



Indigenous Peoples and the Right to Free, Prior and Informed Consent

For Indigenous Peoples, the Right of **Free, Prior and Informed Consent (FPIC)** is a requirement, prerequisite and manifestation of the exercise of the fundamental, inherent right to Self-determination as defined in international law. FPIC began as a medical term to guarantee the rights of patients to informed consent before any medical treatment or drug was given to them. Now it is recognized as a political right that also is applicable in many other situations facing Indigenous Peoples.

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.

What is Free, Prior and Informed Consent?

Free is the absence of coercion and outside pressure, including monetary inducements (unless they are mutually agreed to as part of a settlement process), and "divide and conquer" tactics. It includes the absence of any threats or implied retaliation if the results of the decision is to say "no".

Prior is having sufficient time to allow for information-gathering and full discussion, including translations into traditional languages, before a project starts. It must take place without time pressure or constraints. A plan or project must not begin before this process is fully completed and an agreement is reached.

Informed is having all the relevant information available reflecting all views and positions. This includes the input of traditional elders, spiritual leaders, subsistence practitioners and traditional knowledge holders, with adequate time and resources to consider impartial and balanced information about potential risks and benefits.

Consent is the demonstration of clear and compelling agreement, in keeping with the decision-making structures of the Indigenous Peoples in question, including traditional consensus procedures. Agreements must be reached with the full participation of authorized leaders, representatives or decision-making institutions as decided by the Indigenous Peoples themselves.

ANY process or activity which does not meet these criteria for obtaining their FPIC as put forth by the affected Indigenous peoples is subject to immediate cease and desist.





Photo: Ben Powless, July 2008

Many Indigenous Peoples, in keeping with our original instructions, are also taught to apply what could be called the principle of Free, Prior and Informed Consent. We ask for permission from the animals, plants, minerals, rocks, waters and spirits before we use places, harvest foods or medicines, dig in the earth, hunt or fish for food or ceremonial purposes. We can also understand the principle of FPIC in terms of the obligation to ask for permission before taking an action that might affect the lives or well being of others.

FPIC for Indigenous Peoples is affirmed in many International Laws and Standards

General Recommendation XXIII of the United Nations (UN) Committee on the Elimination of Racial Discrimination, the UN General Assembly's Plan of Action for the 2nd International Decade of the World's Indigenous Peoples, International Labor Organization Convention 169 and many other international instruments recognize FPIC as a right of Indigenous Peoples and obligate states (countries) to uphold this right.

The **United Nations Declaration on the Rights of Indigenous Peoples** explicitly affirms the Right to Free, Prior and Informed Consent and States' obligations to obtain it in many of its provisions, including:

Article 10 affirms that Indigenous Peoples shall not be forcibly removed or relocated from their lands or territories without their Free, Prior and Informed Consent,

Articles 19 affirms that states must obtain the Free Prior and Informed Consent of Indigenous Peoples before adopting and implementing legislative or administrative measures which may affect them;

Article 29 affirms that Indigenous Peoples must give their FPIC before hazardous materials are stored or disposed of on their lands

Article 32 affirms that states must obtain FPIC prior to the approval of any development project affecting Indigenous Peoples' lands and resources, *"particularly in connection with the development, utilization or exploitation of mineral, water or other resources"*.

Indigenous Peoples have the inherent and inalienable right to freely determine what is best for them and for their future generations, in accordance with their own cultures and world views. Learn about and assert your human rights! Help your Nations and Peoples to become well informed about the choices they are facing, the true risks and benefits, and what is at stake.

For more information about International Indian Treaty Council's Human Rights and Capacity Building Training Program, contact: Andrea Carmen, Executive Director, at 907-745-4482 or andrea@treatycouncil.org. You can also visit IITC online at www.treatycouncil.org.