

INDIGENOUS ENVIRONMENTAL NETWORK



Adopted by the UN General Assembly in September 2007, the Declaration on the Rights of Indigenous Peoples recognizes the obligation of states (countries) to consult with Indigenous Peoples and “to obtain their free, prior, and informed consent before adopting and implementing legislative or administrative measures that may affect them.” “While the UN Declaration on the Rights of Indigenous Peoples may not be legally binding per se, in important parts, it reaffirms customary international law, say two law professors.” (S James Anaya & Siegfried Wiessner)

Free, Prior and Informed Consent (FPIC)

The principle of **Free, Prior, and Informed Consent** is vital to upholding the human rights of Indigenous Peoples and local communities. The right of **FPIC** is an expression of the fundamental and inherent right to self-determination of American Indians and Alaska Natives in the United States and First Nations, Inuit and Métis in Canada.

Free, Prior, and Informed Consent is a basic underpinning of Indigenous Peoples’ ability to conclude and implement valid treaties and agreements, to have sovereignty over and protect our lands and natural resources, and to develop and participate in processes that redress violations of our land and treaty rights.

From Consultation to Consent

Free, Prior, and Informed Consent is defined as the right of our communities and Native Nations to be thoroughly informed about any development affecting our lands and resources, particularly in connection with the development, utilization or exploitation of mineral, water, environment or other resources and any legislative or administrative actions which may affect our community, in a timely basis, and to provide consent prior to the commencement of the development or action. This includes participation in setting the terms and conditions addressing the economic, social, cultural, spiritual and environmental impacts.

An Emerging New Standard

At the core of the **Free Prior, and Informed Consent** standard is the acknowledgement that under certain circumstances, companies must accept that projects will not proceed – especially when our Native Nations/Indigenous Peoples say NO! For most companies, this is a difficult pill to swallow.

While companies should set **Free, Prior, and Informed Consent** as an ideal standard, only Indigenous communities have the right to a project veto. Other stakeholders, such as NGOs, do not have this power. This distinction is based upon the emergence of national and international jurisprudence grounded in the concept that Native/Indigenous communities have land title—non-Native communities and other stakeholders do not. In addition, in many cases, non-Native communities do not have the historic, spiritual, and cultural ties to land.

INDIGENOUS ENVIRONMENTAL NETWORK

"In many ways, Canada has been at the forefront of this evolution. Over the past 10 years, a series of court decisions has fundamentally altered the relationship between resource companies and Indigenous Peoples' communities. Courts have consistently ruled that governments must consult with and accommodate the needs of Indigenous communities prior to development when a decision affects the exercise of aboriginal title. These court decisions have led to a new assertiveness among many First Nations and Inuit communities: in recent cases, development projects facing Indigenous community opposition have been stopped in their tracks." – The Ethical Funds Company

~ FPIC is More than Mere Consultation ~

Related to development and environmental impacts, companies can achieve the **FPIC** standard through consultation. But consultation, on its own, does not constitute **FPIC**. Consultation is not equivalent to consent. The possibility that projects can be rejected must be acknowledged.

Elements of Free, Prior and Informed Consent

Free from any external manipulation, interference, coercion, outside pressure, duress, fraud, bribery and "divide and conquer" tactics. Critical protocols must be developed concerning monetary inducements. **Free** includes the absence of any threats or implied retaliation if the results of the decision are to say "no".

Prior refers to meaningful, fully informed consent sought sufficiently in advance of any authorization or decision-making of activities or developments. This allows for sufficient time, without time constraint to allow for information-gathering, Indigenous analysis and discussion, including translations into traditional languages.

Informed means full disclosures and having all the information available reflecting all views and positions in appropriate languages and formats that recognize the unique and diverse indigenous governing structures, laws, cultures and customs. This includes the active participation of tribal members, elders, women, spiritual leaders, subsistence practitioners and traditional knowledge holders, with adequate time and resources to consider impartial and balanced information about potential risks and benefits, including interpretation of highly technical and legal language.

Consent is the community or tribal governmental body making a clear and full agreement of the proposed activity or development. Consent must be acquired at the earliest stages. Agreements must be reached within the established leadership structures and with tribal grassroots communities that would be affected by the decision. One caveat: In modern indigenous communities not all tribal members' have an equal voice. The effect of "Internalized Oppression" as a symptom of colonization takes its toll. Companies and state/provincial governments should make special efforts to understand how projects and administrative policies impact marginalized groups. Decision-makers must make sure that decisions don't deepen pre-existing community divisions.

What We Must Do

The standards and policy of **FPIC** and the **Declaration on the Rights of Indigenous Peoples (DRIP)** must be implemented at every level of government and in decision-making bodies within the United States and Canada including our American Indian/Alaska Native and First Nations, Inuit and Métis governing structures. This includes operating standards of companies, social and financial investment policies, governmental environment, natural resource and historical protection regulatory and compliance laws and many other areas.

For more information: Indigenous Environmental Network, P.O. Box 485, Bemidji, MN 56619, Tel: (218) 751-4967, ien@igc.org or in Ottawa, Ontario, Canada, (613) 789-5653, ienoil@igc.org Web: www.ienearth.org