livelihoods and cultural practices of
720 Indigenous Peoples and local communities and, where appropriate, develop
721 and promote alternative, sustainable economic activities;
- 722 ▪ Promote appropriate health-care services for prevention, treatment and care
723 for Indigenous Peoples and local communities affected by exposure to
724 mercury from artisanal and small-scale gold mining;
- 725 ▪ Work with Indigenous Peoples and local communities on possible solutions to
726 their needs and priorities in relation to the use of mercury in artisanal and
727 small-scale gold mining,

728 Another critical topic which Indigenous Peoples and local communities may have a role
729 in is in the implementation of participatory environmental monitoring and environmental
730 impact assessments programs aimed at detecting changes in the use of mercury and in
731 local terrestrial and aquatic environments. However, the access of Indigenous Peoples
732 and local communities to resources and knowledge necessary for monitoring of
733 mercury exposure, mitigating risks, accessing healthcare, local capacity to manage
734 mercury contamination is typically very low across all geographic regions. But since the
735 main group involved in ASGM are the miners themselves, having them involved in
736 mercury research and monitoring, based on an agreed cooperation protocol, can better
737 inform the design and execution of the program. An example of this is training
738 Indigenous or local community miners or others affected by mercury to support
739 technical staff involved in the design of monitoring activities, sample collection and
740 ASGM site restoration.

741 The technical background document, UNEP/MC/COP.5/INF/9, “Monitoring of mercury
742 and mercury compounds in and around artisanal and small-scale gold mining sites”,

743 (INF/9) details how to involve communities. Chapter 3 “A framework for developing in
744 situ monitoring plans for mercury in and around ASGM sites” includes a 9-phase
745 monitoring framework for which participatory monitoring can be integrated. This
746 approach meshes well and can be boosted through the involvement of the “community
747 educators” (or community monitors) described in stage 4 of the FPIC process. An
748 added benefit of closely involving Indigenous Peoples and local communities in
749 implementation of monitoring is that it can build mercury exposure risk awareness in
750 miner populations and even initiate behavioral changes on mercury handling and use.

751 INF/9 is aimed at technical practitioners working to monitor mercury in and around
752 ASGM in soils, surface sediments, surface water and biota. In addition to supporting
753 countries to develop mercury monitoring programs, the technical document also
754 provides useful insight to support implementation of national policies and strategies,
755 including the implementation and review of their National Action Plans under Article 7.
756 An example of participatory community monitoring comes from a post-ASGM landscape
757 of the “La Pampa” mining zone, Madre de Dios, in the Peruvian Amazon.¹⁹ By providing
758 training on mercury monitoring techniques and including Indigenous Peoples and local
759 communities, researchers were able to access more areas and open communications
760 channels for exchange on mercury use and local livelihoods. It was confirmed that
761 working with local people, communities and organizations is a critical success factor for
762 executing a long-term monitoring program.

763 The Guidance Document: Developing a National Action Plan to Reduce and, Where
764 Feasible, Eliminate Mercury Use in Artisanal and Small-Scale Gold Mining, as updated
765 and adopted by the Minamata Convention in decision MC-4/4 (NAP Guidance) offer
766 several options for including Indigenous Peoples as well as local communities
767 specifically on the management of tailings and ecological restoration in NAP
768 implementation:

- 769 ▪ Engage all relevant actors and affected communities in the planning and
770 execution of mercury-contaminated tailings management (ensuring a
771 participatory process).
- 772 ▪ Design and conduct educational programmes, facilitating ASGM miners’
773 opportunities to present ideas and models for the implementation of acceptable
774 tailings management practices by their organizations.
- 775 ▪ Consult with the ASGM community and apply knowledge and local experiences
776 to succeed in the restoration approach. The most sustainable approach will be
777 the one that best serves the needs of the local community.

¹⁹ Centro de Innovacion Cientifica Amazonica (CINCIA) is a Peruvian non-for-profit scientific research centre that conducts applied research on the dynamics and impacts of ASGM on terrestrial and aquatic landscapes in the Peruvian Amazon.

- 778 ▪ Stimulate ASGM community commitment to restoration plans by engaging them
779 actively in the restoration activities (ideally community engagement should be
780 already taking place during operation of the ASGM site) and organizing
781 educational sessions focused on the benefits of restoration and future restored
782 land use possibilities.

783 Sections of UNEP/MC/COP.5/INF/8 – “Needs and priorities of Indigenous Peoples and
784 local communities with regard to the use of mercury in artisanal and small-scale gold
785 mining” offers insights on participation on implementation of NAPs. These are grouped
786 as broad categories of interventions aimed at reducing and eliminating exposure of
787 Indigenous Peoples and local communities to mercury used in ASGM. They include
788 actions to address their immediate needs and priorities, as well as to develop
789 long-lasting solutions that needs to occur during implementation of NAPs.

790 *Diversified sustainable and voluntary adoption of alternative livelihoods*

- 791 ▪ Consultations with Indigenous Peoples and local communities and
792 assessment of feasible options for alternative economic livelihoods,
793 which are sustainable, accessible and profitable;
- 794 ▪ Demonstration of linkages with climate change and biodiversity to
795 advance projects and programmes that promote complementary
796 solutions and generate co-benefits;
- 797 ▪ Partnership with multilateral development banks and investors for
798 alternative economic activities around local owned small and medium
799 enterprises. Additional full cycle support – financial management,
800 marketing, quality control, inventory, etc. – with a focus on support for
801 women to open and manage businesses.

802 *Protection of human health*

- 803 ▪ Information sharing, public awareness and education on the risk of
804 exposure to mercury and impacts to affected communities;
- 805 ▪ Healthcare services that are culturally appropriate, affordable, reliable,
806 and easily; accessible, including regular community monitoring, in
807 particular of children and women in child-bearing age;
- 808 ▪ Training of health service providers to monitor, recognize, prevent,
809 diagnose and treat mercury-related ailments with respect to cultural
810 diversity and traditional medicine;
- 811 ▪ Food security of Indigenous Peoples and local communities impacted
812 by ASGM.

813 *Rights-based approaches to Indigenous Peoples & land rights*

- 814 ▪ Legal recognition of land tenure – individual and communal – by
815 Indigenous Peoples and local communities;

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- Respect of traditional Indigenous Peoples and local communities' treaties and protocols and implementation of the UN Declaration on the Rights of Indigenous Peoples.

819 *Inclusive planning and implementation*

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- Full and effective engagement of Indigenous Peoples and local communities in planning and implementation of ASGM NAPs, with translation of materials into local language and capacity building on mercury-free ASGM;
 - Implementation of the NAP through partnerships with civil society organizations, especially ones that are founded and managed by Indigenous people and local communities.
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827 *Mercury-free mining and processing*

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- Formalization of miners and mining cooperatives and associations;
 - Adoption of alternative mercury-free solutions, with financial support for the appropriate mining and processing equipment;
 - Access to credit and other financing tools and incentives by the miners and their mining cooperatives.

833 *Policy and regulation*

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- Preparatory consultations with Indigenous Peoples and local communities regarding legislation that may impact their livelihoods, rights and natural environment;
 - Participatory policy impact analysis with Indigenous Peoples and local communities before legislation is passed.

839 *Law enforcement*

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- Communities ceasing to engage in and helping to curtail the illegal trade of mercury into ASGM as include in the NAP or new legislation;
 - Preventing illegal activities commonly associated with mercury use and mining: arms trafficking, drug trafficking, child labour, slavery and human trafficking, illegal deforestation, etc.

845 **REVIEW OF THE IMPLEMENTATION OF ARTICLE**

846 **7**

847 Article 7 of the Minamata Convention sets out that each Party, who determines that
848 ASGM in its territory is more than insignificant, shall provide a review every three years
849 of the progress made in meeting its obligations under the Article and include such
850 reviews in its national reports under Article 21. Annex C of the Minamata Convention

851 requires Parties, who are subject to the review process, to include a list of objectives,
852 reduction targets, actions, and strategies in their national action plans.

853 In their review of their Article 7 implementation, as required under paragraph 3(c) of the
854 same Article, it is important that Indigenous Peoples and/or local communities who are
855 affected by ASGM are also included in the review. The Global Environment Facility, in its
856 “*Guidelines for the Preparation of Reviews of the Implementation of Article 7 of the*
857 *Minamata Convention*”, recommends that Parties, in reviewing the implementation of
858 Article 7, prepare a progress report on the implementation of the national action plans,
859 including gaps, challenges faced, and solutions identified or undertaken. According to
860 the GEF guidance (paragraph 13), the progress report on the implementation of the
861 national action plans should contain separate sections with respect to engagement of:

862 (a) Indigenous Peoples

863 (b) Local communities

864 Ideally, Indigenous Peoples and/or local communities affected by ASGM would have
865 already been engaged in the development and implementation of NAPs and their
866 engagement would have been properly documented so that it could serve as a basis for
867 reviewing progress in the implementation of the NAP towards its objectives and targets.
868 However, it maybe that many of the existing NAPs have been developed without
869 effective participation of the relevant Indigenous Peoples or local communities. In such
870 cases, progress reports, leading up to reviews should explicitly indicate Indigenous
871 Peoples and/or local communities were not consulted during the NAP planning,
872 development and implementation phases. Progress reports can make
873 recommendations, based on this supplemental note, about how to update NAP and
874 include full and effective consultation with Indigenous Peoples and local communities. It
875 is then important that the review process start by following the steps described above
876 for “Setting the scene”, “Preparing for consultations” and “Implementing the
877 consultation process”.

878 INF/9 , under phase 3 “Development of a stakeholder engagement plan with relevant
879 local communities and indigenous peoples to create effective communications
880 channels”, contains useful insights on the challenges related to the review phase of a
881 community-based project by noting that: “*Common reasons frequently cited for not*
882 *completing this crucial phase include: a lack of time, funds, or spending authority in final*
883 *project stages, a perception that local actors may not be interested in the findings, or*
884 *concerns that certain stakeholders will be displeased by findings, among others. Most, if*
885 *not all, of these concerns can be preemptively mitigated through sufficient planning, and*
886 *a firm commitment to interactive and iterative communication with local stakeholders*”.

887 In addition to the initial steps mentioned above, the following steps can help ensure
888 meaningful engagement of Indigenous Peoples and local communities:

- 889 • Conduct impact assessments with Indigenous Peoples’ participation:
890 environmental, social, and cultural impact assessments that involve Indigenous

891 Peoples concerned. Use the findings to identify concerns, risks, and opportunities
892 for Indigenous communities.

- 893 • Amend NAP based on Indigenous Peoples' input: incorporate feedback and
894 concerns from Indigenous communities into revisions of the NAP and ensure that
895 any changes reflect their priorities, such as environmental protection, health
896 impacts, and economic opportunities and/or alternatives.
- 897 • Grievance mechanism (established under initial phase of consultation): for
898 Indigenous Peoples to provide feedback and address grievances during the
899 review of the NAP. Ensure the process is transparent, accessible, and culturally
900 appropriate.

901 Engaging Indigenous Peoples and local communities affected by ASGM in the review of
902 existing NAPs is critical to ensuring their rights, knowledge, and concerns are
903 considered. This is likewise important to establish long-term relationships that fosters
904 trust and collaboration, ensuring that Indigenous Peoples, as well as local communities,
905 are fully engaged in reviewing and implementing NAPs in a way that respects their
906 rights and priorities, enhances their well-being.

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908 END