

A photograph of a lush tropical forest. On the left, a large, dark rock formation with some vegetation hangs from it. The forest is dense with green trees and foliage. In the foreground, there is a body of water, possibly a river or a lake, with a rocky shoreline. The text is overlaid on a white rectangular background in the center of the image.

## **FREE, PRIOR, AND INFORMED CONSENT IN MEXICO'S TREN TRANSPENINSULAR: LESSONS TO GUIDE THE PROCESS**

*PIA 2096 Capstone Course:  
Policy and Planning in Developing Countries*



# EXECUTIVE SUMMARY

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This report outlines the particular challenges indigenous groups confront when faced with large-scale development projects that threaten to disrupt or displace their communities. In particular, this study examines the challenges faced by FORO and the communities of Mexico's Yucatán peninsula, where the Tren Transpeninsular (TT), a large-scale transportation project, has been proposed. FORO is the Chiapas, Mexico-based Forum for Sustainable Development, a non-profit organization working to protect indigenous rights. Large-scale projects, while considered to be an effective way to foster economic growth in the aggregate, can lead to unequal development by producing winners and losers. This report demonstrates that all too often the "losers" are comprised of already marginalized indigenous communities that are paradoxically protected by a domestic and international legal framework, such as the International Labour Organization Convention 169 - Indigenous and Tribal Peoples Convention, the United Nations Declaration on the Rights of Indigenous Peoples and the Mexican Constitution. These legal frameworks call for a process of free, prior, and informed consent (FPIC) when indigenous communities can be affected by a development project. FPIC establishes both a "mechanism and a process" for indigenous groups to make collective decisions on projects that may affect them. Under this framework, governments are obligated to not only consult with indigenous communities impacted by development projects, but to have their consent to proceed.

Communities should not just have a voice in the process, but should ideally be able to share the benefits of the project.

This report is the result of the work that students did during the Capstone class as part of their program at GSPIA. The aim of the report is to provide information to FORO regarding experiences that indigenous communities have had with the FPIC process. Specifically, the report identifies lessons from FPIC implementation around the world through a literature review of relevant case studies. The report also includes main findings and themes from fieldwork conducted in the Yucatán to assess the potential effects of the proposed train on indigenous communities. From this the students created a booklet and a comic to disseminate important information on the process itself, indigenous rights, and the proposed train, in an accessible manner. Given that this FPIC process is the first one that will take place in Mexico, it is crucial that communities have access to this information. Moreover, since the FPIC processes are often implemented by governments who are simultaneously supporting these large-scale development projects, the implementation of protocols is often far from ideal. Therefore, the students hope that this report serves to empower the affected indigenous communities to decide if, and to what extent, they take part in the process of economic growth and development in their communities.



# I. INTRODUCTION

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Development projects, while controversial, are often an attractive approach to economic growth for many governments, companies and individuals. Large-scale projects – such as dams, transportation lines, and agroindustry – transform physical space, often with the simultaneous goals of quality of life improvement and economic growth. However, not all of the affected communities benefit from such large projects. Kanbur (2003) writes that rarely do development projects create only winners as changes to the physical environmental, social structures, cultural heritage, and economic trajectories often produce losers. Among the most contested issues surrounding large-scale development projects have the potential for development-led displacement and the inadequacy of governments to properly address involuntary resettlements, environmental degradation and economic distortions associated with displacement.



Throughout the twentieth century, development projects were viewed as a way to achieve economic growth through public policy that addressed natural resources and land (Arndt, 1987, p. 1). However, a global shift toward the human element of development has taken shape over the last three decades. This new paradigm focuses on the impacts of development – both positive and negative – on affected communities globally. The Asian Development Bank (1995) writes, “that people should be at the center of development is increasingly recognized.” Despite these intentions to benefit society as a whole, development projects often adversely affect the most vulnerable communities. For instance, in Mexico there is concern that indigenous Mayan communities could be negatively impacted by the impending Tren Transpeninsular (TT) project, a large-scale transportation project occurring in Mexico’s Yucatán Peninsula.

Given the nature of the TT project, it is important to analyze and learn from ways in which compensation and resettlement has taken place in development projects around the world. While many international laws are increasingly available and utilized, human-centered development has a short and varied past. Nevertheless, a review of best practices shows it is possible for governments, developers and project managers to better address the variety of impacts that arise from large-scale infrastructural developments. This report is the culmination of a semester-long review and study of the FPIC process and its potential application in relation to the communities affected by the TT project in the Yucatán. This course included traveling to Mexico, making observations and surveying the communities where this project is set to take place. The class hopes that this report can be useful as FORO works to ensure the FPIC process occurs as appropriately as possible in these communities. The work of FORO, and the technical support of the capstone, is of particular importance, due to the fact that this is the first time the FPIC process has been attempted in Mexico.

This report is organized as follows. The next section summarizes the legal framework—domestic and international—that aims to protect vulnerable communities from development projects. The section also includes a summary of initiatives commonly undertaken by the private sector to ameliorate their negative impact of their projects on communities. Section III reviews relevant cases in which indigenous communities around the world were adversely affected by development projects. The section identifies lessons that can be valuable for the TT process. Specifically the section lists lessons that can help indigenous communities and other concerned actors to become more aware of FPIC guidelines and procedures, to encourage collaboration and communication among key actors, and to promote FPIC as a global standard for consent. Section IV tries to provide some context of the locations where FPIC would take place. The section firsts summarizes the findings of students’ fieldwork in the communities near Valladolid, Yucatán to provide basic information of the communities that are likely to be affected by the proposed TT and given this context, the potential challenges of implementing FPIC. Then the section discusses some of the limitations of the official cost-benefit analysis of the TT, illustrating again the lack of comprehensive assessment of the proposed project. A final section concludes the report.



## II. WHAT ARE THE LEGAL AND REGULATORY PROTECTIONS FOR VULNERABLE COMMUNITIES?

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While development projects often negatively impact certain populations, including indigenous groups, there are still multiple legal and regulatory protections for vulnerable communities. There are three major documents that shape the legal framework accessible to indigenous communities affected by the TT when participating in a free, prior, informed consent (FPIC) protocol with governments, corporations, and other project proponents: the International Labour Organization Convention 169 - Indigenous and Tribal Peoples Convention (ILO 169), the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP), and the Mexican Constitution.

ILO 169 is a legally binding international agreement that specifically addresses the rights of indigenous and tribal peoples, and has been ratified by 20 countries, including Mexico. The Convention relies on groups to self-identify as tribal or indigenous in order to be protected by the document, and the fundamental guiding principle of ILO 169 is non-discrimination. Protected categories under ILO 169 for indigenous peoples include:

- Traditional life styles
- Culture and way of life different from the other segments of the national population (their livelihoods, languages, and customs)
- Social organizations and political institutions
- The ability to live in historical continuity in a certain area, or before others “invaded” or came to the area (ILO, 1989)

ILO 169 requires that indigenous peoples engage in a free, prior, and informed participation in the policy and development processes that affect them. While ILO 169 has made significant progress in countries where it is ratified, supervisory bodies have detailed implementation challenges, specifically regarding the coordination problems that advocacy organizations and indigenous communities face, as well as the need to ensure meaningful participation by affected groups (ILO, 1989).

The UNDRIP was adopted on September 13, 2007, by 143 states, including Mexico. It establishes a general framework that outlines the minimum conditions for the dignity, survival, rights, and overall well-being of indigenous communities, and draws on all human rights and fundamental freedoms that have been recognized in the Universal Declaration of Human Rights (United Nations, 2008). The UNDRIP addresses individual and collective rights, cultural identity, the right to access education, health care, and employment, as well as the right to maintain indigenous languages (Office of the United Nations High Commissioner for Human Rights, 2008). Similar to ILO 169, the UNDRIP outlaws discrimination and promotes indigenous participation in all matters that concern them. The UNDRIP also specifically addresses FPIC in Article 10:

*“Indigenous peoples shall not be forcibly removed from their lands or territories. No relocation shall take place without the free, prior and informed consent of the indigenous peoples concerned and after agreement on just and fair compensation and, where possible, with the option of return.”*

Under Article 2 of the Mexican Constitution, revised in 2001 to include provisions protecting indigenous communities, these communities have the rights to self-determination, autonomy, education, infrastructure, and non-discrimination





(Office of the United Nations High Commissioner for Human Rights, 2011). One of the main legal obstacles to ensuring that the Constitution is followed in the case of the TT is due to Mexico's federal structure. Since each Mexican state has its own constitution and can establish their own legislation, local laws have limited provisions recognized in the national constitution, resulting in practices surrounding indigenous rights that vary from state to state (Office of the United Nations High Commissioner for Human Rights, 2011). Indigenous groups and advocacy organizations should continue to draw on these essential documents to provide the legal framework in their negotiations throughout the FPIC and benefit sharing process.

The aforementioned laws establish the framework for the FPIC process. While FPIC in practice may be executed in an imperfect manner, the above national and international protections establish the ideal scenario. Broken into its component parts, FPIC establishes both a “mechanism and a process” for indigenous groups to make collective decisions on projects that may affect them (Maharjan, Carling & Sherpa, 2012, p. 52). *Free* refers to an independent process of decision-making, wherein groups can come to a decision without coercion or intimidation from outside forces. *Prior* indicates that the process begins before the project is implemented, and also includes respect for the duration of time needed to make a decision in accordance with the practices of the group. An *informed* consensus implies that indigenous peoples have the right to sufficient information as well as full and clear disclosure in their native language. Finally, *consent* is more than arriving at a consensus or merely being consulted about a project. Consent is the result of collective and independent decision-making process (Maharjan et al., 2012).

In order to be considered valid, FPIC necessitates “full and effective participation of members of the particular community” (McKay, 2008, p. 149). Full participation means that all stakeholders need to be consulted, including typically marginalized sectors such as women and youth. Respect for traditional structures and group practices may require meeting separately with those groups and also meeting directly with political organizations and community associations (Feiring, 2009). While these guiding principles should inform the entire process, the literature review will show that the application of FPIC in communities does not always meet these standards and varies across cases. Appendix A provides four projects that serve as frameworks to guide the implementation process.

### ***Private sector initiatives and benefit sharing***

In addition to the above laws, sometimes private sector project proposals will include benefit-sharing initiatives in an attempt to circumvent, replace, or complement the FPIC protocol, which will typically place higher demands on governments and corporations. Thus, private companies may look for ways to benefit the communities in which they are working, either to strengthen relations with the community, to improve their image, or to develop their supply chain (Luning, 2012). Though these initiatives have to be pursued in the TT thus far, this information could be useful when evaluating the project as a whole.

When the actions of firms have a negative social or environmental impact, they often use compensation mechanisms to mitigate the effects on the community. The general term for private sector involvement in community improvement is Corporate Social Responsibility (CSR) (Porter and Kramer, 2011). For example, Nestlé practices CSR by investing in the agricultural sector of the communities that supply the cocoa pods they use to produce their chocolate. Nestlé provides training and tools to cocoa-growers to increase their technical capacities and improve their supply chain (Porter & Kramer, 2011). Another approach companies use to allocate benefits to their host communities is public-private partnerships, in which private firms work with public actors such as government agencies or non-profit organizations in community-development efforts. These partnerships intend to facilitate coordination among actors within a community. This approach has been criticized as creating a monopoly situation due to the high cost of entry, and increased costs to community members attempting to access new infrastructure services (Chih, Kwak & Ibbs 2009).

Companies may utilize these approaches to obtain the public's permission to operate within a community, what Luning (2012) refers to as “Social License to Operate.” However, impoverished communities that lack basic health or education services may be desperate to receive these services or the potential economic benefits of a company's presence. They



may be willing to accept the company's project, even when there are severe environmental or social impacts. The case the Yanacocha Mining Company in Peru's northwestern region of Cajamarca serves as an example of the complexity between balancing economic development, social equity, environmental sustainability, and citizens' rights.

For decades the Peruvian mining industry has been the embodiment of "state presence" for marginalized rural Peruvian communities. As a result, the communities' social requests for basic services (e.g.; hospitals, bridges or schools) became an expense for several extractive operations within the country. However, several corporations have been directly responsible for polluting water and land in Peru's most impoverished areas, with little or no state response. Because of this, peasants have lost trust in both the government and the private companies, and strongly oppose mining companies that want to invest and operate in community lands. The form of CSR in this case has a dual purpose. On the one hand, mining companies can intervene to improve the quality of life in the community. On the other hand, CSR may appear as an alternative to "buying" social contentment in order to stabilize the mining company's operations.

There are many limitations and concerns with the CSR approach, due especially to sociocultural differences among the different countries of operation. CSR requires the participation of several actors, including the public and private sectors, the community, and civil society. This approach represents a direct intervention by the private sector focusing public issues. This intervention may perverse community empowerment in regard to decision-making processes concerning infrastructure, education, nutrition, and health projects. Local legislation, however, can serve to block out the private sector's intervention when the community is working together to address needs and solve problems. CSR may actually have negative impacts on a community if it is used to replace public processes or government presence, or if it is used to "purchase" consent to operate if the operations will in the end harm the community. Each case will be context-specific, and the government, companies, and communities should work together to capture the most benefits while mitigating negative impacts.





# III. WHAT HAS BEEN THE EXPERIENCE OF FPIC THROUGHOUT THE WORLD?

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In the case of the TT, indigenous Mayan communities may be disproportionately affected by such infrastructural development. Given the nature of the TT project, it is important to critically analyze ways in which consultations and consent protocols have taken place, as other cases can shed light on how best to reduce negative impacts and improve conditions for vulnerable populations. As part of the capstone class, students reviewed literature on cases where indigenous communities were adversely affected by development projects, and subsequently identified best consultation practices. Based on this review, students identified lessons that can help indigenous communities and other stakeholders to become more aware of FPIC guidelines and procedures, encourage collaboration and communication, and promote FPIC as a global standard for consent. Additionally, a full list of case study summaries and the relevant processes within them can be found in Appendix B. Also, a reading list of all documents reviewed in the preparation of these case studies can be found in Appendix C. Within these case studies the students have highlighted ten key lessons to take into consideration throughout the FPIC process.

## *Lessons from case studies*

**A) Consensus at each stage of the negotiation process:** At any stage of the negotiation process, the community has a right to seek more information, say no, or withdraw entirely. The community should not feel pressured or obligated to enter into or continue negotiations. The responsibility is on the project proponent to provide as much information as needed for the community to become fully informed. FPIC is only granted if a final decision is made according to mutually agreed terms and conditions.

- In the case of seismic exploration in Bolivia: The Ministry of Hydrocarbons and Energy was asked to redirect the consultation process due to the complaints by the Guaraní Peoples Assembly, which argued that they received only partial information and not all indigenous communities were included. This was incorporated into the process and adopted the rule that in each stage of the project there is a need to establish consensus.

**B) External neutral actor:** The presence of an external actor unaffiliated with the government or the private company is essential. Depending on the context, an external party could play the role of facilitating or mediating discussion, acting as an arbitrator or providing specialist advice to conflicting parties.

- In the case of seismic exploration in Bolivia, the consultation process was mainly successful because indigenous communities were well organized and had previous training on technical and legal issues by the *Centro de Estudios Jurídicos e Investigación Social*, a local non-governmental organization.
- In the case of the Yamuna Expressway in India, the affected communities were not being considered during the development project for the entire duration of the planning process. These village members realized that their demands were not being taken seriously, so they formed congregations that unified over time. It is to this effect that the Bharatiya Kisan Union - India's biggest farmers' organization - was able to provide procedural and advocacy knowledge to assist the individual farmers.

**C) Long run funding:** If community development programs are an outcome of the FPIC, it is important to agree on the terms and document the sources of funding and incorporate these projects in the budget of the infrastructure project.

- In the case of the territorial connection project in Chocó, Colombia, based on the consultation process, the authorities agreed to create five programs co-financed by the national road institute and the community council.



However, at the present time, several of the projects have been suspended for lack of funding.

**D) Consider the differentiated impacts of the project, international regulations, and protocols on men, women, and other minority groups:** The utilization of FPIC does not guarantee the complete respect for human rights and benefit sharing within groups. Ensuring that women's voices are heard is very important, given the principle of inclusiveness and the fact that the negative impacts of development projects often fall disproportionately on women. Where customary approaches to engagement or decision making prevent the meaningful involvement of women, other ways of facilitating this involvement through mutual agreement with the relevant communities should be found.

- In the case of Tintaya, Peru, a review of the dialogue between communities, nonprofit organizations, and the company demonstrated a deficit of women's opinions through the previous consultation processes. Moreover, it took four years for the nonprofit organization, CooperAcción, to help women organize through the Asociación de Mujeres de la Mina Tintaya. This highlights that the process of consensus might exclude the voices of minorities within the indigenous communities.

**E) Use local language and adequate forms of information dissemination:** Where the majority of the community is not proficient in the national language, it is best to communicate the information and discussion in the local language. Using the local language shows respect and is crucial for understanding the affected community. Technical language needs to be simplified to prevent misunderstanding of concepts.

- For example, in the Song Bung 4 Hydropower project in Vietnam, the brochure explaining the project was in Vietnamese; however, the communities affected use their own dialect and some are even illiterate. Here, disseminating information in written form was inadequate.

**F) Respect the traditional forms of participation and decision making of the local community:** To reach a legitimate agreement, it is necessary to cooperate with all representative institutions and respect traditional norms, practices, and decision-making procedures, as long as they are inclusive of all members.

- In the case of the territorial connection project in Chocó, Colombia, the Colectivo Territorial Afro-Chocó, the largest collection of ethnic communities in the department, became the representative of all the Afro Colombian communities of Chocó.
- In the case of seismic exploration in Bolivia, the Guaraní communities were well-organized and had their own local assemblies, which gathered in zonal assemblies. There were three zonal assemblies in the municipality of Charagua: APG Charagua del Alto y Bajo Isozo, APG Charagua Sur, and APG Charagua Norte. The three assemblies combined comprised the Guaraní People Assembly of Bolivia, the key actor representing the indigenous communities during the consultation process.

**G) Foster open communication between companies and communities:** Company information needs to be presented in an honest and open manner in a readily accessible design. The emphasis should not just be on sharing technical information, but any potentially negative socio-economic or environmental impacts and how these will be managed, plus the potential benefits for indigenous peoples and how these may be enhanced.

- The Rio Tinto mining company, based on their internal 'community agreement guidelines' works to integrate Australia's East Kimberley aboriginal communities into the regional negotiation processes. The Rio Tinto Argyle Diamond Land Agreement recognizes the surrounding local communities as landlords of the land leased for the mine, despite their lack of native government property rights.

**H) Use a monitoring and evaluation system:** Effective monitoring may help avoid the escalation of lower-level disputes into more serious conflicts. The conclusions of the monitoring process should be reported properly to the community on a regular basis, in addition to being used for internal administration purposes.



- In the case of Charagua Norte, Bolivia, a post evaluation highlighted that Guaraní women did not have the same property and leadership rights than men. While initiatives for environmental monitoring have allowed women to participate in the monitoring team with men, gender inequalities within the group hinder women from holding leadership positions.

**I) Communities have the right to take as long as needed for decision-making:** FPIC protocols must take account of the varying internal decision-making processes of different indigenous groups. Consultations must be long enough to allow for these processes to take place, as well as for indigenous peoples to obtain and understand all the relevant information about the proposed project.

- In developing the Suruí Forest Carbon Project, the Paiter-Suruí people of Brazil had a consultation period of four years. In establishing a compensation fund from a dam project, the Timbira in Brazil negotiated with the company for five years in order to reach a just outcome. These cases show how decision-making and consultation time varies in accordance with the practices of the group and this time horizon must be respected for FPIC.

**J) Timing of reimbursement:** Timing of reimbursement and benefits should be agreed on during the consultation process. If reimbursement is not given until several years after the project, inflation rates may not be accounted for and communities may go into debt.

- In the case of the Cambodian Railway Project, many community members did not receive compensation to build their homes until years after they signed their meager resettlement agreements. Many people went into debt financing their move while waiting for funds that may never come.





# IV. HOW MIGHT FPIC TAKE PLACE IN MEXICO IN REGARD TO THE TT?

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From March 10 to March 14, 2014, a group of 14 GSPIA students participated in a research trip to the surrounding localities of the city of Valladolid, in Yucatán, Mexico. The main goal was to develop an understanding of the indigenous and rural populations that might be affected by the construction of the TT. In the first two days the students mapped the area as they covered 12 localities within the municipalities of Cuncunul, Tinum, Kaua, Chemax and Valladolid. During these days, the students carried out a series of interviews and identified the localities' central points by surveying the area. Additionally, a list of key persons and potential partners can be found in Appendix D.



On the evening of day two, the students met with two community organizers, both members of civil societies. The third day was spent visiting two ecotourism projects: Punta Laguna-Chemax (managed by the *ejidal* community) and Pacchen (co-managed via an agreement between the *ejidal* community and “Altournatives,” a tourism company). In day four the group visited both a local basket *tejedores* of *bejuco* (in Loop xul), and a family textile shop in Kimbilá (Yucatán). On Friday, March 14, the students delivered a presentation for the Chemax *comisario* and a group of municipal employees. The students presented an explanation of FPIC, a number of cases regarding other projects that have used the protocol of consent, and additional material prepared by the students focused on researching FPIC's best practices.

## **Relevant socioeconomic characteristics of the communities visited**

**A) Ethnicity and language:** The majority of the population is indigenous; Spanish is not the primary spoken language and most residents speak *Maya Yucateco* (Mayan). However, young individuals and people working outside the communities (mostly men) are more proficient in Spanish. Therefore, it is important that the information related to the train project and the FPIC be translated into Mayan.

**B) Education:** In the small localities, it is common to find one multi-grade primary school (which means that the same teacher is responsible for different grades). Students willing to pursue high school education must travel to larger localities such as Kaua and/or Chemax. Most adults have only basic education. According to Francisco (a school teacher from San Diego), children whose parents have more formal education show a better academic performance. The common careers held by the young people interviewed were: information technology, tourism, languages, and accounting, among others. An increasing number of young people are also migrating to larger cities seeking better employment opportunities and education.

**C) Gender Roles:** In most cases, the gender roles are clearly defined. Men are in charge of the *milpa* and/or working outside the city (e.g. selling artisanal products), in local farms (*ejidos* and greenhouses), as well as in the tourism and construction sectors. Women are responsible for taking care of the family and feeding domestic animals (e.g. chicken, pigs, ducks and turkeys). Yet, men and women share artisan and embroidery (textile) activities in order to contribute to the household's economy. In general, during the interviews, women were more hesitant to express their thoughts and opinions.



**D) Income:** The economies of these localities are predominantly informal and the monetary influx can be considered low. For example, most of the income derives from cheap and non-qualified labor and small family businesses. Accordingly, those working in tourism facilities (such as beach resorts and/or archeological sites) have a better income. Consequently, they have a stronger economic standing within their locality.

**E) Legal Land Status:** The local land is divided into two different types of property: private property and *ejidal* property. In the latter case, the land belongs to the community and it is managed by the *Asamblea de Ejidatarios* (*Ejidatario's* Assembly). On the *ejidal* property, the community members can grow their crops utilizing the number of hectares individual members can manage to work. On average, an *ejidatario* has two hectares. This number varies depending on the family support. In the case of private property, the students witnessed cases in which women were the owners of the lands.

**F) Milpa Production:** Most *ejidatarios* (all men) work on the *milpas* themselves. Among the products they grow are corn, pumpkin, and beans. The *milpa's* harvest serves to fulfill the households' food requirements and helps them obtain the seeds for next years crops. Those who have excess in their production sell it to make profit. Depending on their economic situation, an *ejidatario* can transport himself/herself by foot, bicycle, or truck. Moreover, beyond the land's use, it is worth mentioning the sentimental value the land has for the community. For example, Don Juan de Tixhualactún and his brother have an altar in their *milpa* that is used in rituals to bless their harvest. Likewise, some of the interviewees considered that previous poor harvests were the result of low participation in religious rituals to bless the land in order to obtain fertile soil.

**G) Regarding the TT:** A large number of interviewees mentioned that they heard about the possible construction of a train; however, they do not know the specific details. The main sources of information regarding the train project are journals, TV stations, and what some students—returning from larger cities—have heard. Most of the interviewees claimed that they have not been officially informed about the train construction project. The lack of information prevented some of the interviewees from having a clear understanding of the entire process and, as a result, the consequences.

Some of the interviewees felt optimistic and thought the train could bring economic prosperity and a faster means of alternative transportation to their localities, while others remained indifferent. One group expressed concern that the train could bring social instability or new forms of crime to their towns. Some communities were most concerned with the impact the train could have on the safety of their children. The train's path and stops (stations) are other elements that preoccupied the locals. Some interviewees commented that the municipality of San Francisco is rumored to be one of the stops for the train. Likewise, the road that connects both Cuncunul and Santa Eleuteria might also be affected and/or interrupted by the train. This was a concern for some interviewees since Santa Eleuteria's children currently travel by themselves daily to Cuncunul in order to attend high school. Other elements that worry the locals deal with the construction of the train. For instance, they neither know the current commercial value of their land, nor the way they will be compensated in case the project is approved and carried out. Additionally, the locals expressed their concern with the fact that the train's path could interfere with their sacred worship areas, where ancestral rites and ceremonies are celebrated.

The locality of Chulután has already been visited by a group of people related to the train construction project. However, the group neither informed the local authorities of their presence nor notified the community. Chulután's municipal *comisario* was concerned about the project's possible impacts. He was worried because he considered: 1) that the construction workers would speak English or "fast" Spanish (which could be difficult for the locals to understand); 2) that the construction workers could either take advantage or intimidate the local people; and 3) that there is a lack of official and concrete information related to the train's construction process.

**H) Civil Society and the TT:** During the second night in Valladolid, the students met with Arturo Ciau Puc and Carlos Chablé Mendoza (from the *Peninsular Maya en Quintana Roo* Council). Both of them are members of the *Comisión de Seguimiento al Proyecto Transpeninsular* (Transpeninsular Project Monitoring Commission), a civil society organization

that is aware of the project and clearly understands the historical context of the region. Among this civil society's various proposals, they highlighted the following as important factors to be implemented: 1) encourage the *ejidatarios* and localities to unify themselves in order to act as a united structure and to gain more negotiating power *vis-à-vis* the authorities; 2) negotiate a monthly or annual payment (royalties) based on the train's trajectory and the land affected, instead of selling their properties.

## ***Challenges of a cost-benefit analysis approach to the TT***

In addition to the socioeconomic characteristics of the communities visited, it is important to also look at the justification used by the Mexican government for the implementation of the TT project. The cost-benefit analysis (CBA) contracted out by the Mexican government's Transportation and Communications Secretariat (SCT) for the TT provides an economic analysis of the project, but ignores many of the social costs associated with development led displacement projects, especially those that disrupt indigenous communities.

While the CBA accounts for all basic, direct technical costs (materials, time, labor, etc.) it does not account for common unaccounted costs which include landlessness, homelessness, joblessness, marginalization, food insecurity, increased morbidity and mortality, and social disarticulation (Cernea, 1991). Some specific examples of these negative social costs include environmental damage, increased crime and substance abuse, political instability, food shortages, and health problems (Markussen-Brown & Simms, 2011). It will prove difficult to assess the exact social costs on indigenous communities: namely, the exact number of people to be displaced, how far away they are forced to relocate, how local communities will be disrupted at the eight stops between Mérida and Punta Venado, and so on. Even if the specifics of the project are unknown, there are methods that could be used to get a better idea of scope of the negative impacts of the TT.

The CBA has a net present value of \$200 million (Análisis Costo-Beneficio, 2012). If the negative costs outlined here were estimated to exceed this amount, about \$164.66 per person (there are 1,214,608 residents along the proposed corridor), the project should not go forward. Whether or not these negative costs exceed \$164.66 per person depends on the degree that people will be negatively affected (directly or indirectly) and the perception of costs and values on the part of indigenous communities. The importance of creating an organized force that is well informed and united cannot be understated, as this is the key to making sure that their voice is heard throughout the process.

The first method, which is the standard for compensation in developed countries, is to pay the fair market value of the land (Chang, 2012). However, this is problematic for several reasons: it assumes that there is a fair and transparent market value which both parties agree to, it is probably undervalued by indigenous communities in terms of willingness-to-pay because poorer sections of society are more likely to undervalue assets, and it would be very difficult to assess the subjective cultural and spiritual value that indigenous communities attach to their land. Assessing "economic value," which takes into account fair market value plus subjective intangibles, would be a step in the right direction, but this value is inherently difficult to assess and there is not an established standard even in the US for people to be compensated with economic value in the case of property takings (Chang, 2012).

Another approach is to ascertain how much indigenous communities would value *not* being moved. In theory, this could be done through a regional market-wage analysis complemented by some qualitative research. It would be possible to conduct interviews of those who left the corridor for economic opportunities elsewhere, and to estimate the income difference between what they made before and after they left. This may run into difficulties due to well-documented problems from assessing value via questionnaires, although it would provide the project proponents with a clear idea of the extent of opposition to the TT. An additional obstacle to this approach is that many jobs in indigenous communities have an informal wage structure.

With regards to the social costs imposed from the potential impacts of increased drug and alcohol abuse, prostitution, and crime, there is a significant literature available on how to quantify these problems. Approaches to analyzing these



costs include an assessment of land values after a rise in crime, estimates of property damage as a result of crime, and increases in health costs as a result of substance abuse and other disease. It would be safe to say that an increase in the occurrence of these public health and safety issues would impose very significant social costs on Mayan populations. Two final issues at hand here are the question of community vs. individual values, which may be exemplified in generational differences, and the larger question that ultimately limits the scope of a CBA: do communities have the power to choose whether or not they want to take part in globalization, and if they do have a choice, can communities take part in globalization's advantages while maintaining their culture?





# V. CONCLUSION

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This report summarizes the work of a semester-long graduate capstone course at the University of Pittsburgh on the intersection of development planning and indigenous rights. This document outlines the particular challenges indigenous groups confront when faced with large-scale development projects that threaten to disrupt or displace their communities.

As the FPIC process is relatively new and does not have a legal mechanism to hold governments accountable, a comprehensive study of the cases in which FPIC has been carried out has allowed the students to draw the attention of practitioners to these best practices. In addition to the literature review, this report includes observations from a research trip, where students not only visited communities and interviewed residents, but also met with civil society organizations. In addition to the case studies, the students have created two practical and accessible materials for FORO and civil society organizations to use. The booklet in Appendix E will be used for community organizers to learn more about FPIC and see the basic information of a very complex concept. The comic in Appendix F further distills the complex information into an easily digestible, visual form for the Mayan communities. The present attached comic is in Spanish and will be translated into Maya Yucateco for further ease and understanding.

Taken as a whole, this package will assist FORO in their project of conducting the FPIC process and help the affected community to utilize this powerful rights tool in its infancy. Ideally, this report will help establish the framework to empower the indigenous peoples of the Yucatán to decide if and to what extent they take part in the process of economic growth and development in their communities. This is particularly significant due to the fact that this is the first time in Mexico's history that FPIC is being carried out. If FORO can successfully inform the people about this project and provide them a fair consent process, their methodology could serve as a model in developing countries around the world, empowering people to take control of the future of their livelihoods and their communities.





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# VII. APPENDIX

## A) Examples of Process Frameworks

<b>Issue:</b>	<b>National Policy on Territorial &amp; Environmental Management in Indigenous Lands (PNGATI)</b>	<b>Lanzhou-Chongqing Railway Development Project (LCR)</b>	<b>Song Bung 4 Hydropower Project (SB4HP)</b>	<b>Argyle Diamond Mine Project (ADMP)</b>
<b>Location:</b>	Brazil	Lanzhou-Chongqing, Central China	Vietnam	Pilbara, Western Australia
<b>Project Type:</b>	Federal Policy	Railway Project	Hydropower Project	Private mining operations
<b>Time Frame:</b>	September 2008 – June 2012	2007 – Present	2008 – Present	Sept. 2004 – Present
<b>Populations Impacted:</b>	800,000 individuals (Brazil's indigenous population)	28,404 indigenous households	1,460 individuals	Western Australia indigenous communities, including but not limited to the Miriwung, Gidja, Malignin and Woolah
<b>Type of Process:</b>	FPIC (Free, Prior & Informed Consent)	FPIC	FPIC	Rio Tinto initiated community agreement guidelines

<b>Stakeholders:</b>	<ul style="list-style-type: none"> <li>a) All indigenous peoples in Brazil</li> <li>b) Interministerial working group (GTI) <ul style="list-style-type: none"> <li>➤ 6 indigenous leaders</li> <li>➤ 6 government representatives (Ministry of Justice and Ministry of the Environment)</li> </ul> </li> <li>c) National Indigenous Foundation (FUNAI)</li> <li>d) National Indigenous Policy Commission (CNPI)</li> <li>e) National partner institutions (e.g., International Institute for Education in Brazil, Socio-environment Institute)</li> <li>f) International partner institutions (e.g., UNDP, Global Environment Facility, German Development Corporation)</li> </ul>	<ul style="list-style-type: none"> <li>a) Impacted populations</li> <li>b) Ministry of Railways</li> <li>c) LanYu Railway Company</li> <li>d) China's national government</li> <li>e) Ministry of Finance</li> <li>f) Civil Administration Bureaus</li> <li>g) Asian Development Bank (as lending institution)</li> </ul>	<ul style="list-style-type: none"> <li>a) Quang Nam Provincial People's Committee;</li> <li>b) Provincial Resettlement Steering Committee;</li> <li>c) Nam Giang District People's Committee;</li> <li>d) The Song Bung 4 Resettlement Management and Implementation Unit;</li> <li>e) Zuoih Commune People's Committee;</li> <li>f) Village Resettlement and Development Group</li> </ul>	<ul style="list-style-type: none"> <li>a) Rio Tinto (RT) mining company</li> <li>b) Indigenous people of Australia's East Kimberly region</li> <li>c) Australian government</li> </ul>
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<b>Process Execution:</b>	<ul style="list-style-type: none"> <li>a) Creation of the GTI by the federal government</li> <li>b) GTI preparation of a background document on the guidelines and objectives of the policy with collaboration from five major indigenous organizations</li> <li>c) Five regional consultations to show indigenous representatives the policy proposal and make adjustments <ul style="list-style-type: none"> <li>➤ 3 days each</li> <li>➤ 1,250 representatives from 186 groups</li> </ul> </li> <li>d) Approval of the policy draft in the consultations</li> <li>e) Approved by the CNPI</li> <li>f) Presidential approval and federal decree</li> </ul>	<ul style="list-style-type: none"> <li>a) Stakeholder identification</li> <li>b) Consultation and Participation Disclosure</li> <li>c) Surveys and Plan formulation <ul style="list-style-type: none"> <li>➤ Initial Surveys</li> <li>➤ Feasibility Survey</li> <li>➤ Environmental Impact Assessment</li> <li>➤ Resettlement Plan</li> </ul> </li> <li>d) Information Dissemination (Pamphlet and Web disclosure)</li> <li>e) Notification of Detailed Measurement Survey (DMS) regarding land acquisition and other aspects pertinent which potentially impact locals</li> <li>f) Continued Consultations and Discussions</li> <li>g) Public Meetings with stakeholders and community members</li> <li>h) Post-Resettlement Accommodations <ul style="list-style-type: none"> <li>➤ Resettlement training</li> <li>➤ Training for LCR temporary workers (ex: construction workers)</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>a) Multi-stakeholder workshops with participants from national, provincial, district and commune agencies and villages.</li> <li>b) Specific stakeholder consultations with participants from affected villages and communes</li> <li>c) Disclosure of project information and livelihood restoration</li> <li>d) Project information dissemination by workshops and pamphlets</li> <li>e) Notification of DMS</li> <li>f) Discussions on compensation</li> <li>g) Public Information Booklets distributed</li> <li>h) Full disclosure of Resettlement Site Plan to impacted populations</li> <li>i) Livelihood restoration program</li> </ul>	<ul style="list-style-type: none"> <li>a) Build a knowledge base - sound socioeconomic knowledge base to rely on for designing community agreement process</li> <li>b) Internal preparation - Include development of a community engagement plan by RT and secure resources to implement it. In the interests of RT to ensure that community manages its own internal preparation as well.</li> <li>c) Joint preparation - Reaching agreement with local community on shared aspirations reflects the mutual interests of the business and communities.</li> <li>d) Subsidiary agreements - Along the way about the process or agreements about specific subject areas</li> <li>e) Final agreement – comprehensive; reflects joint resolution of all areas of mutual interest between operation and community, also implementation commitments and institutional arrangements for the parties' ongoing relationship</li> </ul>
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<b>Participation Methods:</b>	<ul style="list-style-type: none"> <li>a) Inclusion of six indigenous leaders in the GTI</li> <li>b) Meetings with indigenous representatives and leaders in regional consultations</li> <li>c) Proportionality of indigenous peoples, places and states invited to participate with the indigenous population overall</li> </ul> <p>Representation defined by indigenous groups, with consideration for traditional leaders, council representatives, women and youth</p>	<ul style="list-style-type: none"> <li>a) Initial consulting meetings with local government</li> <li>b) Information dissemination includes opportunities for meetings and discussion</li> <li>c) Consultative meetings on resettlement mitigation measures</li> <li>d) Notification of resettlement mitigation measures</li> </ul>	<ul style="list-style-type: none"> <li>a) Multi-stakeholder workshops &amp; consultancies with impacted communities</li> <li>b) Project information dissemination by workshops and booklets</li> <li>c) Discussion on compensation resettlement site visits &amp; site development plan</li> <li>d) Public information booklets provided during Entitlement with impacted populations</li> <li>e) Public meetings, discussions of proposed plans</li> </ul>	<ul style="list-style-type: none"> <li>a) Recognizes surrounding communities as landlords of the land leased for the mine, despite their lack of native property rights</li> <li>b) Stipulates that Rio Tinto transfer their lease to indigenous communities upon completion of the project</li> <li>c) Enables these communities to then lodge a claim for native property rights to the Australian government, which Rio Tinto would support</li> <li>d) Traditional owners relationship committee created, comprised of 26 traditional owner representatives and 4 Argyle representatives</li> <li>e) Meet quarterly to jointly monitor the implementation of the agreement</li> <li>f) Committee specifically focuses on land rights, incomes generation, employment and contracting opportunities, land agreements, and indigenous side protection</li> </ul>
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## B) Case Study Summaries

### 1. Case Study: Exploración Sísmica 2D Campos Tacobo y Tajibo, Bloque San Isidro, Bolivia.

**Summary:** The Bolivian Ministry of Hydrocarbons and Energy (MHE) managed a highly successful consultation process around a planned 2D seismic survey in the indigenous territory of Charagua Norte and Isoso in Bolivia. Ultimately, the process resulted in a signed agreement between the Bolivian government and the Guaraní Peoples Assembly (APG), which documented the community's FPIC to the initiation of exploratory activities. This case represents a successful consultation process where the rights of the indigenous communities were taken into consideration and respected.

#### Highlights/Lessons:

- Initially, the MHE conducted workshops consisting of PowerPoint shows. However, these were conducted in only four communities and were mainly of an informative nature. The APG took a stand against the consultation process and asked for respect of traditions and indigenous institutions. The MHE recognized that "indigenous communities received only partial information, which did not include up-to-date maps of the communities, areas of possible impact, socio-environmental prevention and mitigation measures, or information on planning for the consultation process" (p.3). In addition, indigenous leaders requested to modify the timetable and asked that coordination and participation be improved within the communities. In response to these complaints, the MHE redirected the consultation process so that it would be acceptable by the Guaraní people.
- Consensus at each stage of the negotiation process.
- The territorial integrity and institutional structures of the Guaraní people were respected.
- Democratic participation was encouraged and community was well organized (assemblies).
- Communities had the capacity to decide how the process was taking place.
- Willingness of the MHE to respect the use of traditional Guaraní institutions.
- The consultation process was mainly successful due to the fact that the indigenous communities were well organized and had previous training on technical and legal issues by the *Centro de Estudios Jurídicos e Investigación Social* (CEJIS), a local non-governmental organization (external neutral actor, capacity building).

### 2. Case Study: Terrestrial Connection Project, Animas-Nuquí, Colombia (2005-2009), Department of Chocó

**Summary:** In 2004 the Government of Colombia began the procedures to re-launch the construction of the road las Ánimas-Nuquí in the Department of Chocó (Conciviles, 2006). The road las Ánimas-Nuquí, was promoted and developed between September 2005 and April 2009 by the National Roads Institute (INVIAS) (Snoeck, 2013). Due to the biological endowment of the region and the strong presence of an Afro-Colombian population, INVIAS was required to present an environmental impact assessment and a Free Prior Informed Consent (*Subdirección de Medio Ambiente*). On July 2008 and February 2009 Pre-agreements were signed between the governmental authorities and the Afrochocó Territorial Collective (Snoeck, 2013), declaring that the views and perspectives of the afro-communities on the road design were included, based on participatory processes (Conciviles, 2006).

Five main gaps in the FPIC procedure of Chocó were identified. First, the "consultation did not always occurred before the activities started and territories were affected." Second, the "pre-agreements were not fulfilled by authorities." Third, the "division of the works in several sections did not allowed for the engagement of all the affected communities." Fourth, the "land rights recognition was not completed. Fifth, there was "insufficient funding to comply with social engagements" (Snoeck, 2013).

#### Highlights/Lessons:

- Importance of Pre-agreements between the community and INVIAS
- Importance of agreeing on who is going to represent the community in the negotiation rounds.
- Based on the consultation process, the authorities agreed on the creation of five socioeconomic and environmental programs co-financed by INVIAS and the Community Councils.

- If community development programs are an outcome of the FPIC it is important to agree and document the sources of funding in the long run.

### 3. Case Study: Gender in Free, Prior, and Informed Consent

**Summary:** The utilization of a mechanism such as the FPIC does not guarantee the complete respect for human rights and benefit sharing within groups. This is more apparent when considering the gender inequalities that are present in the politics and culture of some indigenous communities around the world. In the cases of Sarayaku, Ecuador, Charagua, Bolivia, and Tintaya, Peru, is evident that mining projects affect women and men differently. Issues such as patriarchal system, lack of identification documents and rights of land ownership create barriers for indigenous women to equally participate in the process and enjoy possible benefits of FPIC. Hence, it is important for practitioners to consider that “collective consent” might still fail to address the exclusion of women and other marginalized groups within indigenous communities.

#### Highlights/Lessons:

- Importance of considering women and other disadvantaged groups in the process of assessing and implementing FPIC and other processes.
- National laws need to be considered in the process of consent. However, their existence does not mean that such laws are being followed. Land ownership and national identification documents are vital for women inclusion in legal processes and benefit sharing of development projects.
- It is important to investigate if indigenous women need to be trained in leadership, oratory, and Spanish language in order to ensure their participation in different civic organizations. Impact reports should consider the differentiated impact of development project for men, women and other minority groups.

### 4. Case Study: Resettlement in Song Bung 4 Hydropower Project in Viet Nam

**Summary:** The Project’s objective is to contribute to meet Viet Nam’s increasing power demand in an environmentally sustainable and socially inclusive manner. The Project’s scope is the construction of Song Bung 4 hydropower project in compliance with Asian Development Bank’s safeguard requirements and the restoration and improvement of livelihoods of affected people following ADB’s principle on displacement. However, this project is currently in progress, which makes it even more difficult assess properly.

#### Highlights/Lessons:

- Compensation, relocation site, relocation houses, infrastructures in the new place and the livelihood restoration activities are important elements.
- Grievance mechanism gives affected persons a way to show their dissatisfaction and find solutions to the problem.
- Having a third party regularly monitoring the process can determine past progress and suggest future movements.
- Prepare the resettlement plan based on traditional culture, such as providing leaflets in the local language and communicating with affected groups in local language.

### 5. Case Study: The Lanzhou-Chongqing Railway Development Project

**Summary:** The Lanzhou-Chongqing Railway Development Project is designed with the intention of installing an electrified double track from Lanzhou in the north to Chongqing in the south, providing an important link in the rail network for western China. As a result of the project receiving significant funding from the Asian Development Bank (ADB), the project must abide by FPIC standards. Consequently, resettlement plans for populations potentially impacted by the development project must be established prior to construction. Currently the project is ongoing, so extensive review of the project and its procedures with regard to abiding by FPIC is not readily available. However, given the



frameworks it has laid out for information dissemination, population resettlement and population compensation, this development project appears to have a promising outlook on achieving FPIC practices, and serves as a good process example that can be employed by other development projects.

#### **Highlights/Lessons:**

- This case is unusual because of a lack of external information regarding the case. For example, opinions could not be found in newspaper articles or other public media sources. As a result, it is difficult to assess the true developments on the ground.
- Additionally, this project is currently in progress, which makes it even more difficult to assess properly.

### **6. Case Study: Negotiations for Compensations: Rights or Rewards? Cajamarca's Rural Communities versus Yanacocha Mining Company**

**Summary:** Peru is a country rich in natural resources such as minerals. However, most of its mineral deposits are located close to multiple-scattered rural-peasant communities. For decades the Peruvian State has been absent due to indifferent and inefficient governments that were not able to fulfill the most impoverished peoples' needs. Consequently, local rejection for public authorities and/or private corporations (specifically extractive companies) became a common denominator among rural populations. One must acknowledge however, that mining companies have been the sole "state presence" image for many peasant communities. Local inhabitants therefore expected the private sector to provide them with the basic services such as hospitals, roads, school, and the like. In this regard, mining companies understood that keeping good relations with the neighboring communities was essential for their operation's profitability. But it had a cost and an investment. Here is where the concept of Corporate Social Responsibility (CSR) emerges as a means to bolstering harmonious cohabitation between communities and private companies.

#### **Highlights/Lessons:**

- This case examines how the private sector has adapted itself to "replace" the role of the Peruvian State's role for decades.
- Similarly, it provides an approach on how CSR can be perceived in such social and economic contexts. This means, whether CSR is used as a genuine framework for local community development or it is just a simple tool to "buy peace" from the neighboring communities.

### **7. Case Study: Preliminary Model for Benefit Sharing in India**

**Summary:** The Yumuna Expressway was constructed to connect the capital city to highly traveled tourist destinations with the aim of reducing travel time. The land that the highway was constructed on was primarily farmland, some of which was very productive land to the farmers. This land was bought by the government at low prices and sold later on at much higher prices. The landowners also quickly realized that not all land was being compensated at the same amount. Not only were factors like distance from the highway and presence of water a factor, but also each town received a different amount. The first compensation method was highly unequal and complex. Communities counteracted this by binding together and refusing to accept this treatment and, at one point, physically stopping construction by protesting for their rights. NGOs stepped in at this time and facilitated the flow of knowledge to communities. The project was also highly political and controversial due to the fact that it was initiated during the term of one political party; however, there was political turnover and the project was suspended until the party came back in to power. Political turnover, and retroactively fixing factors, such as the compensation methods, delayed the construction of the project. The project eventually took 11 years, three to four years longer than originally proposed. The highway currently stands as the longest and most expensive highway that the government has undertaken.

#### **Highlights/Lessons:**

- This case provides us with some evidence that an external mediator can be helpful for the rural or indigenous to leverage their demand.
- It also shows that community annealing is an important component of the negotiation process.

## **8. Case Study:** Australia's Mining Boom: Implications for Consultation and Benefit Sharing with Indigenous Communities

**Summary:** Australia is undergoing an historic boom in their mining industry, and indigenous communities are being affected. The only property rights are a holdover from British rule and cannot be relied on to serve as a benefit sharing mechanism. Inclusive, participatory community agreement processes are what the country should strive for to properly evaluate and compensate the indigenous communities affected by the booming extractive industries sector in the country.

### **Highlights/Lessons:**

- In 2004 a land agreement was established between the indigenous people of the East Kimberly region and the mining company Rio Tinto.
- Positive model to learn from for consultation and benefit sharing processes.
- The company recognizes the surrounding communities as landlords of the land leased for the mine, despite their lack of native property rights.
- The agreement stipulates that Rio Tinto transfer their lease to these communities upon completion of the project and enables these communities to then lodge a claim for native property rights to the Australian government, which Rio Tinto would support.

## **9. Case Study:** Literature Review of Appropriateness of Protocols in Practice

**Summary:** This report draws heavily on the literature from the North-South Institute produced with the help of the Amerindian Peoples Association and the Forest Peoples Programme, which uses the Guyanese experience in mining and forestry to explain how indigenous communities can determine the direction of development projects through the use of FPIC, ESIA, and IBA. The main processes detailed here are the Environmental and Social Impact Assessments, explaining how indigenous communities can be involved in this process and use it as a lever for negotiation, and the Impact Benefit Agreement, detailing how indigenous communities can negotiate to benefit from a project, should they decide to allow it to proceed. The essential point in this literature is that it is crucial for communities to be clear in communicating their goals and expectations, and have the organization and dedication needed to be united and plan collectively.

### **Highlights/Lessons:**

- The case is very detailed, but stresses that the two most important elements for success include (1) communities need to be clear in communicating their expectations and goals from the beginning to governments, NGOs, and project proponents, and (2) the organization and dedication to be united and plan collectively is crucial.

## **10. Case Study:** The creation of Brazil's PNGATI and two short cases: Suruí Forest Carbon Project and the Timbira Ceste Fund

**Summary:** Two Brazilian cases, a forest conservation project and a fund created with compensation from a hydroelectric plant, provide key lessons on consensus and benefits sharing. Benefits have the potential to be more equitable for current and future generations if they are put into overall community development, rather than distributing to individual community members for their needs. Also, both communities took as much as needed for decisions making, in accordance with their traditions—one community had a consent process that lasted four years, and the other had 10 years of consultation. In these cases, community groups use their leverage as conservationists and preservationists of biodiversity to bargain with the state. Further, the new law in Brazil on management of indigenous lands (PNGATI) involved a process of extensive consultation with indigenous groups; it may be indicative of new international trends of inclusion and respect for indigenous rights.

### **Highlights/Lessons:**

- Benefits put into an overall community fund, rather than individual needs, can help sustain long-term community development
- Communities have the right to take as long as need for decision-making—one community took 10 years, the other took 4 years



- Communities with natural resources (like the Amazon in these cases) can use their land as leverage to bargain with the state
- New law in Brazil for managing indigenous lands (PNGATI) involved extensive consultation with indigenous groups and may be indicative of new international trends of inclusion and respect for rights.

## **11. Case Study: Lower Sesan 2 Hydropower Project**

**Summary:** The Lower Sesan 2 Hydropower Project in northeastern Cambodia will be capable of 480MW of power generation. However, serious questions have arisen surrounding the project due to social and environmental impacts. Tens of thousands of local indigenous groups in northeastern Cambodia will be affected through displacement and the loss of resources tied to the fragile waterway ecosystem. These losses – most prevalently – include issues with suitable relocation and fisheries ecosystems, all of which are important for the livelihood of the affected peoples. For example, according to Baird and Meach (2005), 78 percent of the fish caught upstream of the dam site in the rivers migrate from downstream of the dam site. If these fish disappear due to migration pattern disruption, it is estimated that nearly US\$2.06 million per year will be lost to the nearly 30,000 people along the affected waterways (Baird, 2009). Furthermore, meetings with the affected peoples revealed that 100 percent of those attending were against the project.

### **Highlights/Lessons:**

- This case is, in general, a failure. It shows how breakdowns in community engagement, transparent information, and efficient compensation can lead to worst-case scenario outcomes.

## **12. Case Study: The Greater Mekong Sub-region Rehabilitation of the Railway in Cambodia Project**

**Summary:** In 2009 the Greater Mekong Sub-region Rehabilitation of the Railway in Cambodia Project (The Project) was approved in order to rehabilitate the existing, dilapidated railway in addition to adding 48 kilometers of new track. The purpose of The Project was to increase railway connectivity amongst the region and establish Cambodia as a regional hub. The national economy and everyday citizens were supposed to benefit from The Project. However, the people displaced as a result of the railway construction are worse off than before its implementation.

### **Highlights/Lessons:**

- Method of Calculating: to determine which people would be relocated, the Cambodian Government chose to use a Corridor of Impact (COI) method. The COI is defined by a distance of 3.5 to 5m from the centerline of the railroad tracks
- Coercion: the Cambodian Government visited affected communities to gain consent for their resettlement packages. The only documentation of each citizen's reimbursement was often a handwritten post-it note with the resettlement amount granted. Citizens were required to fingerprint the document if they agreed with its contents and then given no receipt for their own records. Many people complained of being coerced into fingerprinting these documents and told that if they refused to comply they would lose their homes and receive nothing from the government (Bugalski and Medallo, 2012)
- Inadequate Compensation: 85% of the totally Affected Households were given less than \$1000 in total and 25% less than \$400. Those people that resided within Phnom Penh were given \$70 for transportation costs. This is a small sum of money considering the fact that these citizens were moved approximately 25 km from their original location
- Inadequate Information Dissemination: resettlement was approved for the majority of Affected Households between 2007 and 2009. Although FPIC was carried out for The Project, the quality of information shared with the Affected Households was limited. Public Information Booklets (PIB) and community meetings were the main methods utilized to inform citizens of their resettlement. However, the language used was quite technical. While PIB's are useful in theory, out of 200 people sampled 20% of women and 40% of men admitted to being illiterate
- Reimbursement Timing: many of these families were not reimbursed until several years after relocation. Inflation rates were not accounted for in spite of these delays. Many Cambodian's went deeply in debt trying to rebuild their lives.

## C) Reading List

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## D) Key Persons and Potential Promoters

<i>San Diego-Cuncunul</i>	<p><b>Doña Laura:</b> <i>comisario's</i> wife, community leader, and school teaching assistant.</p> <p><b>Maestro Francisco:</b> a teacher with a broad knowledge of the community and the socioeconomic conditions of each family. Note: Maestro Francisco is not originally from the community.</p>
<i>Kaua- KAUA</i>	<p><b>Señoras del Centro de Equidad de Género:</b> (Equity of Gender Center's Ladies): located on the same street of the <i>comisario's</i> office. They served the community as school and housewives contact in order to diminish domestic violence.</p>
<i>Tohopkú-Tunum</i>	<p><b>Lorenzo Cantún:</b> Municipal secretary. He is responsible for writing the city's documents.</p> <p><b>Don Brijo y Néstor:</b> Don Brijo and his son are both artisans of the locality of <i>Chiche</i>.</p>
<i>X-Cañakoo-Tinum</i>	<p><b>José Santos:</b> <i>Ejidatario</i>. An elder, when we asked to whom we could speak in the community, most people referred him to us.</p> <p><b>Mariano Mocam:</b> A senior citizen with a limited Spanish proficiency yet, leader of a large family in <i>X-Cañakoo</i>.</p>
<i>Cuncunul</i>	<p><b>Eusebio Vásquez:</b> the largest land owner and former municipal <i>comisario</i>. It is expected that the train will traverse his land.</p>
<i>Ebtún</i>	<p><b>Filiberto Noh:</b> <i>Comisario</i>.</p> <p><b>Mary:</b> Daughter of a <i>Bejuco</i> artisan who owns a business on the main road (periferico).</p>
<i>Tixhualactún</i>	<p><b>Andrés Masum:</b> Municipal <i>Comisario</i>.</p> <p><b>Don Juan de Dios e hijos:</b> Don Juan and his family own many properties (land). His two children have a higher education and live in the locality.</p>
<i>Chulután</i>	<p><b>Comisario Ejidatario</b> (<i>Ejidatario comisario</i>) He is reluctant to the train's project.</p> <p><b>Leopoldo Campo:</b> he perceives the construction of the train as an opportunity.</p>
<i>Bolmay, Yalcón, Lol-Bé</i>	No clear persons or partners identified.

# Tren Rápido Transpeninsular





# ¿Qué es el Tren Tranpeninsular?

Mérida

Izamal



Según el gobierno, el tren va a costar menos que otras formas de transporte, como el automóvil por autopista, automóvil por carretera libre y por autobús para pasajeros regulares. Presupuesto total del proyecto: 18,121,836 miles de pesos.



Hay un total de 1,214,608 residentes a lo largo del corredor en cuestión. Por ende, éstos se verán afectados por la construcción del tren.



Habrán 11 estaciones de tren: Mérida, Tixkokob, Cacalchén, Izamal, Tunkás, Chichén Itza, Aeropuerto Internacional, Vallavolid, Cobá, Punta Venado, y Cancún.



El tren interrumpe la vida de animales (pasa por la reserva de jaguar) y de la gente.



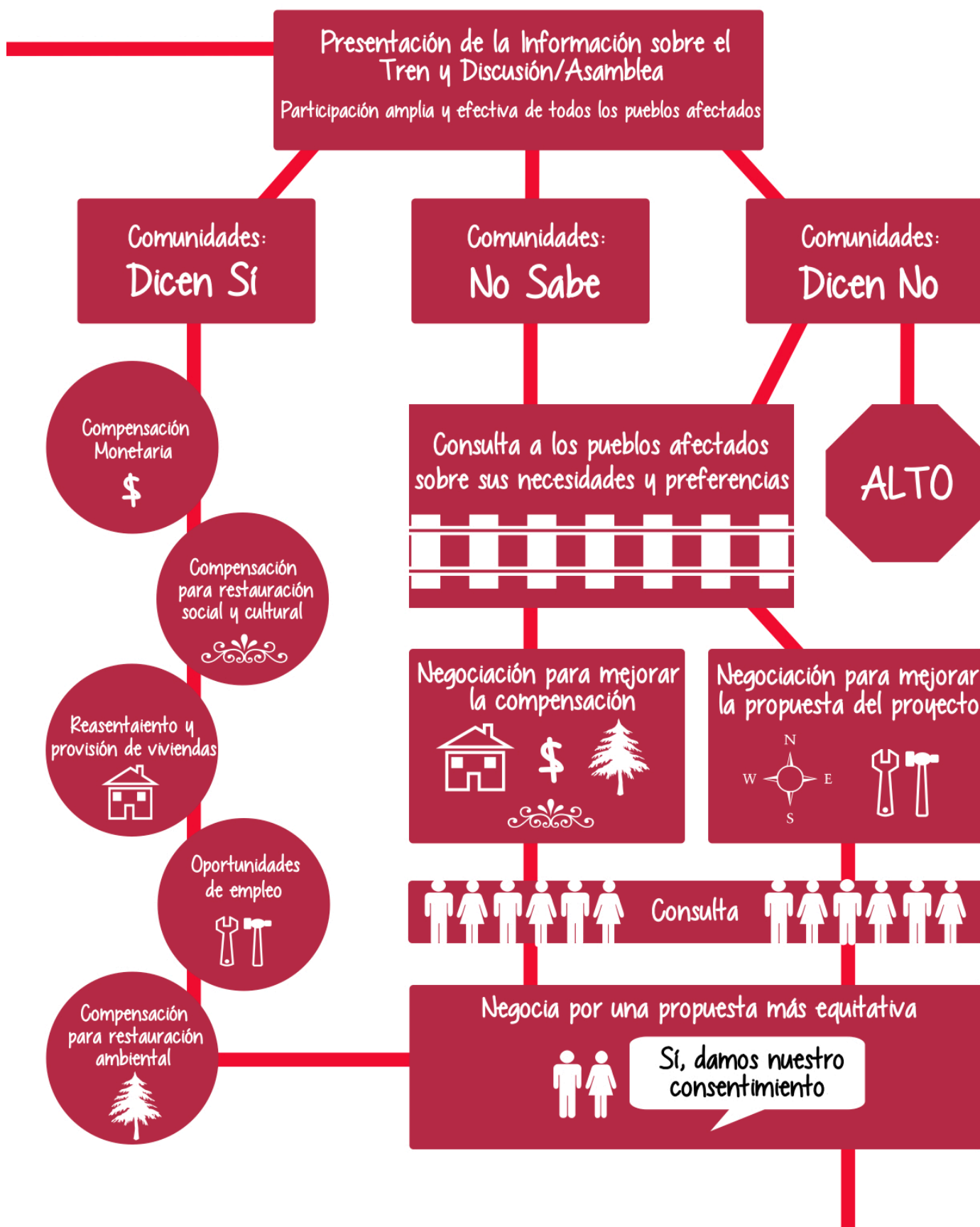
El derecho de vía del tren va a bloquear al acceso a los milpas y otros lugares, como colmenas y las escuelas.

Tixkokob

Vallavolid

Chulután

# ¿Cómo se toman las decisiones dentro del proceso del consentimiento?



# Consentimiento Comunitario

## ¿Cómo debe ser la consulta?

LIBRE:  
sin intimidación

Un actor neutral con conocimiento técnico y político, como un organización no gubernamental (ONG) o de la sociedad civil

PREVIO:  
antes de empezar el proyecto  
con tiempo suficiente de tomar decisions



Todo el tiempo necesario

INFORMADO:  
con acceso a toda la información

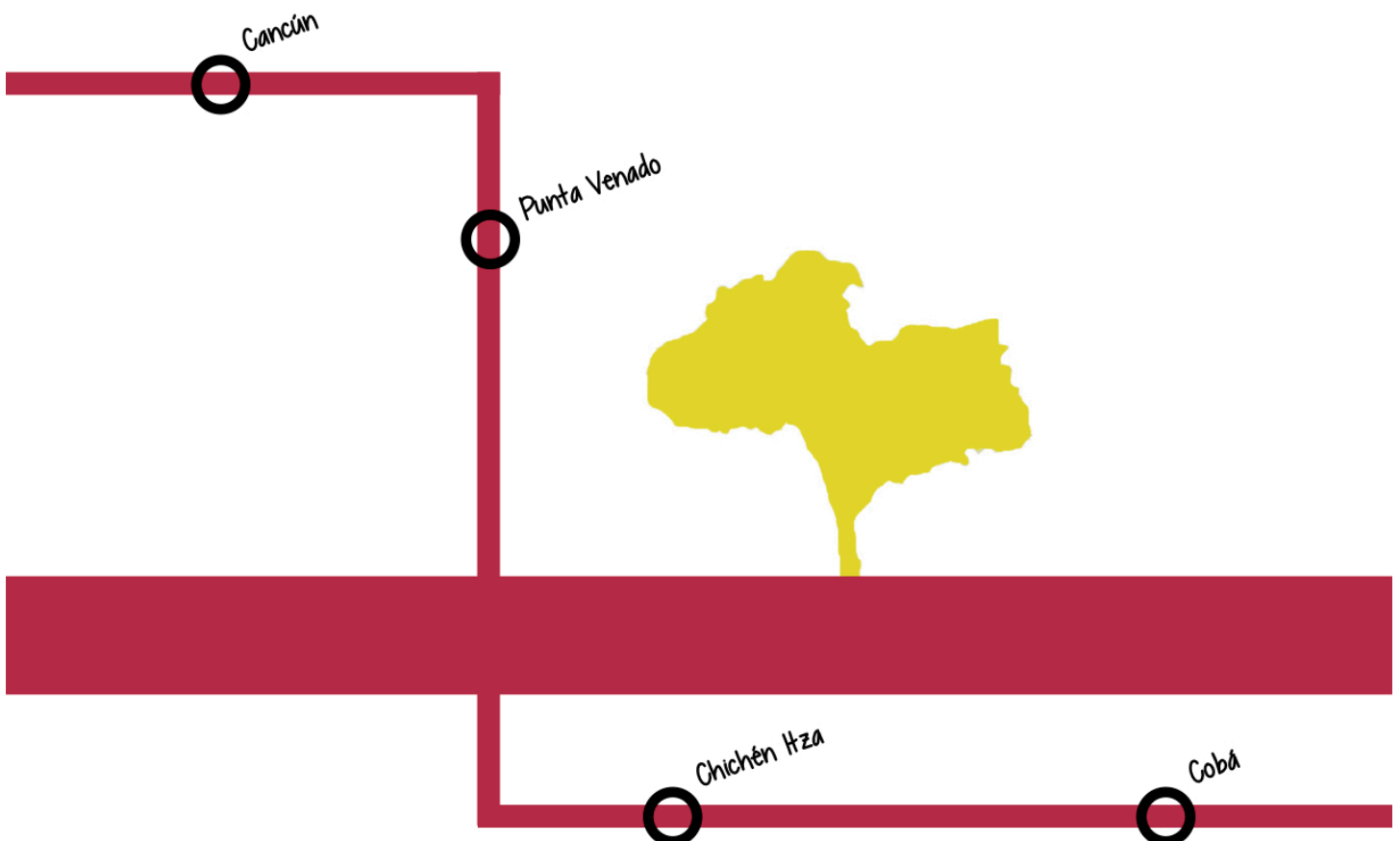


Toda la información necesaria  
Muchos libros y mucha información

CONSENTIMIENTO:  
el resultado del consenso después de la  
de la asamblea comunitaria



La gente afectada tiene el derecho  
a decidir si da o no el  
consentimiento para el proyecto



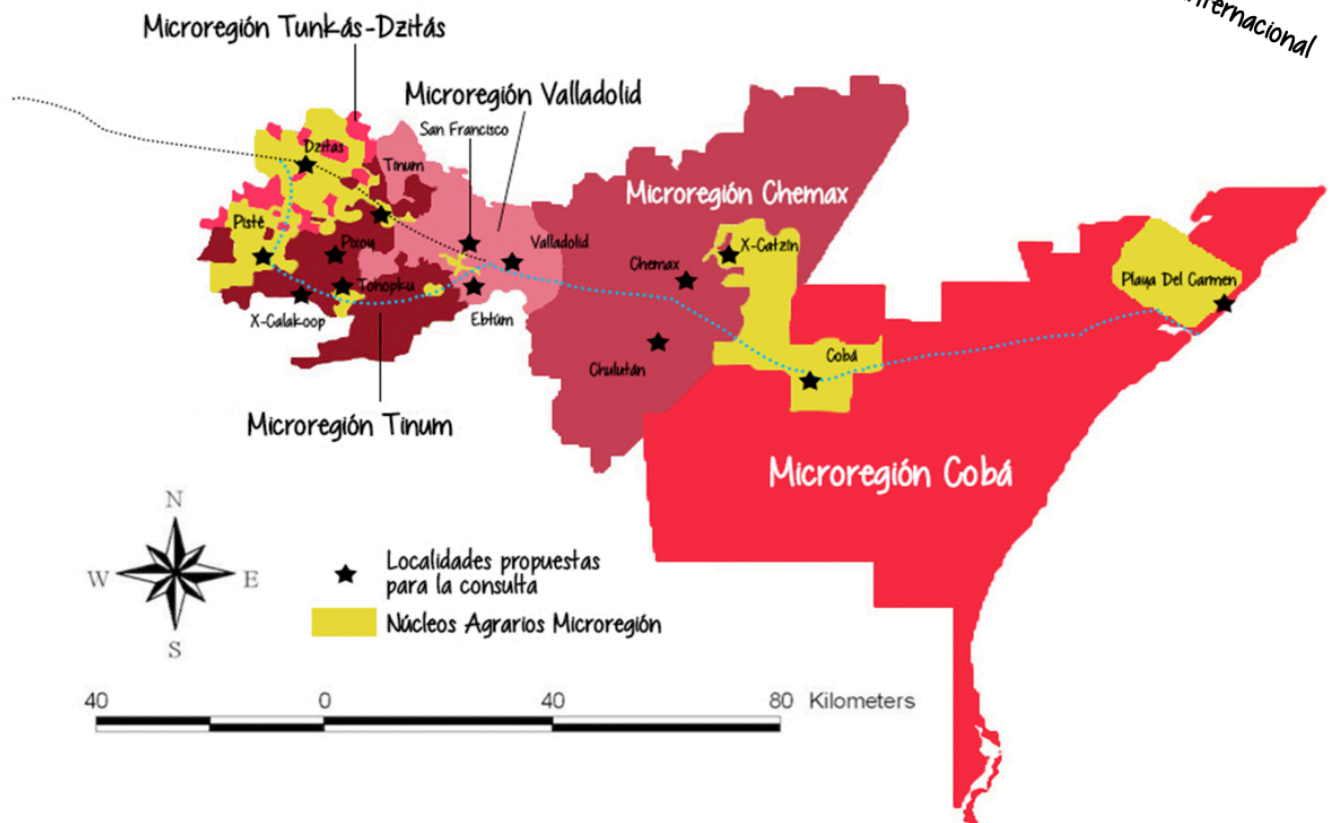


Tunkás

# Localidades para la Consulta

Cacalchén

Aeropuerto Internacional



Pisté | Dzitás | Tinum | X-Calakooop | Pixoy | Tohopku  
San Francisco | Ebtún | Valladolid | Chemax | Chulután  
X-Catzin | Cobá | Playa del Carmen



## Artículo 2 de la Constitución

Este artículo fue reformado en 2001 y reconoce la pluralidad étnica de México

- A. Este apartado habla sobre la libre determinación de los pueblos indígenas y autonomía para lo siguiente:
- I. Decidir formas de convivencia y organización social, política y cultural
  - II. Aplicar sus propios sistemas de regulación (respetando a las mujeres)
  - III. Elegir a sus autoridades de acuerdo a sus tradiciones
  - IV. Preservar y enriquecer sus lenguas y su cultura
  - V. Conservar y mejorar su hábitat y conservar sus tierras
  - VI. Acceder a las formas de propiedad de la tierra establecidas en la constitución
  - VII. Elegir en los municipios con población indígena a sus representantes del ayuntamiento
  - VIII. Acceder a la jurisdicción del estado y tienen todo el derecho a ser asistidos por interpretes
- B. La federación, los estados y municipios promoverán la igualdad y eliminaran prácticas discriminatorias contra los indígenas. Para eliminar los rezagos de los pueblos indígenas, los gobiernos en los tres niveles tiene la obligación de:
- I. Impulsar desarrollo regional de las zonas indígenas con la participación de las comunidades
  - II. Incrementar los niveles de escolaridad
  - III. Garantizar la acceso efectivo a servicios de salud
  - IV. Mejorar espacios de recreación
  - V. Fomentar la incorporación de las mujeres al desarrollo
  - VI. Extender red de comunicación
  - VII. Apoyar actividades productivas indígenas
  - VIII. Apoyar a migrantes de comunidades indígenas
  - IX. Consultar a los pueblos indígenas en la elaboración del Plan Nacional de Desarrollo



# NACIONES UNIDAS

## Convenio 169 de la Organización Internacional del Trabajo

La OIT es una organización del sistema de Naciones Unidas que se dedica a promover la justicia social y los derechos humanos y laborales. En 1957 se establece el Convenio 107 sobre los Pueblos Indígenas y Tribales. Fue escrito durante un tiempo que se entendía muy poco sobre los pueblos indígenas y en el tiempo de que se creía en que el desarrollo debía integrar a los indígenas.

En 1986 la OIT se revisó el convenio con los movimientos indígenas que luchan por su reconocimiento e identidad diferente. En 1989 se adoptó el Convenio 169. Lo han ratificado 20 países y eso significa que cada país tiene un año para linear sus políticas para hacer valer los principios del convenio.

Los principios de Convenio 169 de la OIT son los siguientes:

- Hace referencia a los pueblos indígenas y tribales
- Reconoce y respeta la diversidad étnica y cultural
- Los pueblos indígenas y tribales se auto-identifican
- Reconoce que los pueblos indígenas han sufrido discriminación, así que el primer principio dice no a la discriminación.
- Establece que los gobiernos deben adoptar medidas especiales para salvaguardar a los pueblos, instituciones, trabajo, cultura y medioambiente indígena.
- Reconoce la cultura específica de los pueblos indígenas (su modo de vida, costumbres, tradiciones, instituciones, modos de uso de la tierra, formas de organización, etc.

El punto más importante del Convenio es sobre la consulta y la participación. El Convenio exige que los pueblos indígenas y tribales sean consultados en relación con los temas que los afectan. También exige que estos pueblos puedan participar de manera informada, previa y libre en los procesos de desarrollo y de formulación de políticas que los afectan.

El proceso de consulta debe ser apropiado, en su lengua, con gente que verdaderamente represente a todos los indígenas afectados, en una consulta real, no sólo una reunión informativa.



