DUBLIN DECLARATION ON FAIR AND EQUITABLE LAND ACCESS 1.0

Agenda

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Introduction to the Dublin Declaration on FELA – Eddie Smyth

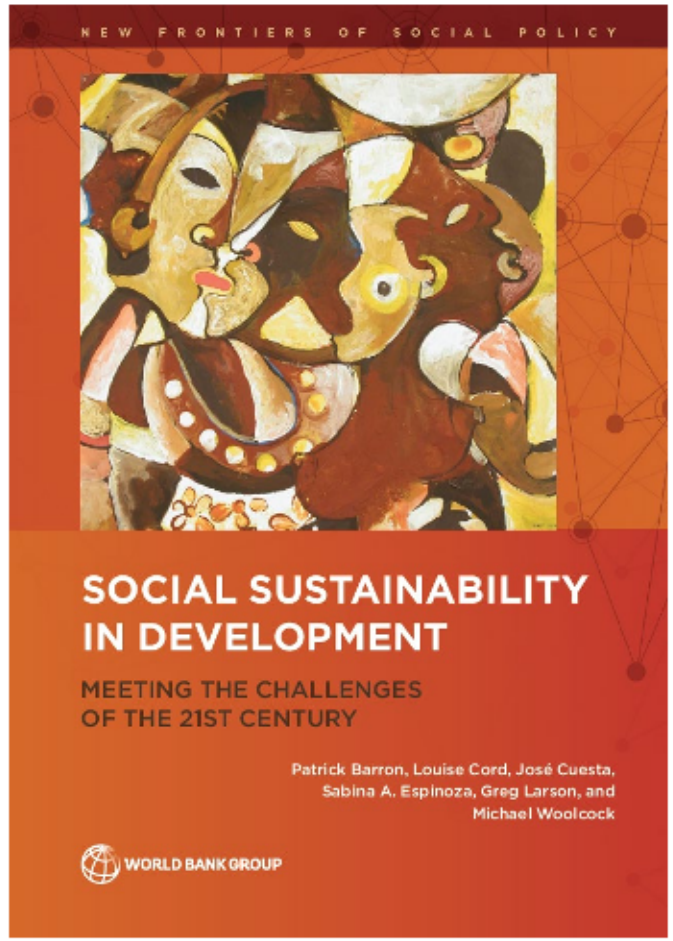
- **Current international standards which govern DFDR promote techno-managerial approaches** which assume that, with the right expertise and financing in place to develop resettlement and livelihood plans, in consultation with affected people, resettlement can have positive outcomes.
- People's movements and human rights organizations have periodically called for a moratorium on DFDR pointing, among others, to the numerous human rights violations that result. They advocate a **'Development without Displacement'** approach.

Introduction to the Dublin Declaration on FELA – Eddie Smyth

- **Human rights principles, country legal frameworks, and the resettlement policies** of international lenders that relate to project land access are beginning to converge, but currently still do not adequately align; and their implementation in projects is often weak.
- **Current development strategies generally put developer interests and priorities above those of affected people,** for whom project land access becomes highly risky and hazardous.

World Bank Social Sustainability in Development

- **Social sustainability** has four key components:
  - **Social cohesion**
  - **Inclusion**
  - **Resilience**
  - and **Process Legitimacy—the extent to which a community or society accepts who has authority, what goals they pursue, and how policies and programs get implemented.**



Introduction to the Dublin Declaration on FELA – Eddie Smyth

- The world's population is expected to increase by nearly 2 billion persons in the next 30 years to 10 billion and **projects across all sectors will displace millions more people each year**.
- **Current approaches to securing project land access are disempowering, and they marginalise and impoverish affected people**. CCDR also risks incurring similar adverse impacts and outcomes. Both DFDR and CCDR are likely to lead to increasing inequality.

Introduction to the Dublin Declaration on FELA – Eddie Smyth

- Eddie Smyth & Susanna Price developed a DFDR Discussion Document and put out an open call on the International Network for Displacement and Resettlement (INDR) to establish a **Working Group to develop a Declaration on the Rights of People affected by DFDR**.
- The **Dublin Declaration on FELA is the culmination of six months of intensive exchanges within the Working Group** and a wide range of DFDR stakeholders.

Policy Brief

Coventry University | Research Centre for Agroecology, Water and Resilience

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Saying NO to development-forced displacement and resettlement: myths and alternatives

For 50 years, mainstream development thinking has legitimised the displacement and resettlement of people for large-scale projects such as dams, infrastructure and wildlife conservation. But half a century of evidence shows, indisputably, that displacement causes social, economic and environmental harm, and that it cannot be mitigated by resettlement. Despite this evidence, estimates suggest that the number

Policy Highlights

1. Stop funding projects that displace people.

Governments, international development finance agencies and private corporations should stop funding projects

POLICY BRIEF: Saying NO to development-forced displacement and resettlement (DFDR): myths and alternatives

Jessica Milgroom, Asmita Kabra and Brooke Wilmsen

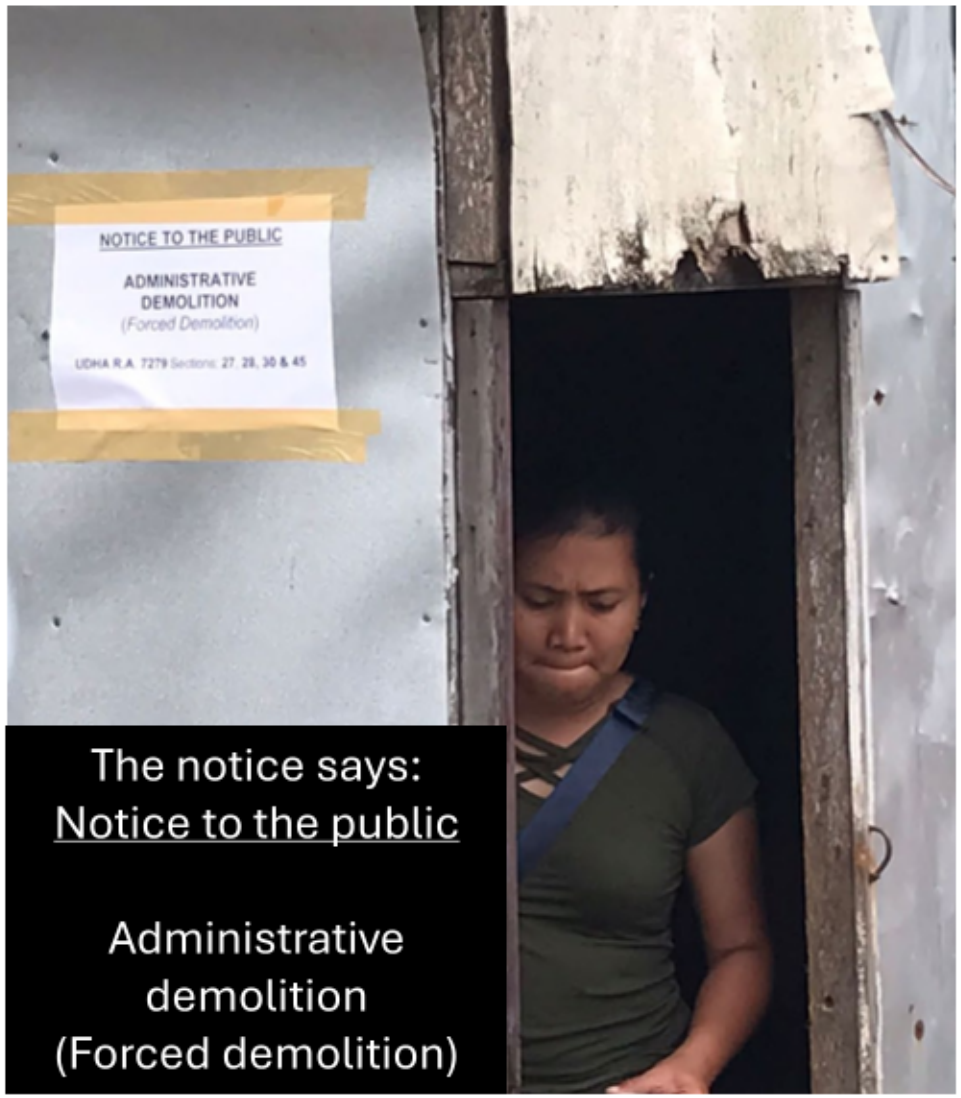
Myth 1. Displacement is inevitable for development

Myth 2. Resettlement can bring development to displaced people

Myth 3. Resettlement can be voluntary and consensual

Myth 4. People can meaningfully participate in resettlement and rehabilitation planning

Myth 5. Resettlement can be successful if best practices are followed.



Principle 1: Rights & Recognition - Issues

Eddie Smyth

- Many groups don’t have the recognitional justice to grant them legitimacy on projects so they can represent their interests, values, and priorities.
- Project approaches don’t promote the right to development (UN 1986) in line with the SDGs.
- The Right to Development includes the right to contribute to, and enjoy economic, social, cultural, and political development in which all human rights and fundamental freedoms can be achieved.

Principle 1: Rights & Recognition

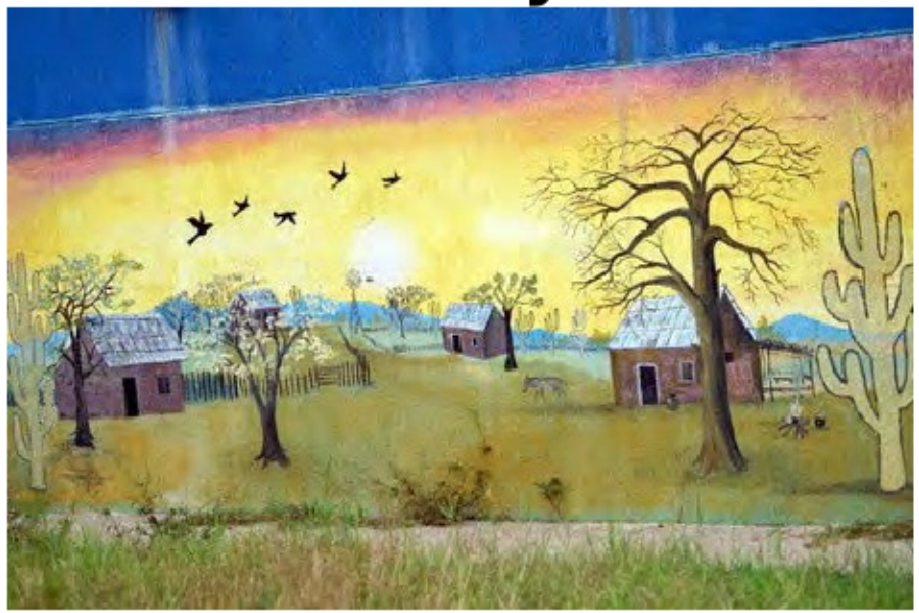
Eddie Smyth

- **Recommendation 1: Grant recognitional justice to all affected groups** by acknowledging and granting them their rights, status, legitimacy, and respect in negotiating agreements relating to project land access.
- **Recommendation 2: Recognize the rights of women and men of all ages and capacities to engage in culturally appropriate dialogues designed to enhance land access-related laws and regulations**.

Principle 1: Rights & Recognition

- **Recommendation 3: Recognize the rights of affected people to define their own objectives and strategies for enhanced wellbeing through economic, social, cultural, and political development including the right to say no to damaging development projects and the right to benefit-sharing.**

Eddie Smyth



Principle 2: Fair Procedure Issues Dolores Koenig

- The **“no project” option is rarely seriously considered**
- The **people at the centre, the affected, rarely have the possibility to participate in all aspects of land taking and resettlement projects to improve their lives**
- Even if given the opportunity, they **rarely have the financial and technical support to formulate their own development objectives, in light of their own definitions of well-being**

Principle 2: Fair Procedure Issues

Dolores Koenig

- Even if given the opportunity, they **rarely have the financial and technical support to formulate their own development objectives, in light of their own definitions of well-being**
- **Negotiated agreements are rarely put into legally binding contracts**
- **Rarely do men and women of varying statuses have equivalent opportunity to participate**

Principle 2: Fair Procedure Dolores Koenig

- **Recommendation 4**: Emphasizes full and effective participation of all relevant actors in inclusive decision making. **Affected women and men of all ages, capacities, and socio-economic identities must take part. Special consideration must be given to children.** Developers and sponsoring agencies **must provide sufficient information, opportunity, financing, and resources to empower all affected people to independently represent their own interests and priorities.**

Principle 2: Fair Procedure Dolores Koenig

- **Recommendation 5**: This support must **enable all affected people to review the project land access needs, options, and alternatives, including a 'no-project' option. Indigenous Peoples must give their Free, Prior and Informed Consent. Broad Community Support (greater than 80%) should be given by all affected communities**.
- **Recommendation 6**: **Support should empower affected people to formulate their own development objectives for their future wellbeing** and to design and implement appropriate programs.

Principle 2: Fair Procedure Dolores Koenig

- **Recommendation 7: Support must enable the affected people to negotiate legally binding contracts with project developers**, to avoid or minimize displacement impacts and to ensure communities achieve enhanced wellbeing and benefits. These should be enforceable through independent arbitration and remediation.
- **Recommendation 8: Lenders, governments, and projects must establish a policy of zero tolerance of any threats, intimidation, or violence against affected peoples, their representatives, and/or human rights defenders.**
- **Recommendation 9: The United Nations should consider establishing capacity that would focus on harmful DFDR** and seek to raise standards for land access across the government and private sector.

Principle 3: Fair Distribution -Issues
Kei Otsuki

- **People are usually not part of the decision making about the project** investment and calculation of material and immaterial compensation, and investments that should be made into their livelihoods improvements and well-being
- **Hardly any transparent discussions take place about what is 'fair' amount** and procedure to redistribute the investment returns obtained by displacing people
- **Often engaged follow-up of livelihoods reconstruction and improvements of infrastructure is missing** in the displacement and post-resettlement process

Principle 3: Fair Distribution Kei Otsuki

- **Recommendation 10**: Before project approval is given **ensure the full costs is essential to determine whether the project is appropriate, viable, has an adequate business case, and is in the broader public interest**. **Affected people should be part of the decision-making** about projects that relate to these assessments.
- **Recommendation 11**: **Identify structural and power constraints to equitable decision-making**, achieving gender equity, and to the equitable distribution of the benefits from the resettlement process.
- **Recommendation 12**: The project should investigate and include project land access strategies that might be suggested by affected people that might **maximise their land security and ownership status.**

Principle 3: Fair Distribution Kei Otsuki

- **Recommendation 13**: For serious livelihood impacts **ensure feasibility studies have supported a clear theory of change** based on expert opinion, benchmarking of similar projects, inter-generational equity principles, and community co-design.
- **Recommendation 14**: The project must investigate and, when requested by affected people, **include benefit-sharing schemes** for the affected people, in cash or in kind, while incorporating measures to limit poor investment decisions and financial dependency.

Principle 3: Fair Distribution Kei Otsuki

- **Recommendation 15**: Developers and appropriate government agencies must address any material, tangible losses as well as any immaterial, intangible losses of social, cultural, psychological.
- **Recommendation 16**: Project staff should engage closely with affected people to focus on building flourishing communities centred around longer-term community perspectives on enhanced wellbeing, rather than only on short-term housing and compensation.

Principle 4: Planning & Resources

Susan D. Tamandong

- **Recommendation 17: Provide evidence of competent teams with social scientists** to support a FELA process and have appropriate social expertise and field experience in community development.
- **Recommendation 18: Sufficient funds must be provided to enable a proper FELA planning process** that can address all impacts, provide for agreed benefits, and for contingencies including independent support for affected people.

Principle 4: Planning & Resources

Susan D. Tamandong

- **Recommendation 19: The timeframe for planning, implementation and follow-up of FELA must be sufficient to allow affected people to engage in meaningful dialogue to assess impacts and negotiate agreements.** There must be **sufficient time for implementation, verification, and remediation (**which may take up to 10 years).

Principle 5: Power & Context Issues
Dolores Koenig

- **Local and national power dynamics are rarely taken directly into account in project plans**. The power structures in local communities and between local communities and higher levels deserve more attention.
- **Rarely is sufficient attention paid to the complexity of the resettled community**: natural and physical environment, community and family structures, essential cultural values and religious institutions, the intangible and tangible resources people use to live.
- **Impacts on non land-based livelihoods merit as much attention as land-based ones**
- Projects often don't work; they may need to be adapted mid-course.

Principle 5: Power & Context Dolores Koenig

- **Recommendation 20: A political scan should be used to identify power brokers and to determine whether equitable negotiations with affected people can be undertaken.** Steps must be taken to ensure that there is no corruption.

Principle 5: Power & Context Dolores Koenig

- **Recommendation 21**: **Environmental, social, cultural, political, and economic impacts all can create problems**. These can be 'simple' (i.e. standard operating procedures apply), 'complicated' (i.e. resolvable by good practice) or 'wicked' (i.e. not easily resolved). **Many resettlement projects pose wicked problems; expert-led approaches will not work. Need inclusive, transdisciplinary approaches**.
- **Recommendation 22**: Project developers, together with local communities, **must proactively assess contextual factors and be prepared to reassess and potentially redesign projects if strategies do not work in the specific context**.

Principle 6: Remedy & Accountability
Natalie Bugalski

Problems with DFDR approach:

- Top-down standards and mitigation measures produced by short term consultants
- No accountability to affected communities
- No ability for affected communities enforce their rights

Principle 6: Remedy & Accountability
Natalie Bugalski

A new approach:

- Displacement-induced harm to be avoided in the first place.
- New platforms to shift power to communities.
- Multi-party mediations should be used upfront to reach agreement on the terms of land access before projects begin, and throughout the project cycle.
- **Recommendation 25**: Communities must be offered technical and legal support to negotiate agreements in their favor.

Principle 6: Remedy & Accountability
Natalie Bugalski

A new approach:

- Project developers must be directly accountable to affected communities.
- Community-company agreements must be legally binding and enforceable by communities, through courts or arbitration.
- Multiple channels must be available to communities to secure remedy. (**Recommendations 23 and 24**)
- Investment and supply chain actors must ensure accountability and remedy. (**Recommendation 26**)

Land Access & Rights of Indigenous Peoples

Raymond Cardinal

Co-Chair, IAMC-TMX | Chair Indigenous Caucus IAMC-TMX |
Regional Director IAIA Western & Northern Canada |
Indigenous Regulatory Expert

Land Access & Rights of Indigenous Peoples: Issues

1. Capacity

- Technical documents, technical language: how to engage Community?
- Centers of Indigenous Regulatory Excellence in service of Communities

e.g. "Salish Sea Initiative" - over 650 Federal Programs + Provincial

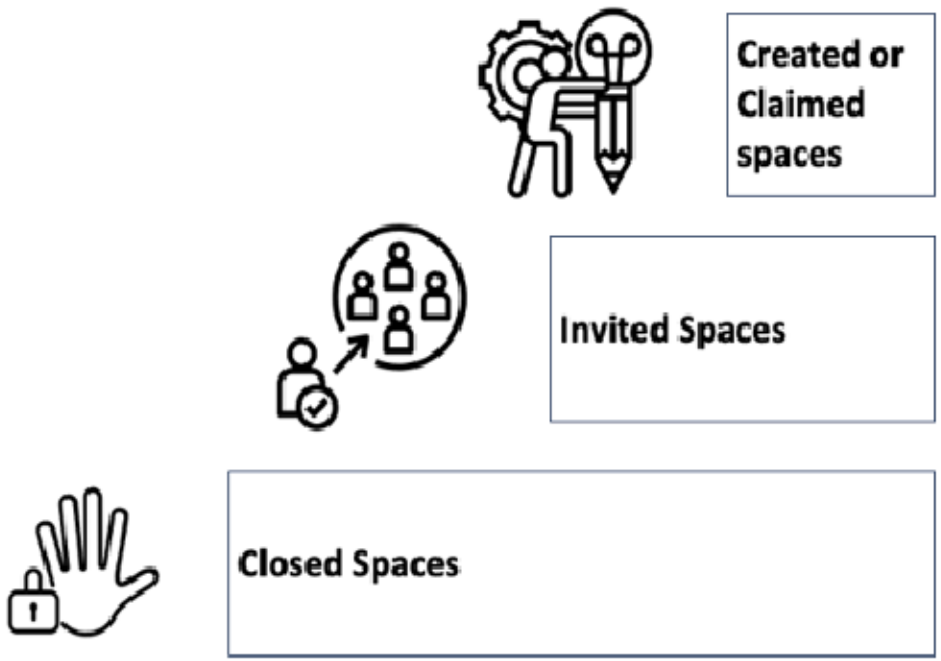
2. Goal clarity vs. ambiguity on "indigenous Inclusion"

- **Vague objectives:** positive rhetoric vs. specific actionable steps
- **Unclear roles:** Nations and Settlements left vulnerable
- **Misaligned expectations:** between regulatory bodies, governments, proponents / private sector and Indigenous communities

3. Doing less vs. doing more

- Systemic racism and > 150 years of displacement
- Red tape can't just be cut without careful consideration

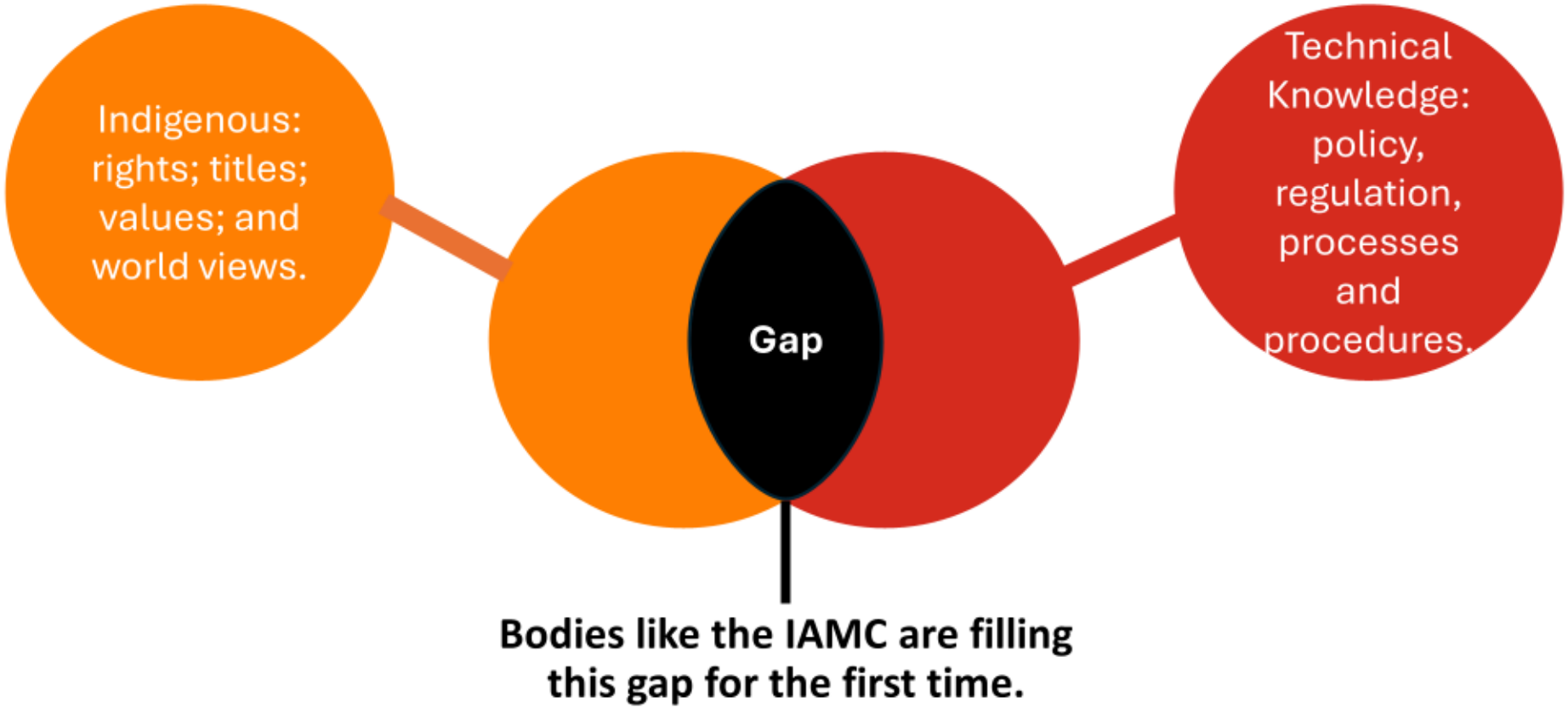
The Journey Towards Indigenous Oversight: Creating Spaces for Change



PROCESS	RESPONSIBILITIES
Indigenous-Led	Indigenous peoples or Indigenous institutions make decisions independently.
Indigenous Oversight	Indigenous peoples ensure decisions are made and enacted in a way that protects their rights.
Co-Development / Co-Management	Indigenous peoples jointly make decisions.
Consultation	Indigenous peoples are notified of happenings and provide feedback, but do not make decisions.
Notification	Indigenous peoples are notified something is happening.
No Notification	No involvement of Indigenous peoples.

Adapted from the work of: Gaventa, John. 2006. ***Finding the Spaces for Change:*** A Power Analysis. IDS Bulletin 37 (6): 23–33

The Inclusion gap requires bridging two worlds



The inclusion gap creates a framing bias resulting in Indigenous issues being excluded.

Finding spaces for change

Indigenous led decision making in spaces created by Indigenous peoples

Created spaces

Spaces created by Indigenous peoples to set priorities & draft and design decision making regimes.

Invited Spaces

Indigenous people may participate, but they are given no opportunity to co-design or shape the space participation happens in.

Closed Spaces

Little to no active participation by Indigenous people. The status quo of most "consultation" processes.

Gaventa, John. 2006. ***Finding the Spaces for Change:*** A Power Analysis. IDS Bulletin 37 (6): 23–33

Conclusion & Next Steps – Eddie Smyth

- Further work with developers, lenders, NGOs, governments, international agencies, and communities, especially to promote the FELA approach.
- Refining, publicising, and seeking endorsements for the Declaration more widely.
- Implementing the FELA Approach, as framed in this Declaration, in projects and identifying the lessons that can be learned.
- Allocating specific responsibilities for its implementation.

Conclusion & Next Steps – Eddie Smyth

- Allocating specific responsibilities for its implementation.
- Advocating for governments, lenders, and companies to incorporate the FELA Approach in their laws, standards. and practices.
- Comparing this Declaration with alternative ways of proceeding, for example, Resettlement with Development, or a Moratorium on resettlement.
- Adapting this Declaration to be suitable to other forms of displacement and resettlement, for example, climate change displacement and resettlement (CCDR).