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## “A Bureaucratic Trap:” Free, Prior and Informed Consent (FPIC) and Wind Energy Development in Juchitán, Mexico

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### ABSTRACT

On November 2014, the first Free, Prior and Informed Consent (FPIC) consultation was called for the Eólica del Sur wind project in Juchitán de Zaragoza, Mexico. Lasting eight months, the consultation was responding not only to the UN International Labor Organization’s (ILO) convention 169 that Mexico signed in 1990 but also to widespread uprisings against wind energy projects in the region. This article begins with an FPIC literature review, followed by sections examining the consultation in Juchitán, its spatial layout, the actors involved and its repressive atmosphere. The subsequent section analyzes the discursive techniques deployed by the FPIC technical committee (TC) which—despite unanswered questions and popular opposition to the wind energy project—granted project approval on 30 June 2015. The final section concludes that the FPIC consultation undermines Indigenous autonomy and serves as a counter-insurrectionary device, reinforcing a context of substantial political and economic asymmetry between state, corporate and elite interest and Indigenous fishermen and farmers. The FPIC consultation in Juchitán reinforced state power and simultaneously serves as a marketing platform for development projects, thereby creating an illusion of real dialogue, negotiation and, by extension, democratic decision making. Despite efforts to have the wind project approved, resistance groups’ temporarily halted construction.

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**KEYWORDS** FPIC; wind energy; Indigenous rights; inclusionary control; resistance; Mexico

[I]n the consultation there has been several people who say “Thank you COCEI, thank you city hall, thank you mayor and his administration. We are here at the consultation to give applause to the mayor and his administration, because it is thanks to them that the consultation arrives.” I have been really quiet; I only speak when I know I can hit them all, so that day

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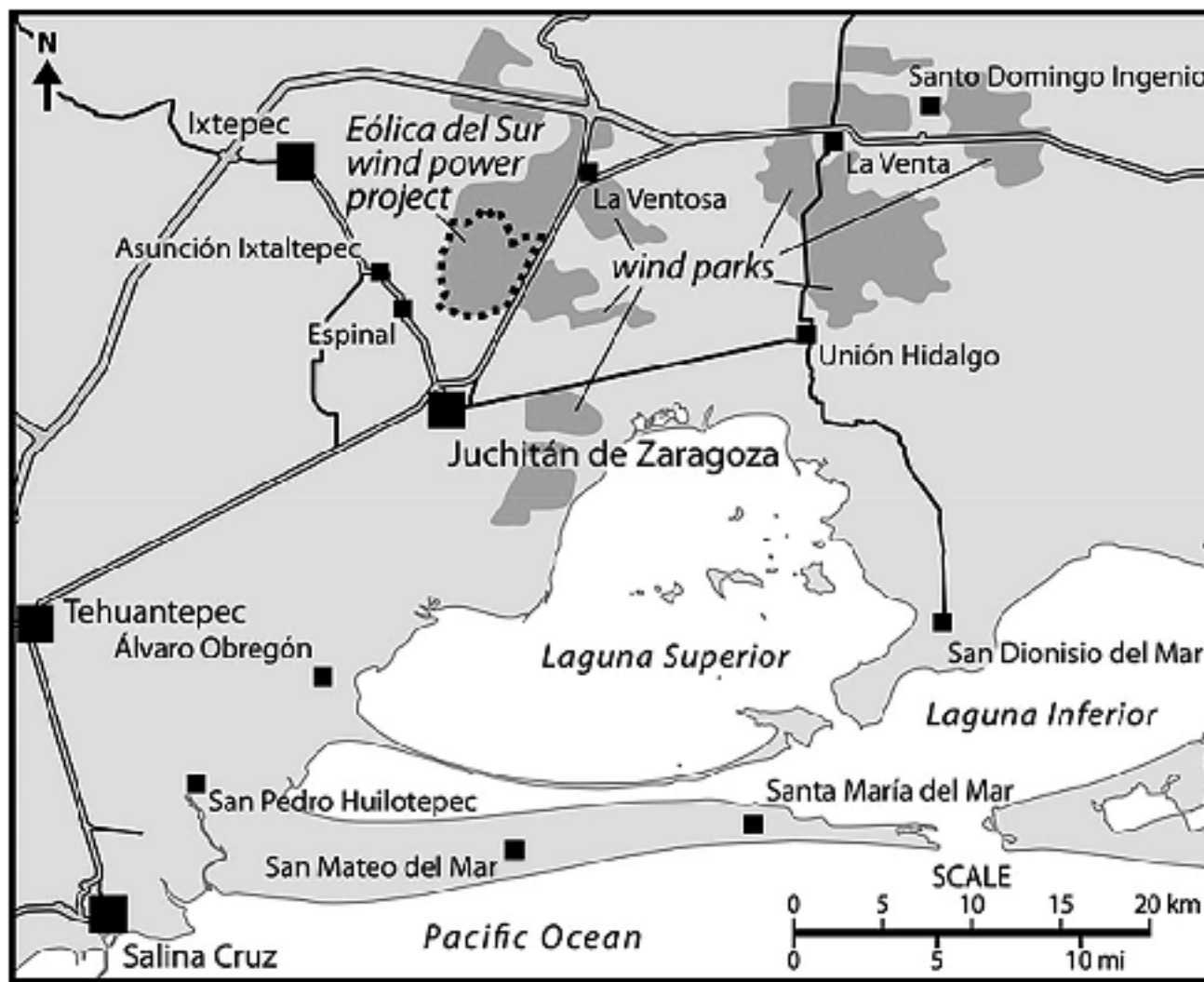


after everyone talked I took the microphone and said: “It is no thanks to the mayor or his splendid administration—NO! This is a farce. It was thanks to the battle that took place on the barricade last year on March 26, it is thanks to that mayhem; it is thanks to those injuries as well as the injuries of the police that the government listened to our voices—it is not thanks to you, mayor. Who is he? There was already a mayor and an administration [when the companies arrived] and they are thieves.”<sup>1</sup> —Ray

On November 2014, the first Free, Prior and Informed Consent (FPIC) consultation concerning wind energy development began in Juchitán de Zaragoza, Mexico. The consultation lasted eight months until 30 June 2015 and responded not only to the United Nations International Labor Organization’s (ILO) convention 169 signed by Mexico in 1990, but also, as Ray points out above, to the widespread revolt against wind energy projects slated for construction on the Laguna (Figures 1 and 2). In the Isthmus of Tehuantepec region of Oaxaca, known locally as the *Istmo*, between 2003 and January 2015 there have been 1608 wind turbines constructed in the region (Rivas 2015). This triggered protests, but also intense conflicts as wind companies moved into Zapotec and Ikoot fishing communities on the Laguna, which manifest in widespread blockades, protests and violent confrontations with police in San Dionisio del Mar, Álvaro Obregón, Santa Maria del Mar and Juchitán (Dunlap 2015b, 2017; Howe, Boyer, and Barrera 2015). The Mareña Renovables project sought to build 102 wind turbines on the Barra de Santa Teresa (Barra) and another 30 on the Pacific Ocean around Santa Maria del Mar, receiving loans from the United Nations Clean Development Mechanism (CDM) and Inter-American Development Bank (IBD) alongside investors from the Maquarie Group, Mitsubishi, FEMSA and the Dutch pension fund PGGM that sought to use the proposed energy to power



**Figure 1.** Mexico and Oaxaca state. Map by Carl Sack.



**Figure 2.** The Coastal Isthmus of Tehuantepec region. Map by Carl Sack.

Coca Cola, Heineken, Walmart, Grupo Bimbo and other shareholders (Smith 2012). While a court injunction officially canceled the Mareña Renovables project, resistance groups were convinced wind companies would still try to build on the Barra through local politicians, causing a large portion of Álvaro Obregón to reject elections and struggle for autonomy (Dunlap 2015b; Howe, Boyer, and Barrera 2015). Meanwhile, Mareña Renovables renamed itself Eólica del Sur, relocated the project to an area between Juchitán and La Ventosa and became the first wind park in the region subject to an FPIC consultation.

Based on observing consultations, analyzing transcripts, informal and semi-structured interviews conducted between January and May 2015, it is argued that even if unsuccessful, the FPIC procedure is wielded by governments as a counter-insurrectionary device to pacify opposition and legitimize controversial development projects. FPIC consultations emerge as a “soft” and enlightened approach to counterinsurgency that harnesses democratic approaches of incorporation, self-identification and decision making that conditions negotiations to create, what local human rights defender Lucila Bettina Cruz Velázquez has called, “a bureaucratic trap,” which represents and articulates a strategy of “inclusionary control”<sup>2</sup> (see Dunlap 2014; Dunlap and Fairhead 2014). Counterinsurgency is about maintaining legitimacy, mitigating and keeping conflict in its most manageable phase —“peace” (Dunlap 2014). While strategies of inclusionary control are the art of integrating and de-escalating rebellious, insurrectionary and autonomous tensions arising from systemic grievances such as poverty,



exploitation, state violence and the overall submission of a life to the dictates of the global economy. The FPIC procedure is an attempt to channel rebellious tensions into “constructive” negotiations and “appropriate” channels mediated by a bureaucratic procedure that affirm state and corporate organizational processes, agendas and, by extension, the trajectory of industrial progress and its social and ecological consequences. With inclusionary control in mind, the following examines the FPIC consultation in Juchitán, Mexico.

Beginning with a literature review, this paper outlines some of the experiences and outcomes of FPIC consultations in other countries. It then moves to Juchitán, describing the consultation format along with the key actors and their dispositions within the consultation. The following section documents the tense and repressive situation engulfing the FPIC inquiry and how the people critical of and/or opposing the wind projects were targeted for harassment and assault. The third section analyzes the contradictions within the FPIC inquiry as well as its inadequacies, not only in its procedure but also in providing the necessary project financial, social and environmental impact information. The paper then continues to analyze the discursive techniques deployed by the technical committee (TC) and its members during the FPIC inquiry which—despite unanswered questions and popular opposition to the project—was approved on 30 June 2015. It is concluded that the FPIC consultation undermines Indigenous autonomy, reinforces a context of substantial political and economic asymmetry between state, corporate and elite interest and Indigenous fishermen and farmers. Thus, the FPIC consultation reinforces state–corporate power while simultaneously acting as a marketing platform for development projects and constructing the illusion of real dialogue, negotiation and, by extension, democratic decision making.

### **Free, Prior and Informed Consent**

The idea behind FPIC is that it requires the *free*, non-coercive negotiations *prior* to any development intervention that provide full and accurate information about the proposed project and its implications with the aim to create an *informed* Indigenous population. This allows Indigenous groups to presumably deny or *consent* to governments, national or transnational corporations operating in their territory (FPP 2007). Emerging from decades of struggle, Indigenous groups around the world have been fighting for territorial recognition, rights and respect in the wake of colonialism and in the presence of nation states. The FPIC mechanism has come to epitomize the legal outcome of decades of Indigenous struggle with colonial societies (Engle 2010). The mechanism is widely considered an experiment in democratic participation emerging from decolonization with Article 1(2) of the 1945 UN Charter that established “the principle of equal rights and self-determination of peoples” (Perera 2015, 147). Legal struggles for Indigenous self-



determination continued in 1975 in the International Court of Justice (ICJ), which specified the need for consent between states and Indigenous populations, laying the foundations for the Indigenous and Tribal peoples Convention in 1989 and Convention no. 169 of the ILO (2015). Convention 169 came into force in 1991, affirming Indigenous rights to self-determination, and was embedded in the FPIC protocol. In 2007, the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) further cemented the importance of Indigenous control over their territory, lives and future (UNDRIP 2008).

Two interpretations emerge from FPIC legislation: *Indigenous rights and self-determination* embodied by UNDRIP and ILO 169 versus the *financial realism* of international bank performance standards. In 2002, the International Financial Corporation (IFC)—the commercial department of the World Bank—developed the Equator Principles as “a risk management framework, adopted by financial institutions, for determining, assessing and managing environmental and social risk in [development] projects” (EP 2013, n.p.). Corporate social responsibility and efforts to gain “social license” from local communities is the realization that failure to gain popular acceptance for a development project can lead to “serious costs and delays” (Baker 2013, 674). This means gaining local acceptance can mitigate project costs and damage inflicted by recalcitrant locals, which helps ensure project completion, security and, eventually, a steady revenue stream.

This enlightened self-interest of the Equator Principles took another step forward in 2006 with the IFCs Policy and Performance Standards on Social and Environmental Sustainability, which was revised in 2011 to include FPIC (Baker 2013). The outcome is that any development project financed by or receiving a loan from the World Bank, Inter-American Development Bank (IDB) or the other 77 signatory banks require the FPIC of Indigenous populations (Baker 2013). However, the IFC guideline states that “[t]here is no universally accepted definition of FPIC,” which is “established through good faith negotiation between client and the affected communities.” Most importantly, the guideline states that “FPIC does not necessarily require unanimity and maybe achieved even when individuals or groups with the community explicitly disagree” (IFC 2012, 7, emphasis added). The FPIC procedure is based on “good faith negotiations” that cede power and make Indigenous populations reliant on developer charity, which does not require “unanimity” or even majority consent from local populations.

Every aspect of FPIC comes into conflict with development projects (Baker 2013). While the “free”—non-coercive—aspect has to be judged within the context of the proposed project, the “prior” and “informed” aspects conflict with upfront investments. Baker (2013, 693) explains that “once the project developer has enough information to provide actual data regarding environmental and community risks to affected indigenous communities, the project will have already received its initial equity funding, a commitment that could



prove difficult to unwind.” After the project is designed and approved for financing and environmental impact studies have been produced, an Indigenous community’s rejection of the project would result in the loss of hundreds of work hours and hundred thousands of dollars. Furthermore, the IFC’s definition of consent as *consultation* strips away the substance within the protocol (IFC 2012; Baker 2013), which consequently denies people the power to veto development projects—a power that is not mandated by Convention 169 even if it is implied by the legislation. The IFC’s interpretations of FPIC allow business as usual to proceed by paying lip service to the public, allocate additional funds to projects and manufacture an image of corporate social responsibility, all of which can minimize disruptions to investors, labor contract negotiations and profit modeling. From the viewpoint of Indigenous self-determination and autonomy this is disingenuous, if not outright deceptive. Nevertheless, the hope still remains that the FPIC protocol will strengthen Indigenous rights and permits the exercise of self-determination in the face of state and corporate natural resource interests on Indigenous territory.

There are still possibilities for Indigenous engagement with FPIC. Jennifer Franco (2014, 5) summarizes four such possibilities: FPIC can (1) help Indigenous people claim rights, resources and knowledge using national and international law; (2) strengthen communal rights to management of the community’s own natural resources; (3) create room for Indigenous groups to negotiate land deals, benefit from sharing and access to resources; and (4) improve community cohesion and confidence to improve livelihoods and defend rights. In the case of Guatemala, Jennifer Costanza (2015, 277) points out the violent, racist and unfavorable situation faced by Indigenous people and explains how the consultation helped “many indigenous people to rethink their identity, the rights they hold as indigenous peoples, and the role of the state in their communities; development and governance.” Costanza adds that “at least one” community altered governance practices and asserted land control over their territory using FPIC procedure (Costanza 2015, 277). Franco (2014, 17) also recognizes potential for “unintended and unanticipated impacts” that can be used to the advantage of people fighting for agrarian justice.

The shortcomings of FPIC, however, are significant. FPIC has been criticized especially harshly in the case of the largest market-based participatory conservation program, UN REDD+<sup>3</sup> (Cavanagh, Vedeld, and Trædal 2015), for its inadequate project monitoring, certification, decision-making models and generalized disrespect of Indigenous populations by governments and transnational corporations (FPP 2007; Rotz 2014; Dunlap 2015a). Similarly, FPIC is viewed as a mechanism to legitimize land acquisition and create social divisions, and affirms existing power asymmetries in the areas of development (Baker 2013; Franco 2014; Rotz 2014; Perera 2015; Dunlap 2015a; Flemmer and Schilling-Vacaflor 2016; Fontana and Grugel 2016). Costanza



(2015, 277) summarizes six common complications with FPIC procedures: (1) consultation will likely follow state or private company guidelines rather than Indigenous customs; (2) it might be unclear who is the affected community and what are their “true” customs; (3) communities might not be fully informed about their rights and the proposed project; (4) consultation might begin after project approval; (5) the amount of time allocated to the inquiry might be inadequate; and (6) meetings might be scheduled at inaccessible locations. Lorenza Fontana and Jean Grugel (2016, 250, 257) argue that in Bolivia not only is FPIC unlikely to “resolve issues of democratic inclusion and participation” but it opens “up different kinds of political conflicts, between social groups and between society and state.” Furthermore, FPIC is “likely to become an exercise of strategic bargaining rather than an inclusive process with the “collective” interest at the center” (Fontana and Grugel 2016, 257). These complications, as will be seen below, emerge with varying intensity in the Juchitán consultation.

### **Learning from the Past: From Barricades to Consultation**

After ten years of wind energy development, the FPIC consultation began on 3 November 2014 and lasted until 30 June 2015. Located either at the Juchitán Cultural<sup>4</sup> or Ecological Center, the consultation was arranged in a linear fashion, sitting in chairs or standing and facing the TC, the members of which were to provide informative presentations and afterwards facilitate a Q&A session. The FPIC TC was predominately male and composed of representatives from federal (Figure 3), state and international regulatory boards: The Mexican Secretary of Energy (SENER), Secretariat of Environment and Natural Resources (SMARNAT), Federal Commission for the Protection against Sanitary Risk (COFEPRIS) and The National Commission for the Development of Indigenous Peoples (CDI). Professors from the National Autonomous University of Mexico (UNAM) and National Institute of Anthropology and History (INAH) also made guest appearances on the TC, alongside representatives from Eólica del Sur and the Juchitán administration.

Five factions could be identified at the consultation. First, members of resistance organizations such as the People’s Popular Assembly of Juchitecos (APPJ) and the Assembly of Indigenous Peoples of the Isthmus of Tehuantepec in Defense of Land and Territory (APIIDTT). Members of these groups had been organizing against the imposition of wind energy since 2005 but the wind energy issue gained greater popularity around 2010 when wind companies began to build on the Barra and around the Laguna.

Second, political parties, including (1) Institutional Revolutionary Party (PRI), who held federal power for 70 years after the Mexican Revolution (1910–1920) and (2) The Isthmus of Tehuantepec Coalition of Workers,





**Figure 3.** Technical committee check their phones during the Q&A on 2 February 2015. Source: Consulta [n.d.](#)

Peasants and Students (COCEI), a leftist party that formed in 1973 and combined Marxism with indigenism. After intense repression, the COCEI began collaborating with the PRI by the late 1980s and subsequently began tolerating transnational corporations in the Istmo, with many supporters feeling COCEI had “sold out” or were “institutionalized” by the 2000s (Altamirano-Jiménez 2014; Dunlap 2017b); (3) other political parties were also present, such as the Party of the Democratic Revolution (PRD), Labour Party (PT) and the New Alliance Party (PNA) and more. All these parties retain links with key members of the COCEI.

The third group of actors identified at the consultation consisted of union leaders, landless and foreign workers associated with the PRI, COCEI and wind companies. The fourth involved transnational actors associated with the Spanish wind companies, representatives from international banks, particularly the IDB, as well as individuals representing and working with the Federal government. The fifth and final group comprised professors, students and NGOs including human right groups that monitored the consultation such as CODIGODH, PODER, TEYPEC and Peace Brigades International (PBI). Notably, members of independent human rights groups, the APPJ and APIIDTT, were excluded from the TC.

The first consultation I attended took place on 4 February 2015. That day the ex-UN Special Rapporteur on the rights of Indigenous peoples, James Anaya (2015), sat on the TC to monitor the consultation. The Juchitán Cultural Center was filled with around 500 hundred people and the situation quickly grew tense. Numerous persons looking like undercover police with



ear pieces held cameras and either pretended or actually had their hands on holstered handguns. There was a large crowd by the entrance that hunched over the chairs, creating an open space that also left chairs vacant (Figure 4). This crowd included *acarreados*—people paid to support political parties or unions. Once the Q&A section started, the distance between the crowd in the back and the chairs drastically changed. In one orderly and disciplined big step the crowd immediately moved forward, escalating tensions. The first people chosen for the Q&A immediately started insulting the wind company and the experts on the panel. By the end of the second Q&A speaker the crowd behind me started yelling: “Liars, you work for the company!” A confusing statement given they were insulting government representatives. “Weda! Weda! Weda!<sup>5</sup> Out! Out! Out! Shut up, rat!” the crowd shouted.

Bettina Cruz Velásquez eventually got up and gave a counter-presentation explaining the problems with the consultation and the information provided about the wind energy project. This took twenty minutes. Meanwhile, the situation got increasingly uncomfortable. I was in the middle of a group of people yelling: “Out! Whitey!” Drama ensued when the panel tried to shut down Cruz’s presentation. The tensions rose significantly. I felt a brawl about to breakout while Cruz was speaking. My friend began wrapping a paper clip



**Figure 4.** Wind project agitators at the consultation. Source: Consulta n.d.



around his finger to stab people when he punches them. He gave me one also, but I lost it somewhere, I felt it was inevitable that I or my friends were going to be attacked. This did not happen and I am pleased a fight was avoided (Figure 5).

Bettina Cruz, a well-known human rights defender, is a member of APIIDTT and part of the National Network of Women Human Rights Defenders. Making the most of the Q&A session by giving a counter-presentation, Cruz discussed the private negotiations between wind company officials and government representatives in Huatulco, the failure of communal consultation, inadequate environmental impact assessments (EIAs) and the violation of Indigenous rights, while demanding that independent investigations be carried out into wind energy development in the region. Cruz's presentation triggered insults from parts of the crowd and the TC attempted to shut her down.<sup>6</sup> In general, the consultation format seemed to promote a one-directional discourse either from the panel to the audience or from the audience to the panel—there was no discussion. The speakers usually insulted members of the TC, politicians or other speakers on the panel in Zapotec, which was not translated by the Zapotec–Spanish translator. Similarly, questions asked by speakers about social and environmental impacts, income transparency, benefit sharing and FPIC procedure were also noted. The TC sometimes commented on these concerns, but more often brushed them aside to be answered at the next consultation. Likewise, while there were concerns about unequal benefits sharing and employment, union workers, land owners and wind company representatives advocated for the information phase to end and to proceed to the deliberation phase during which construction could begin.



**Figure 5.** Velásquez's Presentation on 2 February 2015. Source: Consulta Galería.



At the 3 December 2014 consultation, it was clear that the government and wind company were trying to (re-)sell the wind project that was previously rejected on the Barra de Santa Teresa (Barra). With the past conflict in mind, the Secretary of Energy Ramon Olivas called the transnational energy consortium Eólica del Sur a Mexican company, which is true in legal terms but deceptive in practice due to the company's extensive transnational composition. Eduardo Zenteno, director of Eólica del Sur, continued to emphasize the company's planned environmental mitigation as well as its reforestation programs, endangered species protection, "respect [for] ... water resources," construction of roads in a way that will minimize flooding, giving community road use "priority over any [construction] equipment"; and the minimization of construction equipment noise. Furthermore, Zenteno announced the benefits of building new roads, giving preference to local workers for construction contracts and providing worker skill trainings. He also stressed that the wind company was not taking over the land but was merely leasing it, and promised social development programs and archeological preservation programs (Consulta n.d. 3 December). This list no doubt speaks to sources of conflicts in the past that to this day remain points of contention surrounding wind energy development in the region (Dunlap 2017b). Nevertheless, a reputation of manipulation, broken and partially fulfilled promises left most people unfazed by these claims, while my friend went so far as to comment: "He is just like every other fucker who sells you death."

### **Free: Intimidation, Violence and Employment Opportunity**

The FPIC emerges after years of intimidation, targeted violence by the police, gunmen and instances of military intervention as well as full-scale barricade battles and shootouts in towns surrounding the Laguna (Smith 2012; Dunlap 2015b, 2017; Howe, Boyer, and Barrera 2015). These tensions continued in the FPIC consultation with a nervous and combative atmosphere. Insults, public threats, intimidation and fights during and after the consultation were frequent (PODER 2015). The people I had been interviewing instructed me not to talk to them at the consultation as it would also make me a target (which eventually happened). Juan Antonio Lopez (CencosTV 2015) summarizes the situation:

There were attempts at physical aggression, insults, and coarseness, committed by people at the consultation but clearly controlled by the [wind] company. They even delivered sandwiches in the same place and outside [the consultation] they received payment for coming. These groups insulted the indigenous people that participated in the consultation. The sessions involved harassment, gunshots outside some houses, pounding and kicking and rocks thrown at doors, all because of [people's] participation in the consultation. Everything is in the report. The TC has been informed [of this].



Intimidation and opposition were funded by the wind companies directly and indirectly through political functionaries known as *caciques* (local political bosses), who serve as project intermediaries between wind companies and the land (Dunlap 2017b). In an interview, a woman from a neighboring town explained how a relative working for the *cacique* pays 200 pesos per person to attend the FPIC consultation to counter people in opposition to the wind park. “So when people speak against wind energy they will interfere and not let them speak. How do we know? We see the people there and the unions who want work.”

Another person explains:

Even when we go to the consultation we see a lot of workers who are obligated to be there by the union leader. He brings them and gives them some money—the money comes from the [wind] companies, so they have to speak in favor of the companies because they are being paid to do that. Because businessmen do not want to lose the money and that is why they are in favor of these projects.

Implicit in work contracts with the wind companies are informal obligations to support the projects, attending the consultation that includes additional pay—around 200 pesos. Furthermore, “[s]ome of the gunmen are working for the unions and they are defending their right to work,” says a resident of a nearby town while another woman contends that the *cacique* bring “people with firearms to the front [of the consultation] all the time to intimidate people.”

Unions have blockaded highways around Juchitán, the town hall and on 14 April even blocked the doors at the Cultural Center after a consultation, holding people for three hours. PODER (2015) documents 32 security incidents, which represent direct violations of the “Free” character of the FPIC. The consultation was a low-intensity battleground meant to demonstrate disapproval, approval or negotiating power, but quickly became theatrical given the procedural violations, outstanding information requests and insistence to end its informative phase.

### **Prior and Informed**

Vital to the FPIC mechanism’s legitimacy is its ability to deliver accurate and detailed information concerning the cultural, economic and ecological impacts of the proposed projects. Previous conflict and subsequent health concerns regarding wind energy in the Istmo amplify the importance of precise information acquisition for individual and communal decision making. The common practice of unequal benefit sharing, racism and corporate profit imperatives complicate this process. Putting aside the ten years of violations and internal conflicts, it does not built support or legitimacy when there are already plans, negotiations and institutional approval for



more wind projects (Rivas 2015). This point was repeatedly stressed during the Q&A section of the consultation by advocates of Indigenous rights. Mariano Lopez summarized this point on CencosTV (2015):

Two years before the consultation began, there were already rent contracts with Eólica del Sur with some Indigenous farmers from Juchitán deceived to sign [contracts]. Beside there were two authorizations, one by SEMARNAT in MIA [Environmental Impact Assessment] last year, before the consultation, and another by SENER in January of this year, during the Indigenous consultation process.

This violation of the *Prior* aspect creates a weak if not disingenuous foundation for the FPIC consultation.

In the same vein, the information provided ranged from unsatisfactory to insulting depending on how emotionally invested a person was in the project. First, the linear layout of the panel informed people while their complaints and questions were systematically left unanswered, which spawned distrust and even resentment toward the TC. While the consultations would last anywhere from two to seven hours (with the project already approved by Federal and state institutions), they were reduced to pure theatrics to fulfill the Convention 169 legal requirement and thus allow project construction.

Second, the collusion between the government and wind companies clearly shows that their interests are aligned. Aside from state security forces aiding the operations to break Indigenous barricades against the wind projects in the past (Dunlap 2015b, 2017a; Howe, Boyer, and Barrera 2015), the government is responsible for economic, electric and climate change legislation promoting foreign direct investment (FDI), green economic development and by extension wind energy projects (Dunlap 2017b). This has resulted not only in President Felipe Calderon cutting the ribbon at the Acciona Oaxaca II, III and IV wind parks but also in President Piña Nieto inaugurating the new Central Eólica Southeast I phase II on 2 March 2016 in Asunción Ixtaltepec twenty minutes northeast of Juchitán (ADNsureste 2016). More importantly, the TC consists of representatives from government institutions, local political parties and Universities who support the wind project but do not agree on the specific terms and conditions. On the second anniversary of the Battle of the Barra in Álvaro Obregón (Dunlap 2015b), Cruz explained during a speech that the consultation was a right people had and demanded to exercise but that it was wrong of the government to be leading the consultation for its own benefit. “This consultation,” she said, “was a *bureaucratic trap* allowing the government to manipulate and control the process in a way it sees acceptable because it only consults politicians and other people who already agree with the [wind] project.” The vested interests involved in the FPIC consultation should be recognized as a structural and procedural problem. The state is not a neutral actor or final arbiter. The state is instead a colonial



force concerned with economic growth and its own organizational survival. This is a structural challenge that will always—to various degrees depending on its context—operationalize the FPIC consultation as a self-legitimizing mechanism for governments and their corporate partners to control, develop and convert Indigenous territory with or without direct opposition.

Third, inadequate information was provided at the consultation. While the consultation completed the information phase on 30 June to begin construction—there were 75 information requests unattended to and 12 topics neglected, all of which was acknowledged by the TC (PODER 2015). The EIA was a key point of contention because: (1) SEMARNAT approved the high-impact project; (2) the EIA had been outsourced to a private company; (3) Indigenous people had not participated in the assessment; (4) the current EIA was inadequate for local populations; and (5) the study denied the existence of unique biotic life at the project site. Demonstrating the scope of related concern Mariano Lopez (CencosTV) explains: “We asked for these studies because we have farmers with oil in their wells and this is due to their neighbors’ having a wind turbine 30 or 40 meters away. We asked for information about this type of oil and its toxicity, but the TC does not answer” (see Dunlap 2017b). This was in addition to information about other health impacts such as distance, noise and electromagnetic currents—topics superficially summarized at the 5 February consultation—which sold decibel levels as appropriate, trivialized health impacts, talked about distances from houses that do not exist in most of the northern towns in the Istmo and performed an inadequate literature review. On 5 February, Silvia Victoria from COFEPRIS summarized health risk evidence presented at the consultation:

There is not enough evidence to confirm that the infrasound emitted by wind turbine affects our vestibular system, which is responsible for our sense of balance. There is not enough evidence to suggest a relation between vibrations and mental disorders or mental health problems. It’s the same with the shadows we see when the wind turbines are moving: There is not enough evidence to say there is a relation between the shadows and our cognitive and physical health. There is nothing scientific to help us say we are suffering because of the sound or infrasound that wind turbines make.

While the wind energy impact literature is contested, there is a significant amount of evidence pointing to health and ecological impacts from industrial wind turbines (Tabassum-Abbasi, Abbasi, and Abbasi 2014; Evans 2014; Dunlap, 2017b). During consultations, the depth of wind turbine impact is minimized, while expressing the general message that scientific evidence on health impacts is inconclusive, therefore, it is appropriate to proceed with constructing the wind park regardless of recurrent testimonies in Q&A sessions. Discussion, deliberation and participatory EIA are vital in the promotion of planning suitable for people living with these projects.



Fourth, the FPIC consultation was rife with technical violations and inadequacies. These included (1) limited notification and advertisement of the actual consultation; (2) the fact that consultations often began two–three hours late; (3) the sessions resulted in last minute cancellations, meeting changes and failure to adequately notify the public; and (4) the fact that at times the Spanish–Zapotec translator would not be present. This situation provoked feelings of disrespect across the divided factions.

The prior and informative aspects of this consultation were violated. The layout of the event promoted passive reception and was contrary to regional practices of communal assemblies. The Mexican state, through the TC, retained a vested interest in the project, neglected investigation into counter-evidence and failed to deliver on 75 information requests. This was compounded by procedural violations that conveyed disrespect. The next section now turns to analyze the discourse of the FPIC and how it was constructed to promote the legitimacy of Eólica del Sur project.

### **The Theatrics of Legitimizing Development**

The line between marketing and providing project information is thin and further thinned in an atmosphere of intimidation and institutional approval. This is the context where interpretative manipulation between consent and consultation emerged between local COCEI politicians who discursively supported the possibility of rejecting the project while government and wind company representatives enacted a discourse of inevitability. “In general we are going to see the permissions for wind energy projects,” announced Ramon Olivas the Secretary of energy at the 3 December 2014 consultation. The wind project had already received the government’s stamp of approval, now the task was to put on an FPIC consultation.

The cost of electricity was the first point of contention. Ironically, because of the land use change from agriculture to wind turbines and the subsequent zoning regulations, electricity prices began to rise along with the cost of land, rent, food and other basic necessities, causing the arrival of wind energy in the Istmo to widen income inequality and intensify existing social and material problems (Dunlap 2017b). This was possible thanks to the 1992 “self-supply” (*autoabastecimiento*) law that allowed corporations to buy their own wind parks and generate their own electricity. Wind companies would manage the electricity generated from the Istmo and then export it to specific companies and, cities in Mexico, Guatemala, Belize and the United States (Dunlap 2017b). Attempting to normalize this controversial energy law at the 4 December consultation, Olivas would begin by self-referencing government institutions and explain how in Baja, California and Nuevo Leon they already generate self-supply electricity, adding that “this is not disadvantageous to the country, according to SENER.” The message is clear: it is



already happening, the government approves it and therefore it is normal and people should not contest wind energy projects or how the energy is used. The crowd is then reminded: “Oaxaca is the third state at the national level with the highest subsidy for energy.” This implies that people in this area should feel privileged with the current state of energy affairs regardless of their pressing material concerns. Olivas’ talk is dedicated to minimizing the real discontent arising from energy costs, rural gentrification and poverty entrenchment that appear to be increasing work-related out-migration in towns surrounded by wind parks (Dunlap 2017b).

This narrative of normalization recurred at the consultation dedicated to health impacts. On 2 February 2015, the first twenty minutes of the presentation were dedicated to explaining the production of wind energy around world. The message was “China, USA, Germany, Spain, and India are generating electricity, so Mexico and the Istmo have nothing to worry about and should be doing it also.” This saves and/or wastes the time which would otherwise have to be spent on discussing the complicated aspects of wind energy health impacts.

Questions about income transparency, social, health and environmental impacts were systematically ignored, stalled or avoided. Come March The panel members told people they would deliver EIA at the end of the assembly and they would be able to come to the table and have a look at it. The study mentioned was foundational to alleviating local ecological concerns but the standards it operated on were found to be unsatisfactory by the people concerned. The researchers who conducted the study were unable to present their work at the consultation because of travel complications. The study was an old EIA report that did not answer many of the pressing questions regarding noise, headaches, concrete foundations, leaking oils and so on. When people criticized or insulted the consultation for procedural violations, inadequate information and cultural violations, the TC would respond: “We have to remind you that this is an unprecedented process here in Juchitán, that started with good faith from authorities to respect what Convention 169 says, which is the instrument that regulates the consultation” (Consulta n.d., 25 March). Novelty and gratitude became an excuse for inadequacy, neglect and disrespect.

The TC was committed to rushing into the deliberative phase regardless of 32 security incidents, 75 unanswered information requests and their own acknowledgment of 12 information topics lacking resolution (PODER 2015). These are the theatrics of legitimizing megaprojects: “[T]his rush the authorities have,” said Mariano Lopez (CencosTV), “is because of deadlines given by financing agents to Eólica del Sur in order to begin the project.” The project was already being approved by the government. Private negotiations were taking place in parallel to the FPIC consultation and the TC made a concerted effort to approve the project in violation of Convention 169 Protocol.



Finally, a key concern for groups struggling against wind energy development was the construction of wind parks on sacred sites (Dunlap 2017a). This protest led to a consultation dedicated to archeology preservation on 4 March 2015. Agustín Andrade, an archeologist from INAH, tried to assure the public that sacred sites would not be destroyed and that archeologists would monitor wind turbine construction, halting construction if necessary to preserve ancient artifacts. Despite the admittedly limited preservation funds, Andrade expressed eagerness to work with the groups protesting the takeover of Zapotec and Ikoot cultural sites. The remedy offered by Andrade, however, disregarded the relational and/or qualitative concerns expressed by APPJ and APIIDTT. These are sites of regular prayer, reciprocity and subsistence with the land celebrated with a series of annual festivals at Guze Venda, Guela Venge, Chigueze and La Chxaada among others.<sup>7</sup> Wind turbines change the qualitative features of ecosystems, and consequently impact the cultural integrity of the Zapotec and Ikoots who still value their relationship with the earth, farming, fishing and sacred sites. The remedy put forward by Andrade might help preserve the rumored tombs of Zapotec warriors on communal lands, but it does not acknowledge the active relationship that some people hold with the land. Consequently, Andrade's offer amounts to gratuitous gesture to assign Zapotec and Ikoot culture a space on the wall in a museum (See 2015)—making it history as opposed to a lived reality and practice.

Regardless of the discursive manipulations, project marketing and cultural insults and physical intimidation, on 30 June 2015 the information phase would come to a close. This was formally protested by resistance groups, human rights organizations, journalists, NGOs and factions of the COCEI, which accompanied a legal strategy. After collecting 1166 signatures, on 15 September 2015 opposition groups filed a court injunction (*amparo*) with the Seventh District court of Salina Cruz (Manzo 2015). On 30 September, a temporary injunction suspended all of Eólica del Sur's licenses and permits, which became permanent on 16 December 2015 (Sin-Embargo 2015). Then, however, on 9 June 2016 the Seventh District Court repealed the injunction (Orozco 2016), creating an opening for continued wind park construction in Juchitán County. The legal success in exercising Indigenous rights against the Mexican government, Eólica del Sur and the FPIC procedure was short-lived, but the struggle continues in the Istmo today.

## Conclusion

Therefore merely by attending the meeting they had muzzled themselves, bound themselves to new bosses who were more insidious than the old bosses because they came from among themselves.—Sophia Nachalo



An exercise in democracy, incorporating and creating a new arena to exercise Indigenous rights, the FPIC consultation in Juchitán was employed to approve and legitimize the Eólica de Sur wind project. The FPIC consultation in Juchitán failed to provide genuinely *free*, non-coercive information *prior* to approving the project and thus did not provide the conditions to allow for *informed consent*. Instead, the FPIC consultation in Juchitán all but mimicked all the negative features mentioned in the literature review and suffered a conflict of interest between state and corporate collaboration, violated cultural norms, provided inadequate information and also served as a marketing platform to sell the idea of the project rather than adequately address the issues raised by participants such as income transparency or social and environmental impacts. Consequently, the FPIC has served to entrench state power and reinforce existing political and economic asymmetry between different actors. Interestingly, in this case, the Mexican courts proved more accountable in responding to Indigenous rights and raising questions regarding the FPIC's operational purpose and its ability to affirm Indigenous self-determination.

Battles against state security forces and struggles for Indigenous autonomy directly and unapologetically challenged the legitimacy of the state, its formation and continued development. Governments and corporations classify these struggles as “insurgent,” regardless of their justification and behind every FPIC consultation is the practice or threat of military, police and other security forces' occupying Indigenous territory to enforce colonial law and protect corporate investments. FPIC consultations represent a “soft” and enlightened approach to combating insurgency that harnesses democratic techniques of incorporation, self-identification and participatory decision making for the purpose of “inclusionary control.” The FPIC represents a relatively new mechanism that repackages old labels, procedures and paper work to integrate people into a bureaucratic (colonial) system that provides hope, enables (real or imagined) expression/feedback and regiments people to chairs, presentations and Q&A proceedings. Strategies of inclusionary control work to facilitate a shift within rebellious groups from *total rejection to negotiation*, which inherently relies on the threat of coercive force and work to create spaces to facilitate or widen existing social divisions (Dunlap 2017a). Counterinsurgency fashions the FPIC procedure as a concession made attractive by the everyday political and structural violence that wears people down and creates openings to lure recalcitrant populations into rigged democratic theatrics that tightens the psychosocial grip of state and corporate power.

Despite discursive and physical attacks, the resistance remained determined in quickly recognizing the intentions of the FPIC consultation. From the perspective of Indigenous autonomy, the mere attendance of the consultation promotes submission to procedural disciplines, state authority and acceptance of land acquisition via subterfuge. Thus, FPIC is not a neutral political technology



of deliberation and decision making but a device of social mediation and control. It emerges as a liberal colonial technology with vested interests and power asymmetries and functions as a component of the state apparatus bound to the imperatives of political control and economic growth, which incidentally are said to be the foundations of ecological crisis and anthropogenic climate change (Dunlap and Fairhead 2014). In short, it might be beneficial to view the FPIC consultation as a politico-military hold-and-build technique designed to (re)establish control and legitimacy over populations resorting to direct action and asserting their legal rights against destructive development projects. If the possibility exists, rejecting FPIC consultations might be wise until the process is taken seriously by granting impacted people veto power, eliminating corporate–state–elite interests from them and enforcing the actual meaning of the words Free, Prior and Informed Consent. Oppositional groups need to consider the best ways in which to use their time and resources to accomplish their goals of defending their ecosystems and ways of life, which might include boycotting FPIC consultations and expending their energies elsewhere.

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### **Notes**

1. This and all subsequent block quotations have been translated by the author with Anna, Paul R. and Mr. X.
2. Public speech in Álvaro Obregón on 2 February 2015.
3. United Nations Collaborative Programme on Reducing Emissions from Deforestation and Forest Degradation.
4. This is a place the COCEI struggled for during the 1970s and thus retains important symbolic meaning.
5. This is a derogatory term referring to white people or Europeans akin to cracker, honkey or whitey.
6. Cruz's presentation: 30:30-53:00 at <https://www.youtube.com/watch?v=0qfbJ9QDrrM>.
7. The spelling of Zapotec words tends to vary.

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