Synthesis of Literature on FPIC
Written by Charis Enns for Terry Mitchell, 2015

Introduction

This synthesis is divided into five sections. It begins by introducing and defining the concept of Free, Prior and Informed Consent (FPIC). Part II then describes the origins of FPIC in international law. Part III provides an overview of the status of FPIC in the Canadian context. Part IV describes the status of FPIC in the Canadian extractive sector. Part V closes by identifying and summarizing current trends in recent research and scholarship on FPIC.

1.0 Definitions of FPIC

FPIC has been defined as the "principle that indigenous peoples and local communities must be adequately informed about projects that affect their lands in a timely manner, free of coercion and manipulation, and should be given the opportunity to approve or reject a project prior to the commencement of all activities" (Oxfam 2015). Weitzner adds to this definition that FPIC includes Indigenous peoples' "right to agree to or to reject activities or plans affecting their ancestral territories, *and in cases of agreement, to determine the conditions and terms for proceeding*" (emphasis added, 2011, 2).

FPIC has been widely recognized at the international level as an inherent right of Indigenous peoples. In recent years, the right to FPIC has been most often discussed in relation to resource extraction. Yet, the principle of FPIC has much broader application and is gradually being recognized and applied to issues arising beyond resource extraction alone, including: the removal of Indigenous peoples from their lands; the taking of cultural, intellectual, religious and spiritual property from Indigenous peoples; the creation of legislative measures that may affect Indigenous people, and military activities on Indigenous peoples land (Carmen 2010, Weitzner 2011). As Weitzner states, FPIC is increasingly being seen as "…pivotal to the fulfillment and upholding of the full range of rights enjoyed by Indigenous Peoples, including rights to self-determination, development, cultural identity, autonomy and participation" (2011, 2).

1.2 Interpretations of 'Consent' in FPIC

One ongoing point of contention in defining FPIC relates to the meaning of 'consent' (Sargent 2015, Szablowski 2010, Deer 2010). Literature on FPIC commonly defines consent as "the voluntary agreement by a competent person to another person's proposition" (Nola Dictionary 2010). This definition suggests that, at a minimum, consent includes the right to say either "yes" or "no" to any proposition.

However, some debate whether the right to consent, and more specifically the right to say "no", actually gives Indigenous peoples the right to veto activities or plans affecting their territories in reality. Notably, most international human rights mechanisms have avoided using the word 'veto' or mentioning the right to say "no" in text. Luis Enrique Chavez, the Peruvian delegate to the Commission on Human Rights Working Group on the Draft Declaration (WGDD), played a crucial role in determining the final wording of the *United Nations Declaration on the Rights of Indigenous Peoples* (2007) (UNDRIP). He has argued that 'consent' in FPIC should not be interpreted as veto, as UNDRIP is not meant to "...recognise indigenous peoples preferential or greater rights than those granted to other members of society, as would be the case with a right of veto" (2009, 102). He further explains that that FPIC in UNDRIP serves to establish an "…obligation regarding the means (consultation and cooperation in good faith with a view to obtaining consent) but not, in any way, an obligation regarding the result, which would mean having to obtain that consent" (2009, 103).

Other Indigenous and non-Indigenous rights advocates and legal scholars have supported Chavez' interpretation of consent (Anaya 2013, Deer 2010). Kenneth Deer is widely cited on the issue and was also

involved in the development of UNDRIP from 1985 through to its ratification. Deer states: “But free, prior, and informed consent is not automatically a veto, since our human rights exist relative to the rights of others. Nor is there any reference to a veto in the Declaration. Free, prior, and informed consent is a means of participating on an equal footing in decisions that affect us” (2010, 27).

James Anaya (Former United Nations Special Rapporteur on the Rights of Indigenous Peoples) (2012) has also addressed contending interpretations of ‘consent’ in FPIC. Anaya argues:

> [C]onsent may not be required for extractive activities within indigenous territories in cases in which it can be conclusively established that the activities will not substantially affect indigenous peoples in the exercise of any of their substantive rights in relation to the lands and resources within their territories … More plausibly, consent may not be required when it can be established that the extractive activity would only impose such limitations on indigenous peoples’ substantive rights as are permissible within certain narrow bounds established by international human rights law (2012, Paragraph 31).

However, Anaya is also careful to clarify that these types of cases are relatively rare and beyond these types of cases, consent is most likely required.

Importantly, these Indigenous and non-Indigenous rights advocates and legal scholars unanimously recognize that consent is much more than consultation (Chavez 2009, Deer 2010, Anaya 2013). They also advocate against consent being replaced with the lesser standard of consultation. However, they also do not equate the right to consent to the right to veto activities or plans affecting Indigenous peoples’ territories. Rather, they argue that establishing Indigenous peoples’ right to FPIC includes a requirement to take into account the rights of others. In this sense, they suggest that Indigenous peoples have the right to withhold consent, but that exercising this right should be subject to tests of necessity and proportionality (Anaya 2013).

2.0 FPIC in international law

2.1. Early work on FPIC by Indigenous peoples and international actors

The principle of FPIC is largely a result of the global Indigenous movement (Deer 2010). During the 1920s, the Haudenosaunee from North America and the Maori from New Zealand applied for membership in the League of Nations but were rejected (Henderson 2008). This began a long struggle by Indigenous peoples for international recognition for their rights, including the right to self-determination. In 1973, the International Indian Treaty Council was created with the goal of taking Indigenous issues to the United Nations (Deer 2010). Subsequently, in 1982, United Nations Special Rapporteur of the Subcommission on the Prevention of Discrimination and Protection of Minorities, José R. Martinez Cobo, released a special study about the systemic discrimination faced by Indigenous peoples internationally. The United Nations Economic and Social Council responded by creating a Working Group on Indigenous Populations (WGIP), comprised of Indigenous advisors and independent experts. It was these events and efforts that paved the way for international-level discussions about the distinct rights of Indigenous peoples, including the right to FPIC (Deer 2010, Hartley et al. 2010, Engle 2010).

Prompted by the efforts of global Indigenous movement, several UN committees informally recognized Indigenous peoples right to self-determination - as well as the underlying principle of FPIC - during the 1960s and 1970s (Hartley et al. 2010, Blaser et al. 2010, Szablowski 2010). For example, *United Nations Declaration on the Granting of Independence to Colonial Countries and Peoples*, which was ratified in 1960, stated: "All peoples have the right to self-determination; by virtue of that right all people freely determine their political status and freely pursue their economic, social and cultural development." This statement was later also reflected in the *International Covenant on Civil and Political Rights* (1966) and the *International Covenant on Economic Social and Cultural Rights* (1966).

International Labour Organization (ILO) Convention No. 169 (ILO 169) was the first international law to refer to FPIC explicitly, requiring states to gain free and informed consent before relocating indigenous peoples (Baker 2012). As Article 16 paragraph 2 of the Convention states:

> "Where the relocation of these peoples is considered necessary as an exceptional measure, such relocation shall take place only with their *free and informed consent*. Where their consent cannot be obtained, such relocation shall take place only following appropriate procedures established by national laws and regulations, including public inquiries where appropriate, which provide the opportunity for effective representation of the peoples concerned" (emphasis added).

ILO 169 also states that consultations with Indigenous peoples "shall be undertaken, in good faith and in a form appropriate to the circumstances, *with the objective of achieving agreement or consent to the proposed measures*" (emphasis added). Today, ILO 169 is widely recognized as a key international document in the protection of the principle of FPIC (Baker 2012).

Since the ratification of ILO 169, the United Nations has also adopted the *United Nations Declaration on the Rights of Indigenous Peoples* (UNDRIP), following further advocacy efforts by the global Indigenous movement to enshrine Indigenous rights in international law (Deer 2010, Hartley et al. 2010). The WGIP began drafting a declaration of Indigenous rights in 1985 - a process that took nearly two decades. The final draft of the declaration - including the articles relating to FPIC - represent a compromise between the United Nation member states and the WGIP (Deer 2010, Engle 2011). As Deer explains, the Indigenous advisors and independent experts drafting the Declaration were not happy with some of the compromises made in the language of the Declaration but were ultimately pleased that "the text kept intact the provisions relating to self-determination; our rights to lands and territories; our collective rights; free, prior and informed consent; and treaties." (Deer 2010, 23).

2.2 The current status of FPIC in international law

Today, the principle of FPIC is protected under a number of international human rights treaties, declarations and conventions, including the *International Covenant on Civil and Political Rights* (1966), *International Covenant on Economic Social and Cultural Rights* (1966), and *International Convention on the Elimination of All Forms of Racial Discrimination* (1963), International Labour Organization (ILO) *Convention No. 169* (1989) and the *United Nations Declaration on the Rights of Indigenous Peoples* (2007). Of these international mechanisms, *ILO Convention No. 169* is recognized as the most meaningful for protecting Indigenous peoples right to FPIC given that, once ratified by states, it is a legally binding instrument.

While UNDRIP is not legally binding, the right to FPIC is most clearly articulated in this declaration - stated in seven different articles. These articles affirm Indigenous peoples' right to FPIC with respect to removal from their lands (Article 10); remedy for the taking of their cultural, intellectual, religious and spiritual property (Article 11:2); legislative measures that may affect them (Article 19); remedy for lands or resources taken, used or damaged without their consent (Article 28); environmental damage from disposal of hazardous materials (Article 29:2) and military activities on their lands (Article 30). While UNDRIP does not offer the same legal scope as *ILO Convention No. 169*, it does offer a more comprehensive definition of FPIC and it still has some legal relevance. Moreover, many legal commentators believe that UNDRIP may gain more authority over time, as it is increasingly used to guide the decisions of courts in various jurisdictions around the world (Newman 2010, Joffe 2013, Charters and Stavenhagen 2009, Hartley et al. 2010).

In short, FPIC is a widely accepted norm within international law. It is recognized and promoted in through various international conventions, treaties and declarations. It has also been upheld and further

institutionalized by recent jurisprudence, including binding judgment by the Inter-American Court of Human Rights and decisions by the UN Committee for the Elimination of Racial Discrimination. Furthermore, other actors also promote and uphold FPIC, including select international financial institutions and development banks, national governments, international industry associations and international non-governmental organizations (which will be discussed in more detail in section 4.0).

3.0 The status of FPIC in Canada

In addition to international legal frameworks and standards, national law significantly determines FPIC's application and usefulness in practice. Some states have recognized the right of FPIC in their national law. Others, such as Bolivia, have incorporated FPIC as part of their Constitution.

In contrast, the Conservative Party of Canada – Canada's current ruling, federal party – has repeatedly refused to recognize the right to FPIC as part of domestic law. The current governments opposition to FPIC has been widely documented (see reports by KAIROS, Amnesty and the North-South Institute; Simms and Weitzner 2009, Gunn 2009). Even when the government finally endorsed UNDRIP in 2010 - nearly three years after the Declaration was approved in 2007 - it qualified its endorsement through an official statement:

> "The Declaration is an aspirational document which speaks to the individual and collective rights of Indigenous peoples ... the Declaration is a non-legally binding document that does not reflect customary international law nor change Canadian laws" (Department of Aboriginal Affairs 2010).

The Conservative Party of Canada has stated that its concerns with UNDRIP relate to FPIC in particular, as FPIC could be interpreted as the right to veto proposed activities or developments. Today, the Conservative Party of Canada continues to demonstrate its unwillingness to protect and ensure the right to FPIC (for further examples, refer to minutes from the 2014 Committee on World Food Security or the 2014 World Conference on Indigenous Peoples), stating that FPIC "run[s] counter to Canada's constitution" (Government of Canada 2014).

Yet, legal scholars and experts of Canadian constitutional and international law largely disagree with the current federal government's stance on FPIC (Joffe 2012, Joffe et al. 2010, Gunn 2013, Mortellato 2008, Kymlicka 2009) In 2008, over 100 scholars and experts drafted an open letter to the government that states that UNDRIP is "consistent with the Canadian Constitution and Charter … Government claims to the contrary do a grave disservice to the cause of human rights and to the promotion of harmonious and cooperative relations" (Ad hoc coalition on UNDRIP, 2008). More recently, legal scholar Joffe (2012) has also argued that the federal government's characterization of UNDRIP as 'aspirational' and 'non-binding' is erroneous and inconsistent with both international and Canadian law and legal scholar Gunn (2013) has argued that "…there is no legal impediment to implementing the UN Declaration in Canada" (2013, 157).

The Supreme Court's decision regarding *Tsilhqot'in Nation v. British Columbia* in 2014 also suggests that the right to FPIC does not, in fact, run counter the Canada's constitution. Rather, the decision supports the legal standing of FPIC in Canada by insisting that the government has a responsibility "to consult with the group asserting Aboriginal title, and if appropriate, accommodate the Aboriginal right … prior to carrying out [an] action that could adversely affect the right" (Supreme Court of Canada 2014). Thus, while the current federal government continues to insist that FPIC has no legal standing in Canada, recent Canadian court judgments have set legal precedents that suggest otherwise. Yet, it remains to be seen whether these court directives will be carried out and implemented moving forward.

3.1. Efforts to implement FPIC in Canada by other actors

One positive development in the Canadian context is that not all jurisdictions demonstrate the same opposition to FPIC as the federal government. For example, the Yukon Territory has enshrined consent in

its *Oil and Gas Act* (2002). Similarly the *Nunavut Final Agreement* (1993) includes right to reject a development. More recently, Alberta's Premier Rachel Notley advised her Cabinet Ministers to review their policies and legislation to determine if changes needed to be made based on the principles of UNDRIP (Premier of Alberta 2015).

Certain political agreements, such as the *Kaska-Yukon Government Bilateral Agreement* (2003), also provide guidance around the territorial government's duty to consult in relation to titled lands (Doyle 2014, Weitzner 2009). Such agreements have served to set a higher standard for consultation that more closely aligns with FPIC, clarifying that the territorial government's duty to consult is often "significantly deeper than mere consultation", sometimes including the requirement of "full consent" (Kaska-Yukon Government Bilateral Agreement 2003). In these ways, there have been positive moves towards the implementation of FPIC at the level of provincial and/or territorial politics.

Interestingly, federal opposition parties have also made positive (discursal) steps towards the implementation of FPIC in Canada. The New Democratic Party has pledged to lead a cabinet-level committee to review every government decision to ensure decisions respect treaty rights, inherent rights and Canada's international obligations. They have also committed to ensuring that all new legislation abides by UNDRIP and to engage in 'real and meaningful consultation'. Similarly, the Liberal Party of Canada has pledged to enact the recommendations of the Truth and Reconciliation Commission, including the adoption of the UNDRIP. This suggests that Canada's upcoming election has the potential to incite change to domestic requirements for FPIC.

Finally - and perhaps most importantly - Indigenous peoples in Canada have implemented FPIC as part of their own protocols and policies. For example, the *Kitchenuhmaykoosib Inninuwug* in Northwestern Ontario have drafted a consultation protocol for their territories (Doyle and Corino 2013). This protocol has been effectively used to withhold consent and prevent mining companies from entering their territory (Doyle and Corino 2013). Furthermore, Indigenous peoples in Canada also increasingly refer to the government's obligations to respect FPIC in their submissions to Canadian courts (for example, see (*Canada (Human Rights Commission) v Canada (Attorney General), 2012 FC 444*). This, as suggested previously, is proving to be an effective means of moving towards the implementation of FPIC in the Canadian context.

3.2. The federal government's duty to consult and accommodate vs. FPIC

Finally, consideration for the government's duty to consult and accommodate is necessary in any discussion about FPIC in the Canadian context. Some scholars reference the federal government's duty to consult and accommodate as nearly a functional equivalent to FPIC (Newman 2012). The Supreme Court of Canada has affirmed that Indigenous peoples have the right to be consulted and accommodated for projects that might adversely affect their territories. The federal government's duty to consult and accommodate has been set out in a trilogy of Supreme Court of Canada cases, including: *Haida Nation v. British Columbia; Taku River Tlingit First Nations v. British Columbia;* and *Mikisew Cree First Nation v. Canada.* The Supreme Court's decision regarding *Tsilhqot'in Nation v. British Columbia* in 2014 served to reaffirm the Federal government's obligation "to consult with the group asserting Aboriginal title, and if appropriate, accommodate the Aboriginal right … prior to carrying out [an] action that could adversely affect the right" (Supreme Court of Canada 2014).

However, other scholars argue that there are stark differences between FPIC and the federal government's duty to consult and accommodate. First, while the federal government has a constitutional duty to consult and accommodate, this duty is limited in scope (Mortellato 2008, Pike and Powell 2013). As Pike and

Powell explain: "The nature and scope of the duty to consult is highly contextual and will vary greatly depending on the nature of the affected Aboriginal interest" (2013, 20B-13). More specifically, in cases where Aboriginal claim to the land is 'weak' *or* the potential for adverse impact is perceived to be minimal, "mere notification may satisfy the Federal government's duty to consult" (ibid. 2013, 20B-13). Thus, the federal government's duty to consult and accommodate can be left unfulfilled for the sake of ensuring the interests of society at large (Mortellato 2008).

Second, while the federal government has a constitutional duty to consult and accommodate, it is not obliged to obtain the full consent of Aboriginal groups prior to activities (Mortellato 2008). As the Supreme Court clarifies: "…the accommodation process does not give Aboriginal groups a veto over what can be done with land pending final proof of claims" (2004 D para. 48). This appears to diverge from Anaya's (2013) argument that Indigenous peoples have the right to withhold their consent to proposed projects on titled lands *and* traditional (unceded) territories.

4.0 The status of FPIC in the extractive industry

Prior to the early 2000s, the decision to implement, protect and respect FPIC was regarded as the responsibility of governments alone. Thus, few extractive companies had clear policies and procedures relating to obtaining consent from Indigenous peoples, unless it was a project finance obligation or a legal requirement of the state that they were operating in. However today, extractive companies have come to appreciate the relevance of FPIC to the success of their operations (Oxfam 2015). This is particular true within the Canada extractive industry: many major Canadian extractive companies have made public statements and/or policy commitments to respect FPIC, including Barrick Gold, Goldcorp, IAMGOLD and Teck Resources (Oxfam 2015). Interestingly, these companies are generally making voluntary policy commitments to respect FPIC. In other words, neither their host nor home state requires them to do so.

4.1. FPIC as soft law for the extractive industry

Recent policy advances at the international level have served as a key driver in changing the Canadian extractive industry's thinking and practices with regards to FPIC. In 2012, the International Financial Corporation (IFC) revised its Social Performance Standards to include 'free, prior and informed consent' rather than the previous requirement of 'free, prior and informed consultation'. It also updated its standards to require all corporate loan recipients whose operations affect Indigenous peoples to implement FPIC. As IFC plays an important standard setting role for extractive companies, its stronger commitment to FPIC has generated more awareness about the relevance and importance of FPIC in the (Canadian) extractive industry (Wong 2013). For further discussions on IFC's revised Social Performance Standards and FPIC, see Petrescu (2013), Doyle (2014), Sargent (2015) and Baker (2012).

Other international financial institutions and international organizations have also followed suit, similarly placing pressure on extractive companies to respect FPIC. For example, the Organisation for Economic Co-operation and Development (OECD) updated its *Guidelines for Multinational Enterprises* to strengthen human rights expectations for corporate loan recipients, including those relating to Indigenous peoples. The UN Global Compact and the UN's Guiding Principles on Business and Human Rights (UNGBHR) - which place responsibility on governments to protect human rights and companies to respect human rights, in line with national *and* international law - have served as further drivers, encouraging extractive companies to respect FPIC. Significantly, these principles and guidelines obligate companies to respect human rights regardless of a state's willingness to fulfil their own human rights obligations (Muchlinski 2011, Ruggie 2013). Although such international principles and voluntary frameworks are not legally binding, they have effectively created new social expectations for the extractive sector globally (Rees 2010; Wilson and Blackmore 2013, Ruggie 2013). This has led extractive companies to sharpen

their human and Indigenous rights policies and procedures, including consideration for the legal implications of failing to respect FPIC (Lehr and Smith 2010, Oxfam 2015, Doyle and Cariño 2013)

Canadian extractive companies are likewise embracing FPIC as a requirement of their membership in certain industry associations. For example, the International Council on Mining and Metals (ICMM) released its *Indigenous Peoples and Mining Position Statement* in May 2013, which commits member companies to an FPIC process (ICMM 2013). The position statement also requires member companies to begin integrating FPIC into their practices at more than 800 project sites worldwide by May 2015 (Oxfam 2015). Similarly, the global oil and gas industry association for environmental and social issue (IPIECA) has released a study of best practices for companies engaging with Indigenous peoples, which highlights FPIC as an international standards and best practice for the industry (IPIECA 2013).

Together, these policy advances have served to establish a global normative expectation for the Canadian extractive industry with regards to FPIC. While they do not replace the legal obligations assumed by states under international law to protect human rights, they do supplement or support international law by providing additional non-binding avenues - known as soft law mechanisms - for encouraging extractive companies to respect FPIC.

4.2. FPIC as best practice for the extractive industry

Beyond shifting international expectations, there is also an increasingly strong business case being made for extractive companies to obtain community consent and respect the right to FPIC. Recent research has shown that extractive companies can prevent expensive conflicts that threaten their profits and improve the long-term sustainability of their operations by respecting FPIC (First Peoples Worldwide 2013, Davis and Franks 2014). Davis and Franks (2014) show that major mining and energy companies stand to lose approximately $20 million per week in lost productivity if their activities are delayed by company-community conflict. Similarly, First Peoples Worldwide (2013) reports examples of extractive companies that have lost billions of dollars due to their failure to achieve consent from Indigenous communities. These studies argue that FPIC is an invaluable risk management tool for extractive companies, as obtaining community consent ultimately shields companies from the high costs associated with company-community conflict.

Finally, responsible investors and banks are also increasingly recognizing FPIC as best practice for both ethical and financial reasons. Many now consider extractive companies' FPIC policies and implementation guidelines as part of their financing and loan conditions. In some cases, responsible investors and banks have even aligned their internal standards with the updated IFC standards (EIRIS 2009). This includes Canada's five largest banks (CBERN 2012). Continued engagement by the social investment community around the importance of FPIC as best practice may ultimately prove to be one of the more effective means of pressuring extractive companies to integrate FPIC as part of their operational policies and procedures moving forward (First Peoples Worldwide 2013).

5. Trends in recent research and literature on FPIC

Most of the existing literature on FPIC considers the legal and normative obligations of international and domestic actors with regards to FPIC. However, some of the more recent literature has begun to analyze FPIC in relation to the extractive sector more specifically. This final section serves to identify and synthesize five trends in this literature on FPIC and the extractive sector.

5.1. Corporate commitment to FPIC in the global extractive sector

Much of the recent research on FPIC has focused on (1) understanding corporate commitments to FPIC in the extractive sector and (2) analyzing how corporate actors are moving towards the implementation of

FPIC at the operational level in the extractive sector (Oxfam 2015, Weitzner 2011, Dillon 2014, Buxton and Wilson 2013, Hanna and Vanclay 2013, Lehr and Smith 2010, Tebtebba Foundation 2014; Doyle and Cariño 2014, Szablowski 2010). Although policy commitments to FPIC are increasing, these lack detailed implementation guidance, and some companies have reservations about the core right to withhold consent. At the same time, because this normative consensus is encoded through voluntary standards and codes of conduct, enforcement remains difficult. Accordingly, even though there is clear rhetorical acceptance of human rights norms for extractive companies at the global level, the implementation of these norms in practice remains complex in practice and far from guaranteed. Thus, a key question in this field of study has become whether and how global human rights norms for the extractive sector are being implemented in practice.

Civil society organizations, policy think tanks and collaborative research consortiums have conducted much of this research. In the Canadian context, KAIROS has a participatory research programme on FPIC, with a focus on Canadian extractive companies operating above. In the UK, the Ecumenical Council for Corporate Responsibility (ECCR), Indigenous Peoples Links (PIPLinks), the Missionary Society of St. Columban and Middlesex University School of Law have established a consortium with indigenous representatives, aimed at making FPIC a reality in the mining industry. Oxfam also has an ongoing research program on FPIC, which assesses corporate commitments regarding community engagement and FPIC. Oxfam has produced a number of research reports, policy briefs and FPIC guidelines and training manuals as part of this programme.

5.2. FPIC as best business practice in the global extractive sector

As stated in the previous section, recent research has also focused on illustrating how FPIC serves as best business practice. This research has shown that extractive companies can prevent expensive conflicts that threaten their profits and improve the long-term sustainability of their operations by incorporating policies and procedures that respect community's right to FPIC (First Peoples Worldwide 2013, Davis and Franks 2014; Goldman Sachs 2008). This body of research is closely connected to the work of former Special Representative of the UN Secretary-General for Business and Human Rights, John Ruggie, who began speaking about the business benefits of building positive corporate-community relations when developing the UN Guiding Principles on Business and Human Rights.

5.3. FPIC and impact benefit agreements (IBA)

A growing body of research considers the relationship between FPIC and Impact Benefit Agreements (IBA) (Hanna and Vanclay 2013, Owen and Kemp 2014, Hanna et al. 2014, Lehr and Smith, 2010, Bustamante and Martin 2014). This research has shown that an IBA - written by and agreed upon in advance by company and community - can demonstrate an effective FPIC process. Because of potential future litigation, extractive companies are more likely to observe and apply conditions agreed upon in an IBA, including those pertaining to FPIC (Hanna and Vanclay 2013). This research does caution that the mere existence of an IBA is not proof of FPIC, a signed agreement could be the result of coercion or companies may not have acted in good faith by not revealing all relevant information (Hanna and Vanclay 2013). At the same time, this research does conclude that IBA can serve as effective mechanisms for operationalizing FPIC. While much of this research has been produced by scholar-practitioners, some has also been written by extractive companies themselves. For example, Goldcorp has published case studies on its IBAs, which include Indigenous rights and community consultation clauses.

5.4. Conflicting local interests as a barrier to the implementation of FPIC

A small body of research on FPIC has considered how conflicting local interests, power relations and existing divisions within the community interact with the process of obtaining FPIC from communities (Goodland 2004, Doyle and Cariño 2013). This research has cautioned that the interests and values of local

elites often influence the outcomes of community engagement and consultation processes in ways that may not represent the interests or serve the common-good of the community-at-large. As Goodland (2004) has shown, beyond appointed leaders, there are often other legitimate representatives of Indigenous communities that should be included and involved in processes to obtain FPIC. Thus, FPIC must be operationalized in ways that respect Indigenous peoples decision-making processes *and* serve the interests of the community as a whole. As little research and theorizing yet exists on this subject, this is a promising avenue for future research.

5.5. Indigenous perspectives on FPIC

Finally, and closely related to the previous body of research, some research has begun to explore Indigenous perspectives on FPIC. This research has found that some Indigenous communities remain highly skeptical about the usefulness of FPIC in practice in relation to resource extraction. These particular communites expressed concern that "…the concept of FPIC will be undermined and divorced from the right to self-determination if actors other than Indigenous peoples themselves attempt to define it and control its operationalization" (2013, 3). These findings have been supported by Bustamante and Martin (2014) and Bustamante (2015), who similarly argues that FPIC processes can be captured by unequitable power relations and post-(colonial) governance structures. However, in other cases, research has shown that Indigenous groups - including Subanen communities in the Philippians, Resguardo communities in Columbia and Kitchenuhmaykoosib Inninuwug First Nation in Canada and - have embraced FPIC as a means of protecting their territories from proposed extractive projects. These conflicting findings suggest that more research is needed on culturally appropriate ways of implementing FPIC, in order to ensure that any attempts to operationalize FPIC in the extractive sector serve the interests of Indigenous peoples first and foremost.

References

Scholarly Literature

Anaya, J. (2013). *Report of the Special Rapporteur on the rights of indigenous peoples, James Anaya* (No. A/HRC/24/41). United Nations Human Rights Council. Retrieved from http://unsr.jamesanaya.org/docs/annual/2013-hrc-annual-report-en.pdf

Association, I. B., & others. (2011). *Understanding and Impementing the UN Declaration on the Rights of Indigenous Peoples: An Introductory Handbook*. Winnipeg: Indigenous Bar Association.

Baker, S. H. (2012). Why the IFC's Free, Prior, and Informed Consent Policy Doesn't Matter (Yet) to Indigenous Communities Affected by Development Projects. *Wisconsin International Law Journal, Forthcoming*. Retrieved from http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2132887

Barelli, M. (2012). Free, prior and informed consent in the aftermath of the UN Declaration on the Rights of Indigenous Peoples: developments and challenges ahead. *The International Journal of Human Rights*, *16*(1), 1–24.

Blaser, M., De Costa, R., McGregor, D., & Coleman, W. D. (2011). *Indigenous peoples and autonomy: Insights for a global age*. UBC Press. Retrieved from https://books.google.ca/books?hl=en&lr=&id=FuKQrs0os6EC&oi=fnd&pg=PP2&dq=Indigenous+peoples+and+autonomy:+Insights+for+a+global+age&ots=vrfKDVe5Rv&sig=pDbARWNA4P-Pox14Hzck7Ho8OJc

Bustamante, G. (2013, February). *Free, prior and informed consent in Latin America*. Presented at the Americas Policy Group, Montreal.

Bustamante, G. (2015). Right to Consultation and Free, Prior and Informed Consent in Latin America: The Governmentality of the Extraction of Natural Resources, The. *Special Edition Rev. Quebecoise de Droit Int'l*, 179.

Bustamante, G., & Martin, T. (2014). BENEFIT SHARING AND THE MOBILIZATION OF ILO CONVENTION 169. In *The Internationalization of Indigenous Rights: UNDRIP in the Canadian Context* (Special Report). Centre for International Governance Innovation. Retrieved from https://www.cigionline.org/sites/default/files/indigenous_rights_special_report_web_1.pdf

Buxton, A. (2012). The spirit of FPIC: lessons from Canada and the Philippines. *Biodiversity and Culture: Exploring Community Protocols, Rights and Consent*, 67.

Buxton, A., & Wilson, E. (2013). FPIC and the extractive industries: a guide to applying the spirit of free, prior and informed consent in industrial projects. *International Institute for Environment and Development. Available From< Http://pubs. Iied. org/pdfs/16530IIED. Pdf>(accessed 10.01. 14)*. Retrieved from http://pubs.iied.org/16530IIED.html

Cariño, J. (2005). Indigenous peoples' right to free, prior, informed consent: reflections on concepts and practice. *Ariz. J. Int'l & Comp. L.*, *22*, 19.

Carmen, A. (2010). The right to free, prior and informed consent: A framework for harmonious relations and new processes for redress. *Realizing the UN Declaration on the Rights of Indigenous Peoples: Triumph, Hope, and Action. Saskatoon: Purich Publishing*.

Centre for International Governance Innovation. (2014). *The Internationalization of Indigenous Rights: UNDRIP in the Canadian Context* (Special Report). Retrieved from https://www.cigionline.org/sites/default/files/indigenous_rights_special_report_web_1.pdf

Charters, C., & Stavenhagen, R. (2009). *Making the declaration work: The United Nations declaration on the rights of indigenous peoples*. IWGIA Copenhagen. Retrieved from http://www.iwgia.org/publications/search-pubs?publication_id=11

Chávez, L. E. (2009). The Declaration on the Rights of Indigenous Peoples Breaking the Impasse: The Middle Ground. *IWGIA Document*, (127), 96–106.

Coates, K., & Newman, D. G. (2014). The End Is Not Nigh: Reason Over Alarmism in Analysing the Tsilhqot'in Decision. *Macdonald-Laurier Institute Papers Series*. Retrieved from http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2517041

Davis, R., & Franks, D. M. (2014). Costs of Company-Community Conflict in the Extractive Sector. *Cambridge: CSR Initiative at the Harvard Kennedy School*. Retrieved from http://www.nmbu.no/sites/default/files/pdfattachments/costs_of_conflict_davis_franks_0.pdf

Deer, K. (2010). Reflections on the Development, Adoption and Implementation of the UN Declaration on the Rights of Indigenous Peoples. *Realizing the UN Declaration on the Rights of Indigenous Peoples: Triumph, Hope, and Action. Saskatoon: Purich Publishing*.

Dillon, J. (2015). *Case Study on Canada's Disregard for Indigenous Peoples' Right to Free, Prior and Informed Consent with respect to the Northern Gateway Pipeline*. KAIROS. Retrieved from http://www.united-church.ca/files/getinvolved/takeaction/141107_case-study.pdf

Doyle, Cathal and Jill Cariño. "Making Free Prior & Informed Consent a Reality: Indigenous Peoples and the Extractive Sector." Piplinks, Middlesex University School of Law, and The Ecumenical Council for Corporate Responsibility (May 2013),http://jetztzeit.files.wordpress.com/2013/05/fpic-report-long.pdf.

Doyle, C. M. (2014a). Indigenous Peoples' Issues & Participation at the UN Forum on Business and Human Rights: Progress to date and Potential for the Future. Retrieved from http://www.enip.eu/web/wp-content/uploads/2014/06/Doyle-C-Indigenous-Peoples-Issues-Participation-at-the-UN-Forum-on-Business-Human-Rights-ENIP-20141.pdf

Doyle, C. M. (2014b). *Indigenous Peoples, Title to Territory, Rights and Resources: The Transformative Role of Free Prior and Informed Consent*. Routledge. Retrieved from https://books.google.ca/books?hl=en&lr=&id=-0mLBQAAQBAJ&oi=fnd&pg=PP1&ots=Km8y5eAYDl&sig=F_DfmVD32MXVzGBdFoWiTP1zlGA

Engle, K. (2011). On fragile architecture: The UN Declaration on the Rights of Indigenous Peoples in the context of human rights. *European Journal of International Law*, *22*(1), 141–163.

Franco, J. (2014). *Reclaiming Free Prior and Informed Consent (FPIC) in the context of global land grabs*. Amsterdam: Transnational Institute. Retrieved from http://landjustice4wa.org/wp-content/uploads/2014/08/reclaiming_fpic_0.pdf

Goodland, R. (2004). Free, prior and informed consent and the World Bank Group. *Sustainable Dev. L. & Pol'y*, *4*, 66.

Gunn, B. L. (2013). Overcoming Obstacles to Implementing the UN Declaration on the Rights of Indigenous Peoples in Canada. *Windsor YB Access Just.*, *31*, 147.

Hanna, P., & Vanclay, F. (2013). Human rights, Indigenous peoples and the concept of Free, Prior and Informed Consent. *Impact Assessment and Project Appraisal*, *31*(2), 146–157.

Hanna, P., Vanclay, F., Langdon, E. J., & Arts, J. (2014). Improving the effectiveness of impact assessment pertaining to Indigenous peoples in the Brazilian environmental licensing procedure. *Environmental Impact Assessment Review*, *46*, 58–67.

Hartley, J., Joffe, P., & Preston, J. (2010). *Realizing the UN Declaration on the Rights of Indigenous Peoples: Triumph, Hope, and Action*. Purich Pub.

Joffe, P. (2010). UN Declaration on the Rights of Indigenous Peoples: Canadian government positions incompatible with genuine reconciliation. *National Journal of Constitutional Law*, *26*(2), 121–229.

Joffe, P. (2013a). UN Declaration on the Rights of Indigenous Peoples Not Merely" Aspirational" 22 June 2013. Retrieved from http://rights.info.yorku.ca/files/2013/06/UN-Decl-Not-merely-aspirational-Jun-22-13.pdf

Joffe, P. (2013b, February). *UN Declaration: Legal Effects and 'Free, Prior, and Informed Conse*. Presented at the Americas Policy Group, Montreal.

Kemp, D., & Vanclay, F. (2013). Human rights and impact assessment: clarifying the connections in practice. *Impact Assessment and Project Appraisal*, *31*(2), 86–96.

Krekshi, L. El. (2009). Indigenous Peoples' Perspectives on Participation in Mining The Case of James Bay Cree First Nation in Canada. Retrieved from http://www.diva-portal.org/smash/record.jsf?pid=diva2:353620

Lehr, A. K., & Smith, G. A. (2010). *Implementing a corporate free, prior, and informed consent policy: Benefits and challenges*. Foley Hoag. Retrieved from http://s3.amazonaws.com/isuma.attachments/implementing_a_corporate_free_prior_and_informed_consent_policy_benefits_and_challenges_0710.pdf

MacKay, F. (2004). Indigenous peoples' rights to free, prior and informed consent and the World Bank's Extractive Industries Review. *Sustainable Dev. L. & Pol'y*, *4*, 43.

Mitchell, T., & Enns, C. (2014). The UN Declaration on the Rights of Indigenous Peoples: Monitoring and Realizing Indigenous Rights in Canada. *Policy Brief*, (39). Retrieved from http://www.chooselaurierbrantford.ca/documents/58103/IHSJ_Policy_Brief_for_CIGI.pdf

Muchlinski, P. (2012). Implementing the new UN corporate human rights framework: Implications for corporate law, governance, and regulation. *Business Ethics Quarterly*, *22*(01), 145–177.

Newman, D. G. (2011). *Revisiting the Duty to Consult Aboriginal Peoples*. Ottawa: The North-South Institute.

Newman, D. G. (2012). Norms of Consultation with Indigenous Peoples: Decentralization of International Law Formation or Reinforcement of States' Role? *International Law in the New Age of Globalization*, 267–86.

Newman, D. G. (2014). The Rule and Role of Law: The Duty to Consult, Aboriginal Communities, and the Canadian Natural Resource Sector. *Macdonald-Laurier Institute Papers Series*. Retrieved from http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2517033

Petrescu, C. C. (n.d.). Is the engagement between mining companies, communities and states heading towards a compulsory FPIC regime? Retrieved from http://idealisreports.cl/wp-content/uploads/2013/05/Is-the-engagement-between-mining-companies-communities-and-states-heading-towards-a-compulsory-FPIC-regime_.pdf

Pike, A., & Powell, S. (n.d.). International Comparison of Solutions to Aboriginal Rights Issues Associated with Mineral Development: Free, Prior and Informed Consent—The Canadian Context. *Rocky Mt. Min. L. Inst.*, *59*.

Ruckstuhl, K., Thompson-Fawcett, M., & Rae, H. (2014). Māori and mining: Indigenous perspectives on reconceptualising and contextualising the social licence to operate. *Impact Assessment and Project Appraisal*, *32*(4), 304–314.

Sauer, L., Chiodini, J., & Duong, C. (n.d.). Incorporating New Business Practices in the Extractive Sector. Retrieved from https://www.balsillieschool.ca/sites/default/files/Consent%20within%20Consultation.pdf

Sawyer, S., & Gomez, E. T. (2012). *The Politics of Resource Extraction: Indigenous Peoples, Multinational Corporations and the State*. Palgrave Macmillan. Retrieved from https://books.google.ca/books?hl=en&lr=&id=97ccJAMqf6UC&oi=fnd&pg=PP2&dq=The+politics+of+resource+extraction:+Indigenous+peoples,+multinational+corporations+and+the+state&ots=etytLSobST&sig=1umTdGTeOr-e4jW60i4sTqrlv2U

Simms, M.; Weitzner, V. 2009. Moving Free, Prior and Informed Consent from the Fringes to the Centre stage: Exploring the context of opposition and opportunity in Canada. Prepared for the UNPFII/Tebtebba Foundation International Expert Workshop on Indigenous Peoples' Rights, Corporate Accountability and Extractive Industries, Manila, 27-29 Mar. 2009.

Simons, P. C., & Collins, L. M. (2010). Participatory rights in the Ontario mining sector: An international human rights perspective. *McGill International Journal of Sustainable Development Law & Policy*, *6*(2). Retrieved from http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1775422

Szablowski, D. (2010). Operationalizing free, prior, and informed consent in the extractive industry sector? Examining the challenges of a negotiated model of justice. *Canadian Journal of Development Studies/Revue Canadienne D'études Du Développement*, *30*(1-2), 111–130.

Ward, T. (2011). Right to Free, Prior, and Informed Consent: Indigenous Peoples' Participation Rights within International Law, The. *Nw. UJ Int'l Hum. Rts.*, *10*, 54.

Washburn, K., Coulter, T., Fletcher, M., Lee, C., & Tsosie, R. (2013). VIDEO: Opening Keynote Session 1: Free, Prior and Informed Consent Conference (FPIC). Retrieved from http://scholar.law.colorado.edu/free-prior-and-informed-consent/6/

Weitzner, V. (2009). Bucking the Wild West-Making Free, Prior and Informed Consent Work. In *Speaking Notes for Free, Prior and Informed Consent Panel, Prospector and Developer's Association of Canada annual convention, p3. Available at: www. nsi-ins. ca*. Retrieved from http://www.nsi-ins.ca/wp-content/uploads/2013/03/PDAC-FPIC-panel-february-2009-Weitzner-speaking-notes.pdf

Weitzner, V. (2011). *Tipping the Power Balance — Making Free, Prior and Informed Consent Work: Lessons & policy directions from 10 years of action research on extractives with Indigenous and Afro-descendent Peoples in the Americas*.

Case Law

Haida Nation v. British Columbia (Minister of Forests), 2004 SCC 73, [2004] 3 SCR 511.

Taku River Tlingit, 2004 SCC 74, [2004] 3 SCR 550.

Misikew Cree First Nation, 2005 SCC 43, [2005] 3 SC.R 388.

Tsilhqot'in Nation v. British Columbia, No. 34986 SCC 20140626.

Civil Society/NGO Reports

Amnesty International (2013). FPIC Fact Sheet. Retrieved from http://www.amnesty.ca/sites/default/files/fpic_factsheet_nov_2013.pdf

Boreal Leadership Council. (2012). *Free, Prior and Informed Consent in Canada*. Retrieved from http://borealcouncil.ca/wp-content/uploads/2013/09/FPICReport-English-web.pdf

Dillon, J. (2014). *Case Study on Canada's Disregard for Indigenous Peoples' Right to Free, Prior and Informed Consent with respect to the Northern Gateway Pipeline*. KAIROS.

Episcopal-Anglican-Lutheran leadership of Canada, US write to President Obama, Prime Minister Harper. (n.d.). Retrieved July 27, 2015, from http://episcopaldigitalnetwork.com/ens/2015/06/12/episcopal-anglican-lutheran-leadership-of-canada-us-write-to-president-obama-prime-minister-harper/

Greenspan, Emily. (2014). Free, Prior, Informed Consent in Africa: An emerging standard for extractive industry projects. Oxfam America.

Greenspan, E. (2015, July 23). 4 critical ways oil, gas, and mining companies must support local community rights. Retrieved from https://blogs.oxfam.org/en/blogs/15-07-23-4-critical-ways-oil-gas-and-mining-companies-must-support-local-community-rights

Greenspan, E., Katz, M., Kim, J., Lillywhite, S., & Madden, C. (2015). *Community Consent Index 2015*. Oxfam. Retrieved from https://www.oxfam.org/sites/www.oxfam.org/files/file_attachments/bp207-community-consent-index-230715-en.pdf

Hart, R. (2013, June 3). ICMM's Tentative Commitment to Indigenous Rights and FPIC. Retrieved from http://www.miningwatch.ca/blog/icmm-s-tentative-commitment-indigenous-rights-and-fpic

Oxfam America. (2013). ICMM commits to Free Prior Informed Consent standard. The Politics of Poverty Blog. Retrieved from http://politicsofpoverty.oxfamamerica.org/2013/05/icmm-commits-to-free-prior-informed-consent-standard/

Oxfam International. "Guide to Free Prior and Informed Consent." http://resources.oxfam.org.au/pages/view.php?ref=528.

First Peoples Worldwide. (2014). The Cost of Ignoring FPIC. Retrieved from http://firstpeoples.org/wp/the-cost-of-ignoring-fpic-2/

The Forest Stewardship Council can help protect Canada's Boreal Intact Forest Landscapes. (n.d.). Retrieved July 27, 2015, from http://act.greenpeace.org/ea-action/action?ea.client.id=1844&ea.campaign.id=34351

First Peoples Worldwide. (2013). *Indigenous Rights Risk Report for the Extractive Industry (US). Preliminary Findings.*

Government Documents (Canada)

Government of Canada. (2008). Recommendations by the Observer Delegation of Canada on Methodologies Regarding Free, Prior and Informed Consent (FPIC) and Indigenous Peoples Department of Northern and Aboriginal Affairs. Retrieved July 27, 2015, from https://www.aadnc-aandc.gc.ca/eng/1100100014097/1100100014098

Government of Canada. (2008). Statement by the Observer Delegation of Canada United Nations Permanent Forum. Department of Northern and Aboriginal Affairs. Retrieved July 27, 2015, from https://www.aadnc-aandc.gc.ca/eng/1100100014088/1100100014089

Government of Canada. (2008). Statement - Examples of applications of the principle of Free, Prior and Informed Consent (FPIC) at the national and international levels. Department of Northern and Aboriginal Affairs. Retrieved July 27, 2015, from https://www.aadnc-aandc.gc.ca/eng/1100100014128/1100100014129

Government of Canada. (2008). Statement - Legal Commentary on the Concept of Free, Prior and Informed Consent. Department of Northern and Aboriginal Affairs. Retrieved July 27, 2015, from http://www.aadnc-aandc.gc.ca/eng/1100100014125/1100100014126

Government of Canada. (2011). Canada's Statement of Support on the United Nations Declaration on the Rights of Indigenous Peoples. Department of Northern and Aboriginal Affairs. Retrieved July 27, 2015, from http://www.aadnc-aandc.gc.ca/eng/1309374239861/1309374546142

Government of Canada. CSR ABROAD – Indigenous Peoples. Retrieved from http://www.nrcan.gc.ca/mining-materials/mining/corporate-social-responsibility/17241

Government of Canada, Canada's Statement on the World Conference on Indigenous Peoples Outcome Document. Retrieved July 27, 2015, from http://www.canadainternational.gc.ca/prmny-mponu/canada_un-canada_onu/statements-declarations/other-autres/2014-09-22_WCIPD-PADD.aspx?lang=eng

Notley, R. (2015, July 7). Note to Cabinet. Premier of Alberta. Retrieved from http://aboriginal.alberta.ca/documents/Premier-Notley-Letter-Cabinet-Ministers.pdf

Industry and Private Sector Reports, Statements and Standards

NEI Investments. (2013). Aboriginal Issues Update - Ethical Funds. Retrieved from http://www.neiinvestments.com/documents/Research/Aboriginal_issues_update_final.pdf

Bourassa, M., & Feldkamp, C. (2013). *Governing Ethics and Sustainability for Companies: An Evolving Legal Regime*. Presented at the CCCA National Spring Conference. Retrieved from http://www.ccca-accje.org/en/events/pdf/Evolving%20Legal%20Regime.pdf

Campbell, J. (2012). *Engaging With Free, Prior, and Informed Consent*. BSR. Retrieved from http://www.bsr.org/reports/BSR_Engaging_With_FPIC.pdf

NEI Investments. (2008). *Winning the Social License to Operate: Resource Extraction with Free, Prior, and Informed Community Consent.* Ethical Funds. Retrieved from http://www.neiinvestments.com/documents/Research/FPIC.pdf

Goldcorp. (2015). Free, Prior and Informed Consent. (n.d.). Retrieved August 1, 2015, from http://www.goldcorp.com/blog/Articles-Details/2012/Free-Prior-and-Informed-Consent/default.aspx

ICMM. (2010). Indigenous Peoples and Mining Good Practice Guide, Guidance 2010-3, available at http://www.icmm.com/publications/ indigenous-peoples-and-mining-good-practice-guide.

ICMM. (2013). Indigenous Peoples and Mining Position Statement, available at http://www.icmm.com/publications/icmm-position-statement-on-indigenous-peoples-and-mining/.

ICMM. (2013). *ICMM Regional Workshop: Human rights*. Toronto. Retrieved from http://www.icmm.com/document/5959

ICMM. (2013). *ICMM Regional Workshop: Indigenous Peoples*. Toronto. Retrieved from http://www.icmm.com/document/5960

ICMM. (2013). *Indigenous Peoples and Mining: Position Statement*. Retrieved from https://www.icmm.com/document/5433

ICMM. (2013). *International Indigenous Peoples Workshop: From Good Practice Guidance to Good Practice on the Ground*. New York. Retrieved from http://www.icmm.com/document/7560

IPIECA. (April 2012). Indigenous Peoples and the oil and gas industry: context, issues and emerging good practice, http://www.ipieca.org/ publication/indigenous-peoples-and-oil-and-gas-industry-contextissues-and-emerging-good-practice.

IPIECA, "New Project on Free, Prior, and Informed Consent," September 2013, http://www.ipieca.org/news/20130906/new-project-free-prior-and-informed-consent.

O'Callaghan, K., & Bryant, D. (2014). *Free Prior Informed Consent: Is it Required and What's the Standard?* Presentation presented at the Canadian Institute of Mining, Metallurgy and Petroleum Convention.

Rae, M., Taylor, M., Inglez de Sousa, C., Dodson, M., & Mulenkei, L. (n.d.). *Indigenous Peoples and Mining: Good Practice Guide*. International Council on Mining & Metals. Retrieved from https://www.icmm.com/document/1221

Sosa, I., Belanger, P., & Meloche, F. (2012, March). *Free, Prior and Informed Consent and Indigenous Relations*. Webinar. Retrieved from http://www.sustainalytics.com/sites/default/files/sustainalytics_fpic_webinarslides_march2012.pdf

Wong, A. (2012). Raising the standard. *Mining, People and the Environment*. Monkey Forest Consulting. 24–25.

Intergovernmental Documents

Anaya, J. (2012). Report of the Special Rapporteur on the rights of indigenous peoples. *Human Rights Council (A/HRC/21/47). Available at: Http://www. Ohchr. org/Documents/HRBodies/HRCouncil/RegularSession/Session21/A-HRC-21-47_en. Pdf (accessed 3 October 2012)*. Retrieved from http://www.unhcr.org/refworld/pdfid/5051b78b2.pdf

Anaya, J. (2013). Statement upon conclusion of the visit to Canada. *Video. Internet: Www. Unsr. Jamesanaya. Org/videos/video-Statement-upon-Conclusion-of-the-Visit-to-Canada (8.11. 2013)*.

Business and Human Rights Resource Centre. "United Nations 'Protect, Respect, and Remedy' Framework." Accessed on November 5, 2013, http://www.businesshumanrights.org/SpecialRepPortal/Home/Protect-Respect-Remedy-Framework.

Committee on Economic, Social, and Cultural Rights. "General Comment No. 21: Right of everyone to take part in cultural life." [E/C.12/GC/21] (December 21, 2009), http://tbinternet.ohchr.org/_layouts/treatybodyexternal/TBSearch.aspx?Lang=en&TreatyID=9&DocTypeID=11.

Committee on World Food Security. "Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security" (May 11, 2012), http://www.fao.org/fileadmin/user_upload/nr/land_tenure/pdf/VG_Final_May_2012.pdf.

IACHR (Inter-American Court of Human Rights). *Saramaka People v. Suriname. Preliminary Objections, Merits, Reparations and Costs.* Judgement of 28 November 2007. Series C No. 172. http://www.corteidh.or.cr/docs/casos/ articulos/seriec_172_ing.pdf, cited 29 Mar. 2011.

International Finance Corporation. 2010. Performance standard 7 — V2 Indigenous Peoples. IFC, Washington, DC, United States. 1 Dec. 2010, http://www.ifc.org/ifcext/policyreview.nsf/AttachmentsByTitle/Phase3_PS7_Clean_ Highlights/$FILE/Phase3_PS7_Clean_Highlights.pdf, cited 29 Mar. 2011.

International Labour Organization. 1989. Convention No. 169 Concerning Indigenous and Tribal Peoples in Independent Countries. 27 June 1989, http://www.ilo.org/ilolex/cgi-lex/convde.pl?C169, cited 29 Mar. 2011.

United Nations Declaration on the Rights of Indigenous Peoples. 2007. A/61/L.67. 13 Sept. 2007, http://www.un.org/esa/socdev/unpfii/documents/DRIPS_en.pdf, cited 29 Mar. 2011.

United Nations Human Rights Committee. (2015). *Concluding observations on the sixth periodic report of Canada*. Retrieved from http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CCPR%2FC%2FCAN%2FCO%2F6&Lang=en