



Indigenous peoples, free, prior and informed consent and consultation mechanisms

Adam Stepien

Northern Institute for
Environmental and Minority Law
PYVI/NIEM, Arctic Centre,
University of Lapland
Arctic Doctoral Programme



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- Indigenous peoples in development policies and development aid
- Participation as a human right
- Consultation and FPIC – principles, rules
- Various techniques
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- Obvious space for event design?



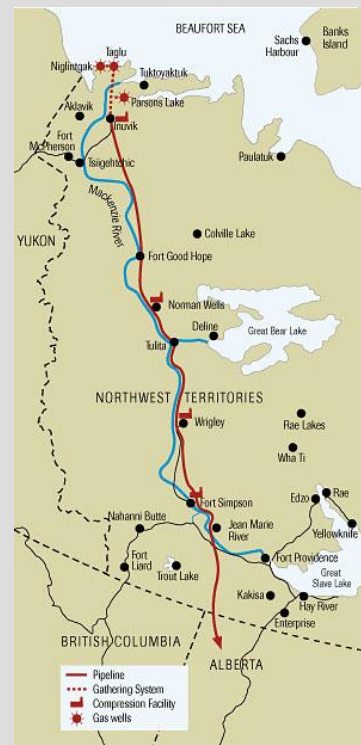
Origins

- Indigenous peoples
 - Specific situation
 - Negative experiences with various development projects
 - Greater requirements than for other groups (FPIC)
- Human-rights based approach
 - Poverty as the lack of rights and possibilities / Development as the furthering of human rights
 - Focus on the conduct of projects
 - Human rights to be safeguarded through the project conduct
 - Increasingly present in development agencies agenda



Mackenzie Valley Pipeline Inquiry

- From 1974
- Justice Thomas Berger
- No guidelines
- 35 communities and major Canadian cities
- Over 40000 pages
- Cost: CAD 5,3 mln
- Outcome:
 - suspension for 10 years
 - No pipeline within the delta
 - Securing nature conservation areas
 - Resolving land claims
 - Consultation mechanisms
 - Possibly costs higher than benefits



Mackenzie Valley Pipeline Inquiry

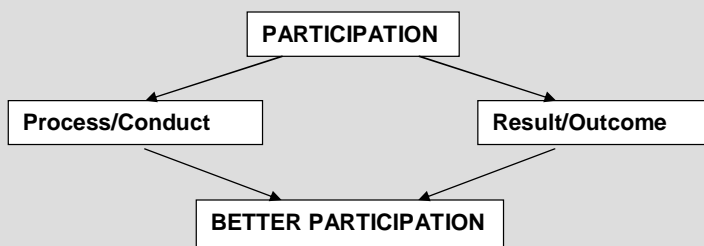


- http://archives.cbc.ca/politics/rights_freedom_s/topics/295/



Participation

- Participation as a right
 - Part of indivisible human rights framework
- Participation for outcome
- Participation for conduct
- Participation as an outcome (capacity building)
- Participation as a process



International law

- UN Declaration on the Rights of Indigenous Peoples
 - No removal or relocation without FPIC (art. 10)
 - Any legislative and administrative measures which may affect IPs (art. 19)
 - No hazardous materials to be stored or disposed of on IPs' lands without FPIC
 - Prior to approval of any development project affecting IPs' lands and resources (art. 30)
 - Right to determine own development priorities and strategies (art. 30)



International law

- ILO Convention 169
 - Right to being consulted – representative institutions and provision of resources necessary to strengthen these institutions
 - „fully consult” and „ensure informed participation” in the context of development, national institutions, and, especially, land and resources
 - Relocation requires FPIC (art. 16)
- CERD: „effective participation in public life”, no decision without informed consent
- CESC: FPIC regarding resource extraction
- IACHR: „fully informed consent on the part of the indigenous community as a whole”
- CBD: the use of indigenous knowledge



Variety of national regulations

- Canada: duty to consult and where indicated, accommodate the concerns of Aboriginal groups
- In the North America: land claims agreements
 - Co-management mechanisms and exact arrangements
- Philippines: Indigenous Peoples Rights Act (1997)
- Nordic countries: Saami parliaments
 - From weak consultation powers to declaratory obligation to negotiate
- EU: right to object projects and choosing own development paths



Free, Prior and Informed Consent

FREE: absence of coercion and outside pressure including monetary inducements, threats , etc.

PRIOR: before the commencement of the project: sufficient time for information gathering and full discussion, including translations, culturally adequate data

INFORMED: having all information available reflecting all views and positions, adequate time and resources, balanced and impartial information about costs and benefits

CONSENT: clear and compelling agreement in line with decision-making structures of IP, full participation of authorized representatives, much more than sheer consultations



FPIC - definition

- Indigenous Peoples Rights Act (Philippines, 1997, regarding resettlement and prior to any licence, lease or permit for the resource exploitation affecting IPs' interests):
- *the consensus of all members of IP to be determined in accordance with their respective customary laws and practices, free from any external manipulation, interference, coercion, and obtained after fully disclosing the intent and scope of the activity, in a language and process understandable to the community*



FPIC

- Linked to self-determination of IPs
 - How far does it go?
- Becoming slowly international norm and standard
- Principle of *ownership*
- Corporate partners want greater clarity in projects
 - Corporate responsibility
 - Forest Stewardship Council
 - World Commission on Dams
- Weaker states?
- Medicine
- Research (when any human subjects involved)



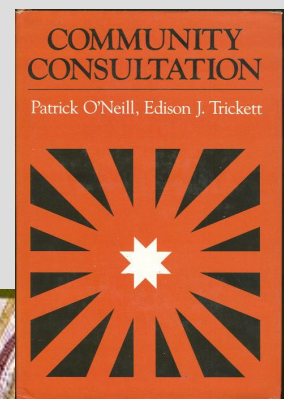
Some principles

- Do not harm
- Good faith
- Openness
- Accessibility
- Respect for cultural specifics
- As close to the site discussed as possible



Consultation methodology

- Various techniques and their combinations
 - Semi-structured interviews / conversational interviewing
 - Mapping (institutional, participatory, etc.)
 - Ranking
 - Trend analysis
 - WB: SARAR (Participatory Rural Appraisal, 1998)
- Forms should depend on what we want to ask:
 - General development priorities
 - Consent to already designed project
- The main purpose: to obtain genuine consent and/or to achieve full and informed consultation
- Illiteracy, understanding of maps, graphs, professional vocabulary...





- <http://www.nordis.net/?p=5667>
- San Rogelio Dam decommissioning, public hearing Baguio, Philippines



- Belo Monte Dam, Brasil, public hearings, protests
- www.internationalrivers.org





- Peru, consultation on marine resource management
- <http://travelfoodguru.wordpress.com/>



- www.iucn.org
- REDD+ consultation – Baka women in Cameroon



Challenges

- Desire for quantitative, verifiable data
- Inequality of partners
- Legitimacy of local leaders and processes?
- Capacity to conduct negotiation
- Buy-in
- World Bank: FPIConsultation,
 - broad community support
- Theory/principles vs. Practice
- Logistics
- Integration of consultations into project work
- With whom to cooperate locally? Local NGOs?
- Monitoring and compliance
 - Complaint mechanisms
- Exchange of good practice?
 - Desire for blueprint approach
- „tragedy of participation“? (intersectionality, mainstreaming)
- No proof that participatory mechanisms improve the performance of development projects
- Sociology and psychology
- The power! Who has it, how it is exercised?
- How to assess credibility of results?



Understanding one another?

- EU Seal Ban Regulation (1007/2009) consultation (18.11.2009)
 - ICC (Greenland) contribution:
- „We, the Inuit, has always strived for a sustainable use of resources which surrounds us. It is our deep understanding that everything is connected. This understanding is reflected in our story about the woman of the sea bed, Sassuma Arnaa. She is, according to our legends, the one who is keeping an eye on how we use the living resources around us, and if we are using them in an acceptable and – thus – sustainable manner. Today we use the words >sustainable use of the living resources< . These words are no different in what Sassuma Arnaa was aiming to teach us. She was able to punish the Inuit if they misused the resources. We were told that she would keep the living resources with her and not allow the Inuit to take any from her. That is, unless they had been guided by the Shaman of how to use it in a sustainable manner.“



What then has to be designed?

- What do we want to communicate, what do we want to learn, what to achieve?
- With whom?
- What kind of information to provide?
- When to distribute the information?
- How to provide the information?
- Do those consulted know their rights and potential influence of the process?
- What kind of research has to be done beforehand?
- How to promote the consultation process?
- Who should conduct the consultations?
- How those people should be trained/prepared?
- Which methods/techniques to choose?
- How to make it culturally sensitive?
- Timing of the consultations (e.g. consultations during reindeer migration)
- Logistics, transport accommodation, translation, training?
- Funding for the participants?
- Follow-up and continued consultations throughout the project?
- What kind of resources we have at our disposal and what resources we need to conduct the process properly? (It's expensive!)



Sources of images

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Thank you!
Questions, comments?

