
THIRD SESSION OF THE OPEN-ENDED
INTERGOVERNMENTAL WORKING GROUP ON
TRANSNATIONAL CORPORATIONS AND OTHER BUSINESS
ENTERPRISES WITH RESPECT TO HUMAN RIGHTS

Oral Submission - Subject 9: Mechanisms for
Promotion, Implementation and Monitoring

The Legal Resources Centre firstly responds to a comment made by a panelist on the topic of Jurisdiction this morning that corporate violations happen only in countries with “fragile democracies”. We strongly reject that suggestion. Evidence suggests that there is hardly a country in the world that is not the location of human rights violations by corporates. Perhaps our disagreement lies in what the panelist regards as human rights abuses. The purpose of this legally binding treaty is not only to end the grossest of human rights violation, but also those violations that, through corporate capture, have become normalized and even legalized in several countries. For examples, look no further than the land and resource grabbing and environmental degradation pervasive on the African continent.

The LRC notes that civil society and even states from across the world have persistently raised the principle and right of Free, Prior and Informed Consent (or FPIC) to be included in this treaty in this forum. As we move towards negotiating a draft text in 2018, we wish to elaborate on how FPIC should act as a mechanism for the promotion, implementation and monitoring of the human rights of affected communities.

FPIC refers both to a substantive right under international-, regional - and indigenous customary law as well as a process designed to ensure satisfactory development outcomes. To realise this right, the affected community’s decision whether to allow development that will affect their rights, should be made free from any obligation, duty, force or coercion. Secondly, the community has the right to make the development choice prior to any similar decisions made by government, finance institutions or investors. In the words of the African Commission on Human and Peoples’ Rights, the community’s right to FPIC is not realised if they are presented with

a project as a fait accompli. Thirdly, the community must be able to make an informed decision. That means that they should be provided sufficient information to understand the nature and scope of the project, including its projected environmental, social, cultural and economic impacts. Such information should be objective and based on a principle of full disclosure. The community should be afforded enough time to digest and debate the information. Finally, consent means that the community's decision may be to reject the proposed development. Consent is not mere consultation. The community can say no.

Because the right to say no places the community in a position to negotiate, it is also a process. FPIC is not designed only to stop undesirable projects, but also to provide communities with better bargaining positions when they do consider allowing proposed developments on their land or resources.

FPIC should not be relegated to a risk-management exercise. Rather, FPIC should be the basis upon which the relationship between the affected community and the company is built. The role of the State in enforcing this right is crucial, but not a prerequisite for building more equitable negotiating and bargaining positions between the affected communities and the developers.

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