



FPIC needs to move beyond an end of the line solution

‘Free prior and informed consent’ (FPIC), is the principle recognizing that a community has the right to give or withhold its consent to proposed projects that may affect the lands they customarily own, occupy or otherwise use.¹ Usually, such projects are not proposed by local communities; instead, they are meticulously designed by project developers that operate from within the globalized financial sector. Investors need the development of such projects to ensure the sustained extraction of the handsome financial returns they are used to. For such projects

to materialise a price has to be paid by the local communities and the natural environment on which their livelihoods depend. The general narrative is that, though unfortunate, this is the price to be paid (usually by often indigenous and minority communities) for the greater good.

A good example of such a project is the various economic corridors that are planned in India. These projects are to match the vast “One belt, One road”-plan of China.² One of the largest infrastructure projects that are planned

¹ Forest People’s Programme, <http://www.forestpeoples.org/guiding-principles/free-prior-and-informed-consent-fpic>

² See e.g.: <https://www.clsa.com/special/onebelttoneroad/>

in India is the Delhi-Mumbai Industrial Corridor (DMIC).³ This corridor is set to run through six states, covering a distance of 1.500 km and the total cost expected to exceed US\$ 100 billion. It is planned to develop new industrial cities that will be established as new manufacturing zones, to be connected by infrastructure linkages like a freight corridor, power plants, water supply, high capacity transportation and logistics facilities. The program is driven by a cooperation agreement between the Government of India and the Government of Japan, and is meant to attract significant private investments. The Dutch government is actively informing Dutch companies about the opportunities provided under this programme.⁴ One wonders whether the millions of people in the band of 150-200 km on both sides of the planned freight corridor have been informed about the details of the plans formulated so far or, better, whether their aspirations have been taken on board.

The introduction of the FPIC is the result of many struggles from across the world of local communities who found themselves at the end of the line of project developers. These communities, in particular indigenous peoples, backed up by NGOs who did not agree to the idea of a trade-off for the greater good, obtained the right to negotiate a fair price and ultimately also the right to say no. It is interesting today to see many development practitioners from the financial sector, consultants and policy makers struggling with making the FPIC work better on the ground. Though there is an increased awareness about the deplorable fate of the indigenous peoples due to the ongoing land-grabs, the resistance of the affected communities, apart from being a reputational risk, also threatens the very sustainability of the business ventures. In response to these

threats private companies around the world came up with a wide range of initiatives to establish shared standards, such as the UN Global Compact, the ILO Core Labour Standards, the UN Guiding Principles on Business and Human Rights, or the UN Principles for Responsible Investment.

At present FPIC is embedded in a number of international intergovernmental treaties and conventions⁵ that need to be transposed within the national rules and regulations meant to enhance the chances of FPIC actually being implemented. It is often suggested that the implementation of FPIC is hampered by weak legislation in host countries and, more specifically, by weak enforcement mechanisms of any legislation that may be in place there. This then is used as a justification for the many conferences aimed at improvements at the end of the line, while allowing the financial sector to carry on in its business-as-usual manner. In these circumstances the focus of FPIC remains on voluntary efforts to enhance its implementation through multi-stakeholder dialogues. Though meaningful, it takes significant energy without much guarantee of effectively enhancing the protection of local livelihoods.

To advance possibilities of local communities from around the world to exercise the right to recourse in courts of industrialised countries, it probably is necessary to make sure that the principles behind FPIC within the international conventions to which most of these countries have signed up are transposed into effective national legislation in industrialised countries too. Many project developers in the globalized financial sector are registered in such countries – including in my country, the Netherlands. One wonders whether legislation could be put in place

here to ensure that local communities affected by their projects could obtain recourse in Dutch courts in case projects are going ahead in their back gardens without an FPIC.

In this way Dutch legislation – and legislations in other industrialised countries – could then ensure that indigenous peoples and local communities from around the world could sue all project developers for any violations of the fundamental community rights as laid out in FPIC. As many foreign companies have a legal presence in the Netherlands – it qualifies as a tax haven – even the introduction of such a legislation in the Netherlands alone could be powerful. Many local communities could be offered an effective legal recourse to ensure that foreign investors take FPIC seriously.

Within Both ENDS we will explore whether elements of such a legislation already exists, and whether this is ready for use or needs improvements. If no such legislation exists it is time to develop one. In any case it is necessary to explore how such a legislation can be made operational and be effectively put to use. In the absence of sufficient legal expertise amongst ourselves we will have to consult with legal experts. More important, one needs to ensure that such specific laws can be practically enforced, and made accessible to local communities worldwide. As soon as we have been able to work all this out we will be happy to share further updates on this.

Wiert Wiertsema

Expert, International Financial Institutions, The Netherlands. Email: w.wiertsema@bothends.org

³ See the project website at: <http://www.dmicdc.com/>

⁴ See: <http://www.rvo.nl/sites/default/files/Smart%20Cities%20India.pdf>

⁵ - Indigenous and Tribal Peoples Convention, 1989 (No. 169), International Labour Organisation (ILO), http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C169

- United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP), http://www.un.org/esa/socdev/unpfi/documents/DRIPS_en.pdf

- World Bank, IFC Performance Standard 7, and Environmental and Social Framework, <http://www.worldbank.org>