

Free, prior and informed consent: Accountability, environmental justice and the rights of Indigenous peoples in the information society

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In the 20 years that have passed since the first World Summit on the Information Society (WSIS), our planet has experienced a massive expansion of digital infrastructure, the greatest benefits of which have been claimed by big corporations and governments in the global North. Multistakeholder processes like the Internet Governance Forum (IGF) have been critical to bring government and corporate actors into conversation with individuals and communities that are being impacted by digitalisation and the corporate capture of “public infrastructure”.

Despite the progress made towards greater transparency and accountability for internet governance, the WSIS Action Lines towards “a people-centred, inclusive and development-oriented Information Society” have been undermined by the dominance of “market-based solutions” that consistently violate human rights standards and commitments. The most powerful and influential actors in the field of internet governance have influenced policy to benefit their own agendas while promoting themselves as leaders for “sustainable development” – hiding behind vague statements, buzzwords and jargon in order to avoid real accountability for harm.

The future of internet governance must be grounded in agreed standards, commitments and processes that uplift and uphold environmental justice and the rights of Indigenous peoples. It is critical that efforts to reclaim a people-centred information society are grounded in commitments to the free, prior and informed consent of Indigenous peoples and communities impacted by digitalisation.

Upholding the rights of Indigenous peoples

Free, prior and informed consent is foundational to the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP), which has been adopted by more than 140 countries since it was passed as a legally non-binding resolution in 2007.¹ Upholding the free and informed consent of Indigenous peoples has also been codified in a legally binding convention of the International Labour Organization (ILO); however, only 24 countries have ratified the Indigenous and Tribal Peoples Convention since it was adopted by the General Conference of the ILO in 1989.²

In April 2023, at the UN Forum on the Rights of Indigenous Peoples in New York, UN Special Rapporteur Francisco Calí Tzay identified so-called “clean energy” projects as an urgent threat, echoing concerns raised by many delegates at the forum of the rise of “green colonialism” that violates the rights of Indigenous peoples and threatens their land tenure, management and knowledge.³

In September 2023, Oxfam released the results of an assessment of the publicly available policies of 43 companies engaged in the exploration and production of minerals used in rechargeable batteries, focusing on policies and commitments to community consultation

1 <https://social.desa.un.org/issues/indigenous-peoples/historical-overview>

2 https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C1699

3 Sax, S. (2023, 21 April). Scramble for clean energy metals confronted by activist calls to respect Indigenous rights. *Mongabay*. <https://news.mongabay.com/2023/04/scramble-for-clean-energy-minerals-confronted-by-calls-to-respect-indigenous-rights>

and consent processes.⁴ Of the 43 companies assessed by Oxfam, only two companies made clear and unequivocal commitments to the free, prior and informed consent of Indigenous peoples. Oxfam’s recommendations parallel those made at the UN forum in April 2023, that is, the need to create binding policies and guidelines requiring the free, prior and informed consent of communities for clean energy mining projects.

Planetary boundaries and access to justice: Principles for environmental governance

In 2023, APC and the Latin American Terraforming Institute convened conversations among our networks to define principles for environmental justice and sustainable development for a submission to the Global Digital Compact.⁵ These conversations highlighted two intersecting principles that align with the Rio Declaration on Environment and Development (1992).⁶

1. Respect planetary boundaries and the rights of nature in the design, production and deployment of digital technologies.
2. Ensure meaningful access to information, participation in decision making, and access to justice for environmental rights and the rights of nature.

These principles complement existing standards and commitments by governments and corporations to ensure the free, prior and informed consent of Indigenous peoples, and underscore the need for accountability mechanisms that cross-cut decision-making processes

for environmental and internet governance, and meaningfully facilitate access to justice.

Environmental standards and commitments to free, prior and informed consent offer grounded responses to ideologies of infinite growth that yield high profit for some and devastating consequences for many. The free, prior and informed consent of communities is only possible when we are able to ensure meaningful access to information and participation in decision making, and when we understand that planetary boundaries exist, and no amount of profit will protect us from crossing those boundaries.

Conclusion

When we reflect on the shifting landscape of digitalisation and connectivity, and the promotion of technology-based “solutions”, it is critical that we learn from the mistakes of the past decades. We must be suspicious of buzzwords like “smart cities” and learn from the experiences and activism of environmental defenders and advocates working against “carbon offsets” and other market-based systems that seek to commodify our planet and all public goods.⁷

In order to achieve “a people-centred, inclusive and development-oriented Information Society”, progress must be assessed through updating, expanding and connecting the implementation of the WSIS Action Plan with the commitments made by governments and corporations towards environmental justice and Indigenous peoples, which cross-cut UN bodies and regional, national and local mechanisms of accountability.

4 Sellwood, S., Hirschel-Burns, T., & Hodgkins, C. (2023). *Recharging Community Consent: Mining companies, battery minerals, and the battle to break from the past*. Oxfam. <https://www.oxfamamerica.org/explore/research-publications/recharging-community-consent>

5 APC and others. (2023). *Joint submission to the Global Digital Compact on Earth justice and sustainable development*. <https://www.apc.org/en/pubs/joint-submission-global-digital-compact-earth-justice-and-sustainable-development>

6 In 1992, following the United Nations Conference on Environment and Development (UNCED), more than 175 countries signed on to the Rio Declaration of 27 principles for sustainable development. These principles informed and lay groundwork for many existing global and regional environmental governance mechanisms, including the precautionary principle which states: “Where there are threats of serious or irreversible damage, lack of full scientific certainty shall not be used as a reason for postponing cost-effective measures to prevent environmental degradation.”

7 A “public good” refers to something that is of benefit to society as a whole, with minimal or no barriers for different people to benefit from that good. Source: <https://www.apc.org/en/apcs-2024-2027-strategic-plan>