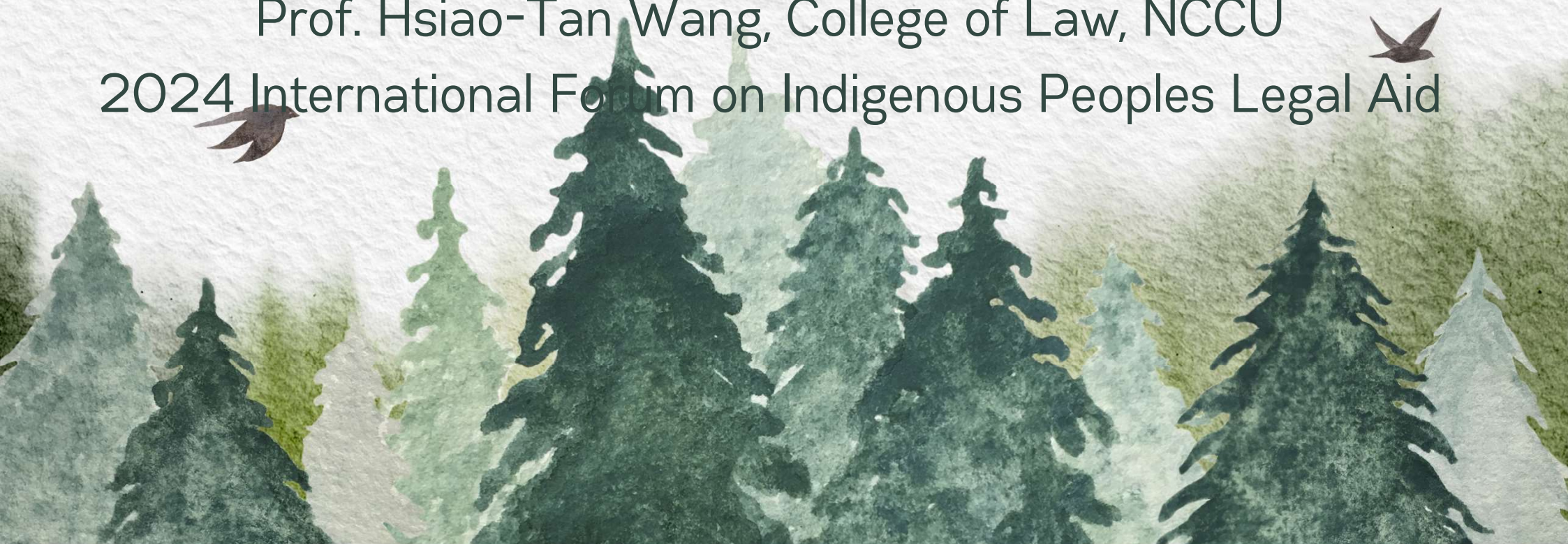



THE NORMATIVE FOUNDATION OF FPIC

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2024 International Forum on Indigenous Peoples Legal Aid



The background of the image is a photograph of a forest with tall evergreen trees. A semi-transparent white rectangular box is centered over the image, containing the text. The text is in a bold, black, sans-serif font, all in uppercase letters. The text is arranged in seven lines, centered within the white box.

**CONSULTATION AND CONSENT CAN BE
BROUGHT INTO A PROCESS OF RESHAPING
THE PUBLIC SPHERE, IN A WAY THAT
GIVES IT THE APPEARANCE OF
DEMOCRATIC PARTICIPATION, THE
INSTITUTIONAL AND PROCEDURAL FORM
FOR SETTLER STATE RE-ENGAGEMENT.**

The background of the slide is a photograph of a forest. In the foreground, there is a dense layer of green grass. Behind the grass, several evergreen trees are visible, their dark green needles contrasting with the lighter green of the grass. A semi-transparent white rectangular box is centered on the slide, containing the title and the main text. The title is in a large, bold, black, sans-serif font, and the text below it is in a smaller, regular, black, sans-serif font.

FPIC: SELF-DETERMINATION RIGHTS

FPIC isn't just about a procedural right to make decisions or participate. It's closely tied to a bigger goal centered on the self-determination rights of Indigenous peoples.




CONSENT

Since FPIC processes should be seen as a way to honor Indigenous peoples' self-governance, the "C" in FPIC can't be boiled down to just a simple idea of consent. **It's not like signing a contract.** Instead, consent in this context involves a **deep, complex process of political expression**, one that Indigenous peoples must have significant control over if their self-determination is **truly to be respected.**



NORMATIVE DRIFT OF CONSENT

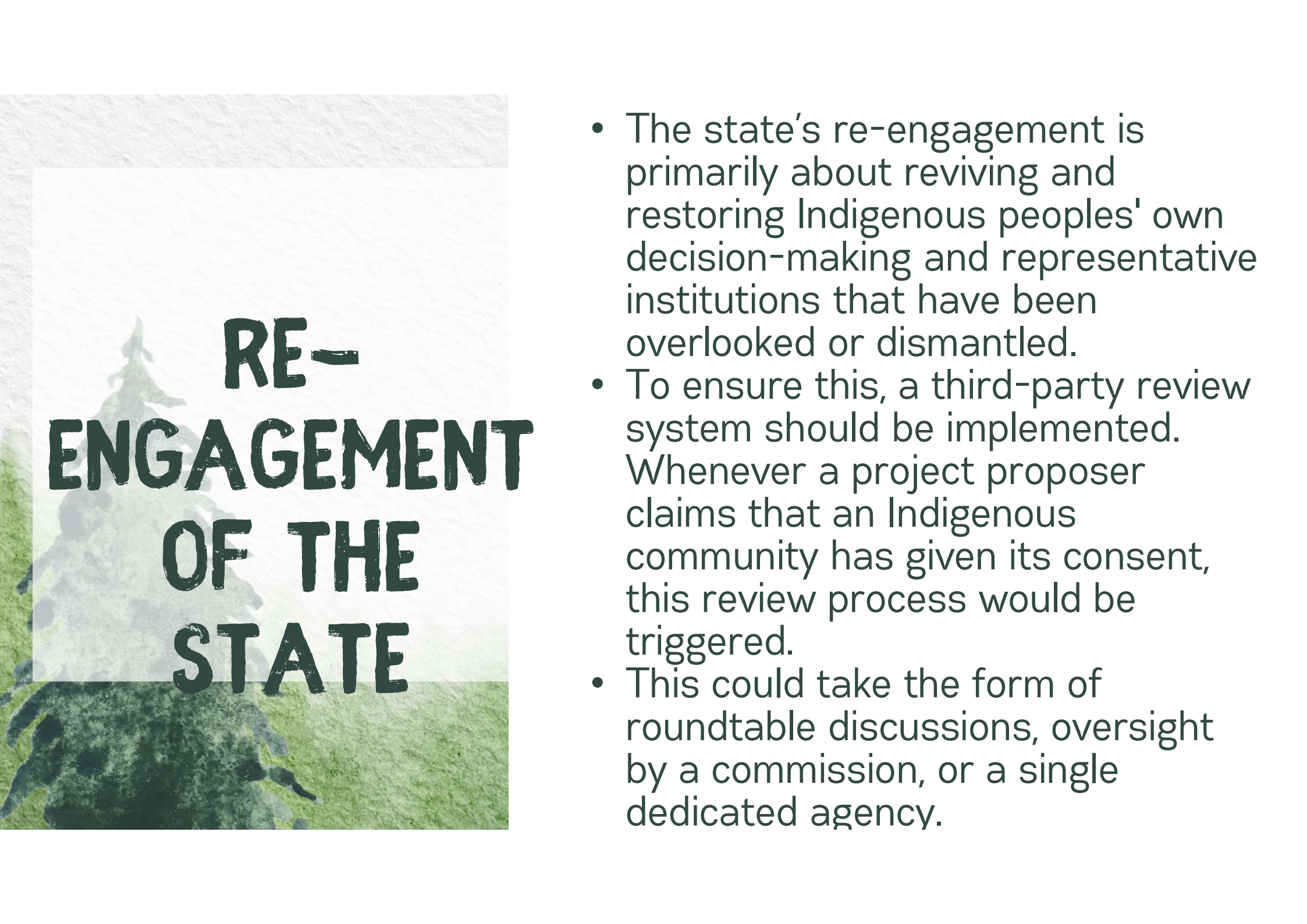
Companies often overlook or ignore that FPIC is part of a broader agenda connected to self-determination. Even when they take FPIC seriously, their version focuses only on the outcome. In their view, FPIC is more of a business process than a governance process. In this version, "consent" becomes nothing more than a simple "yes" or "no" vote with some formal steps. In the end, a "no" doesn't really mean "no," but rather an invitation to come back with another offer. Seeing the "C" in FPIC this way ignores the fact that Indigenous peoples have the right to collectively decide the future they want to pursue.



RULES FOR COMPANIES

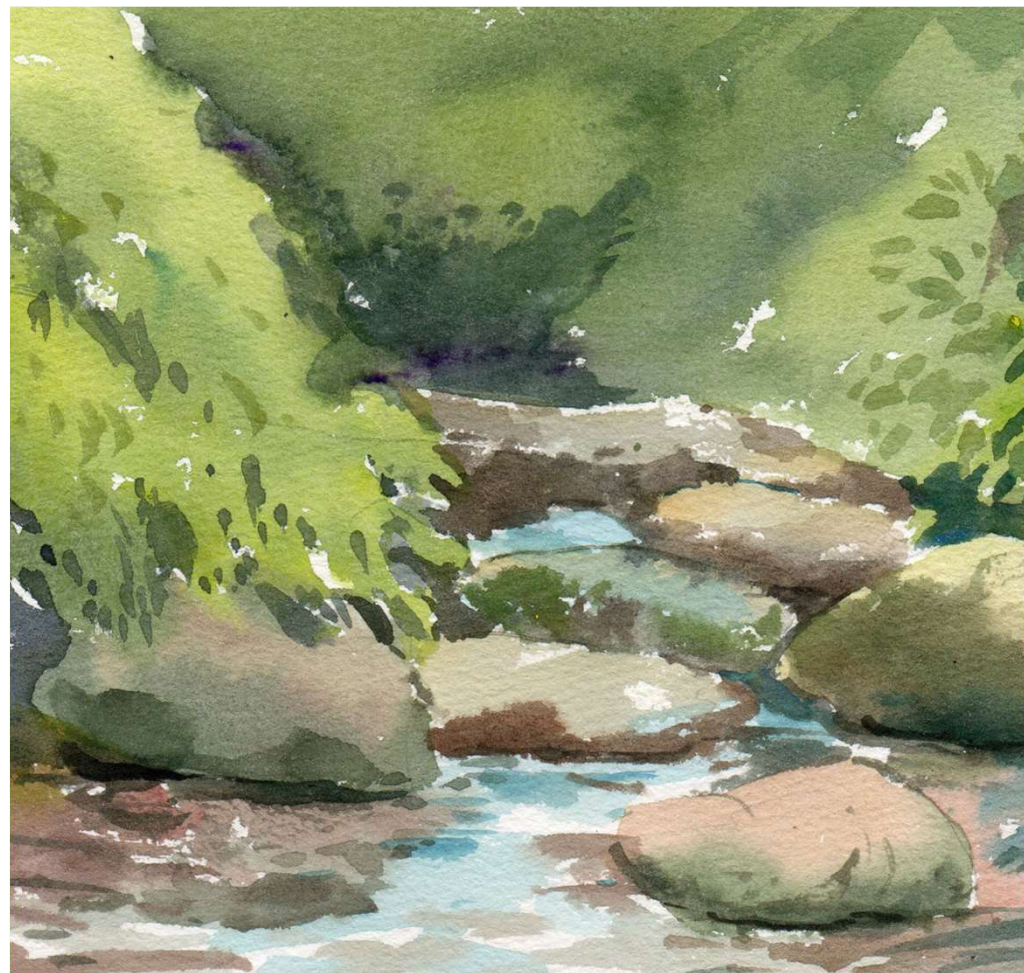


- The company and the tribe should agree on a plan ahead of time that outlines what counts as "consent" and defines the "process and agreements" for negotiations.
- This agreement-making process should treat Indigenous Peoples as partners in the project, not just as stakeholders.
- It's important to emphasize the perspective of community development, which includes identifying the beneficiaries and enhancing social capital within the community.
- The plan should also involve engaging with traditional decision-making structures, especially when these differ from the representative structures imposed by settler governments.
- It's crucial to be aware of the risks that arise when companies have the unilateral power to respond to questions about the potential impacts of the project.



RE- ENGAGEMENT OF THE STATE

- The state's re-engagement is primarily about reviving and restoring Indigenous peoples' own decision-making and representative institutions that have been overlooked or dismantled.
- To ensure this, a third-party review system should be implemented. Whenever a project proposer claims that an Indigenous community has given its consent, this review process would be triggered.
- This could take the form of roundtable discussions, oversight by a commission, or a single dedicated agency.



**THANK YOU
FOR YOUR
ATTENTION**