

## FPIC Fever: Ironies and Pitfalls

Large corporate capital flows into ‘resource-rich, finance poor’ landscapes across the globe today are both threatening to and resulting in large-scale (re)allocations of land, water, forests and fisheries. This phenomenon is now widely referred to as ‘land grabbing’ (see previous text box). But while grabbing land and other natural resources for profit is not new, the rise of ‘corporate social responsibility’ (CSR) responses to it arguably is. Today’s proposals to regulate large-scale (trans)national land deals range widely from calls to prohibit them altogether, to calls for multi-stakeholder-type ‘codes of conduct’ or ‘principles of responsible investment’ around social and environmental concerns, to calls for greater transparency in land governance.

The range of proposals to address land grabs reveals the existence of fundamental disagreement over what ought to be the purpose of regulation. There are three broadly competing views: regulate to facilitate the security of large-scale land deals; or regulate to mitigate their potential social and environmental harms; or regulate to prevent such deals from happening at all. Each view implies fundamentally different answers to deeper questions about the meaning and purpose of ‘development’. Amidst intense public debate, many of those most concerned about land grabbing from across the spectrum are zeroing in on FPIC – an acronym for ‘free, prior, informed consent’ – as a key regulatory tool.

FPIC in principle is fundamentally a good idea, with roots in democratic theory and, more importantly, in practical thinking about democracy’s requirements and prospects in real life. At minimum, consent must be given freely (not coerced), and it must be given before any change starts (not after the project begins), and it must be given on the basis of informed discussion (not ignorance of the project). All three must be present for a decision to be considered valid according to the FPIC standard. But then several questions and dilemmas also arise.

First, who has the right to FPIC? Today FPIC is closely associated with the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP), which enshrines the right of FPIC for indigenous peoples. Some may interpret this to mean that FPIC is applicable only to indigenous peoples, but limiting FPIC in this way brings its own ironies and pitfalls, not the least of which is that such an interpretation means the exclusion by definition of many extremely poor, vulnerable and marginalized groups and individuals who might not be considered as ‘indigenous’. Second, whose free, prior and informed consent is required? For the standard to have

any meaningfulness, the answer should be comprehensive or maximally inclusive, e.g. “all those who could be affected.” This is perhaps not a problem in some cases. But in many cases changing the use of land, water, fisheries and forests can have many spillover effects that can, in turn, affect a lot more people than those at first thought. Negative effects can go beyond the original time and spatial boundaries – e.g., water pollution moves downstream, mono-cropping degrades soil over time, etc. The application of FPIC to natural resource control issues is inherently more complicated than it looks.

Still, for many people, especially those most affected by a decision, FPIC enshrines all vitally important conditions. So the question is not whether or not to follow FPIC, but *how*. FPIC raises some of the same aspirations – and unleashes some of the same basic tensions – that have often marked actual efforts to deal with the difficult challenges of democratization on rocky terrain.

Several difficulties arise. For one, there is wide interpretation of the ‘C’ in FPIC, since some governments insist that the ‘C’ means the weaker “consult” instead of the stronger ‘consent’. If we accept that FPIC should set a high bar for practice, then what are the requirements for people on the ground to make this possible in practice? The answer is not obvious and is likely to require a process of consultation that is much longer, more extensive, and therefore more complicated, than many are ready to admit.

And last but definitely not least, even if these problems can be sorted out, FPIC will still be deployed in communities that are themselves highly differentiated by class, ethnicity, gender, generation and political status, where real people are embedded in actually existing power structures, which in turn can (and do) influence both the process and outcome of FPIC deployment. There is a reason that many companies, if they honor FPIC at all, do so often by relying on selected villagers (including chiefs, brokers, entrepreneurs and bullies) to organize consultations, and time and again, the results have proven to be disastrous for at least some members of the community who may not ‘count’ because of their difference.

How can we ensure that FPIC does not degenerate into mere ‘window-dressing’, especially in places where heavy restrictions still exist on freedom of association, freedom of expression, and a free press?<sup>32</sup>

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