



# The Politics of Indigenous Participation Through “Free Prior Informed Consent”: Reflections from the Bolivian Case

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**Summary.** — This article explores the challenges of ethnic-based participation and its potential for creating inclusive and effective forms of decision-making for marginalized social groups. Empirically, it examines a recent attempt to establish more participative forms of resource and development governance for indigenous communities in Bolivia through Free Prior and Informed Consent/Consultation (FPIC). Rooted in international human rights law, FPIC aims at achieving more effective bottom-up participation by establishing an obligation to consult – or obtain the consent of – indigenous peoples before large development projects and legal reforms that would affect them can proceed. Interest in FPIC initiatives has been growing for reasons that range from efforts to build more equitable management of natural resources to attempts to introduce more effective local-scale practices of participation and active citizenship. We argue that the idea of prior consultation and FPIC itself are not neutral instruments; they will not automatically lead to better or more democratic governance and a more equal society. The way in which FPIC is currently being implemented and framed in Bolivia is in tension with broader ideas of representation and legitimacy, inclusiveness, and management of public and common goods because there is no real clarity as to who is entitled to participation, why they do, and whether they are doing so as a corrective to exclusion, a promotion of citizenship, or as a mechanism for redistribution. As we show here, FPIC implementation can have unintended consequences and consultation can sometimes embed existing social, cultural, and economic tensions. The paper offers some broader reflections on participatory governance and collective rights especially in relation to the tensions between inclusive participation and exclusive rights or – put differently – the challenges for building cultures of participation and inclusion in complex and ethnic diverse democracies.

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## 1. INTRODUCTION

Democracy in Latin America is both stable and stale. Democratization has certainly institutionalized party competition, but the introduction of electoral politics since the 1990s has proved of limited value in terms of encouraging activist participation and even in its capacity to “represent” the interests and opinions of the majority of citizens across the region (Fung & Wright, 2001). One consequence is a growing awareness within international organizations that new ways are needed to encourage bottom-up forms of political engagement, if democracy is to take deeper root in the region (Eberly, 2000; Faguet, 2014; Maxwell, Hershberg, & Sharpe, 2012). As a result, attention is shifting to initiatives that seek to deepen community democratic participation and practices of citizenship (Eversole, McNeish, & Cimadamore, 2005; Gaventa, 2006; Selee & Peruzzotti, 2009; Sen, 1999). The importance of strengthening community participation is recognized in particular in ethnically divided polities such as those that can be found in Andean America.

The rising interest in new forms of direct participation in Latin America is distinctive in that the participatory imperative has become embedded within a dominant neoliberal political economy. Multiculturalism and ethnic-based politics, around which enhanced or novel forms of participation have been shaped, in the Andean region in particular, did not prove easy partners for neoliberal politics. Indigenous claims for collective (rather than individual) rights and for territorial autonomy raised what Yashar (1999, p. 96) rightly called a “postliberal challenge” to regional models of democracy. As Yashar (1999) argues, indigenous rights claims question the idea that democracy corresponds to the pursuit of individualized citizenship and demand the recognition of non-traditional

rights and institutions that reflect the existence of ethnically defined forms of citizenship within nation-states. Recognizing collective, indigenous rights also constitutes a challenge for the participation agenda – who is to speak, for whom, and with what legitimacy? The embrace of indigenous rights thus carries with it the potential to amplify the voice of a traditionally marginalized group in and, therefore, to play a role in strengthening democracy, *and* to raise questions as to whether it enhances the rights, and resources of all citizens, whatever their ethnicity.

The tensions around collective rights, participatory governance, and democratization are the subject of this article. In particular, we explore the challenges of ethnic-based participation and its potential for creating inclusive and effective forms of decision-making for marginalized social groups. Empirically, we examine a recent attempt to establish more participative forms of governance for indigenous communities in Bolivia, where ethnicity has historically been one of the principal political and social cleavages, through the Free Prior and Informed Consent/Consultation (FPIC).<sup>1</sup> Rooted in

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international human rights law, this framework aims at achieving more effective bottom-up participation by establishing an obligation to consult – or obtain the consent of – indigenous peoples before large development projects and legal reforms that would affect them get underway (Goodland, 2004). Ultimately, we argue that the FPIC alone does not, and may not be able to, resolve issues of democratic inclusion and participation. Instead it opens up different kinds of political conflicts, between social groups and between society and the state, which do not necessarily lead to fairer outcomes in terms of social justice.

The paper proceeds as follows. After a discussion of the significance of participation for democracy and the ethnic-based participatory turn in Latin America, we outline the FPIC framework in the context of the agenda of indigenous rights. We then identify some of the most contentious issues that characterize the process of “translation” of FPIC from international to domestic law that, as we see it, will inevitably affect how FPIC actually works. They include: (a) who is the subject of the rights being claimed, (b) how those rights can be operationalized, (c) the procedures that should be put in place to ensure collective consultation and (d) the practice of collective compensation for policies that breach those rights. A discussion of FPIC itself as a mechanism of participatory governance and its operation in Bolivia follows. FPIC is, we argue, different from other experiments in participation such as neighborhood councils, stakeholders’ and workers’ committees, participatory budgeting programs, and village-based governance that have flourished in recent years (Fung & Wright, 2001) in that it is: rooted in international norms, suggesting potentially more leverage for implementation but also the risk of thin contextual fitness; only relevant as a mechanism for participation for ethnically defined communities, thereby embedding a powerful exclusionary, as well as inclusionary, ontology; relevant principally for development projects and natural resource management, as if issues and practices of power can be meaningfully separated by sector; and often operated via strategic bargaining rather than inclusive deliberation, with limited potential, therefore, to shape local institutions and embed participation within them. In the Conclusion, we offer some broader reflections on participatory governance and collective rights especially in relation to the tensions between inclusive participation and exclusive rights or – put differently – the challenges for building cultures of participation and inclusion in complex and fragile democracies.

The article is based on original data. Around 30 interviews were carried out in Bolivia with a variety of actors: leaders of the main social organizations involved in this debate (mainly indigenous/native organizations and peasant unions<sup>2</sup>), representatives of non-governmental organizations (NGOs) and international development agencies particularly active on indigenous peoples rights agenda (e.g., Danish Cooperation DANIDA, IBIS, Fundación Tierra, Ciudadanía, Centro de Estudios Jurídicos e Investigación Social CEJIS, the network Ciudadanos por el TIPNIS), international organizations’ officers (International Labour Organization ILO, United Nations Office of the High Commissioner for Human Rights UNOHCHR, United Nations Development Programme UNDP), and civil servants and ministers, in particular from the Ministry of Government and the Ministry of Autonomies which were directly involved with FPIC discussions. Participant observation in official and informal meetings about FPIC was also conducted as well as in-depth analysis of preliminary proposals and law drafts. Fieldwork in Bolivia was carried out between July and August 2013 during the final round of consultations on the FPIC Law. A short field trip

was also conducted at the ILO headquarters in Geneva to gather views on FPIC from the United Nations body in charge of its regulation and promotion.

## 2. THE PARTICIPATORY TURN AND ITS CRITICS

There is no single model for encouraging participatory governance in the global South. Participatory approaches include decentralization of institutions, consultations, and the introduction of spaces for democratic deliberation and discursive participation. Decentralization processes aim at triggering an institutional transition from hierarchical, bureaucratic mechanisms of top-down management to a “system of nested self-governments characterized by participation and cooperation” (Faguet, 2014, p. 2). Arguments in favor of decentralization include making governments more accountable, reducing corruption and the abuse of power, increasing political competition, and improving political stability by providing minority groups with greater access over subnational institutions and resources (Faguet, 2014). The introduction of new forms of deliberation, in contrast, is about limiting the risks of “political domination by rendering states accountable to (some of) the citizenry” (Fraser, 1990, p. 59). Drawing on ideas of deliberative democracy, spaces of debate and consultation are created in order to provide a collective holding to account of leaders and encourage discussion as a way of reaching decisions (Abelson *et al.*, 2003; Chambers, 2003). Both democratic deliberation and decentralization share a concern with strengthening democratization processes whether through top-down institutional reforms or bottom-up voice practices. For this reason they can be thought of as complementary, not as alternatives, to more traditional forms of representative democracy.

If calls for more participatory governance were originally intended to address the democratic deficit, they were quickly taken up by the development planning community, not just in Latin America but across the global South (Bryld, 2001; Hickey & Mohan, 2004; Parfitt, 2004). Development initiatives that try to involve local communities in decision-making processes are frequently funded and supported by international agencies and they are standardly seen as a more efficient way to get things done than working through state institutions (Mato, 2000). The environmental sector has proved particularly receptive to the introduction of participatory planning partly because of the added value that local and community actors are thought to bring in terms of local and socially-embedded forms of knowledge in relation to resource management and the commitment to equitable, rather than market-driven, solutions to environmental management (Agrawal, 2003; Agrawal & Ribot, 1999; Gibson, McKean, & Ostrom, 2000).

But, despite endorsements from international organizations and planners, questions have been raised about the value of the participatory turn. Cooke and Kothari (2001) expressed some skepticism early on as to whether organized participation genuinely contributes to the quality of democracy or shapes more inclusive decision-making in development planning. They took the view that participation was often used as a mechanism to legitimize, not challenge, the actions of large development agencies such as the World Bank, and had very little emancipatory and inclusive impact at the grassroots. Part of the problem, they suggested, was that participation was increasingly deployed in the service of a fundamentally conservative neoliberal development agenda. Without policies to reduce economic inequalities, the introduction of tokenistic forms of participation

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