



# WoMin

AFRICAN WOMEN UNITE AGAINST  
DESTRUCTIVE RESOURCE EXTRACTION

## Development Futures: An African Roundtable on Extractives, Mega Infrastructure and Women's Right of Consent

*Desmond Tutu Conference Centre, Nairobi  
30 November – 2 December 2016*



For three days, WoMin and our ally KeNRA (Natural Resources Alliance of Kenya) convened 38 activists, development practitioners, human rights defenders and advocates from around the world for **an African Roundtable on Extractives, Mega Infrastructure and Women's Rights of Consent**. The objectives of the roundtable were:

- Build a women's rights perspective on consent, its centrality to just development process, and begin to theorise a legal, moral, political and economic argument for consent which advances women's rights.

- Critically review and share different approaches and strategies – their strengths and limitations - to advance women’s rights of consent/ development decision-making.
- Identify strong pathways to strengthen women’s rights of consent to be further explored through partnership and collaboration.

**LILAK (Purple Action for Indigenous women in the Philippines) wrote as follows in 2013:** *“Mining and violence against rural and indigenous women in the Philippines, companies’ attitudes have not changed, they talk about their promises of benefits, and not about the extent and objective assessment of their projects, and consent are obtained through indigenous leaders they have handpicked. As women are not always recognised as leaders in the communities, it was not deemed necessary that they be informed, nor been given a chance to participate in any form of consultation leading to consent process, thus their ideas and their values are not considered in the whole process. Indigenous women are further marginalized with the lack of their voices in the entire process, even their rights to information is violated by the government and the mining companies and this make them even more invisible”.*

## Background

The world’s peasants and indigenous people live on land and territories that are rich in natural resources such as gold, diamond, silver, copper, timber, gas, and oil. These resources are exploited by multinational corporations, in partnership with governments and ruling parties, for their own purposes and profit typically without the consent of those who have been living on and are sustained by the land, waterways and forests. These violent resource extractions have led to physical, cultural, spiritual and environmental damage to the communities, ecosystems and ultimately the planet.

Populations impacted by extractives and mega-infrastructure projects should be able to determine their own priorities and strategies for development, in accordance with their values, aspirations and needs. A commitment to consent may be expressed in multiple ways: the “right to decide”, “community consent”, “community agreement”, “collection of expression” or ‘community development agreement.’”

Consent is a well-established idea, grounded in moral theory and legal statute, in the medical field as well as feminist theory which addresses the right of women to make decisions about their bodies, about reproduction, and about their sexuality and sexual choices. In more recent years, other sectors have borrowed from liberal theory and law to expand the notion of consent to the collective, to the right of indigenous groups and communities to make decisions about developments affecting their lands and natural resources. This notion of consent is enshrined in various frameworks, laws and protocols, such as the ILO 169 convention which provides for the Free Prior and Informed Consent (FPIC) of indigenous communities, the ECOWAS protocol in West Africa, and national laws in some countries. FPIC, which does not have a universally accepted definition in the legal framework of international law, has emerged as a principle of International Law that derives from the collective rights of indigenous peoples to self-determination.

## Understanding Consent from a Women’s Rights Perspective

The Development Futures Roundtable interrogated the concept of consent, its expression in various tools and legal frameworks, its potential and limitations all read from a women’s rights perspective which has, with a few exceptions, generally been lacking in debates on consent processes amongst civil society organisations and responsible governance institutions.

The roundtable was structured as a series of highly-participatory conversations and panel presentations each grappling with a different question around consent, in theory, statute and practice. The meeting started with a highly participatory introductory session combining inputs and group discussions on consent – the concept, history, and ways in which it has been conceptualised and fought for. This was followed by a lively discussion

on why consent is a women's rights issue, what we have learnt from women's struggles and our work with women in communities, and the major challenges and opportunities we perceive in advancing women's voice and right of consent in development decision-making?

Day One concluded with a panel addressing how consent has been institutionalised and legislated in different contexts and through various mechanisms – in Colombia popular consultations with indigenous people are a constitutional requirement; while in West Africa the ECOWAS protocol and constitutional/policy provisions in the Ghana context have yielded effective tools for engagement. The panel also addressed the question of how customary law has been and could be used as a legal basis for customary communities to claim consent, with a final input considering the ways in which consent has been institutionalised, with its many flaws, in multilateral and World Bank Policies, the Ruggie framework and sub-regional and regional protocols.

On Day Two the roundtable opened with a second panel on consent, now addressing the theme of how consent is claimed in practice through social justice struggles. The cases here considered struggles for self-definition, drawing on customary law and practice (the Amadiba struggle against mining in South Africa); and the Endorois struggle for their land rights affirmed by the African Commission on Human and People's Rights ruling in 2010. This session also included input on the Guatemalan experience where indigenous peoples resist mining drawing on the ILO 169 provision, national law and municipal accords which acknowledge the right of consultation; and the experience of building bio community protocols as a tool for mobilising communities and defining local development agendas as a basis for consent.

The rest of the day was spent in conversation digesting the cases, and relating them back to experiences in other contexts. On the final day we explored the political economy of consent – essentially deepening our shared understanding of the power relations and interests that come around extractives and mega infrastructure projects and how this stymies community voice and the collective right of consent. A key conclusion emerging from this conversation was that consent must be won through social struggle, with international and regional frameworks, and protocols, and constitutional and national laws drawn upon as tools of support and reinforcement. The last hours of the roundtable were spent in commissions building strategy and generating ideas for how to take forward conversations and build the needed responses collectively.

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## Looking Ahead

Together, participants agreed to collaborate on three main themes related to consent:

1. **Deriving consent from/in customary law**, with a specific focus on how to transform customary systems to advance women's rights in decision-making/consent. Specific actions proposed include (a) documenting cases where communities, and women in particular, have used customary law to claim consent rights and the strategies employed to achieve this; (b) training organisations to build a deeper understanding of customary law from a women's rights perspective; and (c) working together to build new practice such as community referendums.
2. **Researching women's land rights** – we discussed the deep link between the strength of tenure systems, communal tenure systems in particular, and consent rights. Since women are generally denied control over land under common property arrangements they are excluded from decision-making. Potential actions with allied organisations working on women's land rights include: (a) support to women's organising including training on strategies for expanding and deepening women's land rights; and (b) empirical research and legal exploration to build a stronger concept of what we mean by women's land rights and how use rights to land could become a source of consent rights.

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<sup>1</sup> See the full programme and concept note for this process attached.

3. **Strengthening consent as opposed to consultation**, with a strong women's rights focus, through (a) mapping of community strategies regionally, (b) training/capacity building targeting community activists/organisers and (c) building country specific handbooks to inform and support actions

In 2017 and beyond, WoMin will work alongside allies and potential collaborators identified by the group to develop these core themes in praxis with deep grounded movement building processes, grassroots women-led research that will feed into learning, theoretical framing, mapping, strategy-sharing, action and advocacy at multiple levels.

The Development Futures Roundtable has offered an exciting opportunity to bring a sharp women's rights lens to consent processes and holds great potential for WoMin's work and that of our allies going forward.