Indigenous Laws and Governance in Indigenous Self-Developed FPIC Protocols

An Expert Contribution to the "Implementing Consent for Mining on Indigenous Lands" project for the B.C. First Nations Energy and Mining Council

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A. Indigenous Legal Context:

3. Indigenous governments have established various mechanisms for inclusivity of community members for expressions of consent. What are mechanisms and opportunities to incorporate and reflect community perspectives such as women and youth? What are current options to support community perspectives in mine review and consent processes? What are measures that Indigenous peoples may wish to take to support unified approaches by communities to resource development issues?

Indigenous peoples are increasingly establishing their own policies and protocols for free, prior and informed consent (FPIC.) Further, Indigenous peoples are codifying their own laws and governance rules into consultation and consent policies and protocols in order to define precisely what FPIC means for them and increasingly, those align with Indigenous legal orders and governance models. In its 2018 study on FPIC, the United Nations Expert Mechanism on the Rights of Indigenous Peoples (EMRIP) noted the existence of such developments especially in North America and Latin America, including Brazil, Bolivia, Canada, Colombia, Guatemala, Honduras, Paraguay, Suriname and the United States.[1] These protocols, which establish the how, when, why and whom to consult, are empowering instruments for Indigenous peoples and are "closely linked to their rights to self-determination, participation and the development and maintenance of their own decision-making institutions."[2]

Indigenous Self-Developed FPIC Protocols

A 2019 collaborative research project between scholars from The University of Middlesex School of Law and several European-based NGOs collected and analyzed Indigenous self-developed FPIC protocols from 20 countries. This research group defines FPIC protocols as "documents that formalize (Indigenous peoples') engagement rules and procedures in relation to consultations aimed at obtaining their FPIC."[3]

While the authors of this report note that Indigenous peoples have always had traditional protocols governing their engagement with outsiders, they identify three "waves of consultation protocol development" in the contemporary period.[4] These three waves can be referred to as: 1) Principles, Policies and Guidelines, 2) Bio-Cultural Protocols, and 3)

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[1] United Nations General Assembly, Free, prior and informed consent: a human rights-based approach, A/HRC/39/62 (New York: United Nations, 2018).
[2] United Nations General Assembly, Short Free, prior and informed consent: a human rights-based approach, 15.
[3] Cathal Doyle, Andy Whitmore, and Helen Tugendhat, *Free Prior Informed Consent Protocols as Instruments of Autonomy: Laying Foundations for Rights Based Engagement*, Institut für Ökologie und Aktions-Ethnologie (INFOE) (2019), 8, https://www.forestpeoples.org/sites/default/files/documents/ENG%20final%20WEB%20FPIC.pdf.
[4] Doyle, Whitmore, and Tugendhat, *Free Prior Informed Consent Protocols as Instruments of Autonomy: Laying Foundations for Rights Based Engagement*, 18.

Self-Determination. This paper will focus primarily on Principles, Policies and Guidelines and Self-Determination.

Indigenous Self-Developed FPIC Protocols: Principles, Policies and Guidelines

The first wave, in the early 2000s, prior to the finalization of the UN Declaration on the Rights of Indigenous Peoples in 2007, emerged primarily amongst Canadian First Nations who were negotiating directly with mining companies who wanted access to their territories. The practice also travelled to Suriname and Philippines during the same period. The study notes wide variation in the content and approach of these policies and guidelines, with some Indigenous peoples providing general principles of engagement and others offering much more detailed rules.[5]

One of the earliest examples of such Indigenous-led FPIC processes was the Tahltan Nation of northwestern BC who developed their own Tahltan Development Policy in 1987 which clearly established that their vision of development would be practiced through their own resource development policies.[6] The eight core principles of Tahltan development, according to their 1987 policy, are: 1) no irreparable environmental damage, 2) no jeopardy to or prejudice against Tahltan Aboriginal rights, 3) more positive than negative social impacts, 4) widest educational opportunities possible, 5) widest employment opportunities possible, 6) equity participation, 7) Tahltan business opportunities, and 8) financial and managerial assistance.

In the years since the Tahltan Nation first established its development policy, it has further developed its engagement practices, and the Tahltan Nation now utilizes both Impact Benefit Agreements (IBAs) and Environmental Impact Assessments (EIAs) together in order to exert a greater degree of control over project development and the economic benefits returning to the Nation. The Nation's overall goals in pursuing development projects are: environmental stewardship, economic self-sufficiency, self-determination, and healthy communities. They have focused attention on using the wealth generated from their mineral

[5] For example, the Kitchenuhmaykoosib Inninuwug First Nation protocol (2011), the Taku River Tlingit First Nation Mining Policy (2007).
[6] Tahltan Tribal Council, Tahltan Tribal Council Resource Development Policy Statement, (1987).

economy to ensure that development occurs on Tahltan terms.[7] In the particular case of the Galore Creek mine, community discussions were held and through "participatory engagement that included the incorporation of (traditional knowledge)," they were able to identify a final access route to the proposed open pit site that posed the least risk to the Nation.[8] This demonstrates how Tahltan participation in the process has made projects more sustainable and favourable. They have also added provisions to IBAs pertaining to mine closures which requires that certain conditions are met. Their IBA process has thus been used "to strengthen the conventional regulatory process and enhance the prospect of a more sustainable mining development."[9]

Another early example of an Indigenous-led consultation policy was the Kitkatla First Nation in BC, which developed its own policy by 2002. This policy established the Nation's rules on how consultation activities were to proceed. For example, they indicated that access to the Council and to elders would only by guaranteed one day per month. Another policy was that when there are several items on the agenda, they would be scheduled to fit into a one-day format. Consultations were not to be conducted by telephone, and all requests for consultation and supporting documents would be sent through the Nation's lawyers.[10]

Other early formal consultation policies include the Northern Shuswap Tribal Council, the Horse Lake First Nation in Alberta, and the Thunderchild First Nation in Saskatchewan.[11]

The James Bay Cree have also had the capacity to develop their own mining policy where they establish criteria for consent, and they make consent a

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[7] Courtney Fidler, "Increasing the Sustainability of a resource development: Aboriginal engagement and negotiated agreements," *Environment, Development and Sustainability* 12, no. 2 (2010).
[8] Fidler, "Increasing the Sustainability of a resource development: Aboriginal engagement and negotiated agreements," 240.
[9] Fidler, "Increasing the Sustainability of a resource development: Aboriginal engagement and negotiated agreements," 241.
[10] William Hipwell et al., "Aboriginal Peoples and Mining in Canada: Consultation, Participation and Prospects for Change: Working Discussion Paper" (North-South Institute, 2002).
[11] Dwight Newman, *Revisting the Duty to Consult Aboriginal Peoples* (Saskatoon, SK: Purich Publishing Limited, 2014).

condition for any development. The Cree have made their support for a mining project conditional on a negotiated agreement. Consent is tied to the signing of an IBA, but the decision to sign or not sign depends on an internal deliberative process at the community and regional levels. While there is technically no legal force behind the policy, it still serves a strong normative value in support of Cree jurisdiction. By unilaterally defining these processes, they are reframing FPIC away from a procedural state duty and into "a matter of Indigenous jurisdiction over the project itself."[12] For governments in Canada, FPIC tends to be defined procedurally, but Indigenous peoples are increasingly defining it for themselves.

The Squamish Nation has also developed their own FPIC mechanism grounded in a community-based impact assessment. As an Indian Act Band, the Squamish Nation Council does not have the legal authority to create a legally enforceable process, but the Council has managed to get project proponents to agree to both collaborate and fund community-driven impact assessment processes and has even created a legally binding private agreement to respect the outcome.

As legal scholar Dwight Newman notes, Indigenous communities will be positioned very differently in terms of their capacity to develop formal consultation policies which involve a significant investment of resources and an uncertain return on that investment in terms of recognition by the state.[13]

Following a series of negative experiences with a government imposed FPIC structure, a group of Subanen traditional leaders in the Philippines gathered in 2007 to protest the government guidelines. In 2009, a series of community consultations and a traditional leaders conference served to consolidate the views of different communities and formulated a set of FPIC guidelines that they considered to be culturally appropriate and consistent with their worldview, beliefs and their customary law. The

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[12] Martin Papillon and Thierry Rodon, "The Transformative Potential of Indigenous-Driven Approaches to Implementing Free, Prior and Informed Consent: Lessons from Two Canadian Cases in: International Journal on Minority and Group Rights Volume 27 Issue 2 (2019)," *International Journal on Minority and Group Rights* 27, no. 2 (2020): 317, https://doi.org/10.1163/15718115-02702009, https://brill.com/view/journals/ijgr/27/2/article-p314_314.xml.

[13] Newman, *Revisting the Duty to Consult Aboriginal Peoples*, 132.

leaders, which included women leaders, represented different communities and provinces from their territory. The result of this broad-based consultation was a manifesto which declared their views on the importance of their lands and resources. It set out a series of conditions for FPIC: the submission of a list of names of Indigenous leaders duly recognized by their respective communities, participation of all affected communities in the process, respect for traditional territories and boundaries, respect for traditional leadership and decision-making processes, performance of traditional sacred rituals, written agreements with terms and conditions, respect for decisions to reject projects and the absence of military and police forces in the community.[14]

Political science scholars Martin Papillon and Thierry Rodon have found that IBAs often result in a truncated version of FPIC as FPIC "requires substantive Indigenous participation in decision-making anchored both in community deliberations and the reconciliation of interests through negotiations."[15] They argue that the deliberative ethic of FPIC is often undermined in the processes surrounding IBAs as these processes tend to skirt more complex questions about the acceptability of projects and their wider cultural, social and economic impacts in favour of discussions about impact mitigation or economic benefits. A full FPIC process, they note, requires both deliberation and negotiation, so there is a need to strengthen the deliberative component of Indigenous participation in decision-making in practice. Most often, IBAs are discussed in closed processes and conducted only by elites and with very little inputs from wider communities, since communities are normally only engaged only after an agreement is made when they are presented with a referendum on the entire package. In this model, there is typically little room for community deliberations, but community deliberations are needed in order to reach legitimacy for any project. Closed processes are further exacerbated by the confidentiality provisions of IBAs which creates additional obstacles to open dialogue.

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[14] Cathal Doyle and Jill Cariño, *Making Free, Prior & Informed Consent a Reality: Indigenous Peoples and the Extractive Sector*, Indigenous Peoples Links, Middlesex University School of Law, and The Ecumenical Council for Corporate Responsibility (2013).
[15] Martin Papillon and Thierry Rodon, "Proponent-Indigenous agreements and the implementation of the right to free, prior, and informed consent in Canada," *Environmental Impact Assessment Review* 62 (2017): 217, https://doi.org/https://doi.org/10.1016/j.eiar.2016.06.009.

Environmental Impact Assessments (EIAs) can provide a deliberative space for community engagement. There is a degree of tension between the two "modes of consent" provided by IBAs and EIAs. The first is based on an elite-based negotiation process and the other is based on community deliberations "designed to establish the legitimacy of the project among those most concerned."[16] IBAs, they argue, need to be better informed by greater transparency and democracy than an EIA can provide. A stronger model of EIA that requires community engagement before any IBA can be finalized, and thus takes a deliberative model seriously. Therefore, "creating conditions for community deliberations is essential to ensure the legitimacy of their positions in negotiation processes."[17]

Papillon and Rodon's 2017 paper published with Institute for Research on Public Policy (IRPP), further argues for a relational, and combined, approach to FPIC. They see that impact assessment (IA) processes are passively participatory and "not designed as collaborative decision-making systems."[18] Consultations undertaken in context of IAs often do not facilitate dialogue or build trust as they are often negotiated with limited community input, kept confidential and ratified and implemented without the community's full knowledge of their content. As in their earlier work, Papillon and Rodon again find that for best FPIC outcomes, collaborative consent through joint decision-making should be combined with community-driver impact assessment, in a two-pronged approach.

The Stk'emlupsemc Te Secwepemc Nation and the Squamish Nation have each developed an independent IA process that enabled community consultation to measure the acceptability of a project, propose mitigation measures and, if in agreement, issue a certificate of authorization. The Squamish Nation signed an agreement with the LNG company who agreed to fund the IA process and also committed to accepting its outcome. This process resulted in a recommendation to proceed with the project,

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[16] Papillon and Rodon, "Proponent-Indigenous agreements and the implementation of the right to free, prior, and informed consent in Canada," 222.
[17] Papillon and Rodon, "Proponent-Indigenous agreements and the implementation of the right to free, prior, and informed consent in Canada," 223.
[18] Martin Papillon and Thierry Rodon, *Indigenous Consent and Natural Resource Extraction*, Institute for Research on Public Policy (4 July 2017 2017), 11, https://irpp.org/research-studies/insight-no16/.

conditional on 25 conditions. On the KGHM Ajax mine project, a community-based process that included attention to traditional knowledge led to a rejection of that project. These cases demonstrate how a parallel process may enhance complications in an already complicated process by adding an additional layer, which then adds multiple dimensions of complexity. The Squamish Nation acknowledges that conducting its own EA process presents both capacity challenges as well as coordination challenges with other levels of government.[19]

The two-pronged approach that Papillon and Rodon advocate combines the strengths of collaborative and community-based approaches. Under this model, a community-based deliberation process is informed by and also feeds into a collaborative process to allow for the "co-construction of decisions."[20] Community consent could be provided through various mechanisms like a referendum, an elder council, or a process that is focused on those most directly affected, but whatever process is chosen must be a "self-defined internal process" for deliberation.[21]

Indigenous Self-Developed FPIC Protocols: Bio-Cultural Protocols

The second category of Indigenous-led FPIC protocols identified in the Middlesex/NGO study emerged in the late 2000s in the context of access and benefit agreements that resulted from the Convention on Biological Diversity rather than under international human rights law. Many Indigenous peoples in countries such as Honduras, Guatemala, India, Kenya, South Africa, Panama and Peru, amongst others, developed this type of protocol. While these protocols often articulate principles and practices of engagement, they tend to be solely focused on third parties and often do not consider the state's role. Some of these protocols also address research activities in Indigenous territories.

Indigenous Self-Developed FPIC Protocols: Self-Determination

The third category of Indigenous-led FPIC protocols identified in the Middlesex/NGO study are the set of self-governance/self-determination

[19] Cases drawn from Papillon and Rodon, "Proponent-Indigenous agreements and the implementation of the right to free, prior, and informed consent in Canada."; Papillon and Rodon, *Indigenous Consent and Natural Resource Extraction*.
[20] Papillon and Rodon, *Indigenous Consent and Natural Resource Extraction*, 17.
[21] Papillon and Rodon, *Indigenous Consent and Natural Resource Extraction*, 18.

protocols that are squarely grounded in international human rights law. Many of these have been developed in Latin America, especially by Indigenous peoples in Brazil, Colombia and Peru. Self-determination protocols entail the codification of Indigenous peoples' own laws and governance rules through the development of "their own autonomous rights-based consultation and consent protocols and policies…, defining how they are to be consulted and their FPIC sought."[22] Common features of these protocols include: the preconditions for good faith negotiations, timeframes and stages of negotiation, legal bases, concepts, practices and principles that are regarded as non-negotiable, and guidance on representation and how decisions are taken. There is significant variance on the focus, format and nature of processes.

Juruna of Brazil

The Juruna people in the Para state of Brazil completed their protocol in 2017 in the face of the Belo Sun mining project. They began the process in 2014 with protocol development meetings which involved all sectors of their society. Their emphasis is on designing a participatory environmental impact assessment which includes a provision for a two-stage consultation process involving co-development of a consultation plan with the government. It also addresses how decisions will be made when a consensus is absent. In these cases, a vote can be called, but then the protocol makes sure that all communities have an equal say, regardless of their population size.

A significant portion of the Juruna Protocol defines the principles that should guide all consultation processes which are then converted into rules.[23] The guiding principles are: respect, transparency, good faith and honesty, and freedom from physical or moral pressure. The associated rules include such provisions as respect for the timing of meetings and traditional activities, obligation to publish all meeting records, need to have some meetings devoted to information sharing only, and the need for independent technical advice. The leaders of all the villages agreed that a

[22] Doyle, Whitmore, and Tugendhat, *Free Prior Informed Consent Protocols as Instruments of Autonomy: Laying Foundations for Rights Based Engagement*, 8.
[23] Case information, including quotes from the Juruna Protocol are drawn from Doyle, Whitmore, and Tugendhat, *Free Prior Informed Consent Protocols as Instruments of Autonomy: Laying Foundations for Rights Based Engagement*.

vote could be taken to reach a decision in the absence of a consensus, even though individual voting is not a usual practice among the Juruna. The voting system equalized all three villages among which there is a large population disparity. However, since 2017, no decisions have been made by voting but always by consensus. Another important rule is that chiefs or leaders cannot make decisions individually, so they are not authorized to enter into agreements with the government or private companies.

For transparency, there is a rule that requires decisions to be make with the joint participation of all three villages. This forces all village chiefs to make decisions in public meetings before those decisions can be communicated to the outside. The voting rule states: “How do we make decisions? We talk until we reach a decision agreed to by all. We will seek consensus in the internal deliberative meetings. If consensus is not possible, ten adult representatives from each village, chosen by us, will vote.” The Protocol has served an important role in encouraging political unity as it discourages unilateral decision-making.

The Protocol has three parts. The first describes the background, including who the Juruna are, the context and rationale for the FPIC Protocol. The second part describes the rules of the Protocol. The third includes the constitutional and international human rights context that refers to the rights of consultation and consent.

One important rule in the Protocol is voluntariness. The Juruna do not recognize an obligation to participate in any consultation that only serves government interests. In addition, consultations must occur before decisions have actually been made: “Consultations can only concern proposal or ideas, never decisions already made. Consultations on new enterprises must occur from their inception or planning stage. A consultation needs to take place in advance for it to be useful. In other words, the result of the consultation must serve to influence the decision and not just legitimize it.”

There is also a section in the protocol that outlines who are the legitimate representatives and reinforces the need for communities to be involved in decision-making. It stipulates that villages cannot be consulted separately,

and villagers cannot be consulted individually. Meetings must be attended by "leaders of all the villages, including women, men, the elders and children."

The Protocol demands that consultations be conducted in accordance with Juruna rules, customs, traditions and representative institutions and explains precisely what each of those mean.

Embera Chamí of Colombia

Embera Chamí people in Colombia developed a regulatory framework in 2012 including an FPIC protocol intended to govern mining in their territory.[24] The framework is grounded in their constitutional rights, international human rights law, the Colombian Constitutional Court and Indigenous laws. The FPIC protocol is one of three components of the framework. No company has successfully brought mining into their territory since the protocol was finalized. The Colombian Constitutional Court, in a 2016 case, affirmed the need to respect this protocol.

The protocol maintains that FPIC processes must be driven and articulated by the Embera Chamí themselves, through their own processes and norms. This is one of the first formal protocols to be developed by an Indigenous people in Colombia. Its opening section provides the constitutional, national and international human rights law context for FPIC. The protocol contains several chapters, including sections on background and context, the reach of the protocol, consultation procedures, articulates agencies and participants of the process, the conditions that would invalidate a process, and three chapters outlining procedures. It does contain a provision that if any of the principles are not upheld, the entire process will be considered invalid and then also articulates a set of conditions that would invalidate the process.

A unique feature of this protocol is the role that spirituality plays in decision-making. Ceremony forms the foundation for the community's governance, and traditional healers play an important role in making sure spaces for decision-making are well prepared. The unarmed Indigenous

[24] Case material including quotes from the FPIC protocol are drawn from Doyle, Whitmore, and Tugendhat, *Free Prior Informed Consent Protocols as Instruments of Autonomy: Laying Foundations for Rights Based Engagement*.

Guard are also important, patrolling the territory and identifying anyone who is not invited to be there.

Wampis of Peru

In 2015, the Wampis, located in the northwest of the Peruvian Amazon, became the first Indigenous people in Peru to declare an Autonomous Territorial Government and, in that process, issued their governing Statute. One aspect of this Statute is a requirement for FPIC for projects that originate outside the community.

The Wampis are developing an FPIC protocol that is grounded in the 2015 Statute. This protocol leaves decision-making authority over their territorial sovereignty to their Wampi government and not to individual communities, so it is the Wampi Government that must be consulted and only it can provide FPIC following a decision-making process that they develop and control themselves. Private negotiations are not allowed, and any decisions made outside the established channels are invalid.

The Protocol will establish pre-conditions for consultations, the basis for negotiations, and the procedures which include long deliberations in which everyone who wants to can contribute to the discussion so that a consensus can be reached. Long timeframes are necessary to prepare for meetings as travel to the meeting site may take days. There is a stipulation that information is to be provided sufficiently in advance of any decision-making meeting. Documents are to be translated into the Wampi language and all processes must include translators that are recognized by the Wampi.

Resguardo of Cañamono Lomapretia in Colombia

The Resguardo of Cañamono Lomapretia in Colombia discovered that the state had granted mining concessions in their territory when representatives of the Canadian company Medoro Resources entered their territory in an attempt to take samples but were detained by the Indigenous guard.[25] They then discovered that 48 concessions had already been issued by the state. The Resguardo decided to conduct their own baseline studies

[25] Case information is drawn from Doyle and Cariño, *Making Free, Prior & Informed Consent a Reality: Indigenous Peoples and the Extractive Sector*.

using their own methodologies which had cultural, sociological, political, administrative and economic elements. They mapped their own boundaries and features using GPS. Their ancestral mining history was also gathered by collecting stories and the knowledge of elders who provided 500 years of history. The community developed its own normative framework including an FPIC protocol that governs mining in their territory. Over a two-year time period, their collective process involved leaders and all sectors of the community. The series of resolutions addresses the nature of permissible mining activities, the role of ancestral mining, specific zones to be excluded from mining and the consultation and consent seeking protocols which must be followed by anyone wishing to enter the territory. This framework is consistent with ILO 169 and the UN Declaration on the Rights of Indigenous Peoples. It grounds consultation on customary laws and the principle that they constitute self-governing territories. Community consultations and consent protocol decisions are made in the absence of government or company representatives. If community members are not happy with the decision of their leaders, a general assembly is held to make a final decision.

Under this protocol, all administrative acts, including the issuance of concessions and environmental certificates, require prior consultation through traditional authorities. Therefore, up to six consultations may be required. They also indicate the types of projects that will never gain consent, in this case large-scale mining or any mining of cyanide or mercury.

Water Governance in British Columbia

In a 2019 paper, legal scholar Deborah Curran also outlined several dimensions where First Nations in BC are making declarations of Indigenous law in watershed governance processes that incorporate FPIC.[26] For example, the Okanagan Nation Alliance's water Declaration in 2014 is a statement of water law. This Declaration "locates water as a relation and as life, recognizing water as the connector of relationships, health and resilience."[27] This means that the Syilx people have duties and

[26] Deborah Curran, "Indigenous Processes of Consent: Repoliticizing Water Governance through Legal Pluralism," *Water* 11, no. 3 (2019).
[27] Curran, "Indigenous Processes of Consent: Repoliticizing Water Governance through Legal Pluralism," 578.

responsibilities to water. Another example is the Yinka Dene 'Uza'hne' who have also stated their water laws.

First Nations are also using Indigenous laws and procedures to review proposed projects. For example, the Tsleil-Waututh Nation announced a Stewardship Policy in 2009, based on Coast Salish legal principles which provides direction on what makes up meaningful consultation in order to achieve consent. It used this policy to conduct its own environmental assessment of the Trans Mountain pipeline expansion proposal and rejected it as the negative impacts were deemed to exceed the nation's "legal limits."

Another example is the Stk'emlúpsemc te Secwépemc Nation which conducted its own assessment of a proposed mine in its territory. A community assessment panel was established which included the elected Chief and Council as well as 26 elders, youth and other individuals that were appointed by various families. The assessment relied on Secwépemc law and governance.

Conclusion

Drawing from this range of case studies on Indigenous self-developed FPIC protocols, policies, principles and guidelines, some commonalities emerge. These should be viewed as guiding principles.

Self-determined Representatives

Indigenous peoples have the right to choose their own representatives, and the onus is on the state or third parties to ask who the appropriate leaders and representatives are before proceeding with an FPIC process.

Women and Youth Participation

Women are essential to include in decision-making as they are often seen to have important traditional knowledge and spiritual power that men do not possess, and, as life givers, they are also the most vulnerable to harmful environmental effects that may emerge from extraction projects. Youth participation is also key as projects will impact them in the future. The community must best decide how to include both, and again, there is no "one size fits all" approach.

Multiple, Co-existing Authorities

Amongst Indigenous peoples, there can be several governing authorities existing together, and these often manifest as elected versus traditional leadership. In some parts of the world, these spheres of authority can be defined by gender. Where multiple governing authorities exist, FPIC must involve all relevant authorities. Each community determines for itself how to include these structures in their decision-making processes.

Consensus Building

FPIC is best viewed as an internal process of consensus-building in Indigenous communities. Consensus does not come to exist as a result of a majority vote but rather, it emerged through a process where elements of the community participate in decision-making according to their own customary laws and practices or procedures. Decisions frequently occur in general assemblies following customary practices of debate and deliberation. Dissenting opinions must also be dealt with in a respectful way during the process. These processes can take a great deal of time when they occur in a culturally appropriate manner. It is essential that these processes are self-defined by the community and not imposed by industry or the state. It is essential to note that there can be no "one size fits all" approach. Communities either rely on their traditional forms of decision-making or they develop entirely new processes that take in their traditional forms and also consider the contemporary reality.

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