



Video: Consultation Protocols: Instrument for the Defense of Territories and Rights

Supplementary material to accompany the video

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Introduction

The Consultation Protocols: Instrument for the Defense of Territories and Rights video aims to contribute to the exchange of experiences and knowledge between indigenous peoples and other traditional communities in Brazil on the origins, processes of elaboration and implementation of Consultation and Free Consent Protocols, Prior and Informed, a new instrument for the defense of territories and rights, developed by the movements themselves.

This video is based on testimonies from leaders of indigenous, riverside and quilombola peoples, talking about their experiences with the creation and implementation of consultation protocols as a tool for fighting. It also includes testimonials from experts, advisers and representatives of civil society organizations and the Public Prosecutor's Office who have supported the development of consultation protocols and the defense of territories.

Thus, the video seeks to show how the right to free, prior and informed consultation and consent are part of the fundamental rights of indigenous peoples and other traditional communities, have guaranteed by the Brazilian Federal Constitution and in international agreements such as ILO Convention 169 and the United Nations Declaration on the Rights of Indigenous Peoples of which they include territorial rights, the right to self-determination and respect for cultural diversity.

For this, the video is divided into four parts:

- 1) The Right to Free, Prior, and Informed Consultation and Consent
- 2) The Emergence of Consultation Protocols
- 3) Elaboration of Consultation Protocols
- 4) Implementation of Consultation Protocols

The simplified material below brings a series of questions that can serve to direct the debate about what was discussed in the video, in each of its parts, in workshops on Consultation and Free, Prior and Informed Consent, to stimulate knowledge and exchange of experiences on the Consultation and Consent Protocols.

Questions for discussion for workshops:

Part 1: The Right to Free, Prior and Informed Consultation and Consent

What is the right to Free, Prior and Informed Consultation and Consent?

What right is it rooted in?

What are the main international agreements that acknowledge or establish the right to free, prior and informed consultation and consent?}

According to the international agreements the Brazilian legislation, what groups have been consulted?
Who is responsible for conducting the consultation?

Part 2: The Emergence of Autonomous Consultation and Consent Protocols

Why were consultation and consent protocols created?

How can a protocol help ensure the right to free, prior and informed consultation and consent?

Do you see parallels in Brazil with your country, are protocols also used in your context?

If your community or people are interested in developing a consultation protocol, do you think it would be important as an instrument to defend your territory and rights in your country?

Part 3: The Elaboration of Autonomous Consultation and Consent Protocols

In the video, Maria Leusa Kabá talked about the process of preparing the protocol for the Munduruku indigenous people. What did you think was most important about what she and other people talked about in the video about the process of preparing a consultation protocol?

How do you imagine a protocol elaboration process in your community, respecting your culture?

What precautions should be taken (including regarding the participation of outsiders)?

Thinking about how your community makes decisions, what do you think should be included in the protocol?

How can a consultation protocol guarantee good community participation in decision-making, respecting the culture of the people?

If your people already have a protocol, how was your process?

What should be included in a consultation protocol?

Questions for discussion for workshops:

Part 4: Implementação dos Protocolos Autônomos de Consulta e Consentimento

After elaborating a consultation protocol, what is an important next step, remembering the statements of the interviewees (Maria Leuza, Antônio Oliveira and Eva Canoé)? Why is the disclosure of a protocol important?

What other paths can be used to implement the protocols?

What are the main challenges to ensure the implementation of a protocol?

What is the best way to face these challenges?

What other instruments do you use to protect the territory and how can the Protocol strengthen them?

In what ways do you think that having a Protocol can help your people in an advocacy strategy?

Guidance on questions:

Part 1: The Right to Free, Prior and Informed Consultation and Consent

The Right to Consultation and Free, Prior and Informed Consent are the rights of indigenous and traditional peoples to be consulted on projects and policies that affect their cultures and territories, including bills, and to say whether or not they agree with the proposal. It must occur without coercion, with enough information for understanding and before making a decision.

The Law stems from the right to self-determination, the right to cultural plurality and the rights guaranteed to indigenous peoples to their cultures, traditions, languages and others, in addition to the original right to their territories and the quilombolas to their lands.

The Right to Free, Prior and Informed Consultation and Consent are foreseen in the United Nations Declaration on Indigenous Peoples (UNDRIP) and in the American Declaration on the Rights of Indigenous Peoples, of the Organization of American States (OAS) and in ILO Convention 169.

The Consultation should take place before decisions are made during political and legislative processes, and whenever necessary for information, according to the procedure determined in the protocols.

Consultation is the right of indigenous and traditional peoples, which include quilombola peoples and other peoples who follow their traditional ways of life.

Guidance on questions:

Part 2: The Emergence of Autonomous Consultation and Consent Protocols

The protocols emerged since the State was not respecting the right to free, prior and informed consent and consultation, or were conducting the consultation in a way that did not respect the traditions and ways of life of indigenous peoples and traditional communities.

The protocol will ensure that the consultation occurs in the way that the peoples themselves understand to be the most correct, according to their customs and traditions, and will ensure that the language is accessible, that their internal decision-making processes are respected, and even their decision-making time.

Part 3: Development of autonomous consultation and consent protocols

The consultation protocol should include the steps in the consultation process appropriate for each community or community, including who should be consulted within the community, in what language, and at what time.

To ensure protocol compliance, it is important to have a recorded or written record of the protocol, meeting minutes, and technical support.

Care must be taken to ensure that no outside influence affects decision-making, including the partners that support its design and implementation.

Part 4: Implementation of two Autonomous Consultation and Consent Protocols

A dissemination of the next step for the protocol to be concluded, raising the relevant government bodies for the media. It is important for media, government and other relevant stakeholders to have knowledge about the protocol and that it is respected.

The peoples and communities can also demand that protocols be respected through litigation and by direct action, such as demonstrations. The judiciary has already upheld the right to have protocols respected, as in the case the Juruna people mentioned in the video.

The greatest challenges to ensure the effectiveness of the protocols are the conflicting interests of the government, companies and individuals. These can be manifested by means of co-optation attempts in the elaboration of protocols or the consultation process, or by disrespect of the consultation or an adequate consultation process by the government.

The protocol establishes that the consultation must follow the process indicated in it, which is culturally appropriate, and can be used to question incorrect, hasty or undue interference consultation processes.

Other relevant materials (in Portuguese):

Protocolos de consulta preliminar y derecho a la libre determinación, Fundación Rosa Luxemburg:

<https://rosalux.org.br/livro-sobre-protocolos-de-consulta-reforca-direito-de-povos-tradicionais/>

Guía de protocolo, RCA:

<https://rca.org.br/wp-content/uploads/2019/06/2019-Guia-de-Protocolos-RCA-vers%C3%A3o-web.pdf>

Consulta y protocolos de consentimiento previo, Fase:

<https://fase.org.br/wp-content/uploads/2019/08/PC-e-Consentimento-Pr%C3%A9vio-FASE-vers%C3%A3o-2.pdf>

Guía sobre el consentimiento libre, previo e informado, Oxfam (en Español):

http://www.bibliotecavirtualrs.com/wp-content/uploads/2011/09/guia_sobre_el_consentimiento_libre_previo_e_informado.pdf

Tratados y declaraciones internacionales

Convenio 169, Organización Internacional del Trabajo (OIT):

https://www.ilo.org/dyn/normlex/es/f?p=NORMLEXPUB:12100::NO::P12100_INSTRUMENT_ID:312314

Declaración Americana sobre los Derechos de los Pueblos Indígenas, Organización de los Estados Americanos (OEA):

<http://www.oas.org/es/sadye/documentos/DADPI.pdf>

Declaración de las Naciones Unidas sobre los Derechos de los Pueblos Indígenas (DNUDPI), Naciones Unidas (ONU):

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Special Thanks: Nayra Paye Kaxuyana, Marlui Miranda Cristina Orpheo, Erika Yamada, Inimá Krenak, Maíra Krenak

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