The Prior Consultation of Indigenous Peoples in Latin America

Inside the Implementation Gap

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Chapter 18

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Introduction

Latin America is a region of great cultural and ethnic diversity, home to over 45 million members of Indigenous Peoples (UNDP, n.d.). Thanks to the mobilisation of their organisations globally (Brysk, 2000), and their contestation of norms, Indigenous Peoples have gained significant recognition and protection of their rights in international (ILO 169, UNDRIP) and regional instruments (ADRIP). However, national normative frameworks and, particularly, government practice fall far short of these standards. This inconsistency was identified by the first Special Rapporteur on the Rights of Indigenous Peoples, Rodolfo Stavenhagen, who referred to the "implementation gap" (Economic and Social Council, 2006, para. 5), a much-used concept by scholars working on Indigenous rights, to describe the continuing difficulties in realising Indigenous rights at the domestic level (Espinoza & Ignacio, 2015).

The general aim of this study has been to draw comparative lessons regarding the dimensions and nature of the implementation gap in the case of Indigenous Peoples' right to consultation and FPIC, together with its multiple causes and consequences for the protection of other individual and collective rights and, particularly, their lands, identities, and ways of life. The different chapters included in the volume deal with the analysis of specific issues and/or countries and are grouped together in terms of what they can tell us about processes to define, administrate, institutionalise, avoid, and re-think prior consultation.

Several questions were asked in the introduction in order to guide this collective analysis of the implementation gap, including the following:

- What does the application of international standards on consultation and FPIC mean for different actors at international, national, and local levels?
- What success stories can be told and what factors lie behind these successes?
- Conversely, what happens when these standards remain unfulfilled or are only partially applied? What lies behind these failures?

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- And finally, even when consultation processes fall short of international standards, may they have other, positive impacts? As a result of their absence or limitations, can they contribute to the empowerment of Indigenous Peoples?

The next pages will first highlight and discuss the main findings and contributions of the different chapters and sections of the book, before providing answers to these questions, in a transversal reading of the text. Finally, a discussion is opened on the need to shift from a "top-down" to a "bottom-up" approach to the enjoyment of the right to prior consultation and FPIC in Latin America; specifically, by approaching the issue from the perspective of Indigenous empowerment.

Significant findings

Defining prior consultation

The first section of this volume narrated processes to define meanings and standards on prior consultation and FPIC, at both the international and regional levels. The first chapter charted the active participation of Indigenous organisations in multilateral negotiations over the creation of international documents – particularly the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) – but their somewhat limited impact on the scope of participation, consultation, and consent in the texts finally adopted by States (see the chapter by Del Castillo). The impact of extractive industries and development projects on Indigenous rights was analysed in the next chapter, which looked to establish the responsibility of private enterprises with regard to consultation and FPIC within the Business and Human Rights framework, referring to both social licences and sustainability as useful approaches (see the chapter by Cantú). The transformative role of the Colombian Constitutional Court within Latin America was discussed in the next chapter, with special attention being paid to the proposal of binding consent rather than the controversial veto power, which may create conflicts with both the State and other minorities (see the chapter by Herrera; and, further, Leydet, 2019). On the same issue of defining consultation and FPIC, the final chapter of this first section pointed out the limits of Peru's Law of Prior Consultation (which is generally considered to be pioneering in Latin America), arguing that consultations should be understood as an exercise in self-determination, autonomy and resistance, with processes controlled by Indigenous Peoples themselves (see the chapter by Doyle).

Administrating prior consultation

The next section brought together a series of experiences of prior consultations in practice. These processes, in general terms, present a series of flaws and irregularities with respect to international and regional standards. The

first chapter in this section found that Environmental Impact Assessments (EIAs) – which should in theory help to protect Indigenous Peoples' interests – in fact account for many deficiencies in consultations over the extraction of natural resources in Bolivia, given that they fail to identify all impacts and reflect the government's pro-extraction bias (see the chapter by Schilling Vacaflor). In an in-depth analysis of a consultation with the Sikuani in Colombia's Orinoquía, the next chapter discovered that the company and government authorities monopolised the process, ignoring the Indigenous Peoples' world vision and offering them few opportunities to participate (see the chapter by Calle). For its part, the chapter on consultation in Peru highlighted that, although processes are clearly deficient, they have opened up an opportunity for new and unexpected spaces for recognition politics in the form of social contestation (see the chapter by Flemmer). The next chapter referred to the case of Chile, where, although a series of consultations have been carried out as of 2009, they have failed to provide substantial results and have actually undermined the State's credibility in pursuing its international and national obligations vis-à-vis Indigenous Peoples (see the chapter by Tomaselli). Similarly, in the Mexican case, the analysis showed that the series of deficiencies regarding consultation processes in practice reflects, precisely, the lack of commitment to Indigenous rights on the part of the government in more general terms (see the chapter by Monterrubio).

Institutionalising prior consultation

The next section of the volume aimed to discuss experiences in which laws or mechanisms to define prior consultation have been created. Following Peru's consultation law of 2011, there has been significant activity in this sense in the region. For instance, in the case of Paraguay (see the chapter by Villalba), a prior consultation mechanism was created as this book was going to press (late December 2018) and in Panama a law was adopted in 2016. The issue of the institutional framework at domestic level is particularly important for two main reasons: first, because the normative framework itself is a highly contested field (see further below); and second, because without a solid consultation processes, and concrete follow-up actions, the resulting laws or mechanisms may lack legitimacy in the eyes of Indigenous Peoples. In the case of Costa Rica, it was the executive branch which decided to create a mechanism, given the inefficiency of the legislative branch in legislating on Indigenous rights. In order to do so, a consultation was carried out on the consultation mechanism, which took over 24 months and gained the FPIC of the vast majority of Costa Rica's Indigenous Peoples (see the chapter by Vega). In the case of Honduras, international actors were a key source of pressure to create the law on consultation (which is still pending), and even though there was a process of consultation it lacked legitimacy in the eyes of several Indigenous organisations. Furthermore, while the executive was

presenting its proposal for a consultation law before congress, another proposal was presented in parallel by political opposition (see the chapter by Barreña), which – we would add – seriously undermined the government's project.

Avoiding prior consultation

The fourth section of this book brought together experiences where mechanisms and processes of prior consultation have been systematically avoided, in a context that is unfavourable to Indigenous rights more broadly. In Ecuador, although Indigenous Peoples were involved in creating the favourable normative framework established in the 2008 Constitution, these rights have been largely unobserved and there is no prior consultation law or mechanism. The case of the Yasuní is illustrative in this sense, given that consultation was avoided in order to prioritise the neo-extractivist project, opening up a considerable public debate on the issue (see the chapter by San Lucas). In Argentina there is no legal recognition of consultation at federal level (despite State ratifications of ILO 169 and UNDRIP) and likewise prior consultation remains elusive in the context of land disputes. This does not mean, however, the Indigenous Peoples remain passive, as in the case of Salinas Grandes-Laguna de Guayatayoc, where the Kolla and Atacama Indigenous Peoples have mobilised – reaching Argentina's Supreme Court (see the chapter by Rosti). The final chapter in this section dealt with the case of Brazil, highlighting how, in a context of threats to Indigenous and human rights in general, the government has chosen to avoid prior consultation processes (see the chapter by Mello).

Re-thinking prior consultation

The final section of the volume included two chapters which invite us to rethink how prior consultation and FPIC are conceived and carried out. In the case of Guatemala (see the chapter by Xiloj), the practice of community consultations offers a reminder that legitimacy over participatory practices must always come "from below"; that is to say from Indigenous Peoples themselves rather than international standards per se. The case study on Canada provides a contrast with the other cases included in the volume, given that it falls outside the historical, cultural, and legal context of Latin America and is the only State included in the volume not to have signed ILO 169 and which initially voted against the UNDRIP, although it revised its position in late 2010 (Government of Canada, 2010). Furthermore, there are two distinguishing features of the Canadian experience which set it apart from the Latin American one: the continuing presence of old treaties and agreements from colonial times; and the response of Indigenous Peoples, which has oscillated between confrontation, collaboration, and reappropriation (see the chapter by Papillon and Rodon). However, it also shares

several features with the majority of countries included here (which will be discussed further below), reflecting that the implementation of the right to prior consultation and FPIC of Indigenous Peoples face similar challenges even in very diverse parts of the world.

Inside the implementation gap

Having summarised the main findings of each chapter, our attention now turns to the questions established in the introduction. A series of replies are offered in the pages that follow, based on a transversal reading of the different chapters within the volume.

What does the application of international standards on consultation and FPIC mean for different actors at international, national, and local levels?

One of the defining characteristics of consultation and FPIC is that their meanings continue to be contested. For their part, international and regional standards are generally clear (see the chapter by Doyle), but need to be further fine-tuned on certain points (see the chapter by Cantú). For instance, definitions of consent are undoubtedly a weak spot where interpretations have been less consistent (see the chapters by Herrera and Cantú). Likewise, the role of businesses is generally unclear in international standards, and has not been systematically approached (see the chapter by Cantú). This issue is particularly important, remembering that consultation and FPIC are particularly – although not exclusively – linked to the activities of (mainly) international firms in Indigenous territories (see the chapters by Schilling-Vacaflor, Flemmer, and Calle). One of the main reasons for the continuing debate over definitions at the international level is, undoubtedly, the omission of certain Indigenous demands in processes to adopt instruments such as ILO 169 and UNDRIP (see the chapter by Del Castillo). For their part, both regional (IACtHR) and national courts have shown considerable innovation when interpreting these rights, particularly the Colombian Constitutional Court and its proposal of binding consent (see the chapter by Herrera).

Although many Latin American States have publicly reaffirmed their commitments to prior consultation through jurisprudence (see the chapters by Herrera, Doyle, Vega, and Xiloj), legal frameworks and constitutional reforms (see the chapters by Doyle, Flemmer, Calle, Tomaselli, and Mello), and the creation of protocols and mechanisms (see the chapters by Monterrubio, Vega, Barreña, and Villalba), consultation in practice tends to be understood as a box-ticking exercise, little more than a pre-requisite before giving the go-ahead to a project (see, particularly, the chapters by Schilling-Vacaflor, Calle, Flemmer, Tomaselli, and Monterrubio). In this sense, the generalised lack of acceptance of consent as the ultimate objective of consultation processes is evident in many cases (see the chapters by

Schilling-Vacaflor, Flemmer, Calle, Tomaselli, Monterrubio), although there are some noticeable exceptions, such as the Process to Create a Prior Consultation Mechanism in Costa Rica (see the chapter by Vega) or the consultation over a proposed hydrocarbon project in Tres Islas, Peru (see the chapter by Flemmer).

For their part – and although this volume cannot claim to speak on their behalf – it is significant that Indigenous Peoples are also involved in processes to define prior consultation and FPIC. In this sense it is important to remember that the impulse for the recognition of these rights at international level came from Indigenous movements themselves (see the chapter by Del Castillo), although both international and regional standards place the responsibility and locus of consultation processes clearly with the State (see the chapter by Cantú). In the cases studied here, Indigenous Peoples have shown different relationships with and understandings of both consultation and consent: in many cases, consultation processes are viewed as a rather narrow opportunity for participation or negotiating compensation (see the chapter by Calle); for many organisations, consultation is seen as a useful tool in their repertoire of protest by stopping projects through legal proceedings (see the chapters by Rosti, Mello, and Xiloj); in others cases, claims have been made based on the lack of consultation and consent to garner public support for their demands (see the chapters by Flemmer and San Lucas); and – increasingly – consultation has been re-signified by Indigenous peoples themselves, asserting the framework of their self-determination (see the chapters by Xiloj, Doyle, Tomaselli, Rosti, Mello, and Papillon and Rodon). In this sense, *refusing* to participate in prior consultations has actually become a successful way of stopping projects in Peru (see the chapter by Flemmer) and this apparent rejection may be best understood as a reappropriation of the right (on the case of Mexico, see the chapter by Monterrubio, and Wright, 2018). Again, on this point there is a degree of contention as the Peruvian Constitutional Court has ruled that Peruvian consultation is not so much a *right* as an *obligation* for Indigenous Peoples (see the chapter by Doyle).

What success stories can be told and what factors lie behind these successes?

This is another question that was – somewhat optimistically – asked at the outset of this volume and the answer is – rather unfortunately – quite simple: few success stories can be told regarding prior consultation when implemented through political-administrative processes in Latin America. Indeed, in the following section we outline the myriad failures of consultations that very often pay lip service to international standards or, at the very best, reflect serious technical difficulties despite actors' best efforts. However, there may be room for optimism, for two main reasons:

First of all, it is clear that prior consultation and FPIC is firmly on the public and government agenda in Latin America. Despite their evident flaws, governments in the region have at least carried out processes under the nomenclature "prior" or "indigenous" consultation (see the chapters by Doyle, Schilling-Vacaflor, Calle, Flemmer, Tomaselli, Monterrubio, Vega and Barreña); courts have on many occasions ruled to protect the right to consultation, with reference to international law (see, particularly, the chapters by Herrera, Doyle, Mello and Vega); and there has been a recent push to create laws, regulations, methodologies, and mechanisms to institutionalise prior consultation (see the chapters by Doyle, Flemmer, Tomaselli, Monterrubio Vega, Barreña and Villalba). Although they are by no means free from criticism, some relative success stories in the region in this sense are the jurisprudence of the Colombian Constitutional Court (see the chapter by Herrera), Peru's pioneering Law of Consultation (see the chapters by Doyle and Flemmer), the 24-month long consultation process on the Prior Consultation Mechanism in Costa Rica in which 22 of the country's 24 Indigenous Peoples gave their consent (see the chapter by Vega) and specific consultation processes such as Tres Islas in Peru (see the chapter by Flemmer).

Second of all, in general terms, Indigenous Peoples continue to look to prior consultation and FPIC as a means to make claims and defend their rights in different spheres, mainly through domestic courts (see the chapters by Mello, Vega, Rosti and Xiloj). Likewise, they are increasingly reasserting prior consultation from a bottom-up perspective, that is to say they have begun to create their own community consultations and protocols within the framework of their self-determination (see, particularly the chapter by Xiloj, this volume, but also the chapters by Doyle, Tomaselli, Rosti, Mello, Villalba, Doyle, and Papillon and Rodon). The fact that Indigenous Peoples do not reject consultation outright may be considered a (mini) success story.

Conversely, what happens when these standards remain unfilled or are only partially applied? What lies behind these failures?

It would be no exaggeration to say that – in general terms – prior consultation processes in practice fall short of international standards on the matter. In several cases, consultations have been systematically avoided (see the chapters by Rosti, Mello and San Lucas). And wherever so-called consultations do take place they are fraught with difficulties and inconsistencies, including: the (short) timeframe; few opportunities for effective participation; the repetition of issues; a lack of transparency; the selection of leaders who are not representative of/legitimate within communities; the omission of documents; false declarations; the lack of proper information; the lack of mutual trust; no conclusion or follow up; threats to terminate consultations without reaching agreements; a lack of an intercultural perspective; and – in

general terms – a lack of good faith (see, particularly, the chapters by Tomaselli and Monterrubio). Special mention must also be made of the thorny issue of EIAs, which – rather than providing much-needed protection for the welfare of Indigenous Peoples and their environment – tend to be based on biased information that reflects the economic interests and pro-extraction bias of national governments (see the chapters by Schilling-Vacaflor and Papillon and Rodon). Another problem is the prevalence of private agreements between firms and Indigenous Peoples in which discussions focus on compensation rather than the possibility of having a real say in how the project is developed (see the chapters by Cantú Rivera and Calle), undermining the possibility of meaningful consultations. Finally, the threat of violence surrounds many consultation processes, either in the form of State repression of Indigenous leaders who protest over irregularities (see the chapter by Doyle) or armed groups (see the chapter by Calle).

Rather than technical difficulties, what would appear to be behind these failures are variables of a political nature (see the chapter by Doyle), given that the extent to which laws, jurisprudence, and mechanisms make a real difference to processes in practice remains to be seen (see further below). Indeed, asymmetries of power and vested interest are reflected within many processes of consultation with Indigenous Peoples (see the chapters by Calle and Flemmer), in which State authorities and companies set the agenda and terms of the process, rather than Indigenous Peoples themselves. This underlying difficulty is a reminder of the different conceptualisations of prior consultation and FPIC, and how, for many governments, the aim of consultation is to "tick the box" (see the chapters by Flemmer and Tomaselli) or, even, obtain information rather than offer Indigenous Peoples a real opportunity to reject a project or to take part in decisions regarding administrative or legislative measures that may affect them (on this issue, see the chapter by Monterrubio).

And finally, even when consultation processes fall short of international standards, may they have other, positive impacts? As a result of their absence or limitations, can they contribute to the empowerment of Indigenous Peoples?

In a somewhat paradoxical way, absent, inappropriate or "pseudo" consultation processes can help empower Indigenous Peoples, specifically, by opening up the public debate on the issue of their rights and bringing different parties including government authorities, Indigenous organisations and – in the context of natural resource extraction – corporations to the negotiating table. To use the terminology proposed by Flemmer in this volume, this may lead to entering into the politics of recognition "through the back door". By showing that their right to consultation and/or FPIC has been infringed in public forums, the media, or domestic courts, Indigenous Peoples can garner considerable interest in and support for their plight, and gain political advantage

over governments and corporations who are responsible for the shortcomings with regard to international and/or national standards and who – ultimately – lose legitimacy as a result (see the chapter by Tomaselli).

Other implications for policy and research

Having summarised the main contributions of the different chapters and sections, the following paragraphs open up the discussion regarding the implementation gap in relation to prior consultation and FPIC, in the light of some more inductive findings and observations.

On the implementation gap

The chapters included in this volume leave us with an important conceptual question: how useful is the "implementation gap" as an approach to understanding Indigenous rights? This approach starts from "above", in the world of legal frameworks and norms at the international level, trickling down through national laws and practices. At first glance it would appear to be very useful indeed, as much scholarly attention has been paid to international standards and the need for them to be fulfilled at national level.[1] However, while the IACtHR has confirmed the importance of culturally appropriate consultation processes, by placing the onus on the State to carry out consultations, it turns them into a State-orientated rather than Indigenous-orientated practice. This clearly has to do with the fact that international instruments such as ILO 169 and UNDRIP are signed by State parties, but essentially it limits how prior consultation and FPIC may be understood. In this sense, it is important to recall that, although Indigenous organisations actively participated in the processes to create these norms, many of their contributions were excluded from the final texts (see the chapter by Del Castillo). Furthermore, for Indigenous Peoples consultation is an ancestral principle and not just a right enshrined in international law (see the chapter by Xiloj).

Another question that has arisen is to what extent international standards are necessary and useful for (relatively) good or poor practice at national level. For instance, States that have a sceptical attitude towards international Indigenous rights law may actually have a rich domestic practice, particularly thanks to mobilisation and norm contestation by Indigenous Peoples, as is the case in Canada (see the chapter by Rodon and Papillon). Although it has not been approached systematically in this volume, Panama is a particularly interesting case, given that the State has yet to ratify ILO 169 but that has not stopped it from promulgating, in 2016, the second prior consultation law in Latin America (Asamblea Nacional de Panamá, 2016). The same logic is true vice versa, in the sense that virtually all Latin American countries have ratified ILO 169, but that in itself does not appear to have made much difference for practical outcomes, as is often the case with international human rights

law. Brazil, Ecuador, and Argentina are all cases in point of where the ratification of international law has – so far – had a very reduced impact at the domestic level, in terms of domestic practice (see the chapters by Mello, San Lucas and Rosti).

Another crucial issue, from this top-down approach, is whether it is a help or a hindrance to create specific laws or regulations on prior consultation. At first glance it may seem logical and desirable to create legal frameworks, and developments in Peru (see the chapter by Doyle), Panama, Costa Rica (see the chapter by Vega), Honduras (see Barreña), and Chile (see the chapter by Tomaselli) can be seen as progress in that sense. However, a specific consultation law or regulation can actually limit the scope of the right, as is the case in Peru (see the chapter by Doyle). Likewise, although in all of the processes mentioned above there were efforts to carry out consultations on the mechanisms developed – following the principle of "consultation on consultation"– nevertheless several Indigenous organisations have criticised both the process and the final results, in each case. There may be other routes to a successful institutionalistion of prior consultation, including the support of jurisprudence (as is the case in Colombia, see the chapter by Herrera) together with historical, informal institutions and practice (see, particularly, the chapters by Villalba, Xiloj, and Papillon and Rodon). Nevertheless, it appears that a lack of clear, domestic legal regulation – beyond the ratification of international treaties, basic constitutional recognition etc. – may also make it easier for authorities to evade their responsibilities. This is clearly the case in Argentina (see the chapter by Rosti), Brazil (see the chapter by Mello), Ecuador (see the chapter by San Lucas) and Mexico (see the chapter by Monterrubio), where there is a noticeable absence of secondary regulation at federal level. In any case, it is important for government authorities to be aware of their responsibilities and take steps to guarantee this right; indeed, in practice Indigenous Peoples often have to remind them (see the chapter by Monterrubio).

Again, it is worth noting that political will and awareness seem to have a greater impact on prior consultation at grassroots level than the institutional route taken (see the chapter by Doyle). That is not to say that jurisprudence and law cannot be used usefully as mechanisms by Indigenous Peoples to claim their rights, but rather that they do not seem to determine the success of prior consultation in practice *per se*. Indeed, there is clearly no unique route to closing the implementation gap from law to practice. Depending on the case, the executive, legislative, and judicial branches may all be foes or allies in this process (on this issue, see for instance the chapters by Vega and Mello). What is important is the commitment different government authorities have to fulfilling rights to consultation and FPIC, and Indigenous rights in general beyond other, competing agendas.

On Indigenous empowerment

It is not uncommon for academic studies to close with a new question, and this volume is no exception. Indeed, having reviewed the different experiences in both Latin America and Canada, the most pressing question seems to be: *how can prior consultation and FPIC be of real use to Indigenous Peoples?* Is it when prior consultations are done by the book, fulfilling international standards and offering an opportunity for co-management in all aspects, including EIAs? Or is it – perversely – through absent or failed consultation processes, which give Indigenous Peoples the opportunity to criticise and make claims against the State at national and international level? Or, is it in the reappropriation of consultations, either in the form of community consultations or the increasingly common practice of Indigenous organisations writing their own protocols to reassert their control over what appears to have become a State-led enterprise? The evidence offered on these particular issues could usefully be broadened with future research, taking into account the importance of Indigenous empowerment rather than the – ever evasive – fulfilment of legal standards.

Final remarks

All things considered, the impact of Indigenous Peoples' right to prior consultation and FPIC in Latin America in legal, political, and symbolic terms cannot be underestimated. Indeed, the issue is firmly on all sorts of agendas throughout the region. However, it is undoubtedly a contested field in which meanings, intentions, goals, and agendas clash, and in which consent is – suspiciously – elusive. Ultimately, States would do well to act in good faith and truly negotiate with Indigenous Peoples, in line with Kingsbury's (2000, p. 22) relational approach of self-determination. Even better, they must give Indigenous Peoples the freedom to truly decide on the matters which affect them, which is nothing more and nothing less than the underlying end of prior consultation. As things stand, consultation in practice may just be serving to re-inforce the centuries-old practice of the "permitted Indian" (Hale, 2004; see also the chapter by Calle), in which the State dictates the role that Indigenous peoples must play, including in processes that – ironically – are established with the aim of defending their rights.

Note

1 See, for instance, studies by Doyle (2015), MacInnes, Colchester, and Whitmore (2017), Tomaselli (2016) and Leydet (2019), among others.

References

Asamblea Nacional de Panamá. (2016). Ley No. 37 que establece la consulta y consentimiento previo, libre e informado a los pueblos indígenas. Published in Gaceta Oficial No. 28090-A, 5 August 2016. Retrieved from https://www.gacetaoficial.gob.pa/pdfTemp/28090_A/GacetaNo_28090a_20160805.pdf.

Brysk, A. (2000). *From Tribal Village to Global Village: Indian Rights and International Relations in Latin America*. Stanford: Stanford University Press.

Doyle, C.M. (2015). *Indigenous Peoples, Title to Territory, Rights, and Resources. The Transformative Role of Free, Prior and Informed Consent*. London: Routledge.

Economic and Social Council. (2006). Human Rights and Indigenous Issues Report of the Special Rapporteur on the Situation of Human Rights and Fundamental Freedoms of Indigenous People, Mr. Rodolfo Stavenhagen. UN Doc. E/CN.4/2006/78, 16 February 2006.

Espinoza, M. & Ignacio, M. (2015). Unimplemented Recognition. An Assessment of the Rights of Indigenous Peoples in Latin America. *Revista mexicana de ciencias políticas y sociales*, 60(224), 251–277.

Government of Canada. (2010). Canada's Statement of Support on the United Nations Declaration on the Rights of Indigenous Peoples. Retrieved from http://www.aadnc-aandc.gc.ca/eng/1309374239861/1309374546142.

Hale, C. (2004). Rethinking Indigenous Politics in the Era of the 'Indio Permitido'. *NCLA Report on the Americas*, 38(2), 16–21.

Kingsbury, B. (2000). Reconstructing Self-Determination: A Relational Approach. In P. Aikio and M. Scheinin (Eds.). *Operationalizing the Rights of Indigenous Peoples to Self-Determination* (pp. 19–38). Saarijärvi: Institute for Human Rights, Åbo Akademi University.

Leydet, D. (2019). The Power to Consent: Indigenous Peoples, States, and Development Projects. *University of Toronto Law Journal*, 69(3), 371–403.

MacInnes, A., Colchester, M., & Whitmore, A. (2017). Free, Prior and Informed Consent: How to Rectify the Devastating Consequences of Harmful Mining for Indigenous Peoples. *Perspectives in Ecology and Conservation*, 15(3), 152–160.

Tomaselli, A. (2016). *Indigenous Peoples and their Right to Political Participation. International Law Standards and their application in Latin America*. Baden-Baden: Nomos.

UNDP. (n.d.). Indigenous Peoples. Retrieved from http://www.latinamerica.undp.org/content/rblac/en/home/ourwork/democratic-governance/political-participation-and-inclusion/citizen-democracy–analysis—advocacy-.html.

Wright, C. (2018). El derecho a la consulta de los pueblos indígenas de México. Un balance de su reconocimiento, implementación e instrumentalización. In C. Wright (Ed.) *Participación política indígena en México. Experiencias de gestión comunitaria, participación institucional y consulta previa* (pp. 219–256). Ciudad de México: Universidad de Monterrey/Ítaca.