Part 4: The Norm of Consent and Gender Justice in Indigenous Self-Determination

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Consent is a central norm or rule in international law. It is often referred to as free, prior, and informed consent (FPIC).

Consent comprises two dimensions: collective and individual. Both are crucial for Indigenous self-determination.

Individual consent relates to personal autonomy and body sovereignty.

There is no Indigenous self-determination without Indigenous gender justice.

Challenge

Indigenous self-determination politics stress the importance of collective consent in achieving Indigenous rights. A frequently used acronym for consent is FPIC (free, prior and informed consent). Collective consent is widely seen as one of the main ways of advancing Indigenous self-determination. It means that Indigenous peoples, societies, and communities discuss internally whether they give permission and agree to proposed measures, development plans, and so on. Much less focus has been given to individual consent and its importance to implementing Indigenous self-determination. Some Indigenous people have called for a greater understanding of the fact that the exploitation of Indigenous lands, waters, and resources and the exploitation of Indigenous bodies go hand in hand, and both need to be stopped.

Introduction

Free, prior, and informed consent (FPIC) is a fundamental norm (rule) of international human rights. These rights consist of individual and collective rights. For example, consent of the study participants has had a central and important role in research for decades. Not all researchers, however, have observed it in Indigenous and other communities.

At the collective level, FPIC is one of the most important rights for Indigenous peoples. It is frequently raised in the context of Indigenous lands and resources. FPIC is also mentioned in several articles of the UN Declaration on the Rights of Indigenous Peoples (UNDRIP). It is a central way of implementing collective self-determination on issues dealing with Indigenous cultural, spiritual, and immaterial property. Land and resource management articles also highlight the importance of collective consent. For example, UNDRIP Article 32.2 requires states to

“consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free and informed consent prior to the approval of any project affecting their lands or territories and other resources, particularly in connection with the development, utilization or exploitation of mineral, water or other resources.”
Collective and Individual Consent Are Inseparable

Consent plays a critical role in both land use and interpersonal relations. A common view of self-determination among those who participated in my research was that Indigenous self-determination is based on the norm of free, prior, and informed consent. It has two inseparable sides: collective consent with regard to Indigenous lands and individual consent with regard to their own bodies. Individual consent is, however, too often overlooked when discussing violations of Indigenous people’s bodily integrity.

Consent is closely linked to the norm of integrity, which is discussed in the first part of the brief series. Integrity is achieved and practiced through active consent. With regard to land use, consent is collective: a community must decide and give it together. Individual consent is always a personal matter and decision.

Individual consent is the foundation of individual self-determination and body sovereignty. In the past couple of decades, active consent has become a central part of eliminating sexual violence. Individual consent has not, however, been as widely accepted as collective consent has been. It is almost the opposite; unspoken social norms make physical and sexual violence possible and weaken or threaten individual consent. Rape culture that downplays sexual violence and blames the victim is rampant in some segments of society such as in military, sports, and university campuses.

Yet consent has its problems and should not be idealized, excessively focused on, or treated as a magic bullet. Consent is a critically important norm, but it is also marked by a deeply complex uncertainty. This is evident in ongoing debates and disputes about questions such as what constitutes consent, who gives consent and at what level, what consent is given to, and how can explain for questions of representation, such as whom consent represents.

Moreover, we need to examine Indigenous decision-making practices and challenges in seeking to acquire collective consent in Indigenous communities. When we are talking about collective consent within a society or community, it is also imperative to keep in mind and use Indigenous peoples’ own ways, traditions, and practices to talk and decide about an issue.

Body Sovereignty

Discussions of body sovereignty have increased general understanding of the links between Indigenous peoples’ collective and individual consent and strengthened the connection between the two. Body sovereignty means that everybody has a right to govern and make decisions over their own bodies. This includes deciding one’s sexual orientation and its representation, the way in which one dresses and which gender one identifies with.

For some, body sovereignty is a way to heal and reclaim their own bodies and identities from misogyny, homophobia, and other public surveillance and control. For others, body sovereignty means coming out, rejecting gender binaries and heteronormativity, and decolonizing and restoring Two Spirit, queer (2SQ) or other LGBTQ+ identities.

Cree scholar and activist Alex Wilson notes: “When we call ourselves two-spirit people, we are proclaiming sovereignty over our bodies, gender expressions and sexualities.” For Wilson, identifying as two-spirit is not a matter of “coming out” but rather, a process of “coming in.” It is about returning home and to the circle of “all our relations” as a valued member of a community. Body sovereignty can also serve as a way of protesting cultural protocols, including Indigenous ones, that seek to control especially...
Indigenous women’s bodies. Examples of these protocols include forbidding menstruating women from ceremonies or requiring them to wear certain clothing such as skirts.

A collaborative project between the Native Youth Sexual Health Network and Women’s Earth Alliance called *Violence on the Land, Violence on our Bodies* explains how colonialism works at the intersection of Indigenous land and peoples. The exploitation of Indigenous lands and bodies are interconnected. This means that the exploitation of Indigenous women and their bodies has been inseparably linked to ongoing exploitation and dispossession of Indigenous lands and resources since the first contact. Settler colonialism has to destroy Indigenous bodies that represent Indigenous political, legal, and economic systems in order to get access to Indigenous lands and resources.

*Violence on the Land, Violence on our Bodies* talks about the ways in which patriarchy targets the land and bodies at once. It argues that an understanding of free, prior, and informed consent must support consent around people’s bodies. Community members involved in the project often raised the question: “how can our men fight for our nations’ right to give or not give consent over our territories, but there’s no understanding of our people’s right to give or not give consent over our bodies?”

Advancing Indigenous peoples’ consent over their lands and resources requires establishing a stronger discourse around consent over bodies:

*In order to increase the recognition of free, prior, and informed consent over Indigenous territories we need to simultaneously build up the ways that consent is supported around people’s bodies. If discussions are taking place about violations of industry on Indigenous lands, we should also be talking about the violations of people’s bodies.*

**Gender Justice**

Consent is threatened by unequal gender power relations. Women are not always included in the collective process of obtaining consent despite its different effects to men and women. Gender justice is not only about women’s rights. Late Mohawk legal scholar Patricia Monture argued, “To have justice means to be in control in one’s life and relations in terms of either individuals or communities.”

I suggest that Indigenous gender justice means above all three things: protecting and upholding Indigenous children, eliminating gendered violence, and rematriating Indigenous governance. It also means addressing theft and oppression by colonialism, and its key structural component, heteropatriarchy. Indigenous gender justice also means that women and their activities on the land are included on an equal footing with those of men when considering consent. As an example, we need to challenge views of hunting and fishing as male or gender-neutral activities. We also need to create space for women within those activities and give equal importance to women’s roles on the land, such as seed protectors, healers and medicine collectors.

Below, I discuss the welfare of children and eliminating violence against Indigenous women. I have discussed rematriating Indigenous governance in the second part of the brief series.

**The Welfare of Children**

Several participants regarded the raising of the next generation as a way of participating in collective Indigenous self-determination. Some Indigenous women were concerned about the double standards of gendered upbringing that maintains stereotypical gender roles and ideas of female inferiority. This includes, for example, teaching girls to take responsibility at an early age while boys are getting off the hook. In extreme cases, this can lead to circumstances where
women are held responsible for the violence they experience. Instead of neglecting the concerns and views of Indigenous children and young people, we need to see them as essential for the future survival of Indigenous communities. For some, a key element of restoring or reclaiming traditional governance is to stress the centrality of children in decision-making. Love of and concern for children and future generations are frequently also mentioned by many Indigenous women as a reason for taking a stand and taking to the streets.

Many research participants agreed that child welfare issues must be at the front and center in Indigenous communities. If we do not put the wellbeing of Indigenous children first and ensure that they are able to stay in their communities, there will be no need for Indigenous rights in the future:

We need to stop and then look at how our community needs are being met. How are the children being taken care of? Because we can be doing all of this work, but if we’re not paying attention to children and community, we’re not going to have children to take on those rights that we fought for. So, women are doing that. They’re kind of like coming forward and saying it’s not just about politics. It’s about the people, and it’s about the community.\(^v\)

In many Indigenous communities (including urban ones), extended family networks still exist and form the central web of social relations. Yet we cannot ignore the question such as: what is an Indigenous idea of family? How can we make sure that Indigenous ideas of family are free from sexist or macho biases such as the lower status of women? How do we guarantee that these ideas do not normalize violence as an acceptable way of disciplining “annoying” or “unruly” women or asserting male authority? Or worse, adopt views according to which violence and sexual abuse of Indigenous children is rooted in customary practice?\(^vi\) When Indigenous men do not address physical or sexual violence or verbal abuse, they are not addressing the welfare of Indigenous children either. When Indigenous women are not safe, nor are Indigenous children.

**Eliminating Violence against Women**

Some Indigenous communities have traditions and teachings of holding women up. This is different from glorifying unspecified notions of culture or tradition. Romanticizing culture and tradition can increase concerns of and barriers to safety. We do not, however, need to reject traditions or traditional teachings. Instead, we need to examine them with an eye to oppression and gender discrimination.

Indigenous laws play a central role in Indigenous gender justice and eliminating violence against Indigenous women. These are different from community-based justice models and restorative justice approaches such as peacemaking, which are seen as limited and flawed in addressing gender violence. They are often established on unequal gender relations and pressure women to reconcile with their oppression.

Instead of relying on idealized, distorted ideas of Indigenous customary law, Indigenous women in Chiapas (Mexico) involved in the Zapatista liberation movement wanted to transform community-based law by addressing unequal gender relations and the oppressive of women in their communities and within the movement. These challenges experienced by Indigenous women led to the creation of the Women’s Revolutionary Law (ZWRL).

The ten-point list, accepted by consensus at a Zapatista meeting in March 1993, outlines women’ rights to education, equal pay, and equal participation and leadership. The Women’s Revolutionary Law also opposes forced marriage and denounce male physical and sexual violence.\(^vii\) Notably, the ZWRL explicitly enshrines...
women’s reproductive rights, something UNDRIP remains silent on.¹⁶

Indigenous gender justice is more than the absence of gender-based discrimination. It is more than ensuring gender quotas and equal representation of Indigenous women. It encompasses Indigenous women’s rights but more comprehensively than UN Declaration on the Rights of Indigenous peoples does, including reproductive rights. Indigenous gender justice forms the foundation of Indigenous self-determination that is free from gendered violence and discriminatory gender practices. It also rejects the division or hierarchy between self-determination and gender. As research participants said it: there is no Indigenous self-determination without Indigenous gender justice, and there is no Indigenous gender justice without restructuring all relations of domination.

Self-determination together with gender justice reconstructs the relations of domination into relations of consent. This involves creating new collective norms. We may have good laws, such as the gender equality legislation in Greenland (see brief #3), but bad norms, such as normalization of violence or maintaining collective peace in small Sámi communities at the cost of individual suffering.

One important new norm would be a strong norm of consent that includes both collective and individual consent. We need to recognize the failure of the old norms and establish new collective norms so that, for example, there would be consequences to the person who abuses his wife on Saturday and shows up at the council meeting on Monday.

We also need to rethink what collective responsibility would mean in practice. What roles and responsibilities would the community institutions, informal groups and networks have?

What would be the role of kinship relations in upholding and promoting the norm of integrity especially at the individual level? What kind of new institutions need to be created and at what level? How would we build them from an understanding that gender matters? What is the role of the state and its institutions in dismantling the division between gender and self-determination?

The urgent task for us is to decide which norms Indigenous communities will adopt and accept as the basis of their Indigenous self-determination: the ones that have failed Indigenous women and Two Spirit and queer individuals and accept violence, or new ones which makes violence against women and 2SQ individuals a public concern?

**Recommendations**

1. Understand the two inseparable dimensions of free, prior, and informed consent and the ways in which they are connected.

2. Include individual consent as central part of all Indigenous self-determination and FPIC discussions.

3. Support and actively advance the right and understanding of bodily self-determination and Indigenous gender justice in public and political institutions.

4. Defend the coercion and violation of individual, personal boundaries as readily as violations aimed at our lands, territories and resources.


iii Ibid. 16.

iv Ibid. 17.


vi Interview with Kundoqk (Jacquie Green), 4 July 2014.

