Does Free, Prior and Informed Consent ensure self-determination?

A relational approach to mining activities and indigenous communities in northwestern Argentina

Jasmin Höglund Hellgren
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Abstract
Over the last decades the struggle for indigenous rights has accomplished great achievements within international law. In relation to development projects and resource extraction on indigenous lands, the principle of Free, Prior and Informed Consent (FPIC) has gained increased recognition and is today expressed as an important instrument to realize indigenous peoples’ right to self-determination. Nevertheless, empirical evidence have identified power asymmetries as one of the major obstacles for effective and meaningful FPIC implementation. This study investigates how power asymmetries emerge and affect the right to self-determination through the four FPIC requirements. Based on field research and by applying a relational approach, the study investigates a case of mining activities in northwestern Argentina where indigenous communities currently experience an increased interest in lithium deposits on their lands from transnational corporations. The study shows how relations characterized by dependency and clientelism create a situation where actors hold unequal power positions which permeate all FPIC requirements severely undermining the principle’s potential to fulfill its purpose. Lastly, based on the findings the study argues substantial underpinnings in terms of necessary preconditions are needed if FPIC are to be able to ensure self-determination.

Key words
Free, Prior and Informed Consent (FPIC), freedom, self-determination, indigenous rights, resource extraction, lithium mining, Argentina
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1. Introduction

“Unfortunately, there are no other employment opportunities here, if there were I would tell the mines to leave” – member of the Huancar community about the lithium mining projects in Olaroz-Cauchari (Interview V 2017)

“I don’t know if what we get is what corresponds to us according to our rights over the land, how could one know that?” – member of the Susques community about compensations from companies (Interview II 2017)

Over the last decades the struggle for indigenous rights has accomplished great achievements within international law. In recent years, in relation to development projects and resource extraction on indigenous lands the principle of Free, Prior and Informed Consent (FPIC) has gained increased recognition and is today conceived of as a way to ensure that indigenous peoples’ right to self-determination is respected and protected (Ward 2011, 58). In short, the FPIC principle establishes states have the obligation to consult and seek the freely and informed consent of affected indigenous communities prior to any authorization or initiation of projects on their lands (OHCHR 2013).

The right of indigenous peoples to manage natural resources on their lands are supported in various international treaties, primarily in the ILO Convention 169 (C169, 1989), as of yet the only binding treaty on indigenous peoples’ rights, and in the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP, 2007), in which the right to FPIC is explicitly expressed and consolidated. In addition to these declarations, the right to FPIC has is normative foundations in universally accepted human rights, including the right to self-determination as contained in numerous international human rights instruments (UN-REDD 2013, 13). Likewise, has the importance of lands and resources to the survival of indigenous cultures and self-determination been widely accepted and recognized as part of international law explicitly linking FPIC right and self-determination to control over traditional territories (Anaya 2005, 9). However, previous research point out there still exists a considerable gap between international norms and state practice regarding FPIC implementation (Ward 2011, 83). Despite progressive law and the high expectations of FPIC as a tool with the potential to
transform oppressive conditions, through processes requiring negotiated agreements between indigenous people and actors engaged in extractive activities and development projects, the voice of indigenous peoples continue to be ignored (Cariño 2005, 39).

1.1. The problem

The observed gap between international norms and state practice, raise concerns to whether the current FPIC framework is sufficient for the principle to fully fulfill its purpose of realizing indigenous self-determination. Taking into account how communities often lie in remote areas where state presence is limited and how they increasingly interact directly with corporations without state involvement, there are reasons to believe the principle needs certain substantial underpinnings in terms of necessary preconditions in order to meet the high expectations ascribed to it.

At present, indigenous communities in the northwestern parts of Argentina are experiencing an increased interest in the lithium rich salt flats located on their lands from transnational corporations (TNC) as a result of the recent boom in lithium demand. Following the technological development the mineral has become an essential component in electric vehicle batteries presuming an important role in the global debate over climate change and the need to shift to a green economy. The Argentine Puna region on the Andean highland plateau is part of the so-called lithium triangle between Chile, Bolivia and Argentina, estimated to hold around 70 per cent of the world’s lithium reserves (MINEM 2017). At the same time, however, the Puna region is since ancestral times home to various indigenous ethnic groups, among them the Atacamas, traditionally dedicated to pastoral farming, small-scale agriculture and salt extraction. In the province of Jujuy, two lithium projects have been approved so far located within the Olaroz-Cauchári salt flat in the Susques department. The ten Atacama communities inhabiting the department are legally recognized as indigenous peoples by the province of Jujuy since the early 2000’s and are, consequently, entitled to certain rights over the land and the management of resources as established in the Argentine constitution. Additionally, communities are also entitled to FPIC rights as enshrined in the ILO C169, which Argentina signed in 2000, consolidated in UNDRIP, which Argentina voted in favor for in 2007. The interest in mineral deposits and the arrival of TNCs to the area has however not caused any major conflicts or confrontations, instead the situation has been perceived as an opportunity by communities who formally have approved both projects.
The northwestern part of Argentina constitutes the country’s poorest region with the highest rates of substandard living conditions, malnutrition, illiteracy, and unemployment (Weinberg 2016, 155). Against the backdrop of such circumstances community members hoped projects would provide local employment opportunities and increase service provision in the area. Nevertheless, as illustrated by the above quotes, hopes and expectations mix with ambivalence and uncertainty, highlighting the complexity of indigenous peoples’ relationship to extractive industries as they may be “simultaneously attracted to the promise of material benefits and repelled by the environmental damages” (Chaturvedi 2013, 58). Under such circumstances, previous research has shown communities run the risk of becoming dependent upon corporations as they “fill the gaps” of an institutional void in basic service provision (Cheshire 2010). As a result, corporate-community relations are often characterized by patronage and clientelism, further reinforcing dependency impacting negatively on communities’ capacity to identify and mobilize around collective interests (Gustafsson 2018, 9). The state could potentially play an important role in such situations by guaranteeing FPIC rights or by supporting communities in their interaction with companies. Nevertheless, previous research also show impact assessments, consultation and participation processes have failed to meaningfully consider and implement FPIC requirements, further identifying power asymmetries as one of the major challenges in relation to FPIC (Mahanty and McDermott 2013; Hanna et al. 2014; Bustamante 2015; Flemmer and Shilling-Vacaflor 2016; Fontana and Grugel 2016).

Considering the consensus in previous research of power asymmetries as the major obstacle to effective FPIC implementation this thesis seeks to deepen the understanding of how such power asymmetries emerge and affect FPIC’s purpose of realizing self-determination. In order to do so, further knowledge is needed as most studies focus on the formal and legal framework and processes in relation to participatory rights, social equity or inclusion of marginalized groups. The power relations between actors and their implications for the right to self-determination have not been sufficiently considered, hence, this thesis seeks to contribute to the current FPIC literature by applying a relational approach to self-determination when exploring how power inequalities between actors have affected the FPIC requirements in the case of Olaroz-Caucharí.
1.2. Main purpose and research questions

The purpose of the study is to assess the FPIC principle’s potential as a tool realizing indigenous peoples’ right to self-determination with the ambition to understand what substantial underpinnings and necessary preconditions the principle needs in order to do so. To fulfill the study’s purpose the case of Olaroz-Caucharí is examined by applying a relational approach to the analysis of the FPIC requirements. The relational approach allows the study to explore the relation between actors which is understood to be the context in which FPIC rights are considered and implemented. The study is based on field research conducted in four of the Atacama communities surrounding the salt flat, and the material used are based on interviews, observations, and complementary secondary sources.

The research questions are:

1) What characterizes the relationship between companies engaged in lithium extraction and communities in the Olaroz-Caucharí area?

2) What are the implications of the relation for the requirements of the FPIC principle?

3) What preconditions are necessary in order to ensure self-determination for indigenous peoples through the FPIC principle?

The disposition of the paper is as follows. The thesis consists of seven chapters, the next chapter provides a brief background on the Atacama people, indigenous rights internationally and in Argentina, mining in Argentina and the legal framework regulating mining activities in the province of Jujuy. The third chapter reviews relevant literature in the field of corporate-community relations and FPIC implementation followed by the fourth chapter describing the methodology of the investigation. The fifth chapter informs the study theoretically by outlining a relational approach to self-determination followed by an operationalization of the theory through four analytical dimensions developed from the FPIC requirements. In chapter six the empirical analysis is presented. Lastly, the conclusions and a discussion of the results are presented in the seventh and final chapter.
2. Background

In this chapter a brief background on the history of the Atacama people is presented followed by an account of mining in Argentina and the Puna region. Lastly, indigenous rights internationally and in Argentina are outlined followed by the legal framework regulating mining activities in the province of Jujuy.

2.1. The Atacama People

Historically, the Atacama people have lived on the Andean highland plateaus of the Atacama Desert today located between Chile, Argentina and Bolivia. Before the Spanish colonization the Puna region was inhabited by various ethnic groups belonging to the linguistic kunza family (Cruz 2009 in García Moritán and Cruz 2011, 13). The knowledge of the Atacama culture dates back to ca. 500 AD, however, little is known about the transformations from the first agro-pastoral societies to the formation of larger communities and their organization before the colonization (García Moritán and Cruz 2011, 13). In the beginning of the 15\textsuperscript{th} century they region was conquered and incorporated into the Inca Empire, the largest pre-Columbian empire with an advanced political and administrative structure based in Cusco, currently Peru. In 1556 the Spanish colonizers took final control over the Puna region and imposed the encomienda system.\footnote{A system in which indigenous labor and taxes belonged to the colonizers, encomenderos, who according to the Spanish crown had the responsibility to protect and religiously educate the indigenous population.} The colonization brought changes in terms of animals, crops and farming techniques which consequently had large negative effects on the self-sufficiency and autonomy of local communities. By the 17\textsuperscript{th} century large parts of the indigenous population had died of diseases, unhealthy work and mistreatment (García Moritán and Cruz 2011, 13).

After the Argentinian independence (1810-1820) little changed for the indigenous population even though the encomienda system ceased. During the second half of the 19\textsuperscript{th} century ethnic cleansing and assimilation policies continued to exterminate large parts of the indigenous population throughout the country. At the beginning of the 20\textsuperscript{th} century the kunza language was completely extinct, with the exception of a few proper names, and today all Atacama communities speak Spanish as their mother tongue (García Moritán and Cruz 2011, 14). Argentina’s dark history regarding its indigenous peoples is still highly visible, although indigenous peoples were later recognized as equal citizens of Argentina they remain deprived...
of ownership over their lands. Following the many Latin American revolutions throughout the 20th century, many countries in the region, fearing the revolutions would spread, initiated agrarian reforms. Only in Argentina has agrarian reform been completely absent (Kay 1998, 12).

Today the indigenous population in Argentina is approximately 955,000 people, 2.4 per cent of the total population (CEPAL 2014). In 2010 the Atacama people were estimated to approximately 4,000 people (INDEC 2010), of which the majority live spatially dispersed in the ten communities surrounding the Olaroz-Cauchari salt flat (García Moritán and Cruz 2011, 32). In 1994, Argentina reformed the National Constitution and the ethnic and cultural pre-existence of indigenous peoples were recognized, it was established indigenous peoples have the right to communal land titles as well as the right to participate in the management of its natural resources (Argentine National Constitution, Article 75, paragraph 17). Among the Atacama communities the constitutional reform triggered a process of political organization and auto-identification resulting in a (re)construction of the Atacama identity based on close interaction with nature and traditional knowledge constituting an “identity of difference” which became an important resource in the struggle to regain land rights in the early 2000’s (Göbel 2013, 143). Today the ten Atacama communities have legal status as indigenous peoples but only seven have communal land titles, one community is in the process and two are recognized but still without land titles.

2.2. Mining in Argentina

In Argentina natural resources belong to the provinces who are responsible for regulating and implementing the Mining Code, which dates back to 1886 (Mutti et al. 2012, 215). Argentina has not been a traditional mining country in comparison to other countries in the Andean region. Argentina’s economy is more diversified and the mining industry is relatively small. However, mining activities have increased significantly since the 1990’s as a result of neoliberal reforms under the “Washington Consensus” favoring FDI and exports (Zilla 2013, 26). Reforms favoring extractivism nevertheless remained under the next “post-neoliberal” governments (2003-2015) under the “Commodity Consensus”, based on the rejection of neoliberalism however still dependent on the large-scale exports of primary products (Svampa 2013, 118). Since 2015, when Mauricio Macri from the center-right PRO party won

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2 Among others; Mexico 1910, Bolivia 1950, Cuba 1959, Nicaragua and El Salvador during the 1980’s.
3 Susques, Huancar, Pastos Chicos, Puesto Sey, Catua, Olaroz Chico and San Juan de Quillaques have land titles. El Toro is in the process. Paso de Jama and Coranzulí are still without land titles.
the presidential elections, the country has again experienced a right turn moving towards more liberal and conservative policies re-opening the country to international capital and loans (Weinberg 2016, 164).

2.2.1. Lithium mining in the Puna

Most of Argentina’s mineral resources, among them lithium, are found along the Andean mountain range in the northwestern parts of the country (Mutti et al. 2012, 215). In Jujuy archeological findings confirm the existence of mining activities before the colonization and the Spanish colonizers also mined silver and gold in the Puna region. However, it was not until the end of the 19th century that mining activities became formalized, experiencing its peak in the mid 1970’s (García Moritán and Cruz 2011, 15). At present, Argentina is the world’s third largest lithium producer, after Australia and Chile. The Fénix project in the province of Catamarca, operating since 1997, was until 2015 the country’s only lithium mine. According to the National Ministry of Mining there are at present 47 ongoing lithium projects in different stages throughout the country’s three Puna provinces, Jujuy, Salta and Catamarca, the projects in the Olaroz-Cauchari salt flat, examined in this study, being the most advanced projects (MINEM 2017).

On October 6th 2017, the mining authorities in the province of Jujuy approved the expansion of the first lithium project in the province operating since 2015, Sales de Jujuy, while at the same time approving the initial license for the second project, Minera Exar, currently under construction expected to start operating in 2019. The two projects are operated by Argentine subsidiaries owned by large TNCs with ties to li-ion battery producers and car manufacturers. Sales de Jujuy is a joint venture of the Australian mining company Orocobre and the Japanese Toyota Tsusho Corporation, while Minera Exar is a joint venture of the Canadian Lithium Americas and the Chilean Sociedad Química y Minera. In both projects Jujuy’s state-owned enterprise Jujuy Energía y Minería Sociedad del Estado (JEMSE) owns 8.5 per cent of the project companies. The map below illustrates the location of the ten Atacama communities and the two projects located in the Susques department in the province of Jujuy.
2.3. International and national legal framework

The ILO C169 was adopted in 1989 and is as of yet the most important legally binding international convention on indigenous rights laying the ground for FPIC rights. Even though self-determination is not mentioned explicitly in the convention, consultation and participation in decision-making processes are prominent. In 2000, Argentina signed the ILO C169 granting indigenous peoples more far-reaching land rights than those established in the National Constitution of 1994. The C169 establishes that governments have the obligation to consult affected indigenous peoples regarding any legislative or administrative measure concerning them, and that indigenous peoples should freely participate in decision-making processes carried out in good faith with the objective of consent (ILO C169, article 6). Further, regarding extractive activities, the convention emphasizes the importance of consultations taking place prior to any approval of exploration or exploitation of resources on indigenous lands (ILO C169, article 15).

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4 The map is the author’s proper elaboration based on maps retrieved from: http://www.lahistoriaconmapas.com/atlas/mapas-y-capitales/jujuy-capital-mapa.htm
In 2007, Argentina voted in favor for the adoption of the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP), which was unanimously adopted by the General Assembly. In UNDRIP indigenous peoples’ right to self-determination is clearly stated in article 3 (UNDRIP, article 3). Even though UNDRIP is not legally binding it is considered of great importance as it establishes an international moral standard for both collective and individual rights for states to strive for when engaging with indigenous peoples.

The principle of Free, Prior and Informed Consent has its normative foundation in the right to develop and maintain cultures but also in the right to self-determination (OHCHR 2013). In relation to extractive activities UNDRIP states indigenous people have the right to determine how to use their lands and resources, and that states should “obtain their free and informed consent prior to the approval of any project affecting their lands or territories and other resources, particularly in connection with the development, utilization or exploitation of mineral, water or other resources” (UNDRIP, article 32, paragraph 2). Even though it is clear that FPIC is based on the right to self-determination UNDRIP itself lacks a clear definition of the concept which has left the FPIC principle somewhat open to interpretation. It is mainly the requirement of consent that has been debated regarding whether it gives indigenous peoples the right to veto projects or not (see Gilbert and Doyle 2011).

To sum up, both ILO C169 and UNDRIP along with the FPIC principle, apply to all cases involving extractive activities on indigenous lands in Argentina. However, despite national legal recognition of indigenous peoples’ land rights since 1994 and adherence to international legal norms, implementation of communal land titles has been slow. In 2012, UN Special Rapporteur on the rights of indigenous people James Anaya said, after his visit to Argentina, that “there remains a significant gap, however, between the established regulatory framework on indigenous issues and its actual implementation” (as cited in Amnesty International 2016, 14). Moreover, in 2016, Amnesty International called for the Argentinian government to develop a legal framework on consultation and FPIC, because “even though the right of the indigenous people to a consultation is part of Argentina’s legal framework as a signatory country of international instruments, there is no law or policy, either federal or provincial, that regulates the consultation procedure with the indigenous people” (Amnesty International 2016, 20).
2.3.1. The licensing process in Jujuy

The absence of incorporating international provisions into the national and provincial legal framework results in an unclear legal situation. Even though provinces in Argentina own subsoil resources, provincial legislation in Jujuy establishes that companies need permission from the landowner(s) (read communities) in order to start extractive activities. However, Jujuy lacks a formalized legal procedure regulating consultations and negotiations between corporations and indigenous communities holding communal land titles. Instead, the licensing process is mainly regulated by the Mining Code and the General Law on the Environment which establishes that an Environmental Impact Assessment (EIA) procedure is needed before any approval of exploration or exploitation activities. If projects are approved companies receive an operating license, a so-called Declaration on Environmental Impact (DIA).\(^5\)

Federal minimum standards for the EIA procedure are set in the General Law on the Environment. The constitutional reform in 1994 included the right to a healthy environment and the provinces agreed to delegate the authority to set minimum standards for the environment to the federal state with resulted in the General Law on the Environment in 2003. However, the law leaves room for the provinces to impose stricter regulations if desired. This means the EIA procedure works slightly different in each province but according to national minimum standards it must include; (1) a statement explaining how the environment would be affected submitted by the entity (person or company) who wishes to initiate any type of activity; (2) an EIA report by the entity (person or company) accounting for the potential impacts and the mitigation measures; (3) a process of public participation through consultations or public hearings. This process requires timely access to environmental information in order for citizens to present objections or comments, and lastly; (4) a decision by the responsible provincial authority (the DIA) (Marchegiani 2015, 4). In the province of Jujuy, it is the Secretariat of Mining and Hydrocarbons that is responsible for the EIA procedure, regulated by provincial decree 5772-2010 which basically incorporates the Mining Code and the General Law on the Environment into provincial legislation.

In Jujuy the EIA procedure consists of that the entity (usually the company) presents the EIA report to the Unit of Environmental Management of the Province (UGAMP) which evaluate the report and makes recommendations. The UGAMP consists of actors from various sectors,

\(^5\)For its acronyms in Spanish, *Declaración de Impacto Ambiental*. 
among others the Ministry of Environment, the Direction of Water Resources, the National University of Jujuy (UNJu), the Centre of Geologists, mining companies, mining unions, municipal authorities and indigenous communities.\(^6\) Important to note, however, is that recommendations in UGAMP are non-binding. After UGAMP the EIA report is reviewed by an Expert Committee consisting of experts from the National Council of Scientific and Technical Research (CONICET) and UNJu, and ultimately the Secretariat of Mining and Hydrocarbons approve or reject project applications. Regarding the third requirement of public participation it is mostly done through consultations or public hearings which are non-binding. These rather have the purpose to legitimize government decisions and it is of common knowledge the implementation of participatory mechanisms in EIA procedures in Argentina are unsatisfactory often being a mere formality, not to be confused with FPIC processes (Marchegiani 2017).

\(^6\) A complete list of actors invited to participate in the UGAMP can be found at: http://www.estrucplan.com.ar/Legislacion/jujuy/decretos/dec05707-10.asp
3. Previous research

In this chapter previous research in the field of corporate-community relations and FPIC implementation is presented. There is a considerable amount of literature addressing the relation and interactions between actors in the context of extractive activities in Latin America and the world, relevant for this study however, is mainly work addressing aspects of power asymmetries and dependency. The section on FPIC serves to situate the study within the of FPIC literature.

3.1. Corporate-community relations

Conflicts over extractive projects can become very costly for corporations, therefore they increasingly employ professional strategies as they interact with communities in order to obtain the “social license” to operate (Gustafsson 2018, 11). In addition, strategies are often articulated as voluntary goodwill in terms of CSR policies, and as IOs to a larger extent have started to include indigenous people’s rights and the FPIC principle in their guiding documents companies have increasingly taken after by adjusting their CSR policies. In this process, however, Rodhouse and Vanclay (2016) argue insufficient attention is paid to the normative and conceptual differences between CSR and FPIC, emphasizing CSR’s neoliberal view of development in contrast to FPIC’s view rooted in a human rights-based approach. For this study, three main findings regarding corporative strategies for community interaction are important to bear in mind; (1) strategies vary to a large extent; (2) are adapted to the local context, and; (3) corporations’ responsibilities are often defined in narrow terms according to the area of direct influence, enabling corporations to engage with each stakeholder (community) separately (Gustafsson 2018, 12).

Through an analysis of government in the Australian mining industry Cheshire (2010) shows how mining companies have become central actors governing and determining the future of local mine-affected communities. Through elaborated CSR strategies corporations obtain the social license to operate by filling the institutional void in remote local communities, and by doing so, reinforce relations of patronage and dependency as they provide for basic services, healthcare, education etc. Similarly, factors such as political marginalization and dependency have been identified as reducing the likelihood of community resistance towards mining projects (Conde and Le Billon 2017, 692).
Further, it is not only corporative strategies and state involvement that shape corporate-community relations, community capacities such as pre-existing mobilization structures and access to resources are also important factors. Somewhat problematizing the dominant tendency in previous research to solely discuss relations in clientelistic terms Gustafsson (2018) develops a typology to illustrate different types of dynamics in corporate-community relations;

Table 1. Type of corporate-community relations

<table>
<thead>
<tr>
<th></th>
<th>Demands for services</th>
<th>Demands for rights</th>
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<tbody>
<tr>
<td>Unequal power</td>
<td>Clientelism</td>
<td>Demobilization</td>
</tr>
<tr>
<td>Equal power</td>
<td>Strategic collaboration</td>
<td>Confrontation</td>
</tr>
</tbody>
</table>

(Gustafsson 2018, 9)

The typology distinguishes between community demands related to services and related to rights. Even though these categories are not mutually exclusive, demands for services relate to the distribution of revenues while demands for rights relate to environmental concerns and deficient participation more commonly resulting in resistance towards projects. Clientelism is defined by a superior actor (often corporation) with unique relationships to the different groups (often communities) which depend on the superior for protection or social benefits preventing them from identifying and organizing around collective interests. Consequently, as clientelistic relations could redirected revenues to minor groups interests tend to become narrowly defined, potentially clashing with the aim of FPIC as a tool for collective resource management according to collectively identified interests. This way of thinking about corporate-community relations in terms of power and demand categories provides a pre-understanding of different forms and characteristics of corporate-community relations that help to understand parts of the empirical analysis.

3.2. Free, Prior and Informed Consent

In contrast to Argentina, FPIC has been acknowledged and incorporated into national legislation in Bolivia and Peru, however, Flemmer and Schilling-Vacaflor (2016) find effective participation in the first state-led consultations were limited. The study concludes consultation processes have become a space dominated by the state with disempowering effects on communities as they had little access to information, difficulties understanding technical details, were included too late, and that representation was unclear and contested
(Flemmer and Schilling-Vacaflor 2016, 183). Also, analyzing the Bolivian case Fontana and Grugel (2016) consider FPIC’s potential to create inclusive and effective participation for marginalized groups in decision-making processes. The authors are critical, arguing FPIC is not a neutral instrument automatically leading to democratic governance or social equity, on the contrary it is emphasized FPIC could instead create new forms of inequality if local dynamics are not taken into account. Further, the authors also voice concerns as it is believed FPIC runs the risk of becoming a “technology of government” having depoliticizing effects on contentious processes (Fontana and Grugel 2016, 258).

Additional critique has also been directed towards the “positive hype” and expectations of FPIC as the solution to violations of indigenous rights in conflicts over development projects. From a governmentality perspective Bustamante (2015) analyzes the rationalities, practices and technologies of government at play when several Latin American countries ratified ILO C169 and started to implement FPIC. The author argues states have “colonized” the right to FPIC through a rationality based on (economic) development and national interest, and even though indigenous peoples have gained influence in governance processes of natural resources, their rights are still rendered secondary in relation to neoliberal and post-neoliberal projects by states in the region.

Considering contributions made by previous research, it is clear FPIC implementation leaves much to wish in terms of meaningful implementation. It is also clear successful implementation seems to depend on contextual factors, where power asymmetries are identified as the most important factor. Hence, this study seeks to make a contribution to the FPIC literature by deepening the understanding of how unequal power relations affect each of the FPIC requirements, and in extension, the right to self-determination. Moreover, while much has been written on FPIC implementation in Latin America in general, experiences from Argentina have been largely overlooked, as such this study also seeks to make a contribution to the FPIC literature by broadening the national contexts in which FPIC implementation is studied.
4. Methodology

The study is part of a qualitative research tradition sharing the ontological and epistemological underlying assumptions of the constructivist approach, in line with the study’s understanding ambition, aware of the advantages and limitations this brings. The study is based on a case study of Olaroz-Caucharí, a method suiting the study as case studies are preferred when aiming at answering questions of how and why in relation to current events in concrete social contexts where relevant behaviors cannot be manipulated (Yin 2006, 22). The chapter is outlined as follows, first the case selection is motivated followed by the method for data collection and analysis, and lastly, ethical considerations are reflected upon.

4.1. Case selection

For studies based on a single case the case selection is of highest importance. The Olaroz-Caucharí case has been selected as it illustrates the theoretically relevant concepts and contexts of interest to this study, that is, the activation of FPIC rights in the context of TNCs’ arrival to indigenous lands in remote and historically marginalized areas.

The ten Atacama communities lie within 50 kilometers from the locations of the Sales de Jujuy and Minera Exar projects. Even though all ten communities have established relations with project companies this study focuses on four communities in particular; Olaroz Chico, Huancar and Pastos Chicos, as they lie within the projects’ area of direct influence, as identified by companies. Further, the Susques community, the largest community in the area functioning as a regional hub, is included as the only paved road accessing the salt flat and projects goes through the community’s territory. Contrary to many situations when resistance occur as a result of companies’ arrival, no major conflicts or confrontations have taken place in Olaroz-Caucharí. Nevertheless, reactions to projects have been diverse as communities are not homogenous groups, on the contrary communities contain different opinions and positions, while some groups are against projects, others are in favor and some are open to negotiate but under different conditions. In this case, all communities have formally approved both projects. Hence, the Olaroz-Caucharí case enables an analysis and assessment of the current FPIC framework and whether it is sufficient in order for the principle to fulfill its purpose. Further, the case enables the study to explore what FPIC potentially needs in terms of substantial underpinnings to ensure indigenous self-determination.
4.2. Method and materials

The material analyzed in this study was mainly gathered through 11 semi-structured interviews with a total of 20 community members during field research in the Olaroz-Cauchari area in November 2017, and through additional interviews with the provincial Secretariat of Mining and Hydrocarbons in San Salvador de Jujuy and the national ombudsman in Buenos Aires. The investigation was conducted in parallel with an internship at the Argentinian non-governmental organization Fundación Ambiente y Recursos Naturales (FARN) between August 2017, and January 2018. The internship was based in Buenos Aires and consisted of assisting in a research project on the impacts of lithium mining in Argentina, a project collaboration between FARN and the Dutch organization Centre for Research on Multinational Corporations (SOMO). The field research and interviews were conducted together with FARN’s Environmental Policy Director Pía Marchegiani, also Ph.D. candidate at the Facultad Latinoamericana de Ciencias Sociales (FLACSO). FARN also assists the Colectivo Apacheta, a group from the Susques community opposing the mining projects, with legal advice and application forms.

4.2.1. Interviews

To gather the material semi-structured interviews were used. The interviews followed certain pre-determined topics while at the same time allowing interviewees to explain or develop their reasoning, follow up on related topics, or change the order of the interviews (Kvale 2007, 39). In case studies which focus on a specific situation semi-structured interviews are often used as it allows the researcher to understand and take part of informants’ own perspective and experiences (Kvale 2007, 46). All interviews lasted between 40-60 minutes and were conducted in Spanish. An interview guide can be found in the appendix, however, follow-up questions were asked in order to pick up on interesting topics that came up or to clarify answers. The selection of respondents is not a representative sample of community members. Instead attention was paid to identify different positions among members and to understand various lines of reasoning among different groups. Respondents were selected due to their position within the community, possession of particular knowledge or through snowball sampling. Snowball sampling refers to the technique where one respondent provides contact or names of other potential respondents. In combination with the other ways of identifying respondents the snowball sampling helped to overcome problems that commonly occur with small populations where high levels of trust are required to initiate contact (Atkinson and Flint 2004, 1044). Regarding the number of respondents, this study
understands interviews were “conducted until a point of saturation” as the last interviews confirmed and repeated the same aspects and arguments as the former yielding little new knowledge (Kvale 2007, 44). Nevertheless, more interviews would have been welcomed but were not possible due to time limitations.

4.2.2. Additional sources

To complement the interview material documents, mainly from the national ombudsman’s investigation, as well as secondary sources have been consulted. As access and quality material can be limited during field research, and thus question the reliability of the material, additional and secondary sources to which the empirical material can be compared are important and help remedy the reliability problem through triangulation. However, the data collection method of interviews were considered the only method available to get a community perspective on the experienced relation to companies.

4.2.3. The processing of the empirical material

The interviews that were recorded were transcribed, while interviews not recorded were processed directly after interviews, an essential process as written notes made during interviews can be difficult to interpret if processed at a later stage. As this study uses dimensions to analyze the material, a first reading of the material was done to identify ideas and arguments belonging to each dimension, followed by further readings of the material under each dimension where it was thoroughly processed and analyzed separately. Even though parts of the material relate to more than one dimension, that is, the dimensions are not mutually exclusive, the material is analyzed under the dimension considered most relevant (Bergström and Boréus 2012, 167). Hence, the processing of the empirical material was structured and focused, drawing on existing theory on the phenomenon under study. This was done by deriving the analytical dimensions from the theoretical approach to self-determination, presented in the next chapter together with the operationalization through dimensions. In that sense, the study contains both deductive and inductive elements as it both evaluates FPIC from a relational approach and further seeks to contribute to the development of a theoretical argument. Accordingly, the study should be seen as one “building block” in the process of constructing a theory to better understand the FPIC principle, its potential and limits, and under what conditions and circumstances it can realize meaningful self-determination (George and Bennett 2005, 76).
Critical reflections

In qualitative research the researcher’s interpretations are of much weight. This study applies a looser analytical framework, in the form of four dimensions, leaving room for the material to “speak”, in contrast to a stricter framework where interpretations run the risk of having poor support in the empirical material (Bergström and Boréus 2012, 173). By doing so it increases the transparency of the researcher’s interpretation strengthening the study’s validity. For long, single-case research has been criticized on the grounds of “no variance” and “single-observations” (see i.e. King, Keohane and Verba 1994). However, this critique is mainly valid for studies analyzing variables across cases, in contrast, this study has an understanding ambition (George and Bennett 2005, 179). Further, in order to avoid such bias this study argues the study’s validity is strengthened by the multiple observations included from the one case studied as by the various and different types of empirical sources consulted (George and Bennet 2005, 32; Yin 2006, 56). Finally, regarding the generalizability of the results the case does bare similarities in many aspects with other situations of extractive activities on indigenous lands, particularly in the Latin American context. However, as for all single-case studies, the generalizability is limited and are to be done with cautiousness. Nonetheless, the study provides an in-depth understanding of this particular case which could serve in future comparative cross-case analysis where the same, or a similar, analytical framework is applied.

4.2.4. Ethical considerations

All interview studies raise ethical questions. The study has taken various measures while considering these. Before each interview a written interview consent form was presented and signed, explaining the study’s purpose, the voluntary character of all type of participation, the possibility to withstand to answer any question or terminate the interview at any point, as well as the right to anonymity. Hence, not all interviews were recorded as some interviewees expressed the wish for the researchers only to take written notes. Second, when studying indigenous issues ethical considerations also need to go beyond individual consent and confidentiality and include the “respect for and protection of the rights, interests and sensitivities” of the people (Tuhiwai Smith 1999, 119). Throughout the study these aspects have been considered and reflected upon. It is the aspiration of the thesis to be able to contribute, even though with a smaller part, to the larger research agenda of meaningful self-determination as articulated and defined by indigenous people during the last decades (Tuhiwai Smith 1999, 115).
5. Theoretical framework

In this chapter the theory informing the analytical framework is presented. The chapter provides a definition of key concepts necessary in order to address the relation between actors, mainly corporations and communities, and how it affects the purpose of FPIC, that is self-determination. Lastly, the operationalization of the theoretical concepts are presented.

5.1. A relational approach to freedom and self-determination

5.1.1. Freedom as non-domination

The conception of freedom as non-domination as described by Pettit (2012) positions itself in contrast to the more prevalent conception of freedom as noninterference. In contrast to the latter, Pettit is concerned with informal power relations not necessarily subjected to constitutional regulation. Pettit’s definition, also referred to as freedom as antipower (1996), holds that an agent can only be free as long as no other agent has dominating power over him/her. To clarify, the dominating agent is not restricted to a person, but could also be a corporate or a collective, likewise, the agent being dominated could also be a person or a group. The relationship in which an agent has dominating power over another is characterized by three conditions; “(1) they have the capacity to interfere (2) with impunity and at will (3) in certain choices that the other is in a position to make” (Pettit 1996, 578). Hence, the mere capacity to interfere is considered enough for an agent to be dominant restricting the other agent’s freedom. Also, interference need not to take the form of coercion, it also extends to manipulation, i.e. through control over the agenda, shaping beliefs and desires, and control over consequences. According to Pettit the dominating agent has absolute and arbitrary power when condition one and two are fulfilled (Pettit 1996, 580). Further, the choices, referred to in the third condition, include all available options, their expected or actual outcome.

Pettit also elaborates on how to achieve less dominant relations in society by guarding “the powerless against subjugation by the powerful” (Pettit 1996, 588). Three measures are identified as promoting antipower; regulatory, protective and empowering institutions. The protecting institutions refers to the rule of law, like criminal judicial systems, while the regulatory institutions refer to resources regulation through which domination occurs within the political, economic, or cultural sector. The third type of institutions differ from the former in that it aims at empowering those subjected to domination, most often these measures fall
within the responsibility of the (welfare)state but NGOs and CSOs are also actors who can contribute to “antipower measures” (Pettit 1996, 592).

When the three conditions are fulfilled the situation will be of common knowledge and to the awareness of the parties constituting the relationship in question. Hence, through the intersubjective experiences of the parties (and society as a whole) the relationship will materialize, making it a communicative as well as an objective reality (Pettit 1996, 584). In that sense, Pettit’s theory of freedom is of relational and interactive nature requiring the relationship between parties to be non-dominant, free from power asymmetries, and based on equal terms in order for both agents to be considered free. According to this position focus must lie in changing conditions and altering positions between individuals and groups in order to achieve a society where everyone enjoys freedom.

5.1.2. Self-determination as non-domination

Drawing on Pettit’s theory of freedom Young (2007) makes an important contribution to the conceptual work of defining self-determination. As claims of indigenous peoples’ to their right to self-determination seldom include a request for separation and independence from the nation-state nor should such concept. Instead, most indigenous claims seek recognition as distinct peoples and political entities, autonomy and self-governance, with whom states need to negotiate agreements and cannot simply impose their will and law upon (Young 2007, 43). Young therefore argues for a concept of self-determination as relational autonomy in the context of non-domination as it best responds to these indigenous claims (Young 2007, 44).

The relational approach holds that previous conceptions of self-determination, developed after the First and Second World War, understood as nonintervention and noninterference, ignore the relation of interdependence there is between peoples (Young 2007, 40). Hence, a relational approach contrasts liberal individualism arguing subjects are constituted through relationships (personal and institutional) and not ontologically and morally independent (Young 2007, 46). To equalize self-determination with noninterference therefore ignores that we act and exist in reference to others in a complex web of social relations which both constrain and enable us. An adequate conception of self-determination, thus is one that takes all contextual relationships into account when promoting persons’ or peoples’ capacity to pursue their own objectives. Accordingly, ensuring self-determination for indigenous peoples is about structuring relationships in a way where all parties can pursue their ends. This could be achieved, Young suggests, through creating non-dominating relationships between actors,
defining non-domination in line with Pettit as “the position that someone enjoys when they live in the presence of other people and when, by virtue of social design, none of those others dominates them” (Pettit 1997, 67 as cited in Young 2007, 48), and hence, peoples can only be self-determining when they are free in the sense that their relation to others is one of non-domination.

5.2. Operationalization

In order to use the theoretical framework in the analysis of the empirical material the theoretical concepts, freedom and self-determination, are operationalized through four analytical dimensions developed from each of the FPIC requirements as described by two UN bodies, the Office of the United Nations High Commissioner for Human Rights (OHCHR 2013) and the United Nations Collaborative Programme on Reducing Emissions from Deforestation and Forest Degradation in Developing Countries (UN-REDD 2013).

The theoretical concepts, operationalized through the dimensions, enable the thesis to, firstly, identify relevant aspects to consider and examine in relation to each requirement, and secondly, to assess the empirical material against the criteria for a people to be free, and consequently able to be self-determining, under each dimension. In this way, the analytical framework makes it possible for the thesis to explore potential hindrances to self-determination in relation to each requirement and to identify what underpinnings and support that are necessary in order for FPIC to ensure indigenous peoples’ right to self-determination.

5.2.1. Dimension of Free

The free requirement implies there is no coercion, intimidation or manipulation in the situation of consultations, negotiations or when the decision to give or withhold consent is to be made (OHCHR 2013). From the relational perspective, a context of non-domination is required if peoples are to be self-determining in such situation. According to Pettit, one way to achieve relations of non-domination and create more equal terms between agents is to promote antipower, decreasing dependency as it has large negative effects on an agents’ freedom. One way to promote antipower is through the empowerment of those subjected to domination, which most likely are smaller and resource poor peoples (Young 2007, 53). This is usually done in areas considered the responsibility of the state, such as education, healthcare, communications, transportation, etc. (Pettit 1996, 591). Hence, the relational approach highlights two aspects as particularly relevant to consider under the dimension of free, first, the socio-economic situation and living conditions of communities as these
determine their degree of antipower. Second, the character and dynamics of the relation that is developed between corporations and communities as this relationship is the context in which coercion, intimidation or manipulation would take place.

5.2.2. Dimension of Prior
The prior requirement is concerned with when things happen, and the time reserved for different aspects during the licensing process. Consent is to be sought in advance and reserve sufficient time for sharing and understanding information, discuss concerns, potential mitigation measures and respect indigenous peoples’ internal processes (OHCHR 2013). Considering Pettit’s account on interference through manipulation, i.e. by controlling the agenda in choice situations, it becomes evident that the options available to communities vary depending on when they are included in the process. The options available are reduced, limited and become less attractive the later in the process it gets, therefore, in order for communities to have access to all actual available options they need to be included from the very beginning. The dimension considers the EIA procedure as it is the arena in which timings and time reservations are set.

5.2.3. Dimension of Informed
Informed implies that information is provided covering various aspects, among these and considered most relevant for this study is the environmental information (OHCHR 2013). Again, considering interference through manipulation, one agent can deny another the use of their “cognitive resources”, and thus “[deny them] the possibility of making a choice on the basis of a proper understanding of the options on offer” (Pettit 2012, 55). In that sense, correct information as well as understanding it is crucial for communities’ ability to freely form an opinion and consequently a prerequisite for an informed decision regarding projects. The dimension considers aspects regarding what available information there is, what information that is required in the EIA procedure, who is responsible for providing it and whether it is understood by all parts. Moreover, the dimension considers who, and according to what values, the evaluation of the available information is done.

5.2.4. Dimension of Consent
The consent requirement refers to the collective decision made by communities reached through their customary decision-making processes. The requirement implies communities may have the possibility to withhold their consent and veto projects. It is also established that consent is an expression of the right to self-determination (UN-REDD 2013, 20). The
problem described by Pettit as adapting preferences is actualized by the consent requirement as an agent (community) does not enjoy freedom of choice (to give or withhold consent) just by adapting to the constraints that might hinder their actual preference from being an available option (Pettit 2012, 31). Moreover, the requirement of consent actualize questions regarding the “self” of a people. As Young points out, people who constitute themselves as a political community must consider how to respond to, and handle, internal conflicts, “and whether the decisions and actions carried out in the name of a group can be said to belong to the group” (Young 2007, 50). The representativity of the collective decision-making institutions giving agency to the group must therefore be considered. Further, it is unacceptable if other actors constrain or interfere in the internal decision-making processes (ibid.). Hence, the dimension of informed considers aspects related to how the group(s) giving or withholding consent are constructed, how communities are internally organized and how internal conflicts are handled.

To conclude, this chapter has provided a definition of freedom and self-determination as non-domination and operationalized these through four dimensions developed from the FPIC requirements. In the next chapter the empirical material related to the aspects considered under each dimension are assessed against the theoretical criteria for freedom and self-determination as non-domination of each requirement.
6. The arrival of lithium mining to Olaroz-Caucharáí

In this chapter the empirical material is analyzed through the dimensions previously outlined and assessed against the theoretical criteria of being free, and consequently, able to be self-determining. The results are presented according to each dimension with a summary of the analysis at the end of each section.

6.1. Free

According to the relational approach the position of actors relative to each other shape the power dynamics determining an actor’s dominating power or degree of freedom. This section analyzes how communities’ position and relation vis-à-vis corporations and provincial authorities is established, shaped and developed. The section does so by addressing the issue of dependency. To do so the section considers two aspects, first, communities’ socio-economic situation is described and discussed including basic services like education, healthcare, infrastructure, economic activity, employment opportunities etc. Second, the development and characteristics of the relation between corporations and communities is described and analyzed.

6.1.1. Socio-economic situation

*Geographical location, population and basic services*

The Olaroz-Caucharáí slat flat is located within an endorheic water basin at approximately 4.000 meters above sea level on the Andean highland plateau, an arid area of mountain landscapes with little rainfall and water stress throughout most parts of the year. The salt flat is located in a remote and difficultly accessed area in the center of the Susques department. The department, of 9.199 km², is inhabited by approximately 4.000 people living spatially dispersed in ten communities. The region has historically been in the periphery of the state far from national and subnational political and economic centers (Göbel 2013, 138). The historical absence of the state has resulted in deficient basic services and great mistrust towards provincial authorities among community members. According to official statistics, 67 per cent of the households in the department lacked basic necessities in 2007 (Plan Estratégico Territorial de la Provincia de Jujuy 2007 in García Moritán and Cruz 2011, 15). The urbanization of the department started with the paving of the road *Ruta Nacional 52,*
finished in 2005, which at present is the only paved road in the department accessing Chile through the Paso de Jama crossing. The road also connects the department to other areas of the province and to the provincial capital more directly.

Within the department there are three municipal commissions, the largest and most important one has its office in the largest community, also named Susques. The department’s hospital is located in the village and there are a few hotels, restaurants, small grocery stores, a gas station and an ATM. After the pavement of Ruta Nacional 52 the community has experienced increased economic activity as the road passes right by the village which has become the natural stop for truckdrivers and the few tourists who come this far. Phone signal and internet access are limited, even though better than in the additional three communities visited during the field research. Olaroz Chico, Huancar and Pastos Chicos are accessed by dirt roads and are considerably smaller, in each community there is a community building, a health center, a church, a school building and a football court. Basic services like sewage systems, communications, electricity etc. are limited. Electricity is generated by solar panels or generators and due to the limited phone signal and internet access the community radio is often the only means of communication. Drinking water needs to be brought to some communities because of naturally high arsenic levels in the area.

**Education opportunities**

All communities have a primary school (up to 12 years). In Huancar and Olaroz Chico secondary school education started two years ago through a “virtual model of education”. The virtual model consists of pedagogical coordinators who are in the communities from Monday to Friday complemented by occasional teacher visits, while continuous planning and support is given through internet communications. Hence, there were no secondary schools in Huancar, Olaroz Chico or Pastos Chicos at the time of companies’ arrival. As the virtual model of education is dependent on internet access the provincial authorities have provided internet access for the school buildings in Huancar and Olaroz Chico and, even though government presence continues to be weak in general, it has somewhat increased since the secondary schools arrived. Nevertheless, Pastos Chicos still solely has a primary school even though the community has demanded secondary education from the provincial Ministry of Education for the past 20 years (Interview VII 2017).
The community of Pastos Chicos.

**Economic activities and employment opportunities**

Traditionally communities are dedicated to pastoral farming and small-scale agriculture and most families have llamas, sheep or goats. Handicrafts are made for domestic use, traded or sold at regional fairs. It is common for community members to have at least two houses, one rural house on the country side and one urban house in the community village. In Olaroz Chico small-scale gold mining has been an important traditional activity providing economic security, the name Olaroz Chico comes from *Oro Chico* which means “little gold” in Spanish. However, since the beginning of the 20th century the traditional mining has been replaced by modern middle- and large-scale mining which requires less physically demanding work.

During the 1990’s massive layoffs, due to the closing of mines and the railroad, led to increased unemployment and widespread poverty as the mines employed the vast majority of the men in the communities. As a result, the state became the main employer and provider of social plans and subsidies (García Moritán and Cruz 2011, 15). Since then extensive unemployment has continued, it is difficult to live solely of traditional activities and people deploy flexible income strategies including (temporary) wage labor, however, there are no intention to give up traditional activities as these are of great cultural significance (Anlauf 2016, 171).

**Migration**

As a result of few employment and education opportunities many community members, especially the young, have migrated to larger villages and towns in the area or even further to
the provincial capitals of Salta and Jujuy. In Pastos Chicos community members see the effect of migration in the number of children enrolled at the community primary school, there used to be around 80 children enrolled but now there are only 23. Besides few employment opportunities in the village the lack of secondary education is seen as a major driver for the migration. When asked about the presence of provincial authorities in relation to the education opportunities one community member sounds surprised; “Them? We don’t see the provincial authorities here, they never come. Now and then we see someone from the municipal commission but it’s not often” (Interview VII 2017).

This brief description of community conditions shows a severe lack of basic services and a historical absence of the state. For the following analysis of corporate-community relations the situation of communities is necessary to understand and analyze how the relations have developed as the situation represents the context and available options against which company proposals are perceived and compared.

6.1.2. Corporate-community relations

The arrival of lithium mining activities has brought large changes to the area in terms of social, economic and environmental impacts. This section elaborates on how the relations between corporations and communities have been shaped by various interacting factors such as legal provisions, company strategies in terms of CSR practices, and community capacities as well as perceived expectations and concerns.

Community expectations and concerns

When companies arrived, expectations were high among many community members. There were hopes that companies would hire unqualified labor providing an opportunity for the many young unemployed men in the communities that were no longer interested in traditional activities. There were also hopes that companies would contract local services, consume local products as well as the opportunity for community members to take advantage of increased infrastructure and transportations (Göbel 2013, 139). In this way, communities were well aware of the possibilities to establish relations and negotiate distribution of benefits, donations or economic compensation with companies. These kind of community expectations are not limited to the Puna region nor to lithium activities, on the contrary are they common in situations of TNCs arriving to remote areas, typically characterized by rapid individual benefits rather than by long term community perspectives. The scenario also created expectations among young indigenous leaders of a “rapid way to modernization” hoping a
substantial share of the benefits would remain in the region used to invest in universities and battery factories (Göbel 2013, 140). However, parallel to the high expectations there were also many concerns, mainly related to the possible environmental impacts. The extraction process requires large amounts of water and in the already dry and arid area water resources are scares and valuable, essential for traditional activities. More negatively set community members did not share the high expectations, instead they feared communities would be left carrying the environmental burdens while companies left with the economic gains.

**Legal provisions and the role of the state**

Regarding the distribution of benefits, it was not very likely that the economic situation would become radically different for communities, at least not through the official mechanisms of redistribution and investment of tax collections. In fact, according to mining regulation much of the taxes go directly to the federal government, around 90 per cent, while the provinces receive less than 10 per cent. What then trickles down to the departments where the projects are located seldom reaches more than 3 per cent of the total export tax (Zilla 2013, 29). Further, provinces are not allowed to set or collect royalties for mining activities at more than 3 per cent of the pithead value (Zilla 2013, 27). However, to increase revenues from mining activities the province of Jujuy declared lithium a strategic mineral in 2011 and created the state enterprise Jujuy Energía y Minería del Estado (JEMSE). Without violating national legislation, the province created new legal requirements making it mandatory for TNCs to associate with JEMSE in order for projects to be approved. As a result, JEMSE obtains 8.5 per cent of each project company and 5 per cent of the produced lithium carbonate (Anlauf, 2016, 170). The 3 per cent royalty collected by the province is divided between the province and the local municipalities in the Susques department, of the 3 per cent, 10 per cent goes to the communities in the area closest to the mine, 35 per cent to communities outside the area of direct influence and 55 per cent to the province. However, it is the local municipalities and not the community organization that receive and decide how to spend the money. In 2016, the department of Susques (three municipalities) received approximately 150,000 Argentine pesos (+/- 75,000 sek) from the Sales de Jujuy project (Veen 2017, 31).

This illustrates the state has a clear position in support of mining activities as there is a national as well as provincial interest to approve projects. This has two important implications for the formation of corporate-community relations; (1) communities need to negotiate with corporations on their own in order to get (a meaningful) part of the economic
benefits produced on their lands, and (2) it is likely the provincial interest in mining and their support of corporations affect the power dynamics of corporate-community relations in favor of the former (Gustafsson 2018, 15).

**CSR practices**

Sales de Jujuy and Minera Exar are skilled and professional in their interactions with communities aware of the importance of getting their approval in order to avoid conflicts and advance projects without additional costs or delays. Both companies work according to elaborated strategies on how to handle community relations, Silvia Rodriguez, responsible for community relations at Sales de Jujuy expresses it as; “We [Sales de Jujuy] don’t have community consent, we have a social license, which is much more important. We have an ongoing relationship with the local communities” (Rodriguez as cited in Veen 2017, 39).

Both companies present their engagement with communities in terms of voluntary goodwill aiming at distributing project benefits. This is presented as CSR policies rather than legal obligations related to indigenous rights. Sales de Jujuy has a *shared values* policy guiding the relationship with communities based on five core values explained on the company’s webpage:

The Company has developed relationships with local communities based upon 5 fundamental pillars: Education, Health, Production, Transparency and Empowerment. Sales de Jujuy’s aim is to improve the quality of life of the people and their skills to be able to participate in regional development opportunities. (Sales de Jujuy n.d.)

Similarly, Minera Exar has a *community relations* policy described as:

[…] a set of programs, through which it applies its social responsibility policy, in order to harmonize project activities with the activities and interests of the social actors related to the project, promoting dialogue and respect among the interacting parties. (Minera Exar n.d., authors’ translation)

Crucial for company strategies is to determine the area of direct influence since this sets the legal requirement of which communities that need to be consulted and give their consent. This is established in the EIA report, provided by the company itself, and usually only includes the community/communities on whose land the project is located. Nevertheless, in order to increase the perception of the company as a socially responsible actor, both companies have “voluntarily chosen” to engage with more communities than those legally required. Sales de Jujuy engages with all ten Atacama communities in the area through
collaborations and particularly with Olaroz Chico, through an agreement including economic compensation. Minera Exar has collaborations with the six closest communities\(^7\) and agreements with Huancar and Pastos Chicos, however, in December 2016 it was revealed that Minera Exar also had agreements of economic compensation with the six closest communities (Frankel and Whoriskey 2016). With Susques companies have right-of-way agreements as companies need to pass through the community territory to access project locations.

Table 2. Type of corporate-community engagement

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<th><em>Sales de Jujuy</em></th>
<th><em>Minera Exar</em></th>
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<tbody>
<tr>
<td><strong>Agreement</strong></td>
<td>Olaroz Chico</td>
<td>Huancar and Pastos Chicos</td>
</tr>
<tr>
<td><strong>Collaborations</strong></td>
<td>The ten communities</td>
<td>The six closest communities</td>
</tr>
<tr>
<td><strong>Economic compensations</strong></td>
<td>Olaroz Chico</td>
<td>The six closest communities</td>
</tr>
<tr>
<td><strong>Right-of-way</strong></td>
<td>Susques</td>
<td>Susques</td>
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*Private consultations and negotiations*

In general, contacts, consultations and negotiations were carried out with each community separately and even though there are differences in the details of these processes they are generally very similar. The contacts between companies and communities started long before the EIA procedure which regulates the formal consultations where companies have the obligation to consult communities and obtain their consent. Sales de Jujuy started reaching out to local communities already in 2004, Silvia Rodriguez explains they “spent a lot of time building trust. Since 2012, it is obligatory to inform communities and ask for consent, but we did this long before it was mandatory. We are going beyond the norms of CSR” (Rodriguez as cited in Veen 2017, 39). Companies thus started to visit communities to inform and explain about projects, only occasionally have government representatives been present and meetings have always been organized and administered entirely by the companies. This is clearly problematic as the principle of FPIC establishes that “the duty and responsibility to secure consent ultimately belongs to the state” and that “this obligation cannot be delegated to a third party/private party” (UN-REDD 2013, 29). The absence of government representatives at meetings has also been reclaimed by communities as they call for more

\(^7\) Susques, Huancar, Pastos Chicos, Puesto Sey, Catua and Olaroz Chico.
state participation particularly form the Direction of Water Resources (Interview II 2017). The meetings seem to have been a mix of consultations, providing information, explaining projects, answering questions and negotiations, discussing communities’ conditions in order to approve projects. Hence, community approvals include an agreement establishing certain terms and conditions. This study did not access the agreements, but community commissions informed they mainly regulate; local employment, economic compensations, measures to minimize environmental impacts and capacitiation of community members through trainee programs (Interview II, VII, and X 2017). During interviews with community members it was at various times mentioned that how good the community agreement got depended on the negotiating skills and capacity of the president (Interview V 2017). Some communities chose to see a lawyer to advise them but when the lawyers came “it seemed they were in favor of the company” and “we [the community] do not have an independent lawyer of our own” (Interview VI 2017).

In addition to the separate meetings with each community meetings were also held with all community presidents to agree on, the perhaps most important issue for communities, local employment opportunities. Together with the formal approval of the Sales de Jujuy and Minera Exar projects in 2012, an agreement was made between the ten communities, three municipalities and two companies regulating local employment. Whenever companies announce vacancies it works through a rotating employment schedule between the ten (Sales de Jujuy) or six (Minera Exar) communities. According to the area of influence the communities have different priority to a number of vacancies (Interview II 2017).

Besides the agreement regulating the employment schedule meetings with each community separately is a recognized corporation strategy. As companies define their responsibility in relation to each community separately, often in narrow terms and by offering different benefits according to the direct area of influence, it is argued that existing or future cooperation between communities is fragmented and prevented (Bebbington 2010, 107 in Gustafsson 2018, 12). In Olaroz-Caucharí the separation made it difficult for communities to increase their negotiation capacities, i.e. by contracting a lawyer together, or to commonly identify and articulate strategies establishing a joint position, terms and conditions. Instead, companies were able to create social pressure through the separation making it difficult for some communities to withhold their approval;

Before we approved of the mine we had a lot of contact with the companies, a lot. We thought a lot about this, some were in favor while others were not. We were fighting till
the end, but as the other communities signed the agreements and were promised work, we finally signed as well. (Interview VI 2017)

In addition to offering employment opportunities, trainee programs, workshops and economic compensations corporate-community relations were also shaped by company collaborations. These collaborations entail a wide range of investments and donations all aimed at satisfying demands for services rather than demand for rights. Some (relatively) larger investments were done in infrastructure, education and healthcare. Among other things, Sales de Jujuy provided for internet at the primary and secondary schools in Susques and have donated an ambulance to the hospital. Sales de Jujuy also provides micro-loans to local entrepreneurs. Minera Exar fixed the roof on the school building in Huancar and built a new community center in Pastos Chicos. Further companies have provided community libraries, internet, computers and printers for community centers, construction material, transportations, dry-cleaning services etc. Regarding Sales de Jujuy’s collaborations Silvia Rodriguez explains that;

It is a very poor region and not all basic services are provided for. There are villages that do not have light or electricity. We try to help a little bit. We know the region really well and we know what the people need. But we try not to be paternalistic. We do not just give money, we give opportunities. Through our training programs and microcredit projects, we offer local residents and entrepreneurs the chance to develop their skills and start their own business, so they can provide services to our company. (Rodriguez as cited in Veen 2017, 31)
However, company collaborations also take the form of more short-term monetary donations. For communal activities and feasts, i.e. Pachamama ceremonies, communities can ask for what they need which the company approves or declines. These most often include food and drinks, vegetables, meat etc. Monica Echenique, responsible for community relations at Minera Exar, explain the communities present a note to the company when they need money to buy food and drinks for such occasions and then the company provides the money necessary (Veen 2017, 32). While some community members welcome investments and donations others are not satisfied with this system;

With Exar we have managed to get an agreement but with Sales it is more difficult, they are tougher and we have not achieved much. They [Sales de Jujuy] say if anything they collaborate. In the community there are various institutions and clubs; the women’s commission, the religious group, student groups from the school etc. – if they need something they ask the company – and get what? Five bottles of soft drink? That’s nothing, while they [Sales de Jujuy] are getting millions of pesos! Because of that, a lot of people, including myself, are not agreeing with this. (Interview VI 2017)

At the same time others perceive the situation as an opportunity;

At every meeting we have with the company we ask and ask and demand and demand and little by little we are achieving things. Both companies have respected and worked with the communities since the beginning. I don’t know if it [collaborations and compensations] is what corresponds to us according to the rights we have over the land, but they [the companies] receive us, support us, collaborate, but as I said regarding the help with micro-loans to small local entrepreneurs, Sales is better than Exar. (Interview II 2017)

As illustrated by the above quotes collaborations and relations with companies are perceived differently, both regarding which company that helps out the most and whether what communities get is what corresponds to them. Also, members express disappointment regarding what things the community asks of companies, pointing out the community settles easily and are too “conforming”. A common opinion is that the community should ask for “something that lasts” but those things “the company is not so willing to provide” (Interview V 2017). That the arrival of companies, the meetings, negotiations, agreements, investments and collaborations, have set off conflicts among and within communities is clear, an aspect that will be further considered under the dimension of consent.
Perceived Changes

In general, both community expectations and concerns have been realized to different degrees, however, it is important to keep in mind that expectations were formed in light of communities’ situation at the moment of companies’ arrival and depending on community members’ expectations and concerns, changes are also perceived differently.

The creation of employment opportunities, both directly and indirectly, is the most evident change and is often put forward as an argument of those in favor of projects. The smaller local supply companies provide project companies with services like transportation, maintenance, catering, cleaning etc. According to community commissions the majority of the communities work directly or indirectly with the companies in Olaroz Chico and Pastos Chicos. In Susques, 16 smaller companies have been created (Interview II, VII and X 2017). According to companies themselves, Sales de Jujuy employs 123 people from the ten communities directly and 136 indirectly through contracting local entrepreneurs, while Minera Exar (still in the construction stage) employs 78 people from the six communities and currently educate 63 people in a trainee program to be able to start working when operations start (Veen 2017, 32). An interesting difference pointed out in comparison with the previous boron mines is that women now have started to work in relation to the projects to a larger extent than before.

However, there exists mistrust and suspected irregularities as to who got employment and who did not. In all communities visited community presidents, vice-presidents and many members of the community commissions are employed by the companies. Among those employed as well as among the community leadership pick-up trucks and large watches have become a common sight. Nevertheless, the considerable impact on employment opportunities is also pointed out by members more skeptical to the projects explaining that “it is difficult to be against what brings work to the community when there is no better option” (Interview V 2017). On the other hand, both those positive and negative to the projects express concern regarding employment opportunities’ dependency on company activities and a preoccupation for what will happen when the companies leave, as one interviewee expresses it; “when there is no longer lithium this community will be a phantom village” (Interview XI 2017).

As an effect of increased employment opportunities people have started to come back to communities. Yet, it is difficult to determine the main driver causing this as Olaroz Chico and Huancar also got access to secondary school education two years ago while Pastos Chicos did
not. Even though the companies employ the majority of the population in Pastos Chicos and some people are returning to the community people still leave (Interview VII and VIII 2017). Moreover, some improvements in infrastructure and communications are mentioned by community members as companies have provided internet access.

Changes are also witnessed in the healthcare sector as there are a lot more people in the area now. The provincial Ministry of Health subsidizes the hospital in Susques and the health centers in the communities with medicine supply according to the population of each community, but as all medication is free of charge also for non-community members the supply is not enough anymore. At the Municipal Commission in Susques this is worrisome as people that have the economic resources to buy medicine get it for free leaving community members with less economic resources without medicine;

The companies work with a social security but there is no pharmacy here connected to the social security. Here you go to the hospital and they give you a recipe, but there is no pharmacy where you can go to and buy the medicine you need, that service doesn’t exist here. This is bad for the community because, I mean we are grateful for the free medication we get from the province and the nation, but sometimes there are people that live in the country side and when they come and need medication there out of it, this is because there are more people here now and more demand than before. (Interview I 2017)

The environmental concerns among community members continue as they worry companies will leave when there are no minerals left and that communities once again be left unemployed. Moreover, the environmental concerns are also closely related to concerns for cultural survival and the continuation of traditional activities as the changes have had impacts on community dynamics as a whole. As previous research has argued large economic compensations can have destructive effects on communities as there is no experience or structure to handle such (relatively) large sums. Also, increased inflow of economic capital has implications for the value systems in communities (Göbel 2017), community members point out the salt flats are now seen more in terms of how much money they can generate rather than what the salt has signified traditionally. The older population of the communities expresses sadness and worry for the loss of traditional understandings and activities among the younger generations (Interview III, VI and XI 2017). Many of the young people have other expectations and life goals now compared to before and want to start working at the companies as soon as possible, even though many families earn enough money to pay for
their children’s university education few continue studying. Parallel to this development there are few activities for the young and community health centers witness problems of alcoholism both among young boys and men working at the projects (Interview V and VIII 2017).

6.1.3. Summary Free

The dimension shows how the socio-economic situation of communities, characterized by limited basic services, weak state presence, and as a result, the lack of access to important empowering institutions such as education, healthcare, communications etc., has made communities susceptible to relations of dependency as they enjoy little antipower in relation to resourceful TNCs. A situation that in extent largely has determined communities’ position, in terms of capacities and available options, as well as shaped community expectations at the time of corporations’ arrival. Moreover, state interventions, or rather the lack of it, has not only not provided basic services, but also further supported corporations mainly in two ways. First, actively through the state’s interest in promoting mining activities through legal provisions both at the national and provincial levels, and second, passively by not intervening to organize efficient consultations and guarantee the protection of communities’ rights. Further, the dimension shows how corporative strategies in terms of professional CSR practices keen to obtain community consent and social legitimacy have benefit from communities’ situation, filled the gap of an absent state through service provision and rapid solutions. All together the above factors have resulted in corporate-community relations characterized by clientelism where communities are highly dependent on companies for service provision and employment opportunities. Companies early engaged in meetings and negotiations with communities in which they held extremely unequal positions, in turn further reinforcing and consolidating clientelism, unequal positions and corporations dominating power over communities. Additionally, the clientelisic relations have later been the context in which the formal consultations required as part of the EIA procedure have taken place and where communities formally have given their consent. However, it must be taken into account that the clientelistic logic that was already established at this time most certainly prevented communities from identifying and organizing around collective interests, as pointed out in previous research (Gustafsson 2018, 9). To conclude, the dimension of free shows how dependency severely undermines the requirement of free by hampering communities from actually give or withhold their consent freely, thus not fulfilling the relational criteria of freedom needed in order to realize self-determination.
6.2. Prior

The previous section described how the situation of communities, the role of the state and corporate strategies together placed communities in an unequal position in relation to companies characterized by dependency and clientelism. This section analyzes who and how timeframes for different aspects are set. The section does so by addressing companies’ power to interfere in the setting of the agenda or choices available through the resource of manipulation. To do so the section considers the EIA procedure as it is the formal arena in which timeframes are regulated.

6.2.1. The EIA procedure

When to include communities

In the exploration stage of a project when companies apply for an exploration permit the provincial Secretariat of Mining and Hydrocarbons does not consider that consultations of communities are required. It is first when companies apply for the exploitation permit consultations form part of the legal requirements. Miguel Soler, head of the Secretariat, explains; “it is first when it is known where the activity will take place, how it will be controlled and where it will be impacting, that we can determine who needs to be involved” (Soler 2017). Formally, according to the provincial mining legislation, consultations are required as a part of the EIA procedure (for exploitation permits) and it is also established consultations require timely access to environmental information in order for citizens to present comments or objections. Consultations are to take place if changes are made to the original plan and mining activities needs to be re-approved every two years, a procedure also including citizen participation.

However, there are gaps between the EIA procedure on paper and in practice. The timely access has been particularly criticized as formal consultations for the Sales de Jujuy project started first during 2012 when they should have done so in 2009 before the first submission of the company’s EIA report (Anlauf 2014 in Marchegiani 2015, 9). To clarify, there is a great difference between the consultations legally required in the official licensing process not to be confused with the private relation between companies and communities, which started much earlier than 2012 with meetings, private consultations and negotiations, as described previously under the free dimension. When to include communities is also mentioned by the national ombudsman’s office as an important aspect to consider, without giving an answer regarding the ombudsman’s position the office confirms they are aware that
consultations are initiated first when projects enter the exploitation stage. The question has been raised at the ombudsman’s office and it is believed a discussion is necessary about at what stage communities are formally included (De Francesco 2017).

**Timeframe and pressures**

Timeframes for different aspects during the formal procedure were not sufficient. Communities were given little time to discuss information and company proposals internally. About the time communities were given in the UGAMP one interviewee explains;

> They [the company] gave us 15 working days to send our observations and comments, that we did, after that the company responded to our points we had sent them, and with the answer there was a note that we had 10 working days to communicate if we were agreeing or not with their answer, that is how they manage the time! Within the 10 days we answered again with our observations and then Exar answered and gave us 5 workdays to respond if we were agreeing with the answer they gave. And well, we sent it again and at that time I think we came to an agreement. (Interview II 2017)

The Atacama communities generally gather in the assembly once a month, 15 working days and below is thus not sufficient to fulfill the requirement that “the amount of time required will depend on the decision-making processes of the rights-holders” (UN-REDD 2013, 19). One effect of short timeframes is the limitation of communities’ possibilities to scale up their organizational structure and seek outside support and allies, i.e. through NGOs who could provide resources such as information, legal expertise or financial help, aspects pointed out in previous research as crucial for communities’ capacity to defend their interests in interactions with companies (Gustafsson 2018, 13). This is evident as one of the groups opposing projects, Colectivo Apacheta from Susques, got organized in 2012 first after the formal consultations were held (Marchegiani 2015, 9). Due to short timeframes communities are also socially pressured when taking their time to seek outside support;

> We [the community] are supposed to sign the EIA report but we have not done it yet. We are getting advice from other actors and waiting on that, so we have not yet signed the Exar agreement or the one for the expansion of Sales. And for that they say it is our fault, that we are the only community not signing, keeping everything on hold. We get the blame and they say it is our fault if the investors go away. But we say that we want to be sure, we are not saying no but we want our time to think. […] Exar is very impatient with this. […] They almost threaten you if you don’t say yes, they [the company] say ‘the investors will disappear as they are about to start in Australia and so on. (Interview II 2017)
6.2.2. Summary Prior

The dimension clearly shows that the prior requirement have been violated. First, the state yet again intervene in support for corporations rather than communities, as the institutional design of the licensing process requires the inclusion of communities first in relation to the assessment of the EIA report in the exploration stage. This point for formal inclusion allows companies to privately interact earlier with communities only sharing the information they wish and first later present crucial information i.e. on environmental impacts. At this time, a relation of dependency and clientelism have already been established as described under the dimension of free. Second, the prior requirement is not fulfilled as timeframes in the formal process are too short considering communities’ internal procedures, however companies suffer no repercussions for such behavior. This shows how companies have full control over the process illustrating their (1) capacity to interfere (2) arbitrarily and with impunity (3) in choices that communities are in a position to make (Pettit 1996, 578). Hence, companies have through their dominating power been able to interfere through manipulation to set timeframes and create pressure limiting communities’ choice options, hampering communities from making a choice, accessing all actually available options, sufficiently in time before any decision on extractive activities are made.

6.3. Informed

The previous section showed that the unequal power relation not only undermines communities’ possibility to freely make a decision but also impacts the prior requirement negatively by hindering the consent decision from being made prior, with access to all actually available options, before any authorization or commencement of activities. This section further analyzes the information, in particular the environmental information, as the informed requirement holds communities should have access to, and properly understand, all available information before giving or withholding consent. Again, the section does so by addressing the issue of manipulation as companies through manipulation of information can alter the possibility for communities to access and properly understand it. To do so the section considers what information that exists and is required, who provides it, as well as how and by whom it is considered relevant, assessed and valued. It also considers whether information is presented to communities in a comprehensive way.
6.3.1. The extraction process

In order to better understand the necessity of information a brief account on lithium extraction and hydrological dynamics are needed. Through evaporation during millions of years slat lakes, that lost connection with the sea during the creation of the Andean mountains, have turned into salt flats concentrating minerals, among them lithium, in brine deposits under the crusty slat flat surface. The brine, containing 0.5-1 gram of lithium/liter, is pumped up from under and in between the layers of salt, placed in large pools at the surface where the remaining water evaporates. Because of the area’s dry climate, strong sun and high altitude it has the ideal conditions for economically profitable lithium extraction. The same extraction method is used for traditional small-scale salt extraction, but in contrast, large-scale extraction uses and evaporates enormous quantities of water and brine every day, in general, each ton of lithium carbonate requires around 1.8 million liters of water (Frankel and Whoriskey 2016). After the evaporation chemicals are used to separate lithium carbonate from the salt, magnesium and other minerals which also get extracted as a by-product during the process. Lastly, the lithium carbonate is washed with fresh water to reach the purity of 99.5 per cent (Anlauf 2016, 171).

Uncertain environmental impacts

In companies’ EIA reports it is emphasized that lithium extraction is relatively environmentally friendly compared to traditional mining methods. It is pointed out companies extract salt brine and not fresh water, Silvia Rodriguez explains; “we don’t extract water; we use ‘salmuera’, salt brine, which is very salt water full of minerals such as lithium, sodium and magnesium. This is not drinking water” (Rodriguez as cited in Veen 2017, 33). Nevertheless, scientists are divided and much uncertainty surround the environmental effects of lithium mining. Some believe the brine deposits (salt flats) are completely closed off from other water resources that communities depend on, while others argue the brine is in contact with fresh water at its limits. If so, as brine is extracted fresh water is drawn towards the area, like a drain, which risks lowering the groundwater levels in the area as a whole effecting water resources used by communities. Further, the subterranean water resources in the area are considered fossil water which is “renewed extremely slowly, or even non-renewable” (Anlauf 2016, 172). However, as of yet there are no conclusive scientific results and the long term consequences remain uncertain, mining geologist Diana Mutti points out “no one knows how much fossil water the companies are extracting and no one knows how this will affect the hydrological system of fossil water in the Puna” (Mutti as cited in Anlauf 2016, 172).
shows that, even though EIA reports and procedures were conducted and approved a long time ago large uncertainty remain regarding the environmental impacts.

**Environmental concerns**

Due to the particular environmental conditions of the area, the large amounts of water used during the extraction process and the uncertainty regarding impacts have resulted in great environmental concerns among communities, NGOs, academics and also at the national ombudsman’s office. Also, community concerns of potential environmental impacts are closely related to cultural aspects and identity. As a reaction to the arrival of companies and arising concerns the Colectivo Apacheta group formed in Susques. Their main concern is that the extractive activities will affect the water access used for pastoral activities and agriculture on which culture and livelihood of many community members depend. Even though Colectivo Apacheta is the only group that has formally organized against projects concerns regarding water resources are brought up in all communities both by people positively and negatively set towards projects. Companies, however, consistently inform communities that water resources will not be affected, nevertheless, community members claim they “have seen how the salt flat has become smaller and smaller” during the last two years since Sales de Jujuy started operating in 2015 (Interview XI 2017). Doubts and mistrust exist to whether companies are telling the whole truth;

> To evaporate they [the company] use a lot of water, in the Olaroz slat flat, the geologist of the companies says the different parts of the water basin are not connected, that they are closed systems, but we see that the water is disappearing from our lake here - a lot! And I have listened to what people have been telling me about the lithium in Chile, that there was a village that was left without water and the government had to bring water to them from other places. (Interview VI 2017)

The above interviewee is referring to testimonies of how salt flats on the other side of the Chilean border are sinking and becoming smaller. In the Chilean Atacama Desert lithium has been extracted since the 1980’s and there are some signs of how salt flats have declined in size between 2003 and 2015, however the cause of this is still not determined (Frankel and Whoriskey 2016). The mistrust towards companies have made communities seek support from provincial authorities, mainly from the Direction of Water Recourses but also from the Ministry of Environment. As communities experience their concerns were not heard by the governmental authorities mistrust arose towards them as well and communities experience
authorities are “taking the companies’ side” and express the necessity of independent information;

In the beginning I opposed the project because I was worried for the water situation as I believe the areas of the basin are connected. Now my opinion is that we [the community] could use the money [economic compensation the community gets from the company] to get a lawyer or a geologist to look at the situation, so we get independent and quality information. (Interview V 2017)

The wish to get independent researchers to investigate the water situation in the area is also the primary objective of Colectivo Apacheta, they are convinced an independent study could counter the view of companies and government authorities (Interview III 2017). Likewise, community commissions emphasize this point;

Regarding the water issue we only have the version from the company and nothing else. And the state? So, lately we have been looking for some professionals that could help us that are not related to the companies nor to the government - it is difficult, but well, we are looking. (Interview II 2017)

A second obstacle for communities is the technical character of the information provided. At company presentations “when they come with the hydrologists and geologists it is difficult to understand” (Interview VII 2017). This wish has also been brought to company representatives but without success;

We want it to be in a less complicated language. Their answers are very technical, […] I mean, the people, us and our way of communicating, we don’t understand their technical language. We always ask them to be as simple as possible when they present their information so that everybody can understand or ask questions, but it seems hard from them. (Interview II 2017)

**6.3.2. Environmental information**

*Requirements*

The EIA report providing the information considered during the EIA procedure (licensing process) is done by the company applying for the permit. The company usually contracts a special agency to carry out the study as it requires a lot of technical detail. The information required to be included in the EIA report is; a statement explaining how the environment would be affected; and a description of how potential impacts would be mitigated. This study has not accessed the EIA reports, neither does the researcher possess the necessary technical
knowledge to have an opinion on such reports, instead, the analysis of available information is based on the uncertainties surrounding environmental impacts presented above and, on an investigation, initiated by the national ombudsman’s office in 2011, case 2640/11.

In 2011, communities in the area of Olaroz-Caucharí, Salinas Grandes and Laguna de Guayatayoc (the provinces of Salta and Jujuy) contacted the ombudsman presenting their concerns in relation to the lithium extraction activities which at this time were in the initial stage of exploration. At this time there was only one lithium project operating in Argentina, the Fénix project in the province of Catamarca operating since 1997. The ombudsman found there existed little information on lithium extraction in general and even less on lithium extraction in Argentina. The ombudsman’s investigation therefor started with the objective to map out how lithium extraction works in Argentina, however, as the investigation came along the objectives gradually changed and the primary concern became to assure that legal requirements were adequate and fulfilled in the licensing processes handling the rapid increase in permit applications (De Francesco 2017).

During the investigation it became clear to the ombudsman there existed little information regarding impacts of lithium mining in the Puna region and together with two contracted hydrogeologists a study of Olaroz-Caucharí, Salinas Grandes and Laguna de Guayatayoc was initiated. The study is based on secondary data gathered form all available sources and analyzed in relation to official company data on the extraction process as it did not have sufficient economic resources to gather primary data. The study (Meconi and Sticco 2012) concluded that at a minimum rate of water recharge the Olaroz-Caucharí salt flat would be in a critical state with potential negative impacts on the region’s water balance as a result of the extractive activities. Also, the study indicates that the analysis itself is partial since it only considers data of the water required by lithium extractive activities (including current and expected projects) and not includes additional activities such as traditional salt extraction, pastoral or agricultural activities. If water pressure were to be calculated on the total number of activities in the area water resources could be even less.

In addition, the study also identified and included a list of recommendations understood to be necessary in order for provincial authorities to be able to adequately evaluate companies’ EIA reports. The extensive list of recommendations, among other things, includes; (1) identification of all available water resources their interface and underground processes, (2)
identification of all potential uses of water resources, and (3) monitor the actual volumes of brine and groundwater extracted (Meconi and Sticco 2012, 74-75).

The extensive list of recommendations illustrates the lack of environmental baseline information of the area. The ombudsman emphasizes that the existence of an environmental baseline is crucial for project evaluations to be adequately done particularly when the EIA reports are done by the companies themselves;

[The EIA report] goes to the approving authorities who analyze and evaluate it and according to this evaluation permits are approved or not. In general, they get approved, as the system in itself makes the companies show that there will be no severe negative impacts. […] We [the national ombudsman’s office] believe that in whatever evaluation, the information needs to be compared to something. What we want to compare it with is what we call the ‘Environmental Baseline’, that is the situation without project, the purest state so to speak, without impacts. (De Francesco 2017)

**State capacity**

The ombudsman’s investigation further concludes the necessary baseline information currently does not exist, not among provincial nor federal authorities, and neither was any information on water resources that would allow a reconstruction of such baseline information found (De Francesco 2017). Hence, all monitoring activities and the two-year evaluations of projects are not compared to any other information than the one provided by companies’ EIA reports. Also, evident by the ombudsman’s recommendations, most monitoring activities are carried out by companies themselves. According to the ombudsman this situation raises questions whether government authorities have the sufficient and necessary capacity to evaluate projects. Virginia De Francesco explains many provinces in the North of Argentina are poor having economic difficulties and few resources, it is understandable they might perceive projects as an opportunity, nonetheless, she points out “the presence of the state [in licensing and monitoring processes] is not enough, it lies in the periphery” and “that is not acceptable” (De Francesco 2017).

That lithium is perceived as an opportunity by the province of Jujuy is confirmed by Miguel Soler, head of the provincial Secretariat of Mining and Hydrocarbons, as he underscores they “are lucky to have lithium in the province” because of the “considerable economic impacts” (Soler 2017). Regarding the lack of environmental baseline information, it is confirmed all studies are done by the companies, however, there are plans for a study by the Ministry of Production and the Direction of Water Resources, but this will take years. In the meantime,
the Secretariat does not see it is a problem that companies conduct the studies and emphasize communities should not mistrust the EIA reports;

Regarding financing, what is better than a company that can provide economic resources? A company that wants its business to continue for 40 years will take care of it [the environment] so it lasts 40 years. Of course, we have to monitor and control, but they plan for 40 years and have the incentive to do so. (Soler 2017)

Provincial authorities’ uncritical attitude towards mining companies as information providers fail to acknowledge company agendas do not necessarily coincide with the state’s responsibility to guarantee citizen rights. Previous research has shown that both provincial departments and authorities often are biased and pro-mining, and even more problematic, poorly equipped, not representing reliable sources of information nor being responsible regulators or neutral mediators (Zilla 2013, 28).

6.3.3. Evaluation of information

Who provides information
The EIA procedure is regulated by the General Law on the Environment which establishes environmental impacts should be included in the EIA report, however it does not explicitly require the inclusion of neither social, cultural or economic impacts. This is problematic, first, as the informed requirement holds information needs to “be complete, covering the spectrum of potential social, financial, political, cultural, [and] environmental impacts” (UN-REDD 2013, 19). In that sense federal and provincial legislation is not compatible with international standards. Second, it is problematic as company consultants who carry out impact assessments, are not legally required to include other impacts than the environmental, and moreover, do not take into consideration environmental impacts have social, cultural and economic effects on communities.

Similarly, the Secretariat understands only impacts of socio-cultural and environmental character require the application of FPIC rights, regarding economic impacts (use of land and resources) it is understood not to apply (Soler 2017). This line of reasoning is also found in literature discussing indigenous peoples’ right to self-determination. It is not an unusual position that states, concerned with traditional concepts of territorial sovereignty, understand indigenous peoples’ rights as having their foundation in the right to maintain and develop their culture, linking only socio-cultural aspects to indigenous identity while separating socio-cultural rights, and thus identity, from land rights and territorial control. What such argument
fails to acknowledge however, is that the indigenous identity is inextricably linked to the preservation of their territory as the identity is sustained by the physical space. Hence, without the territory it would be impossible for the identity of indigenous communities to survive (Ramírez 2017, 16).

Who evaluates information

The EIA report is evaluated in UGAMP where communities participate as one of many actors who can discuss and comment on the report. Nevertheless, the actors in UGAMP can only give non-binding recommendations. After UGAMP the EIA report is revised by the Expert Committee, and lastly it goes to the approving authority, the Direction of Mining and Energy Resources within the Secretariat of Mining and Hydrocarbons, issuing the DIA (the permit).

Somewhat problematic is that the approving authority has the mission of promoting mining activities in the province (Secretaría de Minería e Hidrocarburos n.d.), while provincial authorities with different agendas do not have the same weight. The Secretariat of Environmental Quality, under the Ministry of Environment, did for example voice their concerns in UGAMP recommending not to approve the Sales de Jujuy project but as the recommendation was non-binding it did not alter the final decision. However, as a result, the approval of Sales de Jujuy did establish that UNJu should be involved in the monitoring process paying close attention to the brine pumping system and water usage.

The EIA procedure in Jujuy has previously been criticized due to its inefficiency in integrating socio-environmental concerns into projects (Marchegiani 2015). Moreover, extensive critique has been directed towards how EIA procedures are managed in Argentina in general, Claudia Zilla (2013) expresses grave concern over that companies can hire any consultant to carry out the EIA report without any certificate or registration needed, and that the report is evaluated by “a provincial body (usually as a desk review) following bureaucratic and political rather than scientific principles”, and that “environment departments have virtually no influence on mining policy” leading to neglecting ecological factors (Zilla 2013, 28).

In addition, yet another problem arises in relation to the values that guide the evaluation of the available information presented. During the EIA procedure and in UGAMP scientific knowledge and technical information are dominant and little attention is given to community observations and their traditional knowledge of the area;
We are sure that it affects us, we have people from the community that live close to the mine […] we make the connection, we have lived there during our whole lives and now we see the changes. Of course, there has been mining for a long time here, before it was boron, but never at this scale. (Interview VI 2017)

Communities are also well aware of that their knowledge is ignored and therefore highlight the importance of an independent scientific study;

We see the effect on the water supply in the area and on the community but to be able to fight the environmental studies and the information from the company it has to be on paper. (Interview III 2017)

Further, there is a prefixed definition of what development is and how to reach it, lithium mining is seen as “a way for the province to use its natural resources in a rational way [in order] to make money and attract serious investors who contribute to development” (Soler 2017). In discussions over how to value information it becomes clear how the Atacama cosmovision differ from the perspective and definition the state and companies have of development, a member of the Colectivo Apacheta explains;

They always say that we don’t want progress, that we don’t want development. For them, development is building roads, destructing nature, making money. For us, that is not development. It is not sustainable. Our grandparents, their grandparents and so on, have always taken care of Pachamama, of nature, their lama’s, their sheep. We want to do the same. We use their wool to make our own clothes, we use their meet for our own consumption and what is left, we sell, or we trade. I want to transmit my animals to my children, so they can do the same. That is sustainable. (Anonymous as cited in Veen 2017, 42).

In that sense, the discussion of FPIC and how to achieve a democratic and participatory decision-making process for mining activities reveals a deeper conflict between two conflicting worldviews. However, these are not necessarily completely incompatible, it also becomes clear that Colectivo Apacheta would be open to negotiate regarding mining activities but under different conditions (Interview III 2017).

6.3.4. Summary Informed

The dimension of informed shows how companies’ dominating power hinder communities to make a fully informed decision as companies are in a position to interfere and manipulate information to their advantage. Due to the general lack of information, a weak state and limited community capacity companies alone control the information available and
considered in the EIA procedure. Companies also control the discussion, sharing and explanation of environmental information with communities. In doing so, communities, and provincial authorities, are unable to make an informed decision as the deficient information available to them hampers a proper understanding of the situation, what the consequences are in terms of impacts and what the different choice options available to them actually are. Moreover, the informed dimension has shown not only how the unequal relation between communities and corporations affect the informed requirement negatively, but also that there seems to be an unequal relation between the state and corporations perhaps also characterized by dominating power and dependency.

6.4. Consent

Previous sections have shown there is an unequal relation between communities and corporations. It has also been indicated there exists power asymmetries between provincial authorities and corporations. Further, previous sections have shown how these unequal relations affect the free, prior and informed requirements negatively through company manipulation. This section further analyzes the collective decision of communities and whether it was reached through their customary decision-making processes. The section does so by addressing the issue of adapting preferences to the constraints that might hinder actual preferences from being available options. Further, it addresses whether the consent decision can be considered to belong to the communities’ “self”. To do so the section considers how and by who the area of direct influence is determined and the internal organization of communities.

6.4.1. Who gives and who seeks consent

Despite the unclear status regarding the requirement of obtaining consent, subsoil resources in Argentina belong to the provinces, however companies need the landowners’ (communities’) permission. According to the General Law on the Environment previous consultations are required but non-binding, and FPIC rights and other international norms have still to be incorporated into national and provincial legislation. Nevertheless, FPIC rights apply since Argentina signed the binding ILO C169 in 2000. Provincial authorities also hold they respect FPIC rights, but their interpretation is that communities do not have the right to veto projects (Soler 2017). However, this section will not focus explicitly on the right to veto projects but on whether the consent obtained by communities can be considered a rightfully obtained consent. The consent requirement establishes that consent is to be sought
from “rights-holders which will be affected by the decision/policy/activity in question” (UN-REDD 2013, 29). In the Argentinian case, who is considered affected is determined by the definition of the direct area of influence established in the EIA report.

As shown in the previous section the area of direct influence is determined by the companies themselves as they conduct the EIA report. As a result – considering the insufficient capacity of provincial authorities to evaluate the information in the EIA report – companies themselves alone control from which communities consent needs to be sought. As the previous section also showed there is great uncertainty surrounding the extent of potential environmental impacts. Some studies (i.e. Meconi and Sticco 2012) imply all communities in the area, not only the community in which territory the physical project is located, could be affected as subsoil water resources possibly are connected. In such perspective all ten communities around the Olaroz-Cauchari salt flat should be considered as lying within the area of direct influence, constituting the “demos” and rights-holders from which consent needs to be sought.

Companies’ power to decide who is affected and who is not have enabled them to employ the strategy of separation, previously discussed under the free dimension. According to the EIA reports Olaroz Chico is within the area of direct influence of the Sales de Jujuy project and Huancar and Pastos Chicos of the Minera Exar project. Unsurprisingly, these three communities are also the ones on whose territory the two projects are physically located in, coinciding with the provincial legal requirement to consult, reach an agreement and obtain consent from. In addition, companies have also engaged with Susques negotiating right-of-way agreements (see Table 2). Communities are well aware of who is within the area of direct influence, who is not, what it means, and which position it gives them in relation to companies. In that sense, the separation of communities has largely set the framework and rules for which options that are available to each community decreasing the possibility for communities to mobilize together and demand companies to consider all ten communities in the area as right-holders. Instead of considering that an option communities express “they are lucky to be in the area of direct influence hopefully having the last word”, not with the intention to veto projects but as a bargaining tool in negotiations with companies (Interview VII 2017).

Likewise, another effect of the strategy of separation and the definition of the area of direct influence, is that communities not considered part of the area of direct influence but asked for
their approval because of companies’ “goodwill” feel pressured to approve projects as there is a risk of “being left out” as their approval is not legally required;

The other communities have said yes already, and we are not in the area of direct influence, so we do not have much to say. If they want they could leave us out and just say ‘ok, we don’t work with you anymore’. This is where we are today, I don’t know what we are going to do but as the others have said yes, I don’t think there is a way back for this project now. (Interview II 2017)

The knowledge that companies can legally proceed without their consent, creates a situation where the communities outside the area has no real possibility to influence projects and therefore tries to get an agreement “as good as possible” following the “rules of the game” already set by companies. In one community outside Sales de Jujuy’s area of direct influence the possibility to influence or negotiate an agreement with the company is described as very difficult;

Sales only has an agreement with Olaroz Chico. Now, when they are doing the expansion of the plant they have had negotiations only with Olaroz Chico. Sales have always been that way. Both companies have come [to our community] but Sales are harder and more difficult, they got their permit and ‘bye’. (Interview VI 2017)

6.4.2. Community organization

The communal organization is very similar among the Atacama communities, the leadership consists of a president, a commission (around 8 people) and an assembly. The assembly is the main decision-making body where relevant issues are presented and discussed. Traditionally, decisions in the assembly are taken by consensus, however, if it is impossible to reach consensus the assembly votes and the decision is taken by simple majority. The quorum for decisions vary among communities according to their population. The president and commission are elected for a mandate of two years. The assembly gathers monthly, usually the first Saturday of each month, there is also a monthly meeting among the ten community presidents where joint matters are discussed and decided upon.

Company influence on community politics

At the local level community organizations function parallel to the provincial structure alongside the municipal commissions – which are part of party politics. As communities do not receive any economic contribution for an independent budget the community leadership positions are unpaid, this raises two main concerns. First, it makes it difficult for community members who do not have a regular income to hold a position in the leadership questioning
its general representativity. Second, previous research has argued the parallel structure and lack of resources limits the autonomy and self-governance of communities due to community leaders’ sensitivity to party influences, or even, political clientelism (Göbel 2013, 144).

With this situation in mind, the arrival of companies further contributed to a politicization of community organizations. Companies rapidly identified and built up strategic relations with people holding important positions within the communities taking advantage of the already existing weaknesses in the community structure. In addition, companies also took advantage of the already emerging divisions with regards to community expectations and concerns. Special attention was dedicated to creating relations with younger community members who had migrated and now returned to communities with an education not economically dependent on traditional activities and in general more positively set towards projects. In that way companies managed to influence a generational shift in local community politics supporting young emerging candidates to achieve positions within the community leaderships (Göbel 2013, 145).

Among other community members this has been seen as a cooptation of the leadership. As critics emphasize the great control companies have over community leaders, making them act more in the interest of companies than of the communities, mistrust and questions regarding leaders’ legitimacy have arisen (Interview III 2017). When visiting communities, it was also confirmed presidents and members of the commission generally are employed directly by companies. Other issues also arise regarding the transparency of negotiations and agreements. The community leaderships and presidents seem to have negotiated part of the agreements without the full knowledge of community members, however companies say they met with the presidents of the communities every two months to explain pans and problems, and that president were supposed to explain and discuss this with the rest of the communities (Veen 2017, 39). Additionally, it was also revealed that many community members in the six communities Minera Exar engage with were not aware of the agreements of economic compensation (Frankel and Whoriskey 2016). In that sense, many community members felt they were not part of the negotiation process and explain they heard different versions of what was happening (Interview VI 2017).

**Division and conflicts**

The arrival of companies have divided communities. Most notably is how the decision-making procedures have changed. Decisions are now more frequently taken by simple majority as it has become difficult to reach consensus in the assembly;
Party politics is always about conflicts and they fight, when that reaches our small communities it creates internal conflicts and division. We cannot come to a consensus decision anymore. (Interview VI 2017)

Members more negatively set towards projects emphasize the importance of the traditional understanding of how to make decisions and that consensus is required for an important consent decision of this magnitude. That the consent decision on this issue was taken by simple majority some see as problematic as it threatens the survival of traditional values and the traditional way of life (Interview III 2017). Despite that many community members feel ambivalent towards projects it has been difficult for oppositional groups to mobilize. Members opposing projects also found themselves more and more marginalized, excluded from meetings and consequently, out of fear they have abstained from raising concerns and stopped attending meetings (Marchegiani 2015, 8). Further, community members experience the situation in the assembly as more tense now than before when one is to give one’s opinion (Interview V 2017) and some feel a certain degree of pressure coming from the community leadership (Interview VI 2017).

Companies have also explicitly intervened in community procedures in order to influence assembly decisions. When the expansion of the Sales de Jujuy project was formally approved by the provincial authority on October 6, 2017, the decision required the continued consent of Olaroz Chico. This consultation seems to have consisted of one meeting, posing serious doubts to whether community members could present concerns, questions, discuss and consider the expansion internally. Members in the assembly were of different opinions and the expansion was not approved by the majority. Nevertheless, little later the opposition was outnumbered in the assembly as Sales de Jujuy offered higher economic compensation and the approval of the expansion won by only a few votes (Interview XI 2017).

The arrival of companies illustrates the difficulties arising when different opinions arise in an area for long dominated by a traditional and communal way of living where communities collectively own communal land titles. The arising conflicts among communities should also be seen as a conflict over values. Most evident is the division between the young and elderly, and between those living in the community village and those on the countryside. Often being the elderly and those living outside the village, leading a more traditional way of life, who more strongly oppose projects while younger generations tend to value employment opportunities and economic compensations higher (Interview III 2017). Regarding employment opportunities a line of conflict has also arisen between communities. Some point
out the rotating employment schedule was decided upon among all community presidents and that the communities understand the community closest to the projects get the most (Interview II 2017), while others are of the opinion this has created division both within (Interview VIII, VI 2017) and among the communities (Interview III 2017) regarding who gets employment and who does not.

6.4.3. Summary Consent

The dimension of consent shows it is highly questionable whether consent was obtained by the correct “demos” of right-holders, as companies have had almost complete power to determine the area of direct influence. By employing a strategy of separation the companies have radically affected communities’ available options as they “rig the consequences” both in terms of the outcome of different choices and in terms of communities’ status as right-holders. In this way, communities have been forced to adapt their preferences according to the imposed constraints as they interact with companies. Secondly, it is uncertain whether consent has not been obtained in full accordance with communities’ customary practices. Due to the parallel organization of the community organizations and the municipal commissions at the local level, no financial resources and poor structures of community organizations, companies were able to interfere in the internal affairs of communities by manipulating also the internal decision-making processes. Also, there seems to exist uncertainty and disagreement within the same community regarding how a consent decision of this magnitude is to be taken.
7. Discussion and Conclusions

That international law on indigenous rights and FPIC processes apply in theory does not imply that a formal consent was obtained according to FPIC requirements nor that the consent decision is an expression of self-determination. Even though previous research have pointed out power asymmetries as a major obstacle to effective FPIC implementation full understanding of how these power asymmetries influence FPIC’s aim of realizing self-determination is still unclear. The purpose of this study has therefore been to assess the principle’s potential by answering the research questions posed. In this last chapter the main conclusions are presented and discussed as well as their implications for the realization of indigenous peoples’ right to self-determination. Finally, some recommendations for future research are outlined.

7.1. Main conclusions

A first contribution of this study is that it provides a deeper understanding of how power asymmetries influence the FPIC requirements, this is done by answering the first two research questions. In relation to the first question, **what characterizes the relationship between companies engaged in lithium extraction and communities in the in Olaroz-Cauchari area**, the results show the relations are characterized by dependency and clientelism creating a situation where different actors hold very unequal power positions. Further, in relation to the second research question, **what are the implications of the relation for the requirements of the FPIC principle**, the results offer a detailed account on how the unequal power relations affect each of the requirements. Regarding free, communities’ freedom is negatively impacted by their dependency upon companies which hinders them from giving or withholding their consent in a way that is actually free. Regarding prior, companies have through manipulation controlled timeframes and time reservations hindering communities from being included and actually have a possibility to make a decision prior to any advancements or commencements of project activities. Regarding informed, companies have through manipulation full control over the information available and considered in the licensing process. Companies also control the sharing and explaining of information thereby denying communities a proper understanding of the situation and options available to them which hinder communities from making an actually informed decision. Regarding consent, companies have through manipulation control over which communities that are “right-
holders” in relation to each project, forcing communities to adapt their preferences to the constrains imposed by companies. Companies also have the power to intervene and alter dynamics in the internal community organization to their own advantage, thereby hindering the consent decision from being actually obtained according to customary procedures reflecting the “self” of communities. Altogether, the results show the unequal power positions permeate the entire FPIC process severely undermining the principle’s potential to realize the right to self-determination.

A second contribution of this study is that it has enabled the identification of what substantial underpinnings and preconditions that are necessary in order for FPIC to be able to fulfill its purpose, this is done by answering the third research question, what preconditions are necessary in order to ensure self-determination for indigenous peoples through the FPIC principle. The results confirm that power asymmetries between actors are the fundamental factor undermining the realization of self-determination through FPIC. The analysis shows how communities’ situation of dependency facilitated for unequal power relations to emerge and gain a foothold, further showing how dependency has its root cause in a socio-economic situation characterized by precarious living conditions. On the basis of these results the study argues the most important precondition in order to provide the necessary substantial underpinnings for FPIC is a community situation opposite to dependency, that is, a situation of actual and recognized socio-economic and cultural independence. The argument relates back to Pettit’s measures to promote antipower to guard “the powerless against subjugation by the powerful” (Pettit 1996, 588). Particularly, the results and the subsequent argument emphasize the importance of the third antipower measure, empowering institutions, aiming at enhancing the capabilities of those subjected to domination in areas such as education, healthcare, communications, transportation etc. (Pettit 1996, 591).

Altogether, the results highlight the importance of taking contextual relationships into account when addressing FPIC as a tool aimed at realizing self-determination. Nevertheless, it is necessary to acknowledge a different conceptual understanding of freedom or self-determination would most certainly have focused on different aspects as relevant in the assessment of FPIC requirements and made a different interpretation of the results. This is inevitable in work based on a specific conceptual definition, however, through a transparent and compelling interpretation of the results the study seeks to make a theoretical contribution by adding to the normative argument of a relational definition as the adequate conception of self-determination as argued by Young (2007).
Finally, all studies must critically consider the scope and interpretations of the results in relation to the possibility of not finding important contextual factors or relationships that might alter the results or their interpretation if they were to be included. Hence, actual and recognized socio-economic and cultural independence of communities, should be understood as merely one of many possibly existing necessary preconditions that need to be in place before the FPIC process starts. As briefly indicated in the analysis, the corporate-state relations needs to be further analyzed to identify possible preconditions necessary for the state to be able to fulfill its role as the guarantor of FPIC rights and there implementation. Consequently, the scope of this study does not include all contextual factors and relationships that possibly undermine communities’ self-determination, a closer analysis of the state-community relations or the community-community relations would most certainly contribute with further insights regarding necessary preconditions.

7.2. Future research

This study has provided an empirical account on how contextual relationships particularly influence FPIC’s potential as a tool realizing indigenous self-determination. By focusing on the context beyond the formal and legal frameworks of the FPIC principle this study lends further support to a relational understanding of freedom and self-determination, encouraging such approach in future studies on FPIC implementation, in example by studying some of the relationships identified in the above section. In addition, the examination of each FPIC requirement also raised new and interesting questions to further be explored in future research. One observation, related to the consent dimension, is the one of underlying lines of conflict that divide communities in relation to extractive projects. This observation actualize further questions regarding traditional values, culture and identity, questions of indigenous self-determination in particular and what it means to determine ones’ development collectively, as Young puts it, how to define the “self” of a people, its will and desires (Young 2007, 49). To address these questions will be of much importance in situations where FPIC implementation seem to divide communities, and (perhaps) run the risk of repeating historical injustices, that is, once again marginalizing traditional values and cultures that the FPIC principle from the beginning was set out to protect.
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APPENDIX

APPENDIX I. List of interviews

List of interviews

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<th>Place</th>
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<td>Interview VIII</td>
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<tr>
<td>Interview IX</td>
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<td>Interview X</td>
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## APPENDIX II. Interview guide communities

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<td>Which are the main economic activities among community members? (i.e. agriculture, livestock, handicrafts, tourism, mining)</td>
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<td></td>
<td>What facilities do you have in the community? What is needed?</td>
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<td>Have you organized yourself together with the other communities regarding the projects?</td>
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<td>What is your relation the different provincial authorities?</td>
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<td>authorities</td>
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<td>Relation to companies</td>
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<td>What are the agreements with the company? What is included? How was it negotiated?</td>
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<td></td>
<td>Was there a process of previous consultations? When? How did it work? Who was in charge of consultations?</td>
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<td>How does the community get information, especially environmental information, about the projects?</td>
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<td></td>
<td>Did the companies/government listen to you and answered your questions? Did you understand all the information?</td>
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<td></td>
<td>Are you getting advice or input from other professionals on any issues? Regarding information and negotiations?</td>
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<td>What is your opinion of the project? Has your opinion changed change through the process?</td>
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<td>Are you aware of the collective rights you have as a community to be consulted and the right to FPIC?</td>
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<tr>
<td>Perceived changes and concerns</td>
<td>How has your life changed since the companies arrived? Do you perceive any threats and/or opportunities in relation to these changes?</td>
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</table>
Has there been any conflict within or among the communities?

Do you have any concerns in relation to the projects? If so, why is that?

| Closing questions | Is there anything you would like to add in relation to the topics discussed? |