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## Indigenous Rights, Territory, and the Environment

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...הוא לא יוכל להגן על זכויותיו. לכן, יש להבטיח כי תהיה מעורבות משמעותית של קהילות מקומיות וייצוגיות.

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### Indigenous Rights and Investor Risk

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**THE RISKS OF IGNORING SOCIAL AND ENVIRONMENTAL ISSUES**

From Herbertson et al. 2009<sup>14</sup>

**Financing Risk** – Financial institutions and investors may delay their financing, require more conditions, or decide not to participate.

**Construction Risk** – The proponent may not be able to complete the project on time or on budget.

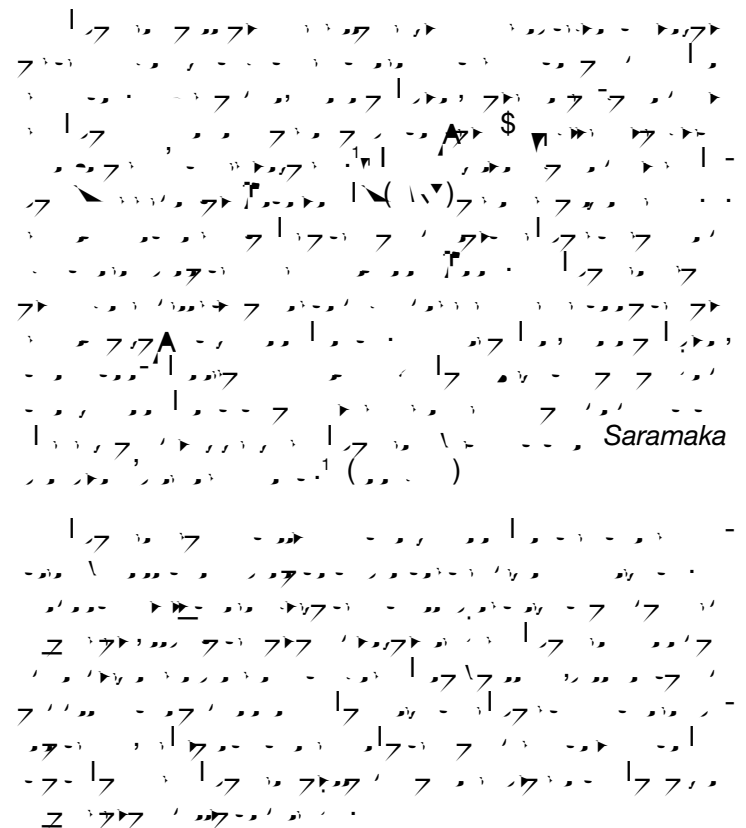
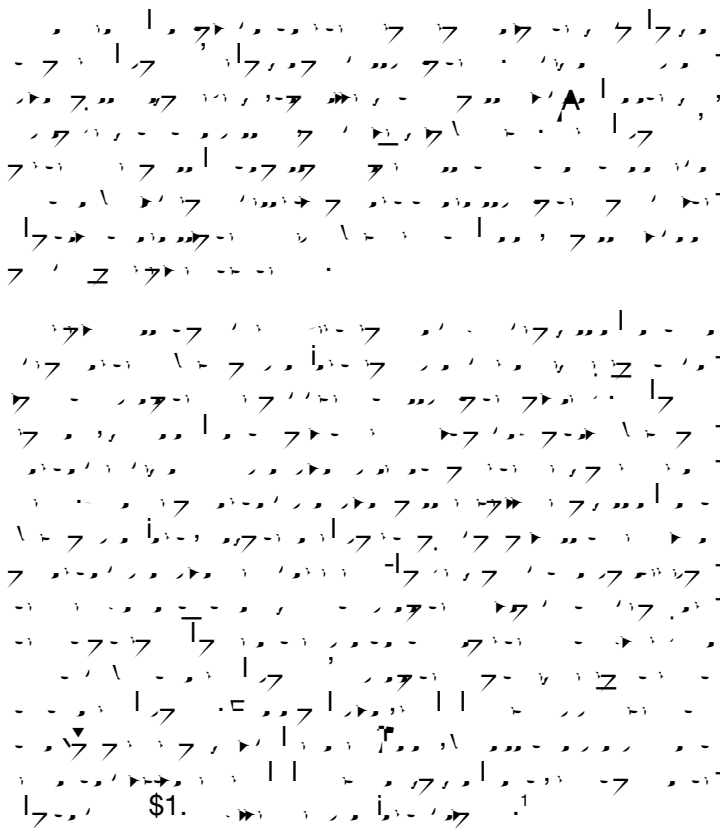
**Operational Risk** – The proponent may not be able to access necessary inputs, produce sufficient output or sell at a sufficient price, which can disrupt operations.

**Reputational Risk** – The project may harm the proponent's or financial institutions' brand identity, which can translate into loss of market value.

**Credit/Corporate Risk** – Delays or interruptions to a project may reduce the proponent's profitability and asset values, decreasing the proponent's stock value, lowering its credit rating, and raising the cost of borrowing.

**Host Government Risk** – The host government may withdraw permits and licenses, commence enforcement actions, impose civil or criminal penalties on the proponent, or tighten requirements.

**Host Country Political Risk** – Political forces in the host country may threaten the project.



**CASE STUDY: THE SARAKAMA PEOPLE V. SURINAME**

The Inter-American Court of Human Rights (IACHR) case of *Saramaka* People v. Suriname looked into the case of the *Saramaka*, whose customary lands had been handed out to mining and logging companies without any regard for their rights, including the right to free, prior and informed consent.

The judgment affirmed that the property rights of indigenous and tribal peoples derive from custom and not from any act of the state. These property rights are exercised conjointly with the right to self-determination and their right "to freely

dispose of their natural wealth and resources", meaning that indigenous and tribal peoples have the "right to manage, distribute, and effectively control [their]... territory, in accordance with their customary laws and traditional collective land tenure system".

The court ruled that in cases where the state proposes large-scale interventions that may affect indigenous and tribal peoples' lands and natural resources, their free, prior and informed consent is required in accordance with their customs and traditions.

## Indigenous Rights and International Law

“Indigenous peoples are arguably among the most disadvantaged and vulnerable groups of people in the world today. The international community now recognizes that special measures are required to protect the rights of the world’s indigenous peoples.”

— United Nations Permanent Forum on Indigenous Issues<sup>19</sup>

מקור: [United Nations Permanent Forum on Indigenous Issues](#), [The Rights of Indigenous Peoples](#), 2011, [www.un.org/indigenous](#)



**FPIC Challenges**

FPIC is a complex concept that involves multiple stakeholders and processes. It is not a one-time event but a continuous process of dialogue and negotiation. The challenge lies in ensuring that all voices are heard and that the process is transparent and accountable. This involves building trust and understanding between communities and governments or companies. The process should be based on mutual respect and the recognition of the rights of all parties involved.

One of the main challenges is the lack of clear legal frameworks. In many countries, the laws regarding land and resource rights are outdated or unclear. This creates uncertainty for both communities and investors. Another challenge is the power imbalance between large corporations and local communities. Without proper safeguards, communities can be marginalized and their interests ignored.

There is also a challenge of ensuring that the process is meaningful and that it leads to tangible benefits for the communities. It is not enough to simply consult; the process should be designed to address the specific needs and concerns of the communities. This requires a deep understanding of the local context and a willingness to listen and adapt. The process should be inclusive and participatory, involving all members of the community.

*Achuar*

The FPIC process is often hindered by a lack of transparency and accountability. Communities need to know what is going on and have access to information. This includes information about the project, the companies involved, and the government's role. Without this information, communities cannot make informed decisions. Another challenge is the lack of capacity and resources for communities to engage in the process. Many communities lack the technical and legal expertise needed to negotiate effectively with large corporations.

**Who is affected?**

The impact of FPIC is felt by a wide range of people, including local communities, governments, and investors. Local communities are the most directly affected, as they are the ones whose land and resources are being used. They need to be consulted and their views taken into account. Governments are also affected, as they are responsible for regulating the process and ensuring that it is fair and transparent. Investors are affected as well, as they need to understand the risks and opportunities associated with the project.

*Saramaka*

**Who gives consent?**

Consent is a key element of FPIC, and it is often a source of confusion. Who has the authority to give consent? Is it the government, the community, or the individuals affected? The answer depends on the context and the legal framework. In many cases, the community as a whole is responsible for giving consent. This requires a clear and inclusive process that allows all members of the community to participate. The consent should be free, prior, and informed, meaning that it is given without coercion, before the project starts, and with a full understanding of the risks and benefits.

**Free from what?**

FPIC is a process that is free from coercion, intimidation, and manipulation. It is a process that is based on mutual respect and the recognition of the rights of all parties involved. It is a process that is transparent and accountable, and that leads to tangible benefits for the communities. The process should be designed to address the specific needs and concerns of the communities, and it should be inclusive and participatory. The process should be based on mutual respect and the recognition of the rights of all parties involved.



