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There is No Free:
An Indigenous Informed Perspective on Free, Prior and Informed Consent
by
Nicole Burns
BA (Hons), Wilfrid Laurier University, 2016

THESIS

Submitted to the Department of Psychology
In partial fulfillment of the requirements for
Master of Arts in Psychology
Wilfrid Laurier University

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Abstract

Many Indigenous nations in Canada are faced with complex issues surrounding proposed development on their lands. There are numerous rights frameworks that support Indigenous Peoples' inherent rights, which includes their right to free, prior and informed consent (FPIC) in relation to any development that would impact their lands. This case study examined the various perspectives of Matawa First Nations in regard to their experiences of consultation with government and industry. This study was conducted by performing document review and analysis of three focus groups (n=20), a video analysis of the APTN documentary series *Ring of Fire* and survey distribution and analysis (n=49). Results indicate that Matawa's experience of the implementation of FPIC fails to comply with Indigenous laws and ideologies and is also not in keeping with the principles of FPIC itself. Government and industry exercise their power by creating biased laws, processes, and spaces for consultation and denying Matawa First Nations any means of participating except by those rules. Matawa First Nations have expressed their willingness to establish genuine relationships with government and industry and work towards sustainable development of their lands. This study ends with a list of recommendations for government and industry to consider in moving forward with consent-seeking in a way that is in keeping with Indigenous perspectives and the principles of FPIC.

Keywords: FPIC, Indigenous Rights, Rights of Consultation, Matawa First Nations, Ring of Fire

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Introduction

In May 2017, I began to work with the Indigenous Rights and Resource Governance research group (IRRG) under the supervision of Dr. Terry Mitchell where my first task was to transcribe audio recordings of a conference on free, prior, and informed consent (FPIC) that the IRRG group organized in 2016. Listening to these recordings, and transcribing them verbatim, put me on the trajectory to do this research. What stood out to me at the time, and what I have continued to replay over in my head, is the comment “there is no free” that multiple Indigenous leaders made throughout the audio files when speaking about FPIC. The idea that “there is no free” offers crucial insight into the critique of FPIC. The voices of these Indigenous leaders have stuck with me, and I have been on a journey to understand the complex issues with the implementation of FPIC ever since.

The literature review will explain the legal background for FPIC, while also outlining complications about its support, which is ultimately tied to Indigenous Peoples’ inherent right to self-determination. However, it is worth iterating that while there are Western legal frameworks that uphold these rights, Indigenous Peoples' inherent rights are not granted to them through Western legal systems but have existed since time immemorial. The right to free, prior, and informed consent covers a wide range of concepts, but it is also intimately tied to the right to say yes or no to development or extraction projects on Indigenous territories. Indigenous and Western legal frameworks are clear on the fact that Indigenous Peoples have authority over their territories and any entities wishing to engage in extraction or development in those lands must obtain free, prior and informed consent.

Initially when I began this research, I supposed that if the Canadian government has laws that make it necessary to obtain free, prior and informed consent when engaging with Indigenous

Peoples' territories, then the consultation procedures should be consistent with Indigenous Peoples' ideologies and processes. That thought turned into the research question for this project: How do current practices of consultation align with an Indigenous perspective of FPIC? To look at this research question, I wanted to have a better understanding of what FPIC *should* look like if it was upheld based on the principles explained in Western law and compare it to what FPIC means to Indigenous Peoples in Canada, from their perspective. I decided that looking at the Matawa First Nations (MFN) experiences with consultation would provide insight into this research question because they have had, and continue to have, numerous experiences of consultation with government and industry due to their geographic location.

Matawa First Nations consist of nine Ojibway, Cree, and Oji-Cree First Nations including Aroland, Constance Lake, Eabametoong, Ginoogaming, Long Lake #58, Marten Falls, Neskantaga, Nibinamik, and Webequie. Spread across Northern Ontario, these communities are accessible to remarkably varying degrees of access: Four communities are accessible by road and five communities are only accessible by air or winter roads. This means that some communities already have more experience with development than others, and the impact on the various communities will manifest in different ways. Matawa First Nations are located near the James Bay Lowlands and a region now referred to as the Ring of Fire¹ (see Figures 1 and 2). The Ring of Fire is a 5,000sq-km region located about 500km northeast of Thunder Bay where a large chromite deposit was discovered in 2007. Chromite is considered a rare mineral and is used in the production of stainless steel, auto parts, and appliances, especially for chromium plating

¹ The term "Ring of Fire" was coined in 2007 after the first significant mineral discovery in the area was made by Richard Nemis, the President and founder of Noront (Ontario Business Report, 2012). With recognition that the naming of this area is another example of continued colonialism, Matawa First Nations now refer to this area as "Ring of Fire" and used this name continuously in the transcripts, so I will also use this term when speaking about the specific region in this thesis.

(Ontario Business Report, 2012). Chromite is used in the production of materials that resist corrosion, such as stainless steel. Government and industry put the value of the chromite deposit alone at \$60 billion (Chong, 2014).



Figure 1 Map of Matawa First Nations and Ring of Fire

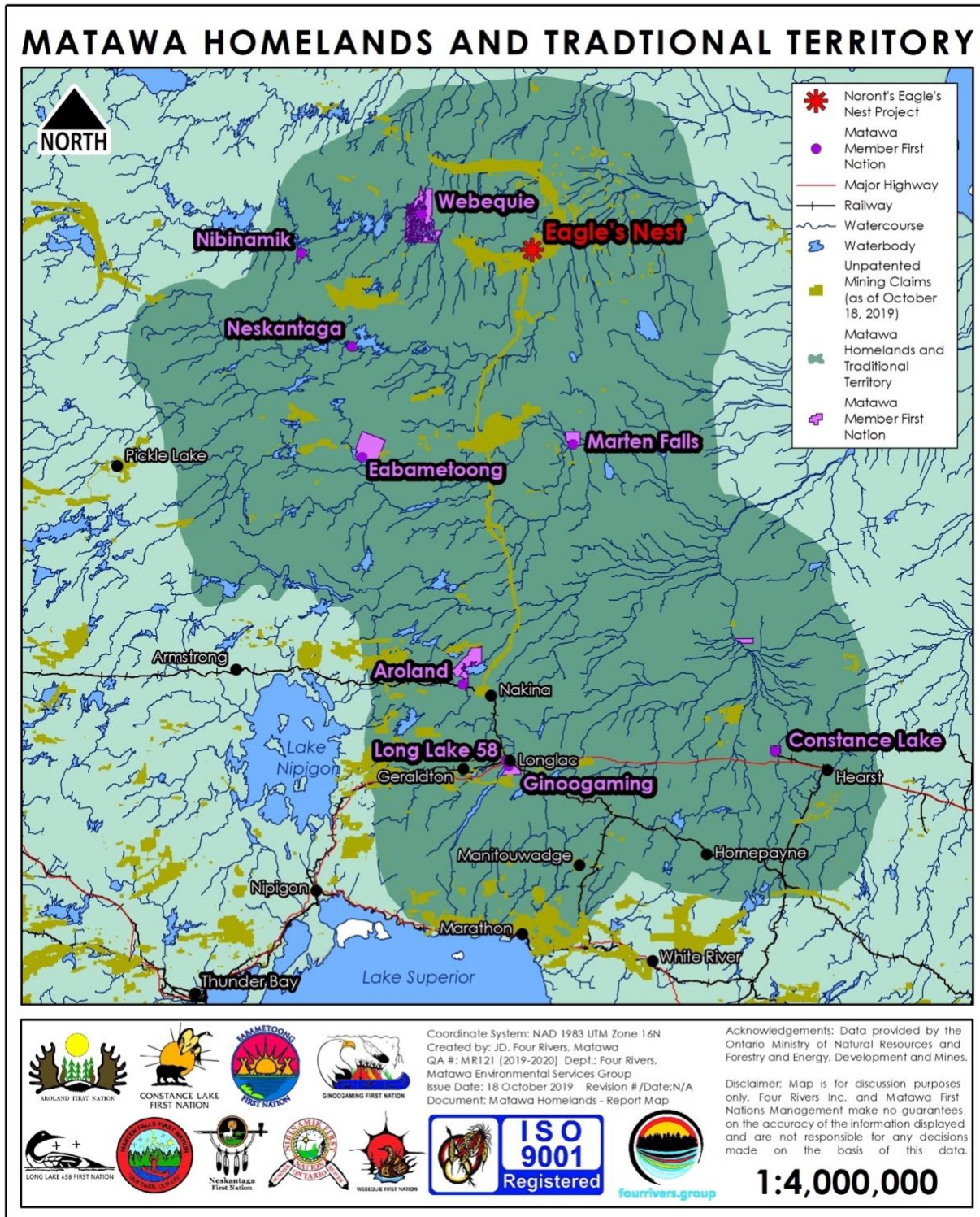


Figure 2 Matawa Homelands and Traditional Territory Map

I have included two maps as a reference to the geographical location of MFN and the Ring of Fire. The first map does a good job at showing the location in relation to Ontario as a whole. However, the second map is important because it was created by Matawa First Nations. I included the second map because it shows the intricacies of the waterways much more clearly, and the communities are more prominent. Something as simple as mapping needs to be considered when attempting to do work in a decolonial framework. We often view maps as factual or scientific, but mapping can contribute towards erasure of lands and peoples.

Having embarked on this journey as a student of Community Psychology (CP), I have been informed by the values and code of ethics of that field. I have learned the importance of community-based collaboration and participatory research, as well as conducting research for positive change and social justice. Community Psychology stresses the importance of establishing relationships in order to conduct ethical research. This concept is also echoed by Shawn Wilson (2008) when he talks about conducting research as ceremony, which is a metaphor for how research should be conducted in a respectful and meaningful way. It also draws attention to the research process rather than the outcome alone. The principles and values that have been instilled in me from CP are consistent with the values when working with Indigenous communities, according to Wilson (2008), which include respect, reciprocity, relevance, and relationship. In conducting research that is meant to be anti-oppressive, as informed by Potts and Brown (2005), I recognize that every step of the research process is an exercise of power, and the knowledge-production of this research is not apolitical. Therefore, I have worked alongside the IRRG research group and Matawa First Nations Management (MFNM) to make sure this research is desired, relevant, and shared with the communities in whatever way they feel is best for them.

I recognize that the experiences of individuals and communities within MFN are not homogenous. This research is not exhaustive of the experiences of all MFN members, let alone the experiences of Indigenous Peoples in Canada. Moreover, it is not my intention to speak on behalf of any of these groups. Instead, my objective is to introduce the complex historical, legal, and ideological implications of government and industry engaging in consultation processes with Indigenous Peoples in Canada. It is my hope that government and industry can incorporate the findings of this research into their consultation processes going forward to work in good faith, and with equal partnership in decision-making, when they desire to engage in extraction projects on Indigenous territories.

Literature Review

Background and Rationale

Since the late 15th century, Indigenous Peoples in North America have been the targets of colonialism, that included genocide, land-theft, enslavement, and assimilation at the hands of Europeans. In the words of Arthur Manuel (2017), “it was a premeditated crime” and “a wave of legalized pillage and plunder,” (p. 58). Over time, the imperial ambitions that fueled this colonial genocide has changed shape to adapt to the time period (Manuel, 2017). Arthur Manuel (2017) explains:

By gradually moving and expanding onto our lands, feeding us a steady diet of falsehoods and fraudulent deals, they took advantage of the peaceable nature of our societies and our natural North American willingness to interact with others until they were able to build up their numbers to swamp us, and gradually the trading posts morphed into military posts and we found ourselves a people under occupation. (p. 60).

Policies directed at the elimination of Indigenous Knowledge and cultures have continuously been enacted in North America, and specifically in Canada. These policies include the forced removal from lands, the establishment of reserves, treaty violations, and the enactment of restrictive laws such as the Indian Act (Florence, 2016; Manuel, 2017). Canada's implementation of residential schools from the 1870s through the 1990s is another example of these colonial policies in action (MacDonald, 2015; Starblanket, 2018). Residential schools were established to assimilate children by destroying their traditional languages, their cultures, and their connection to home, family and homelands (Florence, 2016; Simpson, 2004).

Theft of Indigenous lands is still ongoing and remains the biggest threat to Indigenous lifeways today (Simpson, 2014). Land-theft is evident when looking at unceded territories and active government policies that support mining and extraction on traditional territories (Simpson, 2004). For instance, the government of Ontario claims authority over natural resources within (and beneath) the province (s. 92A, Constitution Act, 1982), and the Far North Act, 2010 allows the Ontario Minister of Natural Resources and Forestry the right to veto Indigenous land-use planning at their discretion (Mitchell, Arseneau, Thomas, & Smith, 2019b). Government policies have successfully worked in countless ways to separate Indigenous Peoples from the land (Ballantyne, 2014). In addition to forced removal from land, residential schools were successful at preventing generations of children from learning how to live off the land, and environmental pollution due to development has caused many communities to be unable to use their waters for fishing or drinking (Simpson, 2004; Aldern & Goode, 2014).

The ramifications of continued colonial policies have resulted in intergenerational trauma and low socioeconomic status of the majority of Indigenous communities in Canada (Mitchell & Maracle, 2005; Radu, House, & Pashagumskum, 2014; Greenwood, 2005). Due to past and

ongoing colonialism, communities are struggling to meet basic needs, and this has resulted in disproportionate rates of addictions and suicide of Indigenous Peoples compared to non-Indigenous settlers in Canada (Mitchell, Arseneau, & Thomas, 2019a). Additionally, several Indigenous scholars believe that the state has been successful in changing the viewpoint of some Indigenous individuals to view the land as an exploitable resource because of the consequences of colonialism, or neocolonialism, and the power and persuasion of money (Coulthard, 2014, p. 78; Ballantyne, 2014; Manuel, 2017). Some Indigenous people have internalized the attitudes of the colonizers and have begun to question their own culture as a result (Akena, 2012). However, despite the efforts of the state to destroy Indigenous ways of life, communities have resisted and continue to do so. Across Canada, there are numerous collaborations to reclaim language, culture, and connection to land in an effort to heal communities, which is a testament to Indigenous resistance and resurgence (Simpson, 2014).

The Importance of Land

Western and Indigenous ideologies are in opposition surrounding the value of land (Manuel, 2017). Western ideology views land as a resource and commodity; something to be controlled and used for monetary value. Land is important for what it can provide for humankind, rather than how humans can live in reciprocity with the land (Aldern & Goode, 2014; Fry & Mitchell, 2015). This is in opposition to how Indigenous Peoples view the land as deserving of the utmost respect and share a deep relationship with the land (Deloria, 2003, p. 61; Cajete, 2000).

For Indigenous Peoples across Canada, land is inseparable from their culture and spirituality, as well as their politics and economy (LaDuke, 2002). They recognize that everything in nature, including humanity, is connected and interdependent on each other for

survival (Cajete, 2000). Land informs their culture, body, mind, and identity (Radu et al., 2014). This is another reason why the impacts of colonialism have been so harsh for Indigenous communities. The health, wellbeing, and sustainability of Indigenous Peoples rely on their relationship to their homelands and the health of the land (Cortassel & Bryce, 2012; Schreyer, Corbett, Gordon, & Larson, 2014). Traditionally, Indigenous cultures have lived with the philosophy that you should not take more from the land than what is needed, and you should always give back to the land, so it will continue to be healthy and sustainable (Cortassel & Bryce, 2012).

The loss of land for Indigenous Peoples has had innumerable consequences to their wellbeing and existence. Conflict over land access and land use has been a point of contention since the settlers arrived in Canada (Fry & Mitchell, 2015). As asserted by Arthur Manuel (2017), “It is the loss of our land that has been the precise cause of our impoverishment,” (p. 25). Manuel (2017) elaborates by saying that Canadian colonialism continues to oppress Indigenous Peoples who are too poor to fight back against a rigged system which relies on land-theft and the dispossession of Indigenous Peoples.

Legal Frameworks

The legal contexts surrounding free, prior, and informed consent (FPIC) are unique and complex. To gain a proper understanding of FPIC in the Canadian context, it is important to look at Indigenous laws, domestic laws, and international frameworks. As several Indigenous legal scholars make clear, FPIC and its implementation must be centred in Indigenous laws because FPIC is about the inherent rights of Indigenous Peoples (Borrows, J., Chartrand, L. N., Fitzgerald, O. E., & Schwartz, R., 2019). The first step to successfully implementing FPIC would be to understand how these different legal systems might work together to support these rights.

Indigenous Laws

As Indigenous legal scholar Sarah Morales (2019) explains, Indigenous Peoples have developed systems to govern their societies since time immemorial. These systems include regulation of societal relations, trade, resolution of disputes, management of territories, and relationships with other nations. Over time, these systems formed highly developed enduring legal traditions (Morales, 2019). In the words of Manuel (2017):

As Indigenous Peoples, we are the original humans in our territories. In our own languages we call ourselves some version of the people of the land. Our names tell us where we come from. We have inherited our land from our ancestors and we have the responsibility to govern our territories. Our political and legal status as Indigenous Peoples obviously long predates contact with Europeans. It supersedes any assertion or assumption of sovereignty by states such as Britain or Canada. Our land is a gift from the Creator. Our sovereignty is our birthright. Our birthright is inalienable and cannot be transferred or taken from us. (p. 265).

Unlike international law, which tends to be viewed as universal law by modern nation states, Indigenous law is more specific to context, including location and history (Borrows, 2019). That is to say that there is not one set of Indigenous laws that exists across the globe in all contexts. Moreover, there are varying laws depending on the individual Indigenous nation, even within Canada. Nations may group together to form larger governments, such as the Haudenosaunee which consists of six different nations that came together to operate under the same set of laws. For the Haudenosaunee, each nation has their own distinct culture and language, but shared laws govern the nations and how they interact with one another

(Haudenosauneeconfederacy.com). There are many other examples of this style of governance including the Huron, Erie, Shawnee, Sioux, and Munsee.

According to John Borrows (2019), Indigenous law is multidirectional and has been informed by multiple experiences in nature. Morales (2019) explains that over time, these laws have been passed down through generations via ceremonies, songs, and stories, amongst other traditions. Morales (2019) iterates that it might be difficult for people from non-Indigenous legal traditions to understand, and as a result, Indigenous law has an indeterminate status in Canada. Morales (2019) asserts, “Our country’s history of denial has resulted in a failure to recognize that Indigenous Peoples have systems of law that governed, and still govern, our lives today,” (p. 79).

International Rights Frameworks

There are numerous declarations, covenants, and treaties that support the rights of all peoples globally and specifically support Indigenous Peoples’ inherent rights as well. International rights frameworks are important because they provide a way to hold countries accountable for how they treat Indigenous populations within their borders (Manuel, 2017).

United Nations Declaration on the Rights of Indigenous Peoples

The United Nations Declaration on the Rights of Indigenous Peoples is a unique declaration in how it was formed. Jennifer Preston (2018), who was actively involved in the working groups for the development of UNDRIP, explains how it was a distinctive journey towards implementation. Preston points out that UNDRIP is the longest negotiated instrument in the history of the UN, and it is also the first international human rights instrument to be negotiated with the rights holders themselves. Typically, member states decide on these instruments, but it was considered inappropriate in this case to leave out the voices of Indigenous Peoples. UNDRIP exists because Indigenous Peoples across the globe went to the UN at

different points to bring attention to the fact that their human rights were being violated at the domestic level. Preston (2018) reports that at the time UNDRIP was developed, there were more than 370 million Indigenous Peoples around the globe, and the stories that were told from all regions shared the commonality of loss of land, language, and culture at the hands of nation states.

Preston (2018) emphasizes that the development of UNDRIP is a model for Indigenous Peoples' participation and has not yet been repeated in other work. The UN normally comes to a consensus with member states when implementing a declaration, but in this case the consensus was with member states as well as the Indigenous Peoples' working group. If it was not for the voices of Indigenous peoples, UNDRIP would not look how it does now.

It is important to recognize that UNDRIP is not a document that is granting rights to Indigenous Peoples but rather translating the Declaration of Human Rights into the specific context for Indigenous Peoples and reaffirming those rights (Borrows et al., 2019; Manuel, 2017; Preston, 2018). Specifically, UNDRIP clarifies that Indigenous Peoples have collective rights in addition to individual rights that are granted to all peoples (Article 1). Moreover, UNDRIP specifies that Indigenous Peoples have the same rights as all other peoples but also have the right to be different; that they have suffered from historic injustices and colonization that have prevented them from participating in development that would support their needs and interests (United Nations, 2007).

Free, Prior and Informed Consent

Free, prior and informed consent refers to the right of Indigenous Peoples worldwide to negotiate in consultation processes regarding development or extraction projects that would affect their traditional territories or resources (United Nations, 2007, Article 32.2). Implementing

FPIC is also required for relocation (Article 10), disposal of hazardous material (Article 29.2), military activities (Article 30), and the adoption of legislation that would affect Indigenous Peoples (Article 19) (United Nations, 2007; Mitchell et al., 2019b).

Free, prior and informed consent is protected under the International Labour Organization (ILO) *Convention 169* (1989) as well as the United Nations Declaration on the Rights of Indigenous Peoples. The right to FPIC is embedded within the larger right of self-determination, which is supported under the Universal Declaration of Human Rights (United Nations Charter, 1945). Self-determination is reinforced under several declarations and covenants, including the International Covenant on Civil and Political Rights (1966) and the International Covenant on Economic, Social and Cultural Rights (1966) which states: “All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development” (Part 1, Article 1). Free, prior and informed consent is a unique expression of self-determination for Indigenous Peoples as it directly relates to control over their lands and resources. For countries that have signed ILO *Convention #169*, FPIC is legally binding, whereas UNDRIP is not a convention and is therefore not legally binding (Borrows et al., 2019). However, as described above, FPIC is intimately tied to other rights and obligations that are legally binding (see Figure 3 below for Canada’s obligation to FPIC).

The principles of FPIC are specific and intricately connected. The principle of *free* asserts that permission from Indigenous communities must be obtained without coercion, intimidation, pressure, or manipulation (United Nations, 2007). According to the Canadian Indigenous Bar Association, this also means that permission must be absent of “divide and conquer” tactics and monetary incentives, unless mutually agreed upon for the settlement process (as cited in Mitchell

et al., 2019b). The term *prior* refers to the right of Indigenous Peoples to be consulted before any project begins with enough time to review the project plans prior to implementation and on an ongoing basis (United Nations, 2007). The principle of *informed* dictates that Indigenous communities must have complete understanding of the potential impacts of a project before making any decisions (United Nations, 2007). According to a group of U.N. agencies, this would include such things as environmental, social, and cultural impacts, purpose of the project, length, size and scope of the project, as well as the personnel that would be involved with the project (Lehr & Smith, 2010). Communities should have access to third party specialists in order to ensure that the information provided to them is not biased in favour of the project's completion. Knowledge must also be conveyed in the chosen language of the community (United Nations, 2007).

If the principles of *free*, *prior*, and *informed* are met, then a community has the right to give their *consent*, or the right to say “yes” or “no” to a project. Of all the principles of FPIC, *consent* has caused the most controversy in terms of implementation. Several nations, including Canada, are worried that FPIC gives Indigenous communities veto power over projects. UNDRIP itself does not mention the word “veto” and most human rights organizations avoid mentioning that Indigenous communities would have the right to say “no” to proposed projects (Lehr & Smith, 2010). However, to be true to the principle of *consent*, Indigenous communities should have the right to say “no” otherwise they do not truly have the right to choose. James Anaya (2013), former United Nations Rapporteur on the Rights of Indigenous Peoples, asserts that Indigenous Peoples should have the right to withhold consent, but that this should not supersede any other human rights laws. This concept is also supported by Kenneth Deer (2010) who reiterates that Indigenous Peoples rights are not to be considered above other peoples' rights

but that they should be equal. Ultimately, legal scholars agree that consultation is not the same as consent (Anaya, 2013; Deer, 2010; Joffe, 2016). Thus, based on the principles of FPIC, Indigenous communities do have the legal right to say “no” to projects.

The question of who has legitimate authority to give consent is a complicated issue. This is often not discussed in relation to FPIC, but Indigenous communities do not always agree about who the legitimate authority is in their community (Boreal Leadership Council, 2012). Another result of the Indian Act in Canada is that communities can be split in supporting different forms of government between elected band council chiefs or hereditary chiefs. According to Arthur Manuel (2017), it is problematic that the chiefs that are recognized through the Indian Act are considered legitimate authority by the Canadian government versus traditional chiefs. There is also the concern of which voices in the community are heard and which are silenced, as well as the question of who has the right to vote and whether or not it includes those who are not living on reserve (Boreal Leadership Council, 2012; Lehr & Smith, 2010).

Canadian Laws

Figure 3 depicts UNDRIP and several other international and domestic covenants, treaties, and laws that Canada is obligated to uphold as signatories or enforcers, and which give legal precedence to free, prior, and informed consent.

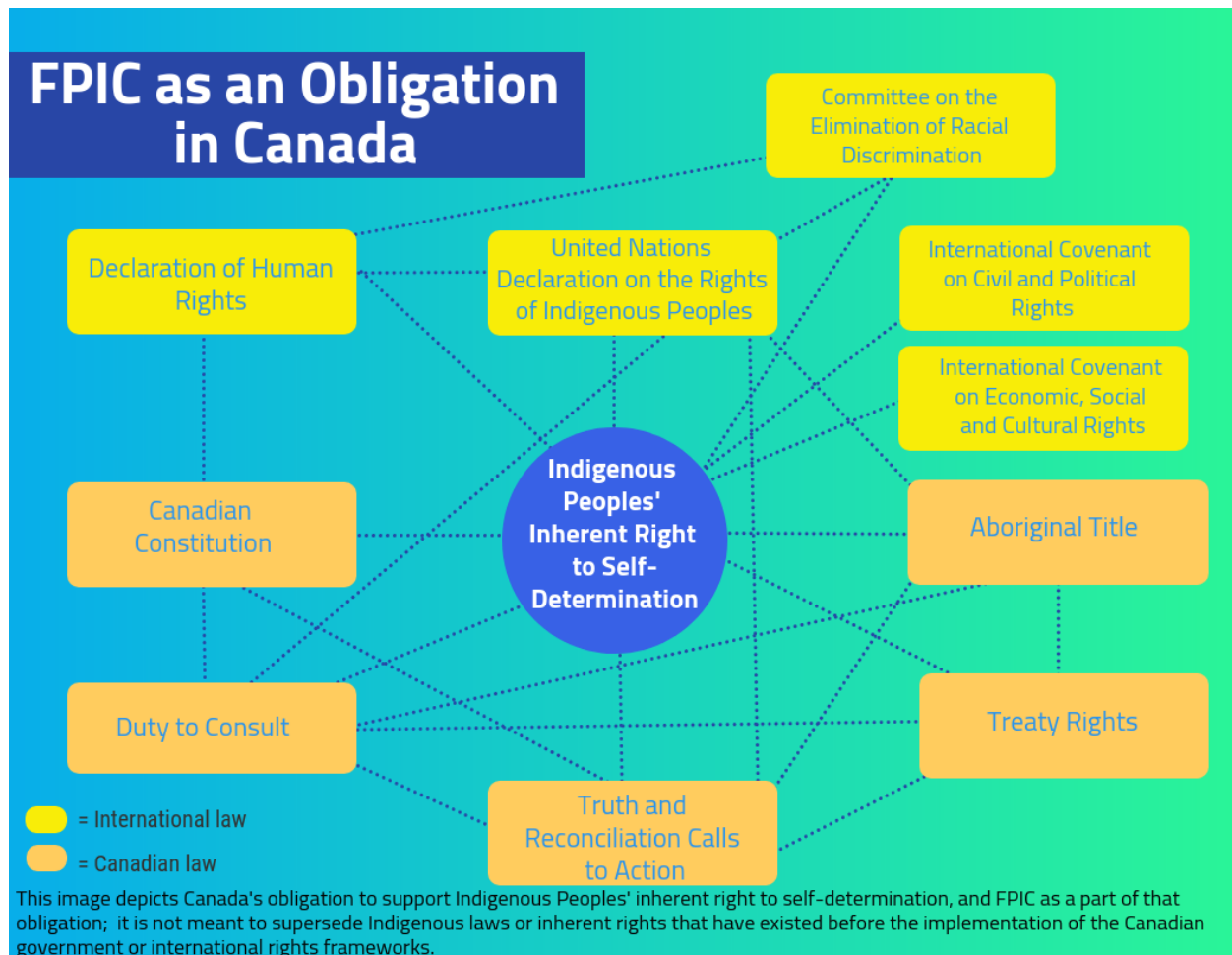


Figure 3 FPIC as an Obligation in Canada

When UNDRIP was first adopted in 2007, Canada refused to sign it, claiming, among other things, that FPIC was incompatible with Canadian law (Land, 2016; Mitchell et al., 2019b). Some also feared that Indigenous Peoples would try to secede from Canada with their right to self-determination (Manuel, 2017). However, as Arthur Manuel (2017) explains, UNDRIP specifically states that Indigenous Peoples are independent within Canada and have the right to self-determination without challenging the sovereignty of Canada. According to Manuel (2017), Indigenous Peoples “are not trying to dismember Canada,” however, “Indigenous peoples want recognition of our Aboriginal and treaty rights on the ground...and our right to

self-determination respected,” all of which can be accomplished within Canadian borders (p. 196). As Patricia Monture (2008) explains, Western states have a singular view of sovereignty whereas she asserts that “In Indigenous epistemologies, sovereignty means access to well-being for all our citizens” (p. 158). In 2016, Canada finally removed its objector status to UNDRIP (Mitchell et al., 2019b). Yet, later in the year, Minister of Justice, Jody Wilson-Raybould announced that implementing UNDRIP was unworkable in Canadian law (Manuel, 2017; Mitchell et al., 2019b). Today, Canada remains a signatory of UNDRIP, but implementation has been lax.

UNDRIP is not a legally binding document. Nonetheless, many Indigenous scholars refer to it as an important and meaningful instrument (Borrows et al., 2019; Gunn, 2015). UNDRIP is also significant because it draws upon the legal traditions and customs of Indigenous Peoples (Borrows et al., 2019). Arthur Manuel (2017) asserts that international laws better support Indigenous Peoples in Canada and that they are a way to hold the Canadian government accountable to their actions. In regard to UNDRIP, Manuel (2017) says, “UNDRIP is unambiguous on [Indigenous Peoples] right to self-determination, which is denied in a thousand ways by the Canadian government, in every syllable of the racist *Indian Act* that still is used to control our lives,” (p. 194). Manuel (2017) urges Indigenous Peoples in Canada to take to international courts and speak their truths in order for Canada to change its policies and laws but also to hold them accountable to the human rights covenants and treaties that Canada has signed, including UNDRIP.

The Canadian Constitution recognizes Aboriginal title and treaty rights and mandates that Canada has the duty to consult with Indigenous Peoples in order to protect these rights (see Figure 3) (s. 35, Constitution Act, 1982). Therefore, Canada is obligated through international

rights and treaties as well as Canadian federal laws to uphold these rights. Numerous Supreme Court cases of Canada have reaffirmed these obligations, including *Calder v. British Columbia* 1973, *R. v. Sparrow* 1990, *Delgamuukw v. British Columbia* 1997, *Haida Nation v. British Columbia* 2004, *Tsilhqot'in Nation v. British Columbia* 2014, and *Clyde River v. Petroleum Geo-Services Inc.*, 2017 (Morelatto, 2008; Mitchell et al., 2019b).

The federal government has a legal obligation to uphold the duty to consult in respect of Aboriginal title and treaty rights, but the exercise of this duty to consult becomes convoluted because the federal government grants jurisdiction over natural resource development to the provinces and territories (s. 92A, Constitution Act, 1982; Mitchell et al., 2019b). In Ontario, the Mining Act (1990) and the Far North Act (2010) give the province jurisdiction over Treaty 9 lands and are said to be in contention to the Canadian Constitution in regard to Aboriginal title (Mitchell et al., 2019b). Simply looking at the complex jurisdictional issues in Ontario, it becomes clear that there are numerous impediments to protecting Indigenous Peoples' inherent rights within Canada, but it is a moral and constitutional obligation for Canada to uphold. More than that, as Arthur Manuel (2017) states:

The challenge, of course, is to force the Canadian government and the people of Canada to live up to international standards in its treatment of Indigenous peoples within its borders. And the point of the spear is our insistence that the Trudeau government be held to its own promise to implement the UN Declaration of Rights of Indigenous Peoples. (p. 190).

Canadian Mining Industry

Canada has a large resource-based economy and operates several mines within the country. Canada has also emerged as a leading superpower in the global mining industry and operates many mines in Latin America (Government of Canada, 2019; Mining Association of

Canada, 2019). Canadian mining companies control much of the world's resource extraction and primarily operate on Indigenous territories (Mining Watch, 2019). While domestic laws vary, international rights frameworks still apply to Canadian government and industry and their treatment of Indigenous Peoples in other countries. Veltmeyer (2012) refers to a new era of resource extraction, funded by countries and global capital, as extractivist imperialism. Veltmeyer and Petras (2014) assert that extractive industries are engaging in modern forms of colonization by displacing Indigenous Peoples from their territories, polluting their lands, and dispossessing them of their natural resources.

Implications and Research Objectives

Indigenous Peoples in Canada are simultaneously dealing with the effects of historical colonial policies and trauma while attempting to engage in modern Western legal systems that work in favour of the settler population in order to protect Indigenous Peoples' inherent land rights. The historical injustices, as well as the expectancy to work within an oppressive legal system, create an unequal playing field for Indigenous Peoples in Canada to protect their territories. However, international law and Canadian law recognize Indigenous Peoples' inherent right to self-determination, and as such, the government needs to be held accountable to uphold these rights. In addition, there is a gap in the literature looking at Indigenous viewpoints on free, prior, and informed consent. For these reasons, this research takes a preliminary look at what FPIC might look like for Indigenous Peoples in Canada by working with Matawa First Nations and learning from their experiences of consultation thus far. Specifically, this research examines what it means to give "free" "prior" and "informed" consent according to Matawa First Nations members. Based on the concepts presented around FPIC, I also look to see whether government

and industry are implementing FPIC in a way that is respectful and supportive of Matawa First Nations decisions and right to self-determination.

As a non-Indigenous researcher, it is essential to have an understanding of the history of colonialism as well as how colonialism still exists today within the larger context of institutional racism. It is imperative to approach any research with Indigenous communities with the intent of being an anti-oppressive researcher and actively work to build relationships with community. In order to honour these relationships, the research must also be based on reciprocity and relevance (Potts & Brown, 2005; Wilson, 2008; Patterson, Jackson, & Edwards, 2006). If it is not useful for Indigenous communities, then there is no justification to conducting the research. It is my hope that this research will contribute to the goal of supporting Indigenous Peoples' inherent right of self-determination in Canada.

Methodology

This research looks to answer the following research question: How do current practices of consultation with Matawa First Nations align with an Indigenous perspective of FPIC? The objective of this research is to provide a better understanding for government and industry of an Indigenous perspective on FPIC and consultation processes. The ultimate goal of this research is to support Indigenous Peoples' inherent right of self-determination in Canada.

Paradigm

The research paradigm informing this research is Critical Theory. According to Guba and Lincoln (1994), Critical Theory is crucial as it recognizes that reality is shaped by historical events as well as culture, politics, society, economy, ethnicity, and gender. One goal of Critical Theory is to combine theory and practice and result in action for change (Guba & Lincoln, 1994). Research situated in the Critical Theory paradigm also recognizes that the researcher can

never be objective and always has an impact in some way (Guba & Lincoln, 1994). This is especially important to recognize as a non-Indigenous researcher working with Indigenous communities who continue to be negatively impacted by colonial policies and research.

Recognizing that research is political, it is important to work towards establishing relationships of reciprocity and that my research is relevant and desired by communities (Potts & Brown, 2005; Wilson, 2008; Patterson, Jackson, & Edwards, 2006). It is imperative that my research not contribute towards disadvantaging Indigenous communities or perpetuating stereotypes. With this in mind, it is also important to understand my social location as a researcher in order to be transparent with my motives. I have been using a two-eyed seeing approach, coined by Marshall (2004), in an attempt to understand issues from both an Indigenous and Western perspective with the purpose of bridging the gap that exists in terms of understanding the experiences of Indigenous Peoples in Canada and the ongoing impacts of colonization.

Ethical Consideration

This study, as part of a larger case study, was approved through REB. An amendment was submitted for the distribution of the survey instrument and was approved at a later date. I have collected data alongside the Indigenous Rights and Resource Governance research group in collaboration with Matawa First Nations communities. The IRRG research group and larger Pan-American Indigenous Rights and Resource Governance Network (PAIRR-GN) have been working with Matawa First Nations over many years in regard to FPIC. The reason I chose to do research with Matawa First Nations was based on previously established relationships, by my supervisor Dr. Terry Mitchell and her ongoing partnership with the nine Matawa First Nations chiefs, in order to maintain a level of trust and to give back to the communities through research. It was mentioned to me that there were continued requests for research surrounding FPIC from

Matawa, and I chose to participate as a result. The hope is that the results of this research will be of use to the chiefs and the larger regional framework. For me, this request was an important part of working with Indigenous communities as a non-Indigenous researcher (Wilson, 2008; Patterson, Jackson, and Edwards, 2006). The intended audience of this research is those from Western government and industry.

As mentioned above, this research is nested within a larger study being conducted about FPIC through several case study locations. The locations include The South American country of Chile, and the following Canadian provinces and territories: Ontario, Northwest Territories, and Nunavut. The locations have been chosen based on active extraction projects and engagement with FPIC processes within the Americas. This research is being conducted with various co-investigators taking the lead at each site. In particular, the supervisor of this research project, Dr. Terry Mitchell, also has the lead on the larger Matawa case study. My research is contributing to the Matawa case study, which helps to inform the larger Pan-American study.

Positionality

As a non-Indigenous person doing this research, I have been on a continuous journey of self-reflection. This reflexivity is not easy work, nor is it something I speak about lightly. While I have been engaging in activist work surrounding Indigenous rights for many years, I keep coming back to my involvement with new insights and experiences. The first time I really began to question my positionality was in 2013 when I had the privilege of going to a talk delivered by Sylvia Macadam, one of the co-founders of the Idle No More movement. I attended the talk because of my concern for the environment and my passion for social justice. Towards the end of the talk, Sylvia invited us to go to an anti-fracking protest in solidarity with several communities in New Brunswick. Before we could leave, she made a statement that has stuck with me ever

since. She said something along the lines of, “don’t support Indigenous rights because you feel bad for us, support Indigenous rights because you care about the environment and your world. Indigenous Peoples can take care of ourselves.” She went on to elaborate and say that these movements and real social change are not sustainable on pity and guilt.

This statement really resonated with me. It caused me to explore my motives on a deeper level. It allowed me to realize that I am passionately concerned with the state of our environment and Earth, and I firmly believe that the best chance we have to ensure the future of the human race is to step back and allow Indigenous Peoples to be the stewards of the land as they have been since time immemorial. Moreover, we should learn from them and treat Mother Earth with mutual respect. Western ideology has caused humans to see themselves above nature when we are actually an equal part of nature, no better than any other species. This knowledge is something I have gained over the years while furthering my relationships with numerous individuals and engaging more with Haudenosaunee and Anishinaabe ideologies.

While I do understand what Sylvia meant with her statement, I have had some inner turmoil surrounding it. As a White person, I always knew that I was in a better situation in life than my friends and family who are people of colour. I was taught about slavery and segregation, but I was taught that those days were over. I grew up in Connecticut and had many friends who were Black, Puerto Rican, Mashantucket, and Pequot. I never once considered myself to be racist, and I always took the stance of social equality. It was not until university that I began to unpack the issue of colourblind racism. My parents always raised me with the notion that there was no difference between people based on the colour of their skin, and we should never treat anyone differently for that reason. This was a far cry from what my mother was taught in the deep south growing up. I never realized that “not seeing colour” contributes to the erasure of

experiences and allows us to ignore the fact that racism still exists and is deeply ingrained in the cultures of the United States and Canada. Only a privileged White settler could “not see colour”.

Growing up in the U.S. I was taught that Christopher Columbus discovered America each year in history class. I was taught that the Americas were empty except for a few “Indians” who helped us make the first Thanksgiving dinner. I was taught that the “Indians” all died off due to diseases and the Pilgrims and the Rockefellers made our country great. I was taught this all the while sitting next to my friends from the Mashantucket and Pequot Tribal Nations, never giving it a second thought. It was not until grade 12 that I began to unlearn this false narrative. In university I was taught the real history of how the U.S. and Canada treated Indigenous Peoples when they arrived in the Americas. It was at this point that I started to feel the “white guilt” due to the actions of my ancestors. I only exist in North America because of the murder of Indigenous Peoples, the theft of their land, and the forced kidnapping and enslavement of millions of Africans. On top of that, these injustices are not simply in the past but continue to impact people of colour and Indigenous Peoples today in so many ways. How could I not feel guilty, and how could I not use this knowledge to make changes?

During my undergrad I began to study feminist theory as well as critical race theory. There are numerous authors I could quote, but the following quotes really encompass my thoughts as to why I continue to do the work that I do:

“I am not free while any woman is unfree, even when her shackles are very different from my own” Audre Lorde (June, 1981).

“If you have come here to help me, you are wasting your time, but if you have come because your liberation is bound up with mine, then let us work together” Lilla Watson².

I recognize that the issues prevalent in society will never go away without the liberation of all peoples worldwide. The continued offenses of colonialism, capitalism, and patriarchy negatively impact society at large, but they unfairly impact Indigenous Peoples and other marginalized groups. My battle is with the capitalist patriarchy that uses colonialism to generate wealth.

I also want to explain my positionality as an ally. I recognize that allyship is not something that can be obtained but it is something to always strive for. My responsibility as a White settler is to always listen to those who are marginalized and learn what I can do to be a better ally. One of these things that I have learned is about emotional labour. Various groups that I am part of have shared information about those who are marginalized always being called to the table to speak about their oppression. This is an unfair emotional burden to them. In this day and age, we can take it upon ourselves to become educated through various sources and without placing this burden on individuals or groups. With this in mind, I do feel there is a space for allies in doing certain types of work in order to lessen the burden of those we are working alongside. For instance, when I was working at the Indigenous Knowledge Centre at Six Nations Polytechnic, I was asked to help deliver a series of workshops on multicultural competencies. This particular series was being delivered to a non-Indigenous group of students who were taking courses at an Indigenous institution. The idea was to make them aware of Indigenous worldviews but also Indigenous-settler relations. While I did not feel comfortable talking about Indigenous

² This quote has been attributed to Watson, although she has previously stated that she was not comfortable taking credit as it was “born of a collective process.” One possible origin is the United Nations Decade for Women Conference in 1985, although other sources mention its use prior to that.

history prior to colonization, I agreed to talk about the settler history and wrongdoings (i.e. initial contact, genocide, treaty violation, residential schools, etc.). The woman who asked me to do this expressed that it was exhausting to have to keep reliving these issues over and over again and to have to talk about them all the time. I explained to her that I feel this is a good place for an ally to have a role because we do not carry the trauma from the experience but can help with public education and awareness. I still believe that allies have a responsibility to lessen the emotional burden of marginalized peoples. This notion has also been expressed by other critically engaged scholars doing allyship work (Smith, Puckett, and Simon, 2015).

More recently I read a Twitter post from Leilani Sabzalian (2018) that said, “This is also probably why it’s easier for white academics to publish and make tenure writing about colonization...the archives don’t haunt them, the trauma doesn’t live in their bones, and they don’t have to put the books down to breathe...” I have not been able to stop thinking about this quote since the moment I read it. I cannot deny its truth. Even with acknowledging my privilege and doing the work to be a reflexive researcher and ally, it does not negate the fact that I will get my master’s degree while doing research with Indigenous folks who will not likely have the opportunity to do the same. I also have an advantage of not needing to relive the trauma as I do research into treaty violations and government theft of Indigenous lands. I do not have to walk a tightrope between my own ideologies and the predominant ideologies of the colonizers occupying the traditional territories of my people in order to get a degree. I will learn about it, read about it, and empathize, but I am not forced to face the trauma, and I will graduate in a better position as a result.

Finally, I have been doing this research because I feel it is important and necessary. Respecting the inherent rights of Indigenous Peoples is vital to reconciliation. Furthermore, it is

imperative to the protection of our environment. I have been keeping Shawn Wilson's (2008) words in mind that "research is ceremony" and that any research conducted should be relevant, desired by community, and reciprocal. As a result, I have been conscious of doing my research that has been guided by what Matawa First Nations have requested and have expressed interest in. This has been a consideration from the beginning, and it will continue going forward with knowledge mobilization and outputs. Through all my learnings and work, I have come to this research using a two-eyed seeing approach in an attempt to understand issues from both an Indigenous and Western perspective and to learn from both to the benefit of all (Iwama, Marshall M, Marshall A, & Bartlett, 2009).

Lens for Analysis

Within a Critical Theory paradigm, I used John Gaventa's (1980) Theory of Power as a lens for analysis along with Gaventa's (2006) "power cube" elaboration. Gaventa asserts that there are three dimensions to power: 1) The overt dimension; 2) The covert dimension; and 3) The latent dimension. These dimensions operate in different ways to prevent decision-making of certain groups (Sadan, 1997). Within these dimensions, there are mechanisms that are used to prevent decision-making. In the first dimension, there is obvious conflict in the decision-making arena, and actors work to obtain an advantage in the political or economic realm in order to maintain the upper-hand. In the second dimension, the actors design the rules of the game to work in their favor, and they mobilize bias that presents a limited view of the problems. This might include sanctions being used or the threat of force. In the third dimension, there is an influence on consciousness and perception. By influencing consciousness, the actors introduce concepts that cause groups to make decisions that are harmful to themselves under the

impression these decisions would be beneficial to them. This dimension looks at language, communication, and social myths (Sadan, 1997).

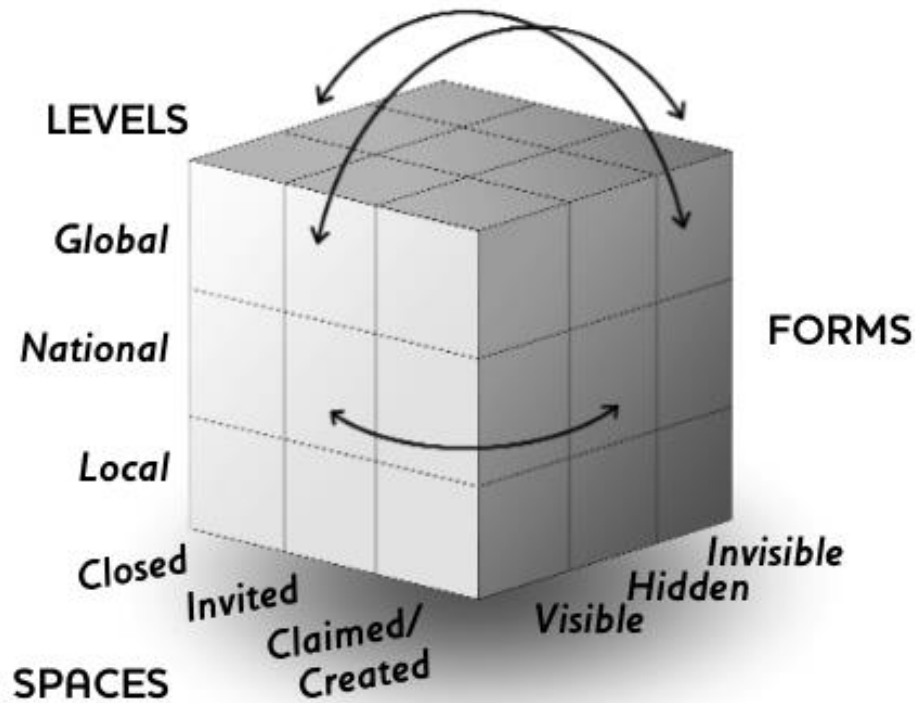


Figure 4 Gaventa's Power Cube Source: John Gaventa's (2006) power cube

Gaventa (2006) later elaborated on his theory of power to include the “power cube”. Gaventa (2006) sees the “power cube” functioning in a similar way as a Rubik’s cube where the pieces are always moving to align in different ways, and each cube has a complex relationship with the other cubes at various levels, in differing spaces, and with diverse forms of power emerging. Gaventa (2006) asserts that if we want to change power relations to be more inclusive or just, then we must understand the “changing configurations of power” (p. 23). Gaventa (2006) is particularly interested in the intersections of power with citizen engagement at the local, national, and global levels of governance and how to “move citizen voice from access, to

presence, to influence” (p. 24). Gaventa (2006) pays particular attention to “how spaces for engagement are created, and the levels of power (from local to global), in which they occur” (p. 25). While there are many different dimensions to power, Gaventa (2006) asserts that they are all interrelated and have various relationships with one another, which are constantly changing.

In terms of citizen participation, Gaventa (2006) sees “spaces” as “opportunities, moments and channels where citizens can act to potentially affect policies, discourses, decisions and relationships that affect their lives and interests” (p. 26). Gaventa supports Andrea Cornwall’s (2002) notion (reflective of Lefebvre, Foucault, and Bourdieu) that spaces for participation are never neutral and are shaped by different power relations, thus regulating who is allowed in those spaces and with what interests (as cited in Gaventa, 2006). Ultimately, Gaventa (2006) reaffirms that space is socially constructed and is in itself a way to maintain control; therefore, true freedom to participate is not solely based on participation itself but would include the right to define and shape the spaces for participation. As researchers, Gaventa (2006) iterates that we must explore the spaces for participation and examine who created those spaces, how, and with what interests and rules of engagement.

Data Collection

Data was collected in three ways: 1. Document review/analysis; 2. Video analysis; and 3. Survey distribution/analysis.

1. In 2016, the IRRG research group hosted a conference in Thunder Bay to discuss FPIC with various chiefs and community members from Matawa First Nations, Northwest Territories, Peru, and Chile. This FPIC conference was co-hosted by the larger Pan-American research network. During this conference, Indigenous Peoples from across these regions formed breakout groups that shared their perspectives and experiences on current practices of FPIC in their lands.

Members of the IRRG research group recorded some of these conversations. As a part of this research study, I transcribed the majority of the audio files with assistance from another team member so that a thematic analysis could later be conducted. I used the transcripts from three breakout groups (n=20) that Matawa leaders participated in.

A deductive thematic analysis was conducted to code the themes “free”, “prior”, “informed”, and “consent,” which were predetermined by the core characteristics of the FPIC process. However, both deductive and inductive analysis of the recordings revealed several additional themes that seemed important to the broader understanding of FPIC in practice. After conducting a thematic analysis using the software program Nvivo (a platform for qualitative data analysis), I revisited the themes and organized into sub-themes.

2. A 6-part video series produced by APTN on the Ring of Fire was released in 2015. The series follows several community members from Matawa First Nations as they navigate the various issues surrounding development in their territories. As part of this research study, I viewed the episodes multiple times and reviewed the transcription of the episodes (done by members of the IRRG research group) in order to conduct a thematic analysis. The thematic analysis followed the same structure as the FPIC conference, and the results were compiled in Nvivo to compare together.

3. Thematic analyses of the FPIC conference and APTN video series revealed additional major themes. Based on these themes, a short community survey was developed in order to fact check the findings that had emerged during the thematic analysis and also to provide more community perspective. The perfect opportunity presented itself when an invitation was extended to the IRRG group to attend the Annual General Meeting (AGM) hosted by Constance Lake First Nation in July 2019. The invitation was extended to present current research projects

and findings as well as to continue research with the communities. Permission was granted to have a table set up with the surveys and information on FPIC, so community members could participate if they desired. A \$10 Tim Hortons gift card was provided to each community member who filled out the survey.

A total of 50 community members from several of Matawa First Nations filled out the survey. There was a wide range of ages and statuses within the participants including chiefs, board members, elders, youth, men and women. While there were people from all nine Matawa First Nations, the majority of participants who filled out the survey were from Constance Lake First Nation since that is where the AGM had been hosted this year. The confidential surveys had only asked for the participants' home community in order to protect their identity. Participants could fill out the survey and bring it back if they wanted to keep their answers private. They also had the opportunity to ask for clarification on any question that they might have found confusing. When participants handed me their survey, I organized them based on whether they were a youth, middle-aged, or an elder. I did not want to record specific ages because I wanted the surveys to be confidential. Given the small sizes of communities, recording specific ages could lead to individual identification. It took participants less than five minutes to complete the survey.

There was some confusion on the final question of the survey, and this prompted some discussion and clarification from myself. The majority of community members were interested in the research that was taking place and wanted to have further discussion about land rights. The survey was conducted in English only, so it is possible that some elders did not fill out the survey due to language barriers. There were speakers of Ojibway and Cree attending the AGM; each person had the opportunity to wear a headpiece where translators worked in real time to translate what each speaker was saying throughout the meetings. Therefore, I assume that the English

surveys were not accessible to everyone. Out of the 50 surveys that were filled out, only one did not pass a reliability test and was excluded from the final results.

Table 1 Methods Linked with Research Objective

Analysis of meeting minutes from conference in Thunder Bay	To provide insight into an Indigenous-informed perspective on FPIC
Document analysis of transcript for Ring of Fire videos	To develop an understanding of what the current reality is for Matawa First Nations dealing with development
Community surveys distributed at the Annual General Meeting (AGM) 2019	To provide an Indigenous perspective on FPIC as well as what current practices of FPIC look like for Matawa First Nations

The particular research methods that have been identified are based on several factors including time, budget, access, and respect to communities. Matawa First Nations Management granted permission at every phase of the research project before data was collected. Considerations were made to ensure that the research was not invasive to community members, although there can be no guarantee.

Analysis

Transcripts

When analysing the qualitative data of the APTN documentary series and FPIC conference transcripts, I chose to use thematic analysis. As described by Braun and Clarke

(2006), thematic analysis is a way to identify and organize themes that emerge from the data and allows for rich and detailed reporting. Thematic analysis fits within a Critical Theory paradigm because it allows for the interpretation of the researcher in understanding the larger themes. As Braun and Clarke (2006) explain, by using thematic analysis within this established theoretical framework, I was able to examine “the ways in which events, realities, meaning, experiences and so on are the effects of a range of discourses operating within society” (p. 81).

I originally chose to use deductive thematic analysis to look at the principles of FPIC with the predetermined themes of “free”, “prior”, “informed”, and “consent” when reviewing the qualitative data. I read through the transcripts several times before proceeding to go through using descriptive coding where I highlighted quotes based on how they connected to the principles of FPIC. For instance, if there was a quote talking about coercion, intimidation, or manipulation, I would highlight it to correspond with “free”. If a quote had to do with more than one principle, I would also highlight with the other colours to make this identification. I then uploaded the transcripts to Nvivo where I was able to further break down these codes into themes.

During this process, I realized that there were concepts and patterns that emerged that did not fit into my predetermined codes of “free”, “prior”, “informed”, and “consent”. I began to question whether or not a deductive analysis was the best method. There were major concepts that I felt were not represented by using a deductive analysis. I decided to put aside the deductive analysis and review the data with a new lens and look at an inductive process of thematic analysis. I read through the transcripts again, and this time I simply highlighted quotes that were significant and told a story from the position of the community members. I then copied all of these quotes into a Word document and began to organize them into themes. Through several

phases of copying and pasting, I organized these quotes into subthemes. I chose to employ a latent thematic analysis where I began to interpret what these quotes meant and what the participants were trying to say in the larger context. According to Braun and Clarke (2006), “a thematic analysis at the latent level goes beyond the semantic content of the data, and starts to identify or examine the underlying ideas, assumptions, and conceptualizations – and ideologies – that are theorized as shaping or informing the semantic content of the data” (p. 84). In the end, I used latent thematic analysis to report my findings because I feel that it conveys the larger picture and uses the voice of the communities to convey their experiences. However, the deductive data analysis still proved to be important and provided a framework to look at the specific implications of the operationalization of FPIC on the ground and provided a good base for the discussion section of this thesis.

Surveys

To analyze the quantitative data collected with the community survey, I used the software program SPSS. The only identifying characteristics of those who filled out the survey that were recorded were community name and age. Based on these characteristics, I was able to determine that 18% of participants were youth, 47% were middle-aged and 35% were elders. In addition, 12% of respondents were from fly-in communities and 88% were from road access communities. With SPSS, I ran several anovas to compare means across several groups (age and road access vs. fly-in community). I also ran tests on group statistics, correlations, independent samples test, and a test of homogeneity of variance. SPSS determined that there was no statistical significance in differences between how these groups responded. Therefore, the findings that were reported from the quantitative data are representative of the entire population that responded and were not separated based on characteristics of age or location.

Knowledge Mobilization

Outputs of this research include an article and infographic that can be uploaded to an online database for FPIC (fpic.info). The article will be written with a targeted audience of non-Indigenous readers such as government and industry representatives to advance an understanding of Indigenous views on the implementation of FPIC in resource governance and the extractive industries. The infographic will be designed to present to MFNM for community distribution if found useful. Knowledge mobilization is an important part of making research accessible and relevant for communities; thus, putting knowledge in the hands of community will be one way to ensure this reciprocal relationship (Wilson, 2008).

Findings

The following section will provide an overview of the findings based on the thematic analyses that were conducted with the APTN documentary series transcripts and the transcripts from the FPIC conference breakout groups. The findings are grouped into themes and subthemes, and separated into categories, as depicted in the table below.

Table 2 Overview of Categories and Themes

Category	Theme	Subtheme
Historical Considerations	Legacies of Colonialism	<ul style="list-style-type: none">Basic Needs Unfulfilled

		<ul style="list-style-type: none"> • Saying Yes to Meet Basic Needs
Historical Considerations	Reliance on Government	<ul style="list-style-type: none"> • Questioning Autonomy • A Sense of Inevitability
Legal Considerations	Government Agenda	<ul style="list-style-type: none"> • Lack of Information • Western Timelines
Legal Considerations	Legality	<ul style="list-style-type: none"> • Presence of Manipulation and Intimidation • Lacking Capacity • Industry Responsibility
Ideological Considerations	Clash of Ideologies	<ul style="list-style-type: none"> • Cultural Preservation • Concern for Land
Ideological Considerations	Community Led Participation	<ul style="list-style-type: none"> • Community Engagement Protocols

		<ul style="list-style-type: none"> • Absence of Equal Partnership
Ideological Considerations	Moving Forward	<ul style="list-style-type: none"> • The Root of the Problem • Safeguard Inherent and Treaty Rights

HISTORICAL CONSIDERATIONS

History has played a large role in shaping the current socioeconomic conditions for Matawa First Nations. Historical events are not simply in the past but play an ongoing role in the experiences for Matawa First Nations and the ways in which FPIC is enacted and understood.

LEGACIES OF COLONIALISM

There are numerous issues that Matawa First Nations are faced with on a daily basis as a result of continued colonial policies. There are many individuals struggling to provide for basic needs, and as a result they are willing to say yes to development in order to make ends meet. Matawa leaders see that their people are struggling with substance abuse and suicidal ideations, and they feel that development offers a solution to combat these problems.

BASIC NEEDS UNFULFILLED

An ongoing theme that emerged from both sets of transcripts had to do with the fact that Matawa First Nations communities are first and foremost concerned with the health of their people and are facing issues such as lack of education, poverty, addictions and suicide. One leader noted, “Today there’s struggles, lots of struggles in the community, the drugs that are

coming in, the black markets, the alcoholism. There's a lot of that" (Participant 017, FPIC Conference). Another leader reported, "I declared a state of emergency twice this year because of the problems that my community has just had— suicidal problems, drug problems that we have in the community— and I need to do something about that" (Mushkeg Media (ROF) Inc. & ABF Ring of Fire Inc., 2015, episode 1). The following quotes also illustrate this issue.

"We're up here in the neck of the woods with hardly anything, and overcrowding issues, socioeconomic conditions and infrastructure, and there's a drug epidemic that we have. What happens if there's gonna be a mining company? How are we gonna be prepared? Those are the issues that plague our communities, especially in the north" (Mushkeg Media (ROF) Inc. & ABF Ring of Fire Inc., 2015, episode 3).

"You're so hard pressed with drugs, alcohol, suicide, and so on. So, those things it's hard to really get going when so many companies come down and say we want to talk to you, that's not the only thing on your mind" (Participant 002, FPIC Conference).

The ultimate question remains as to how communities can focus on or deal with development when they are dealing with so many social issues. As one community member reported, "Social issues are part of what we have to talk about at every turn. We can't talk about business development without talking about education and health" (Mushkeg Media (ROF) Inc. & ABF Ring of Fire Inc., 2015, episode 1).

SAYING YES TO MEET BASIC NEEDS

Some community members want development because they feel that it would provide an opportunity to work and put food on the table without government help (Mushkeg Media (ROF) Inc. & ABF Ring of Fire Inc., 2015). One leader reported that the communities feel they have to

say yes to development because it is the only option when their people are struggling to meet basic needs (FPIC Conference). The following quotes illustrate these concepts as well.

We need our people to work so our people get up in the morning with a purpose you know, with a job, something to do, to put your bread on the table, and not depend on the government to do that for you, eh? I don't think that's a very healthy lifestyle. (Mushkeg Media (ROF) Inc. & ABF Ring of Fire Inc., 2015, episode 1).

We don't want to be welfare. We don't want to be in poverty because poverty no friends, no influence. But we need to find a way to give hope to our young people because far too many are dying, taking their lives, I know in our territory, I don't know I think it's similar around the world, it's hopelessness (Participant 025, FPIC Conference).

Many community members, including community leaders, view development in the Ring of Fire as an opportunity to break free of government dependence.

RELIANCE ON GOVERNMENT

Due to historical and ongoing colonialism, MFN are reliant on the government to assist in many ways, including to participate in FPIC.

QUESTIONING AUTONOMY

Community members are aware that they are reliant on government funding to hire third party consultants in order to determine the impacts of proposed projects. "We're too dependent on government for money to do our work" (Participant 002, FPIC Conference). They question whether or not consent can ever truly be free in this context. Along with dependence on the government to meet basic needs, they also see the impacts of colonialism on their people in terms of addictions and what this means for understanding the implication of proposed projects.

How can you tell somebody what's going to happen to our land, our environment, that's already drug induced or so on? But uh free I think it means you'll never be free. You know, I don't think so. Not to me anyways, the way I see it from the community you know. 'Cause we're all puppets in the government. When we elect our leaders, we use the Indian Act, you know? (Participant 002, FPIC Conference).

Community leaders are aware of the various complexities facing their people as a result of colonial policies, including the Indian Act. They recognize that merely by voting for their leaders through the Indian Act, they are subject to colonial law. "It's an opportunity to promote the Native condition on the reserves and how the Indian Act entraps our people" (Mushkeg Media (ROF) Inc. & ABF Ring of Fire Inc., 2015, episode 1).

A SENSE OF INEVITABILITY

Community members tended to speak as if development in the Ring of Fire region was inevitable:

We know that it's going to happen, right? But we want it to have a benefit for us, too, have a, sort of, as little impact on the landscape itself on the water, you know? That's the type of assurance that we need (Mushkeg Media (ROF) Inc. & ABF Ring of Fire Inc., 2015, episode 2).

Long ago, the elders predicted that this was going to happen. An elder from way back, my great uncle, used to say that. He said, "They will try to displace you, because you are on valuable land." This is true. I do believe it now. It will happen (Mushkeg Media (ROF) Inc. & ABF Ring of Fire Inc., 2015, episode 6).

Along with this sense of inevitability, there are also the fears that community leaders are facing.

So, at the end of the day, just like, people are, we owe them. Well that's our money in the first place because you extracted from our land, but you know, they start, I remember reading "ok we've given them this or we've given them that" they're starting to tally up you know? For me I'm scared 'cause it's not, they're paying for our free prior and informed consent process. You know? What cost are we doing it? At the end of the day, they say, "Well we've told you what we want, you know? We informed you, you know? We came to see you. We're in your community, we made presentations. Ok what are you gonna do for us?" You know? And when that comes, you know, we're gonna be obligated to say let's go. And our land is gonna be destroyed 'cause it wasn't our money, you know? (Participant 002, FPIC Conference).

LEGAL CONSIDERATIONS

Free, prior and informed consent has numerous legal principles to uphold. The following section will use quotes from MFN members that speak to the legal principles of FPIC.

GOVERNMENT AGENDA

From both sets of transcripts, Matawa community members reported that exploration began in the area without prior knowledge and government and industry began to stake claims without permission. The APTN series documented that Matawa members noticed lots of planes flying overhead and cutting of trees happening without prior knowledge or agreeance (Mushkeg Media (ROF) Inc. & ABF Ring of Fire Inc., 2015). As one community leader reported, "There was no prior informed consent, [or] consultation" at this time (Participant 017, FPIC Conference). Another community member describes this in more detail:

Initially, on the early days of exploration, we were left in the dark. Everything as under the old Mining Act. Basically, the companies had a free hand in coming into our territory

and there was not a lot of consultation with our First Nations membership. That was a real sore spot for our chief and council, and we kept on writing letters to the government and the mining companies telling them, you know: “You gotta come talk to us here in Marten Falls before you start anything.” We did a few blockades on our traditional land ‘cause we didn’t have the ear of government, and mining companies, they didn’t take us seriously (Mushkeg Media (ROF) Inc. & ABF Ring of Fire Inc., 2015, episode 1).

The issue was also raised that government and industry sometimes bypass certain requirements in order to get the approval for projects. As one leader reported, “Sometimes they’ll sneak in a check mark, so you know it’s a go ahead. So, we’re always, no matter if they do have a prior, but when they [don’t] have a prior they’ll sneak it in anyway somehow” (Participant 002, FPIC Conference). This same leader elaborated:

Once you give somebody, open that door, they want to do more. You might as well not open the door for them ‘cause once they get in all of a sudden they see what they can have, and they’ll do anything to get in that land. And that’s what’s happening, you know? So all this free prior and informed consent. They’ll get their consent, but they’ll get their consent their way, you know? Thinking that we did consent our way. No, they’ll make us take, they’ll just reverse it. ‘Cause they’re good at their game. It’s money, huh? (Participant 002, FPIC Conference).

In every scenario, community leaders point out that government and industry have their own agenda and First Nations are expected to play by the rules set forth by the government.

You know, and also when they bring in their presentation, it’s their presentation, it’s their rules, it’s their thing. And like I said yesterday, you know we’re so bombarded by information, you know? How can we comprehend?” (Participant 002, FPIC Conference).

“They had their own agenda, they had their own people sitting around. And that’s all set, when the meeting’s over it’s just them (Participant 002, FPIC Conference).

LACK OF INFORMATION

In the FPIC breakout groups, leaders reported that there is a lack of information about what the mine(s) will do to the environment and what is being used to produce them. They are aware that lots of poisonous chemicals will be used as part of the mining process, but they have not been given enough information about the details. In the words of one leader:

We are fully aware that even though there’s a lack of information given from the government, what the mine does itself, what is being used to produce the mine, all sorts of the poison chemicals. That’s why we asked the, when they came back all of a sudden, somewhere around 2001-2007, that’s the time they tried to stake out the whole territory out there, there was no prior informed consent, consultation, to even consult at all. So there was a lot of activity in our area, in our backyard, a lot of disturbance in our fishing and hunting activities in that area in that time. And there was no respect at all from the industry or the government (Participant 017, FPIC Conference).

There is also the issue of conveying information in the preferred language of the community and in a way that is easy to understand as mining and extraction are highly technical fields. “It’s a little bit challenging because, you know, the type of language that the scientists use, it’s very technical” (Mushkeg Media (ROF) Inc. & ABF Ring of Fire Inc., 2015, episode 2).

Translating is always an issue, you know, to translate our documents. All the changes are happening, and we don’t have words for it. Somebody was asking about what does ‘staking’ mean? And sometimes we throw around this word a little bit without realizing that people don’t know what we’re talking about. And that really just is giving them

permission to do exploration (Mushkeg Media (ROF) Inc. & ABF Ring of Fire Inc., 2015, episode 2).

A leader similarly reported:

They carried with them English presentations, but they provided local, the community provided local translator. However, from my experience in terms of the, in terms of the understanding the terminology that the mining companies use, as well as, there's many words that you cannot really put into our dialect, so a lot of times when I hear translators, I question what they're saying. And I think, I don't think that's a very appropriate process (Participant 006, FPIC Conference).

Moreover, Matawa First Nations report that they are visual learners and would prefer to be presented information in a visual way rather than having to read through documents (FPIC Conference). Matawa First Nations emphasized throughout both sets of transcripts, that it is important for community members to be aware of the issues and the impacts that their communities will face with development. This is an important part of gaining informed consent for community leaders.

One of the most important things that has to occur is that we have the awareness, the understanding, and allow our community membership to be in an informed decision process, eh? So that basically what we try to do as people that are coming to these kinds of functions (Mushkeg Media (ROF) Inc. & ABF Ring of Fire Inc., 2015, episode 1).

The functions referenced in this quote are information sessions sponsored by government and industry.

WESTERN TIMELINES

During the FPIC conferences, community leaders reported that current development timelines are much too short for Matawa First Nations to participate in FPIC processes in a way that is meaningful and true to their ideologies. Communities are not ready to adapt to the short timelines of industry and government. Community leaders also reported that the communities do not have the time or resources to comply with the agenda and timelines of developers; if communities do not respond within the imposed timelines, it is built into the legislation that they have been consulted (FPIC Conference). “When the industry develops a mine, a road, they fast track environmental regulations and policies or guidelines and that’s not good enough to satisfy me and my people” (Mushkeg Media (ROF) Inc. & ABF Ring of Fire Inc., 2015, episode 1).

There is a sense of needing to play catch up, expressed in the following quote:

I don’t think we’re ready, but who’s gonna wait for us, you know? We’re trying to do the best we can, you know, with the resources that we have. We gotta take a chance and see, you know, what’s possible. If we don’t take that chance then, you know, we’ll never get anywhere (Mushkeg Media (ROF) Inc. & ABF Ring of Fire Inc., 2015, episode 1).

There are even difficulties for communities when they try to apply for funding in order to hire third party consultants or perform neutral environmental assessments. Communities are still held to Western timelines in order to gain access to funding.

Every different agency when they ask for funding, they have a different criteria, or you have a different criteria. So when we put out our application I have to fit into his criteria for it, and it takes a long time, so by the time you fit it, maybe it won’t go through approval because the deadline is over, you know. There’s always that challenge. So free

is, lost. It's the language. It's where your money is coming from. It's who's pulling the strings (Participant 002, FPIC Conference).

LEGALITY

The legality surrounding FPIC is extremely complex, and Matawa community leaders are aware of these complexities. They question the lawfulness of the current Ontario legislation surrounding jurisdiction. They bring attention to the fact that there are provincial policies that contradict the federal constitution, including the Mining Act of Ontario. Community leaders elaborate on the added complexities of industry and government relationships surrounding mining and extraction in the following quotes. "That's the reason why they built the community, because when they signed the treaty, they didn't give up their inherent right, they didn't give up their land, there's no such thing as surrender" (Participant 006, FPIC Conference). The following quotes are from Matawa leaders talking about the legal complexities of FPIC.

I've been looking at and trying to understand all these different pieces of legislation in Ontario, I know that's one of the things that we keep coming up against. It seems that the Ontario legislation supersedes the duty to consult, Section 35, in the constitution. And it doesn't make sense of how and why that is. You would think that the federal constitution would have more power than Ontario legislation, but, that doesn't seem, so I don't think that's ever been challenged fully in court, you know, the constitutionality of the Mining Act or the Far North Act, and of our controlling Indigenous Peoples' lands and resources (Participant 003, FPIC Conference).

Ontario, more recently amended their 100-year-old Mining Act. It was really no consultation undertaken with First Nations on the changes. Matawa communities, there was what 10 years ago or so, we made some recommendations about mining and one of

them was that we felt that consultation starts very early in terms of even before exploration happens. It should happen at a time when there is prospecting or even before that. And that was one of our recommendations. And that recommendation was never honoured (Participant 007, FPIC Conference).

The free entry systems still exist in the Mining Act. First Nations don't need to be consulted until there is exploration, which means drilling. And by that time, the extent of development in our communities are too far extended there's no use to be consulted. It's really, so we believe that works against the intent of the treaty. We believe that the action of the government doesn't honour what we agreed upon in the treaty, it doesn't honour the inherent right of our peoples on the land (Participant 006, FPIC Conference).

The Mining Act of Ontario, the revision of that. Or particularly the First Nations. In terms of the plans and permit processes, there's timelines to react, if you don't react it's assumed you've been consulted. It's contained within the process. And as one of the communities, we gave you an example of where these processes weren't followed (Participant 001, FPIC Conference).

There is an added layer of difficulty when industry and government bypass existing laws and continue to engage in exploration or development according to their agendas, as demonstrated with the following quote.

We are looking at the first stages of the exploration stages where mining companies are actually going in to First Nations respective territories and they're actually sometimes trying to bypass the duty to consult. Basically, to just go, right, and go and do like they used to do before. Even though there's some mining aggravation to accommodate that but

it's actually a third-party designation from the ministries. In this case the Ministry of Northern Development Mines of Ontario designates that particular action to happen from the mining company itself. When in fact, it is actually a duty by the crown, and the government represents the crown, and they're not doing it. They're designating a third party. That's the system in Ontario that's been adapted since 2009 when the legislation passed a revision of the Mining Act of Ontario. And that's what we're dealing with (Participant 001, FPIC Conference).

During the FPIC conference, one community leader reminded our research group that the government does not have authority "to allow" Indigenous Peoples' land rights. He said, "You don't have the right to allow anybody. It's a given." He continued to explain that the terminology used to discuss these rights need to be specific. The community has the right to allow government and industry to do a project on their territories, not the other way around (Participant 006, FPIC Conference).

PRESENCE OF MANIPULATION AND INTIMIDATION

Many community members feel that the government manipulates communities to get them to say yes to development. Some feel this manipulation is intentional while others think it might be unintentional.

It sounds like the community is being misled, forced to make mistakes, to say the wrong things. They are waiting for the First Nations to say the wrong thing and that is why the process is taking so long when talking about the land (Mushkeg Media (ROF) Inc. & ABF Ring of Fire Inc., 2015, episode 2).

I don't know that there is such a thing as 'free'. You know. For me, you know, I've heard a lot of things so far and I believe there is a gentleman here that was talking about

intimidation and so much of that happening up here from what I gather. And it's very hard to understand how you can challenge all of that (Participant 004, FPIC Conference).

On those information sessions about how they are going to do everything, they don't always say what is going to happen, what they are really doing when they mine. They don't disclose how that will change things where the road will go (Mushkeg Media (ROF) Inc. & ABF Ring of Fire Inc., 2015, episode 2).

From First Nations' perspective it's not free. It's imposed on us, you're manipulated. You're everything, the definitions of 'free' means in terms of FPIC, that particular cause is, has every parameter of that definition - force, intimidation, inducement, manipulation - it's all there (Participant 001, FPIC Conference).

When leaders were discussing the principle of "free" at the FPIC conference, they wondered whether free consent must be free from coercion, intimidation, pressure, and manipulation from their own community members in addition to outside government and industry. It was reported by one leader that, "there's pressure even in our own local government to produce" (Participant 002, FPIC Conference).

De Beers is one example of a company that did not follow through on their promises, according to community leaders. One Matawa member asserted, "Who's benefitting? Industry and government. First Nations, what do they get? Ditto, zilch, nothing! But I think it's high time that we tell these guys to, you know, get off our land" (Mushkeg Media (ROF) Inc. & ABF Ring of Fire Inc., 2015, episode 1). Matawa First Nations have reported that there is a history of "false hope" and promises of benefits and jobs, but that these benefits remain to be seen.

LACKING CAPACITY

Communities have limited resources, time, and money, and many members are struggling to meet basic needs. It is difficult for communities to focus on consultation and development when they are often dealing with life-threatening issues such as high suicide rates. While there is currently a lull in the development phase for the Ring of Fire, there is concern that communities will not have the capacity to deal with all the proposals and permits when the process speeds up.

The communities are not quite ready to adapt to that new system. And when the actual surge or the resurrection of the industry happens, these communities are going to be overwhelmed with all this particular piece of legislation [Mining Act], which they're, they are, have to, have to be basically be involved, and in a specified time period. Like thirty days, fifty days respective for plans and permits. And these permits are being issued by the Ministry without adequately, where First Nations don't have the time or the resources to be able to comply with the legislation piece so that's what's happening (Participant 001, FPIC Conference).

With the lack of the capacity in the communities, you'll never ever get prior consent. That's like being funded out. The Ministry of Mines in Ontario is loading up on their side with qualified people that go against other people. And they're saying, 'Ok you guys want capacity, put your money into it.' Meanwhile you get one finger to make a hand, they expect us to have a hand, you know, your housing, your education, your health. Where's the capacity building? There's no funding left for that. So, what you are saying is 100% correct. You'll never, ever get free prior and informed consent as long as there is no capacity (Participant 003, FPIC Conference).

INDUSTRY RESPONSIBILITY

Industry has a legal obligation to operate in good faith with Indigenous communities. However, industries do not always follow through on commitments to respect Indigenous Peoples' rights, and the Ontario government often takes the side of industry.

So there really hasn't been any meaningful consultation that the communities like to see, and what's made some of us worried is that some of the companies have policies that promote free, prior, and informed consent. One of the companies has an agreement with Green Peace that support Indigenous rights and we don't feel like that company holds the spirit and intent of free, prior, and informed consent and we're trying to remedy that (Participant 020, FPIC Conference).

And whatever mining companies enter into their territory, they advise the mining company that here is our protocol, here is how we want you to consult with us. We want you to build a relationship with us. And the mining companies don't honour that, they don't seriously with First Nations. So that raises conflicts. And unfortunately, the Ontario government takes the side of the mining companies and they are still permitting without any real involvement of First Nations (Participant 007, FPIC Conference).

IDEOLOGICAL CONSIDERATIONS

Ideology lies at the forefront of the issues surrounding the implementation of FPIC. Ideology is central to historical events as well as the way that current law operates in Canada. Matawa First Nations are aware of ideological differences between First Nations and the West and the way this impacts FPIC processes. The following sections will highlight some of the main ideological concerns present in Matawa.

CLASH OF IDEOLOGIES

According to Matawa members, there is a difference between Indigenous ideologies and the initiatives of Canadian government and industry (FPIC Conference). The following quotes provide examples of these differences.

As a councillor, I speak to non-Aboriginal people; the government, the mining people and those who are doing the staking. Some understand how much we rely on the land, water, animals and fish. There are some that don't seem to grasp that we depend on everything. Our survival comes from the water and the land, which is now pristine (Mushkeg Media (ROF) Inc. & ABF Ring of Fire Inc., 2015, episode 6).

The main thing is it's about money for them, for the companies, and for me, they're just gonna destroy the land. I don't care how many environmentalists or whomever the powers that be in the government that can tell me that they're not gonna destroy the land, you know they're lying (Mushkeg Media (ROF) Inc. & ABF Ring of Fire Inc., 2015, episode 6).

White men have their way. Indian have their way. And we're always, always trying to adapt to something. We're always trying to be, you know? You know when we ask for a project, when they ask for funding, they have their own circle. We got a triangle. And we're always trying to fit our triangle to that circle. It should be the other way around (Participant 002, FPIC Conference).

This clash in ideologies has impact on the processes of consultation as well as the outcomes of development. For Canadian government and industry, the land has a dollar value. For Matawa First Nations, it is far more valuable than that.

When you talk to the Elders about past time, who are still here with us, they always talk about to be careful, be careful how you're negotiating, what you do with your land.

'Cause no matter what, whatever money you make, whatever result that is coming into your territory, you're Anishinaabe. The blood that's running through your vein is

Anishinaabe blood and it always wants to be in alignment. And that's very important.

Without land, you're nothing, no matter how much money comes into your territory. So in negotiating, you have to be very careful how, not what. And that's why, in the Ring of Fire, you know people say what's wrong with you guys, you got really good potential coming to your territory. No, that's not how Anishinaabe looks at it, it's your environment, if you don't protect your environment, then you're nothing. That's where you're from, the water, the land, the trees (Participant 002, FPIC Conference).

CULTURAL PRESERVATION

Indigenous Peoples, including Anishinaabe people, recognize that land, resources, water, and trees are sacred. They need to be protected, and the connection that people have to the land is very important. They assert that without this connection, the environment will not survive. People will not survive. The culture, language, and traditional ways of life will not continue if lands are not protected. This is the message that Matawa has been trying to convey to industry and government.

It seems like they never wanted to listen to understand that. They never take the time to learn. So, what is our livelihood, where we came from. It's important to maintain what we are, who we are, for a better environment and to sustain us and keeping healthy (Participant 017, FPIC Conference).

The rivers here, that's part of who I am, a big part of who I am as a person. It feeds me, you know? It's a tool. It teaches me how to be grateful for my life. This place is called Winiskisis channel or Naw-naw-koo-pang in our native language. There is a lot of wildlife here such as fish, moose, geese and ducks in the fall (Mushkeg Media (ROF) Inc. & ABF Ring of Fire Inc., 2015, episode 6).

When we are out here, living out here, I feel grateful for my wellbeing. This is our way of life and it is essential for our survival. We saw moose out here yesterday. There are a lot of moose around here, even caribou. Once the ice breaks up, we come here to fish for whitefish. We are catching whitefish right now. That's what we're doing today (Mushkeg Media (ROF) Inc. & ABF Ring of Fire Inc., 2015, episode 6).

Matawa First Nations are worried that they will not be able to pass their culture and ways of life down to future generations. They are concerned with the negative impacts of development. For some of the remote communities, living off the land has meant survival for millennia. "We always catch fish to feed ourselves. It's our source of life and survival. We make everything from them ... from what we catch. We respect the fish" (Mushkeg Media (ROF) Inc. & ABF Ring of Fire Inc., 2015, episode 2).

In the long run, the Ring of Fire project that is being developed today, will affect those of us who are doing traditional hunting. We will have some problems in the future. Before it all happens, we are going to protect the land. We have to try to stop it before it comes here. We have to teach our young ones about our survival, this is our life (Mushkeg Media (ROF) Inc. & ABF Ring of Fire Inc., 2015, episode 6).

It's very beautiful here when the water level is low, today the water is very high. When we landed here for a short visit, we noticed there were a lot of fish and animals to trap. People long ago enjoyed this land, and now we are here. Today we are taking over this traditional land and passing it on to our grandchildren and children. Hunting is very good here (Mushkeg Media (ROF) Inc. & ABF Ring of Fire Inc., 2015, episode 6).

CONCERN FOR LAND

Matawa First Nations are worried that development will pollute their lands and disturb the wildlife that inhabits their territories. Community members have noticed destruction in other places as a result of mining and are wary of similar consequences for their territories.

Today, we see a lot of wildlife, both animals and fish. Will it still be possible in the future to eat them when things are getting damaged? Will we be able to hunt and eat the wildlife like caribou and moose, the things that I'm used to eating? (Mushkeg Media (ROF) Inc. & ABF Ring of Fire Inc., 2015, episode 2).

Everybody needs to understand what the Ring of Fire entails, because they don't know what type of chemicals are gonna be used, what type of impact it's gonna have on the fish, because everything is connected (Mushkeg Media (ROF) Inc. & ABF Ring of Fire Inc., 2015, episode 2).

It will destroy fur animals, beaver, moose, caribou, all living things. We know that things will be destroyed. This is the truth that I say. As in the past, there has been destruction in other mining places. This is how we know this (Mushkeg Media (ROF) Inc. & ABF Ring of Fire Inc., 2015, episode 2).

I care about the environment and what's going on in our surroundings. And the mines are going up like crazy, and us Natives have to get involved in what's going on with our bush

and our forests and make sure that all these rivers and streams and lakes that are getting polluted, so we gotta make sure that they're kept pristine (Mushkeg Media (ROF) Inc. & ABF Ring of Fire Inc., 2015, episode 6).

We are connected to the land. And like one of my colleagues said, money will run out. But our connection to the land as well as our stewardship to the land is something that we really need to look at when making our decisions in the future because we're only borrowing the land. We're only using it temporarily because we got to leave the rest to our children, for those that are going to live in the future (Participant 005, FPIC Conference).

COMMUNITY LED PARTICIPATION

Matawa leaders recognize that the problems they are facing are complex and the decisions they are facing will require input from the communities. They have taken it upon themselves to engage community members and make sure they are aware of what is happening. They want the full involvement of community members in order to make decisions. "As community leaders, we kind of have an idea as to what we have to do now in order to bring awareness to the community because there's not much awareness in terms of all this development" (Mushkeg Media (ROF) Inc. & ABF Ring of Fire Inc., 2015, episode 1). "Webequie and all of the other nations have taken the position that the communities have to be in the driver's seat, the ones making decisions about these proposals" (Mushkeg Media (ROF) Inc. & ABF Ring of Fire Inc., 2015, episode 1).

I don't feel comfortable moving forward without the full participation of my community members. I would be amiss to do that. I need to hear from the community. We cannot jump into everything that is presented to us just because we feel poor. We need to

thoroughly think these things through when we are asked for input (Mushkeg Media (ROF) Inc. & ABF Ring of Fire Inc., 2015, episode 1).

And you know, our elders have always said that we need to be part of the development in our area. We have to be able to be part of the processes, be part of the work that is going to come in from our lands and resources, our territories. So we needed to find out more of how this, or what we want as consultation for us to better understand that. We are working with government in developing that relation and we are talking about what we mean, what we want as consultation for our communities and our members (Participant 016, FPIC Conference).

COMMUNITY ENGAGEMENT PROTOCOLS

Communities are working on creating policies for consultation and procedures for working with government and industry. Communities understand that they must take charge in these processes. Matawa demanded that industry and government come to the table because their lands are sacred to them.

The potential Industry that's coming to our territory it's something very new to us. And it's going to take a lot of time for our members to understand what needs to take place, and there's a lot of consultation that needs to happen. A community consultation policy for making decisions around this area should consider from a values point of view that you need to understand the value of the land and protect it (Mushkeg Media (ROF) Inc. & ABF Ring of Fire Inc., 2015, episode 1).

Matawa First Nations have also worked to develop a Regional Framework Agreement and have continued to work on land-use planning in order to safeguard their territories. In addition, Matawa First Nations have taken proactive steps to educate and train community members to

make sure they are employable at the mines (Mushkeg Media (ROF) Inc. & ABF Ring of Fire Inc., 2015). However, there are a lot of barriers that are still faced for gaining employment including the need for a grade 12 education, the need to travel to become certified and the gap between becoming certified and obtaining a job.

What's happening is that we do have those people who are eager to work, but they're not working on their actual training. They're losing their skill set of what they were actually taught. So when we bring people up from fly-in communities and when they go back home, they're losing that skill set because they're waiting for something to happen. And right now, there's nothing happening, because we cannot start a project without the company being in there first (Mushkeg Media (ROF) Inc. & ABF Ring of Fire Inc., 2015, episode 5).

ABSENCE OF EQUAL PARTNERSHIP

Community leaders question whether FPIC can ever happen when they lack the capacity to follow current Western consultation protocol. They also assert that FPIC can never be achieved without equal partnership in decision-making. "Free, I think it means you'll never be free, you know. I don't think so. Not to me anyways, the way I see it from the community, you know. 'Cause we're all puppets for the government" (Participant 002, FPIC Conference). "There is no free, until the day we make our own money, have our own set of language...or even, you know, technologies. So, to me it's not intentionally, not being intimidated intentionally. Maybe that's not their intent" (Participant 002, FPIC Conference).

You know, right now I got an email from Ring of Fire. They're setting up another table. But yet our people haven't even gotten that far yet. So how can the chiefs present to the government, to the negotiators, you know, what our people are saying? So the free will

never be there until we are equal partners once our, ‘cause we’re always behind. We’re always behind (Participant 002, FPIC Conference).

Matawa First Nations want to create a mutual and beneficial relationship with government and industry. To date, representatives have gone to the communities, shaken hands, and assumed that Matawa First Nations have been consulted (FPIC Conference).

It doesn’t have a true meaning. If you want to truly create a working relationship for development or anything, you have to know the concepts and teachings of how it is the development, how is the important pieces of the development will occur (Participant 017, FPIC Conference).

While Matawa First Nations are demanding to be equal partners in decision-making, they recognize that current consultation protocol is defined through Western frameworks. As one leader stated, “But really when it comes down to decision-making, it’s still a part of their process and it’s not the process that the communities own or create” (Participant 020, FPIC Conference).

MOVING FORWARD

To recognize the issues of FPIC is not enough. Matawa community members have also provided suggestions on ways to move forward with FPIC.

THE ROOT OF THE PROBLEM

Looking at the data, it is clear that there are many complications to the implementation of FPIC. Community leaders reported that it is important to look at the root of the problem and come up with new strategies.

Yeah, it’s just a band-aid solution [shareholder advocacy] for now. It’s a tool. And you know, you use everything you can to exist at the time, you know. But nevertheless, that’s not, that’s not the solution. Like I said, when I was addressing here as well, I said, you

have to look at the root of the problem, very carefully analyze, and that means going back to history and the treaties and everything else. And we gotta do it collectively as one body, you know, and then make a sort of strategy approach in how we're gonna build that and then get back, get back on track, where we, where we should have been. It's always trying to establish your connection to the land (Participant 001, FPIC Conference).

We talk about education, you know, just because we have to catch up, we have to educate our young people, but on the other hand, we're losing our culture, our language, you know, our Indigenous passing on to generation to generation, it's not about this. It's not about a technology that the Europeans brought in. So, when our elders die, you're also burying the history of the knowledge. And I think it's time for everyone to recognize that we need to start to funding as much money to regaining our tradition, our culture, our language, you know, they throw pennies at us to know our language. How can we challenge that to the level that they are? (Participant 002, FPIC Conference).

The creation of government policy has created instability for First Nations. The government uses divide and conquer tactics, so they are trying to diffuse our unity and strength, but I think that we maintain the original principles. Our Anishinaabe ways, our own laws, you know...I think that's true that the processes of colonization...I think that we need to focus ourselves as Anishinaabe people, towards decolonizing our community members. There's still a lot of fear that's intergenerational within our families that exists today. People, I think we really need to look at that, revitalizing our culture, language, our identity, and understand the living document has to move along with the economy and the technological changes, and has to harness our culture. We had, for an example would be that, you know, we can utilize the technology in our laws, our identity, our

language, our governments, and I think that the jurisdiction ideology of the foreign government is divisional, the language itself is divisional, it creates instability. And they're utilizing all those land systems, to look at the trap line that I was talking about before, and we talk about another glorified trap line system, then it becomes regional fighting, then national fighting. And I think our Anishinaabe people, we have to target their people, the government is targeting us, and we have to tell their people this is our way. Our way is love, truth, sharing, strength, be kind to each other. That is our law. Their law is legislation based, court, judges, police, lawyers, that's their way. Their mandate. Our ways are written on the land, that is why we are tied to that because the language is based on what we see out there (Participant 006, FPIC Conference).

SAFEGUARD INHERENT AND TREATY RIGHTS

Matawa leaders insist that their inherent and treaty rights as First Nations must be safeguarded and protected in a way that will bring harmony and balance to everyone. If government and industry want to move forward, they will need to build relationships prior to exploration. Matawa First Nations have made it clear that they want to go forward with development, but they want to engage on their terms.

And today we were the ones who want to be part of the decision-making process, what comes in, what can go on the ground. And based on the benefits and the earnings on what is going to take place up there and the control in the decision-making process. It seems that every time we sit down with them, they bring in what they have in their papers, in their legislative frameworks that they follow that they want to suppress on people's minds. So we do have our laws and we do have our guidelines, and protocols that lead us in a good way. So we learn from the beginning when the child is born to respect each

other, to respect the animals and other people that we meet. So part of that is, there has to be a balance, a benefit in the decision-making process in what will take place in our backyard, and also the control. And that's what we're telling them, we want to be part of the decision-making process, and having the jurisdiction authority in decision-making in what's going to be happening in our backyard, what is coming (Participant 017, FPIC Conference).

We have to safeguard our Aboriginal and treaty rights, things that are within us, our culture has to be safeguarded and protected. But it has to be protected in a way that everything will work in harmony. So that's how we view it. And that's how we want to move forward in our relationship with industry and also with government (Participant 016, FPIC Conference).

Matawa leaders are still looking at ways to level the playing field so they can engage with consultation and decision-making on their own terms. They also recognize that Indigenous Peoples across Canada are facing similar issues with their land rights, and this needs to be addressed on a larger scale.

I think it is going to be important a part of that equation is how do we create wealth so that we can finance our own research or litigation and things like that because it's the money that calls the shots around government. Calls shots around corporate tables (Participant 025, FPIC Conference).

So, there was never free. It's not even free across Canada and all First Nations. It's not free. We're talking about free, that particular part of that first definition on the FPIC, it's not there. It's just not there. Because we're all gonna be, we're always gonna be contesting with the governments, ok? No matter which way we look at it. Ongoing. So, if

it's not free across Canada, I can't even see how one small First Nation is going to carry on. It's evident. It's there. It's documented. And it's ongoing (Participant 001, FPIC Conference).

It's like that right across Canada, it's not only here. There is no free for First Nations. They are always manipulated, intimidated, and forced. The only way that's been happening, just like our neighbours here actually talked about western Canada, how they handled it, and how the rest of the First Nations handled it. It was through litigation; you have to go to court (Participant 001, FPIC Conference).

Survey Results

Various statistical analyses were conducted in SPSS with the responses from the surveys. The survey consisted of six questions rated on a Likert scale of 1-9; 1 signifying “strongly disagree”, 5 as “neutral” and 9 as “strongly agree”. Based on the feedback that the survey should be visual, a frowny face symbol was put next to the “strongly disagree” option and a smiley face symbol was next to the “strongly agree” option to make sure the scale was clear. Below are the means and modes of each response (n=49). The results did not show any significant difference between responses based on age (youth, middle-aged, or elder) or location (fly-in or remote community).

Table 3 Survey Responses

Question	Mean	Mode	Standard Deviation

Q1. I feel that my community has the right to say YES or NO to all development on our lands	7.88	9.00	2.38
Q2. I feel that government listens to and respects my community's decisions	3.18	1.00	2.05
Q3. I feel that industry listens to and respects my community's decision	3.90	Multiple modes 1.00 and 5.00	2.36
Q4. I feel that my community has been provided with enough information about Indigenous rights to free, prior and informed decision-making	4.14	5.00	2.32
Q5. I am looking forward to development in my community	6.63	9.00	2.31

Q6. I would not support proposed development on our lands if the social and infrastructure needs of my community were already met	5.82	5.00	2.33
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The survey results show that community members are aware that they have the right to say yes or no to development on their lands. However, the results indicate that they do not feel government or industry respect their right to say yes or no. Overall, community members do not feel they have been provided enough information on FPIC. Despite these issues, the results show that the majority of community members are looking forward to development in their communities.

Summary of Data

There is a lot of information covered with the data, with many repeated themes. Historical considerations demonstrate that due to past and ongoing colonialism, Matawa First Nations are not able to meet basic needs for all community members and the majority of MFN that contributed to the research want to say yes to development in order to meet basic needs and decrease government dependency. However, they are currently reliant on government in many ways, including for the ability to participate in FPIC processes. Many Matawa members speak about development as if it is inevitable.

The legal considerations highlight the current experiences of FPIC, and particularly touch on the principles of free, prior, and informed consent. Matawa members gave many reports of their experiences with inadequate notice of exploration, presence of intimidation and

manipulation, short timelines, and insufficient information presented to them about projects. Moreover, MFN members talked about the lack of capacity to participate in FPIC in the way it was meant to be implemented. Matawa members also questioned the legality of the current FPIC practices in Ontario, drawing attention to specific provincial laws and practices.

The ideological considerations demonstrate the clash between Indigenous and non-Indigenous ways of viewing the land, which lies at the root of the larger issues facing Indigenous Peoples in Canada. Matawa members speak about preserving culture, engaging their community members, and moving forward in equal partnership in order to safeguard inherent and treaty rights.

Discussion

In the following section, I will analyze the findings from the research and discuss them in connection with the literature. I will then go into more depth with the data and explain the infographics I have designed as a way to help illustrate the larger themes that emerged from the data and the literature.

Unlevel Playing Field

From the very onset of considering the implementation of FPIC, it becomes apparent that MFN are already at a disadvantage. Matawa First Nations are faced with poverty, lack of education, addictions, and suicides due to ongoing governmental policies. This is consistent with what is reported in the literature, that Indigenous communities are dealing with intergenerational trauma, addictions, suicides, and low socioeconomic status as a direct outcome of colonialism (Mitchell *et al.*, 2019a; Mitchell & Maracle, 2005; Radu, House, & Pashagumskum, 2014; Greenwood, 2005). These issues are important to consider when reconciling for past wrongdoings because an apology will not bring about equity, and this has everything to do with

the disadvantages that MFN are currently dealing with. As a result of these disadvantages, many MFN community members want to say yes to development because they feel it will decrease poverty, which they feel will ultimately increase community wellbeing. Communities are also looking for a way to decrease government dependency by having more economic opportunities for community members.

This raises the question as to whether or not it is considered a form of manipulation to use the promise of jobs as the primary benefit for MFN to say yes to development in their lands. As indicated in the literature, the principle of *free* would imply that consent is given without manipulation including monetary incentives (Mitchell et al., 2019b; United Nations, 2007). However, the promise of jobs is not currently considered manipulation or a monetary incentive. It is seen as a benefit to the communities, and it is definitely not something that can be guaranteed. This is clear when looking at the history of development in Matawa, and the fact that there have been cases in the past where Matawa was promised jobs for their communities with no follow-through. Matawa has also identified that there are particular skills required to obtain the jobs being offered by the mining companies, and they are actively working to train those who want to take advantage of future opportunities. However, there are still issues with accessing training, and then being able to find a job when training is completed. To date, there has been no consistency with MFN getting jobs as a direct result of mining in the Ring of Fire.

Dimensions to Power

When looking at issues of power imbalance in relation to Matawa First Nations experiences of FPIC processes, multiple issues become evident. As Gaventa (1980) described, there are three dimensions to power in order to prevent or influence decision-making: overt, covert, and latent.

Overt Dimension

Overtly, the literature and MFN reported that there are government policies that attempt to prevent Indigenous Peoples from being able to maintain jurisdiction over their lands (e.g. The Mining Act and The Far North Act). There are also the ways that Canada attempts to control situations such as stating that UNDRIP is not workable in Canadian law or declaring that consent does not include a veto power, and ultimately implying that Indigenous communities have the right to consent just as long as they say yes to development. Moreover, this is the dimension where intimidation and manipulation are present in consultation processes. The overt dimension includes situations in which government and industry officially state that they consulted Matawa First Nations, but in reality, merely made a presentation or shook hands with someone in the community. This dimension also includes purposeful violation of policies, which was clearly present in this case based on the evidence in the data.

Covert Dimension

Power at the covert level includes designing the rules of the game. Communities are expected to come to the table and work with government and industry in consultation processes that are defined by the Canadian government. As Gaventa (2006) asserts, we need to pay attention to “how spaces for engagement are created, and the levels of power (from local to global), in which they occur” (p. 25). Spaces themselves contribute to power and influence. If government and industry are defining the consultation processes, then they are already in a position of power. However, there are other factors to consider, such as where the meeting is held, who is present at the meeting (and who is not invited), in addition to how the consultation is conducted. We heard from Matawa leaders that there has been no meaningful consultation yet, and that they feel like puppets for the government. The Matawa leadership recognizes that

government and industry are setting the tables for negotiation but that Matawa is too far behind to respond. Matawa leaders recognize that they are not creators of the consultation processes that currently exist. Furthermore, while Matawa might be invited to participate in consultation processes, there are many spaces at the government and industry level that are still closed to First Nations and many meetings that they are not part of. This also includes implementing legislation that impacts land rights, such as the Mining Act and the Far North Act. The covert dimension also includes the mobilization of bias that presents a limited view of the problems (Sadan, 1997). Biases can lead to the dismissal of groups of people or assumptions about what groups of people want. The mobilization of bias against Indigenous Peoples in Canada is overwhelming on a whole.

Latent Dimension

The latent dimension of power is more difficult to discern. The latent level looks at the influence on consciousness and perception and would include the ability to influence concepts that cause groups to make decisions that are harmful to themselves under the impression that the decisions will be beneficial to them (Sadan, 1997). While this dimension is much trickier to determine, Matawa leadership made some very profound statements that speak to this level of power. They talked about making decisions as a drug induced person; the implication being that someone under the influence of drugs will not understand, or perhaps care about, the repercussions of development in the same way as someone who is not under the influence. The much larger connection is that the abundance of drug addictions is due to government policies that have caused poverty and trauma for First Nations. Even further back, alcohol was introduced to First Nations by the colonizers as a means of trade but also was used to manipulate decision-making and obtain signatures for land ownership. The complex relationship surrounding drug

and alcohol addictions – the fact that alcohol and drugs were introduced by colonizers and are now used as a way to escape the trauma caused by settlers – is something that is rarely connected when talking about the issues Indigenous Peoples in Canada are facing.

Matawa leaders also talked about decolonizing their community members, which is reflective of the latent ways in which the attitudes of the settlers can become engrained in Indigenous populations. This corresponds with the literature, which talks about Indigenous Peoples internalizing the attitudes of the colonizers (Akena, 2012). It appears that the majority of Matawa First Nations are under the impression that development in the Ring of Fire will provide more economic opportunities for their communities. They feel that these opportunities will be a way to decrease government dependency, put food on the table, and give the communities hope. Again, this is reflective of the literature which talks about neocolonialism and the power of money causing some Indigenous Peoples to view their land as an exploitable resource (Coulthard, 2014, p. 78; Ballantyne, 2014; Manuel, 2017).

Based on the results from the survey, the majority of community members said that they are looking forward to development. However, several community members have also warned of the negative consequences to the environment and are opposed to development. Matawa First Nations are aware of some of the negative impacts on the environment, but many are still choosing to say yes to development because they feel it will be more beneficial to them. While nothing can be said for certain, there is a lot of evidence to suggest that development will drastically change the lifestyles of Matawa First Nations. Even when looking at communities who have already been exposed to development (e.g. Constance Lake, Ginoogaming, Aroland and Long Lake #58) there are examples of the detriments and changes for the community (e.g. they cannot drink water from the lakes or eat fish from the lakes). As cited in the literature,

separating Indigenous Peoples from their traditional subsistence lifestyles is another way of separating them from their land (Simpson, 2004; Aldern & Goode, 2014). Matawa First Nations are continuing to consider the opportunity to engage with industrial development, with the understanding that development will have consequences in their lands. Whether or not it will be beneficial to Matawa First Nations remains to be seen.

Lastly, I was attempting to analyse the motive behind community members' desire for development with the last question on the survey I designed. It asked whether community members would still want development (assuming they did) if their basic needs were already met. There was some back and forth as to whether or not I should include this question. A member of Matawa First Nations Management said that it was a good question, but likely community members would not be able to envision what that would look like, i.e. a time for youth and middle aged Matawa members when their basic needs were met. When participants were filling out the survey, this subject did get a lot of questions as well as conversation. One community member commented that the word "infrastructure" already in itself implies that development exists, which is a good point. I feel that the overall wording of this question was a bit tricky and complicated, and I was not able to discern what I had hoped. However, there is definitely a difference in how this question was answered compared to question five where there was an obvious trend pointing to the fact that the majority of community members are looking forward to development. I would recommend a more in-depth study about the latent motives behind the desire for development. The literature review and preliminary thematic analysis that I performed lead me to believe that the motive behind saying yes to development was more reactionary and based on a lack of basic needs being met rather than a genuine desire for development.

Questioning the Legality

It is clear from the literature and from the data collected that there are several points of contention surrounding the legality of what is happening in northern Ontario. Matawa leaders raised many questions surrounding the constitutionality of the Mining Act and the Far North Act including the fact that they are a violation of Aboriginal treaty rights. Moreover, Matawa leaders brought up the fact that the amendments made to the Mining Act were done without consultation of First Nations, and that when Matawa made some recommendations, they were ignored. Matawa leaders discussed the fact that they never surrendered their land, and they should still have jurisdiction over their territories.

Another issue that Matawa leaders raised is that current legislation defines how the permitting process works for mining companies, and that legislation currently operates on a free entry system and does not require consultation until after the prospecting phase, which Matawa leaders assert is too late. They want to be consulted before mining companies are coming into their lands to compete for mineral access. They feel this is a violation of their treaty rights. Another issue with the current processes is that the timelines that are built into the legislation are much too short for MFN to properly consult with community and have a proper understanding of the impacts to their lands. It is built into the legislation that if Matawa First Nations does not respond within a certain timeframe, it is considered that they were consulted.

It becomes even more problematic when mining companies bypass the duty to consult altogether and begin exploration or development without permission. As explained in the literature review, it is the duty of the crown to ensure that First Nations are consulted, but according to Matawa, the crown is designating third parties to oversee these processes, and the duty to consult is being bypassed. As previously mentioned, Matawa has also spoken of their

experience of government and industry lying about consulting communities or sneaking in checkmarks for project approval. It is interesting to note that, based on the survey responses, communities feel that government and industry do not respect their land rights, but industry was rated a bit higher than government. What is clear is that MFN are aware of their rights to say yes or no to development on their lands, but they also recognize that government and industry do not respect their decisions, which is extremely problematic if the goal is to provide a fair and informed decision-making process.

I have highlighted a few of the major issues that are present surrounding FPIC, the duty to consult, and the contentions between Ontario legislation and Canadian constitutional law. These are all issues that Matawa First Nations leaders are aware of and are working against. However, the complications are even more complex when considering Indigenous law and the assumption in Canada that Western law is dominant. One way this is evident in this case study is the recognition that Matawa leaders make in regard to the Indian Act and the fact that they elect their leaders through colonial policy. This is reflective of the larger issue of Indigenous Peoples being forced to play a game that Canada designed and implemented, and First Nations are held accountable to rules that they did not create. Despite this, Matawa First Nations are making their voices heard and seeking to assert their inherent rights.

One Matawa leader made a profound statement, as mentioned in the findings section, that terminology is important when speaking about land rights. The community has the right to allow government and industry to do a project on their territories, not the other way around. This also speaks to the latent dimension of power that uses language as a way to prevent decision-making (Sadan, 1997). It is commonplace in the literature for the issue of land rights to be framed as something that Canada or International law is granting to Indigenous Peoples. In that mindset,

Indigenous Peoples might feel reliant on Western law to grant them rights or feel thankful to these entities for granting them rights. This can create a sense of dependency and paternalism for Indigenous Peoples in Canada.

In the same vein, many Indigenous Peoples in Canada are not aware that their rights are supported in Western legal frameworks, and this includes the right to free, prior and informed consent. As is reflected in the survey, the majority of community members did not feel that they had been provided enough information about their rights to FPIC. Western legal rights frameworks provide another tool for Indigenous Peoples in Canada to protect their lands. In the words of Arthur Manuel:

It is essential that we take our place with world bodies to push for recognition of our rights...When the Canadian government signed on to these initial human rights treaties and covenants, they promised to reform the country's laws and policies to comply with their provisions. They also promised to inform citizens about their legal rights, to ensure the laws are implemented and fairly adjudicated and, if there was a violation, individuals should be able to file complaints or lawsuits to obtain justice" (p. 174-175).

The Larger Picture

It is important to keep in mind the various factors at play in regard to upholding Indigenous Peoples' right to self-determination, and more specifically, the right to FPIC in regard to traditional territories. There are the historical aspects to consider, the various legal contexts, differing ideologies, and the actual consultation processes. It would be naive to conduct research on consultation processes without considering the myriad ways that history, ideology, and colonial policies impact these processes. Figure 5 below provides a visual framework of these complex issues using Bronfenbrenner's (1979) Ecological Model with an adapted version

of Sherry Arnstein's (1969) Ladder of Citizen Participation at the centre. Figure 5 shows some of the major issues at play that impact the implementation of FPIC while centering the ladder of participation to portray the different ways that Indigenous Peoples can be involved in FPIC processes, with varying levels of participation. I designed this infographic based on the themes that emerged from the literature and data.

The outer level of Figure 5 represents the Chronosystem which includes things such as changes over time, sociohistoric conditions, and environmental patterns. The next level is the Macrosystem where I listed ideologies and various legal systems and rights frameworks. The next inner level is the Exosystem where government officials, social services, environment, community, culture, relationships, industry and infrastructure are listed. The Mesosystem level is where the interaction between the Exosystem and the inner circle happen. In the inner circle, there is a ladder to show the level of participation that a nation or community might have.

At every level, there are considerations that impact the way a community might participate in FPIC. Communities are influenced by ideologies, laws, environment, community members, infrastructure and so on. Circumstances carry a lot of weight as to what rung on the ladder communities are participating on. Of course, these are not the only considerations for participation, but they are big factors. For instance, if Western laws and ideologies do not allow space for Indigenous laws and ideologies, then Indigenous communities will not be able to fully participate in FPIC, which is a Westernized legal framework. If there are positive supports from all sides of the of the sphere and at all levels, then an ideal scenario is created for communities to fully participate in FPIC that allows for self-determination.

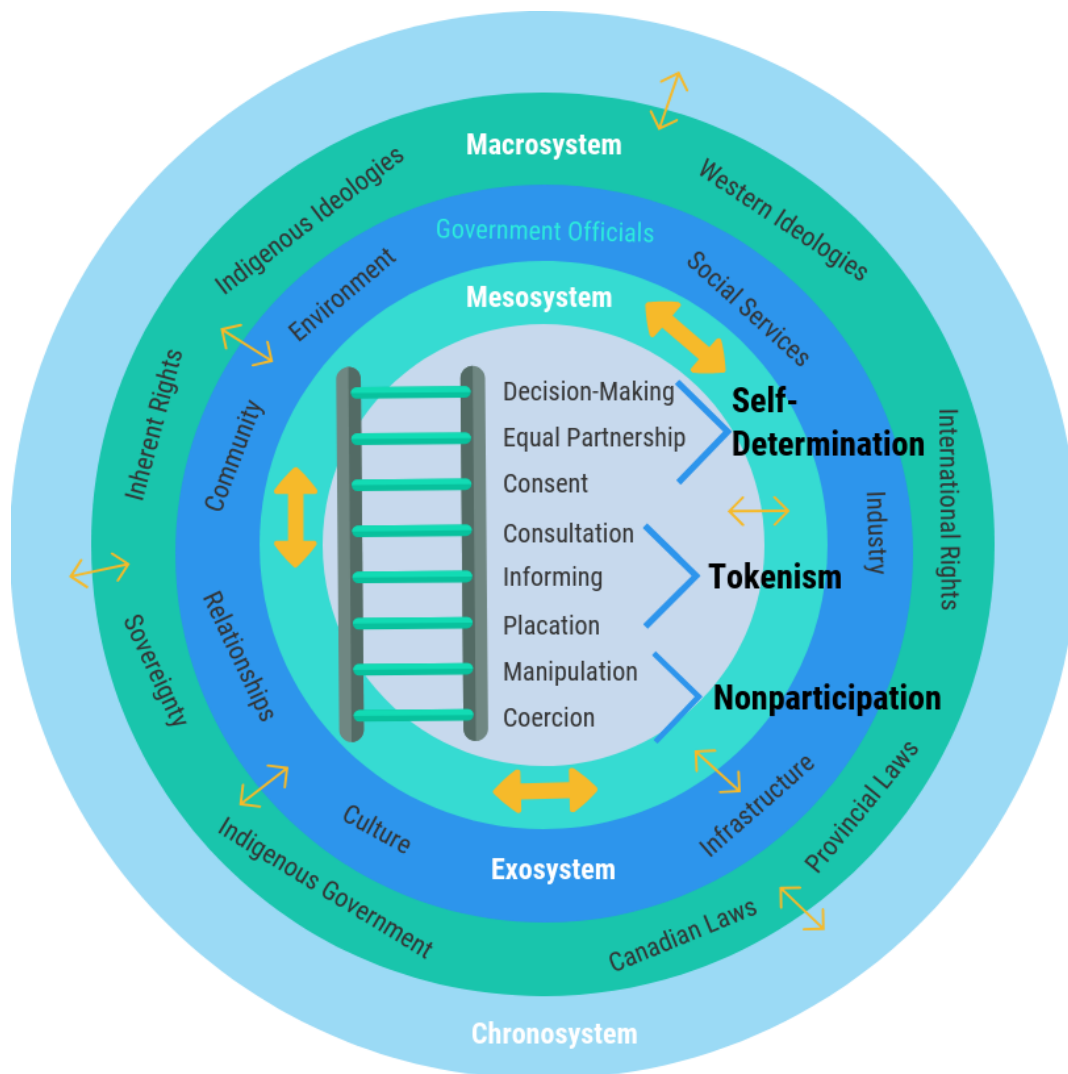


Figure 5 Ladder of Self-Determined Participation within an Ecological Model

Arnstein's (1969) ladder of participation is concerned with citizen power, and I adapted it to represent Matawa First Nations experience with FPIC processes. Working from the bottom rung to the top, there is *Nonparticipation* which includes coercion and manipulation, *Tokenism* which includes placation, informing and consultation, and at the top of the ladder is *Self-Determination* which includes consent, equal partnership, and decision-making. It is interesting that these levels or indicators could be interchangeable with Gaventa's (2006) mention of access (nonparticipation), presence (tokenism), and influence (self-determination).

Matawa members made mention of both coercion and manipulation being used in consultation processes in the past, which would represent a level of nonparticipation. Placation would indicate efforts by government and industry to appease MFN, and there is evidence of this in the data as well. As Matawa leaders reported, they were not initially consulted before exploration began in the Ring of Fire. It was not until they made their voices heard that government and industry began to include them in consultation. Government and industry began to inform and consult with Matawa, but as is evident in the data, the information-sharing and consultation processes are lacking. Matawa has not been receiving all information, in appropriate languages or formats. Consultation has not been meaningful to date as Matawa has not been in the driver's seat with these processes.

Matawa First Nations have yet to reach a full level of self-determination. According to the principles of FPIC, Indigenous Peoples can choose to give consent if they are properly informed, with adequate time to consult Traditional Knowledge holders, and without intimidation or manipulation. As demonstrated in the data, none of these principles have been met with MFN, which means they have not given consent. Matawa First Nations do not feel that government and industry respect their right to say yes or no to development, which also means that they cannot give consent. For MFN to give true consent, their decisions must be respected by government and industry. Matawa First Nations are not experiencing a level of equal partnership, they are not in the driver's seat, and they are not mutually benefitting from development. They also do not hold full decision-making power in relation to their lands and resources. While consent indicates that MFN are responding to proposals, decision-making carries a stronger tone and signifies that Matawa is making decisions from their own agenda rather than simply in response to other agendas. Matawa can give consent to a project but not

have equal partnership or any decision-making power in terms of how the project is played out. That is why I put decision-making at the top of the ladder. Right now, MFN have not obtained full influence or decision-making capabilities in relation to the question of proposed development on their lands. This is not for a lack of trying or asserting inherent and Indigenous land rights. This is a reflection of unfair and unjust governmental policies and continued mistreatment and disrespect of Indigenous Peoples' inherent rights with a failure to operationalize and fully express the values and principles of the duty to consult and UNDRIP in terms of FPIC.

Canada has an obligation to uphold Indigenous Peoples' right to self-determination and free, prior and informed consent. To be held accountable, Canada needs to ensure that MFN are giving prior, informed and uncoerced or free consent, establishing equal partnership, and hold the decision-making power in their consultation processes, at all stages of development. In order for Canada to fulfill its obligation to uphold Matawa First Nations right to self-determination, Matawa must have equal power surrounding jurisdiction and authority over their lands.

Moving Towards Self-Determination

When we look at Gaventa's (2006) power cube in Figure 4, we can see that there are different levels, spaces, and forms where power relationships operate, and they can be moved around in seemingly infinite ways (remember the Rubik's cube as a visual). The ecological model in Figure 5 provides a bit more context to the different levels that power can operate on and the multiple types of relationships that exist, such as at the community level and the various levels of government. It also brings attention to the impacts that history and the environment have in regard to participation. For example, the environment is a life source for Matawa First Nations, and it is a commodity for industry and government. Relationships to the environment

for Matawa have changed since settlers arrived, and they continue to change. Moreover, the relationship between Matawa and government or Matawa and industry in relation to the environment is also always changing. Additionally, these relationships are impacted by other systems such as international law, Canadian law, and provincial law, which are constantly shifting as well. These various aspects can impact participation positively or negatively for Matawa First Nations.

Gaventa's (2006) power cube highlights the fact that power is multidimensional and multilateral, constantly changing, and functioning in numerous areas at a time. It also illuminates that power is a relationship, not something that can simply be obtained. For instance, legislation in Ontario that attempts to separate MFN from their land is no more powerful than a land defender refusing to move off the land or MFN working to reclaim their language and culture. They function in different spaces, in different forms, and at varying levels. Gaventa (2006) also draws attention to the intersections of power with citizen engagement at the local, national, and global levels and asks how we can "move citizen voice from access, to presence, to influence" (p. 24). This is a central concept to Matawa First Nations right to FPIC and provides another way to analyse what is happening on the ground.

Matawa Informed Perspective on FPIC

After analysing the data, it became clear that there are several ways that government and industry can make changes to implement FPIC in a way that is cohesive with the desires of Matawa First Nations. First and foremost, it needs to be made clear that MFN want **sustainable** development in their lands. That means that any development should be respectful of the land, and this is the primary consideration that MFN are bringing forward. This is consistent with the literature, which indicates that Indigenous Peoples traditionally live by the philosophy that you

should not take more than what is needed from the land, and you should always give back to the land so that it is healthy and sustainable (Corntassle & Bryce, 2012). This provides the basis for Indigenous law.

It is possible to bridge Indigenous law and Western law. Just as international and domestic law can operate in tandem, so can Indigenous law. As John Borrows (2019) iterates, none of the legal systems should supersede the others; instead, the systems should interact with each other and influence one another. Indigenous law is specific to place and also the diverse nations that exist. In the Canadian context, it would require true relationships to be established, and through those relationships a mutual understanding of laws can be had. According to Matawa leaders, these relationships need to be established before exploration and need to be mutually beneficial.

In order for a mutually beneficial relationship to be made, there are several considerations that need to be made. First and foremost, these issues need to be addressed by looking at ***the root of the problem*** by going back to historical treaties and the mistreatment of Indigenous Peoples in Canada and finding ways to reconcile for those actions. This would be part of a true reconciliation process, as recommended by the Truth and Reconciliation Council.

Due to the unjust policies that have existed in the past that have harmed First Nations, something needs to be done to aid the communities in ***capacity building***. Communities cannot be expected to engage in consultation processes when they are dealing with life threatening situations on a regular basis and are fighting to meet basic needs. Capacity building needs to be executed in a way that decreases government dependency and is community led.

Policies, procedures, and actions from government and industry need to ***respect Indigenous laws*** and Traditional Knowledge, which includes Aboriginal and treaty rights.

Matawa leaders recognize that mining companies have not honoured their relationships and the Ontario government has taken the side of industry. This needs to change going forward; ***government needs to hold itself accountable and hold mining companies accountable*** to uphold Indigenous Peoples' land rights. This also means that ***timelines need to be increased*** to allow for communities to consult with their members according to their traditional processes. That might mean getting rid of timelines altogether and ***allowing for genuine relationships*** and consultation to take place. Authentic ***information sharing*** also needs to take place in preferred languages of Matawa First Nations and in preferred formats, such as visuals.

Finally, as mentioned in the findings section, Matawa First Nations recognize that they can never be free while Indigenous Peoples across Canada are suffering from the same issues. While this case study is not intended to represent the views or experiences of all Indigenous Peoples in Canada, or to speak on behalf of Matawa First Nations who speak for themselves, it is imperative that as non-Indigenous Peoples, as settlers, we attend to Indigenous Peoples' experiences and views of FPIC and work to ensure that ***Indigenous Peoples' right to self-determination is upheld*** in Canada. Moreover, with Canada as a leader in the global mining industry, and much of the world's mines operating on Indigenous lands, it is safe to say that the way that Canada operates domestically is an indication of what might be happening across the globe (Mining Association of Canada, 2019).

Conclusion

History is not just "in the past" as so many settlers like to say. The historical wrongdoings against Indigenous Peoples have everything to do with the current issues they are facing in Canada including loss of land, loss of culture and language, poverty, trauma, and high rates of suicide. Moreover, the government continues to endorse policies that put Indigenous

Peoples in worse positions, such as the Indian Act or the Mining Act. Indigenous Peoples in Canada are simultaneously dealing with the ramifications of all these colonial policies while working to heal their communities and reclaim their cultures, all while attempting to defend their inherent land rights in every way possible, including playing by the rules of a game they never asked to be a part of.

Canada has signed treaties and covenants to uphold Indigenous Peoples' inherent right to self-determination internationally and domestically. As such, Canada is obligated to uphold the right to free, prior and informed consent for Indigenous Peoples. If Canada would like to ensure a just and peaceable future going forward, it should look at the implementation of FPIC to ensure that the processes are: 1) consistent with the principles of FPIC; and 2) meeting the needs of Indigenous Peoples in Canada. Indigenous Peoples in Canada, including Matawa First Nations, have not been silent on the injustices they have faced and continue to face. It is time that governments – federal, provincial and territorial – listen to Indigenous Peoples' concerns and holds industries accountable, as it is the duty of the Crown to protect Aboriginal and treaty rights.

Summary of Key Findings and Contributions

This research sought to answer the following research question: How do current practices of consultation with Matawa First Nations align with an Indigenous perspective of FPIC? The results have shown that current consultation processes for Matawa First Nations with industry and government do not correspond with the principles of FPIC and do not respect the laws and values of Matawa First Nations. Various members of Matawa First Nations made clear that there currently is no free, prior, or informed consent for them when they are dealing with government and industry looking to develop on their territories.

A key finding in this research is that Matawa First Nations are at a disadvantage in consultation processes because non-Indigenous governments and industry hold the power in these scenarios. To date, government and industry create the laws and processes for consultation, have the money to invest in the projects as well as hire professionals in various fields, and stand to gain the most from development with the least risk relative to First Nations. Given the impacts of ongoing colonial policies, Matawa First Nations are not at a level playing field in these processes to begin with, do not have the capacity or the funds to meet imposed timelines, and are at risk of losing current ways of life, culture, and land. Analyzing the power structures that exist, it is clear that Western government and industry hold the most power and agency to accomplish their agendas while Matawa is forced to work beyond capacity to manage community issues concurrently with unrealistic time and resource demands from both government and industry. Matawa First Nations recognize this unfair power imbalance and are working to mitigate the ratio. However, if current processes do not change, FPIC will not be realized.

My contribution with this research is the adapted ladder of participation that I have developed. This ladder of participation depicts the various levels of participation that can be experienced when it comes to FPIC processes. To date, the provincial government has not gone beyond consultation on the ladder of participation, which means they are still at a level of tokenism in relation to their duty to consult with Matawa First Nations. The larger implication of this is that any efforts government or industry have made so far are merely symbolic; they are not meaningful. To move beyond tokenism, the decisions of Matawa First Nations must be respected, and they must be able to say no to development without fear of reprisals. Moreover, they must be equal partners in development projects, which means they have decision-making power, gain mutual benefits, and are leaders in these processes. Only at that time will Matawa

First Nations inherent right to self-determination be upheld. In addition, there are still considerations that need to be made given the ongoing colonial policies that have negatively impacted Matawa First Nations and have created these unequal power structures, including the consultation processes themselves.

Limitations

This research is focused on my narrow and limited access to the perspectives of Matawa First Nations and their unique experiences with consultation. While there may be common trends or themes that can be applied to other Indigenous populations in Canada and perhaps across the globe, that is not the intent of this research. Furthermore, Indigenous perspectives are not homogenous, even within individual communities. There will always be diverse opinions and experiences, and not all voices were heard or expressed in this study. In particular, this study lacks a gendered lens. In addition, power structures are at play in every scenario, and it would be encouraged for communities to engage amongst themselves to make sure that more marginalized voices are heard. However, that is not the place for an outside researcher like myself. For future research, I would recommend travelling to some of the fly-in communities in order to engage with community members that were not able to attend the AGM in Constance Lake.

Recommendations

There are some concrete actions that the Canadian government can take to ensure FPIC is implemented in a meaningful way for Matawa First Nations. These include:

- | | |
|---|--------------------------------------|
| 1) Reconcile for past wrongdoings | 4) Hold all levels of government and |
| 2) Aid in community-led capacity-building | industry accountable to upholding |
| 3) Respect Indigenous laws | Indigenous Peoples' land rights |

- | | |
|--|---|
| 5) Ensure that provincial and federal laws are consistent | right to say no to development at any time or to set the terms) |
| 6) Increase timelines | 10) Ensure mutual benefit for communities |
| 7) Establish genuine relationships | 11) Follow through on benefits offered to communities |
| 8) Properly inform communities about the full impact of projects | 12) Ensure education and job training so Matawa First Nations will have the skills required to benefit from employment promised in FPIC negotiations. |
| 9) Respect Indigenous Peoples' inherent right to self-determination (respect their | |

With all of this in mind, Matawa First Nations need to be the leaders of development and initiatives in their communities.

Lastly, I think that we have a lot to learn from our relationships with Indigenous Peoples. The laws and philosophies that have ensured the survival of Indigenous Peoples for millennia have also protected our environment and Earth. It is common knowledge that climate change has drastically increased since modern extraction and development has begun, which is a very small timeframe compared to the length of time Indigenous Peoples lived sustainably and in harmony with the land. The responsibility to protect Indigenous Peoples' inherent land rights is not only an issue of human rights, but it is also imperative to ensuring the survival of future generations for all peoples. These issues are intimately connected and extremely vital to consider.

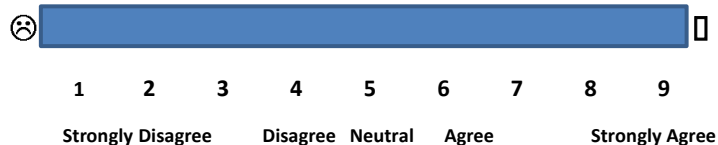
Appendix



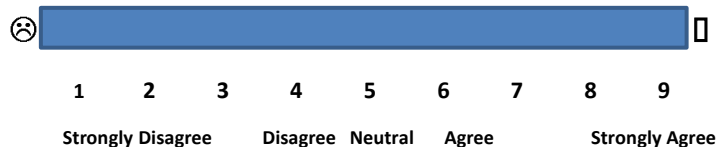
Development in Matawa First Nations

Name of Community _____

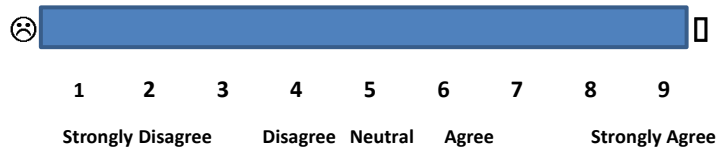
I feel that my community has the right to say YES or NO to all development on our lands.



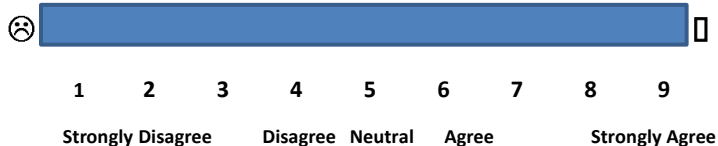
I feel that government listens to and respects my community's decisions.



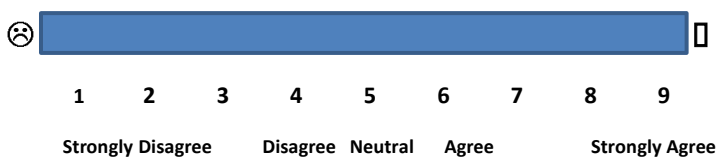
I feel that industry listens to and respects my community's decisions.



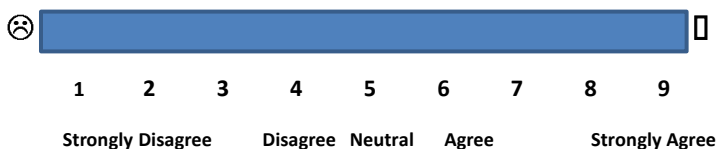
I feel that my community has been provided with enough information about Indigenous rights to free, prior, and informed decision-making



I am looking forward to development in my community.



I would not support proposed development on our lands if the social and infrastructure needs of my community were already met.



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