

IRMA's Approach: Indigenous Rights and Free, Prior and Informed Consent

Background

IRMA recognizes that Indigenous peoples and their distinct cultures are entitled to a full range of rights established under international law.¹ The rights of Indigenous Peoples in the context of industrial-scale mining include, for example:

- the right to self-determination;
- right to property, culture, religion, and non-discrimination;
- rights to health and physical well-being;
- rights to set and pursue their own priorities for development; and
- the right to make authoritative decisions about external projects or investments.

IRMA believes governments and corporations should respect Indigenous rights by obtaining Indigenous Peoples' Free, Prior and Informed Consent (FPIC) when making decisions affecting Indigenous Peoples. FPIC is a right recognized since 1989 under the International Labour Organization Convention 169 on Indigenous and Tribal Peoples.

Free, Prior and Informed Consent (FPIC) in the IRMA Standard

The IRMA *Standard for Responsible Mining* Chapter 2.2 lays out detailed expectations for mines with activities that affect the rights or interests of Indigenous Peoples. **The IRMA Standard defines FPIC as consent based on:**

- engagement that is free from external manipulation, coercion and intimidation;
- notification, sufficiently in advance of commencement of any activities, that consent will be sought;
- full disclosure of information regarding all aspects of a proposed project or activity in a manner that is accessible and understandable to the people whose consent is being sought;

¹ United Nations. 2008. Guidelines on Indigenous Peoples' Issues.
https://www.un.org/esa/socdev/unpfii/documents/UNDG_guidelines_EN.pdf

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- acknowledgment that the people whose consent is being sought can approve or reject a project or activity, and that the entities seeking consent will abide by the decision.

Of more than 400 requirements in the IRMA Standard, 40 have been identified by the IRMA Board of Directors as critical requirements.²

One critical requirement in the IRMA Standard is that new mines must obtain the FPIC of potentially affected Indigenous Peoples.³ The explanatory note related to this requirement states that at *existing* mines, where FPIC was not originally obtained, operating companies are expected to demonstrate that they are operating in a manner that achieves the objectives of the FPIC Chapter.

Recent studies comparing IRMA's FPIC Chapter to the coverage of FPIC by other standards in the mining sector have found that the IRMA Standard sets more detailed and high-bar expectations.

In November 2020, the ISEAL Alliance published a report⁴ outlining the strengths of IRMA's approach to FPIC, including:

Indigenous Peoples have been recognized and consulted as a separate group from social/environmental NGOs from the start of IRMA's standard development.

Affected Indigenous Peoples participate in the standard assurance process and IRMA has a comprehensive complaints mechanism for those who disagree with results.

² For more information and a full list of IRMA's critical requirements go to: <https://responsiblemining.net/wp-content/uploads/2022/02/What-are-Critical-Requirements-in-the-IRMA-Standard-Updated2022.pdf>

³ This requirement only applies at new mines that have the potential to affect the interests or rights of indigenous peoples. If there are no indigenous peoples who may be affected, then there is no need to obtain FPIC. Instead, requirements in Chapter 2.3 apply.

⁴ Emma Wilson. Nov. 2020. Voluntary Standards and FPIC – Insights for Improving Implementation. (ISEAL Alliance) pp. 42. https://www.isealalliance.org/sites/default/files/resource/2020-11/Voluntary-standards-and-FPIC_ISEAL_11-2020.pdf

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The IRMA FPIC chapter has a clear, strong position on FPIC and it requires companies to be transparent about their FPIC processes.

In June 2021, the International Work Group for Indigenous Affairs (IWGIA) and Indigenous Peoples Rights International (IPRI) published a report that stated:

“The IRMA (Initiative for Responsible Mining Assurance) standard is currently the most advanced standard in the extractive sector with regard to Indigenous Peoples’ rights. It distinguishes itself by being a genuine multi-stakeholder effort.

It stipulates that only such new mines for which Indigenous Peoples’ FPIC has been obtained are certifiable.

Further, it is among the few documents that explicitly say that FPIC can only take place if the affected community agrees to enter an FPIC process in the first place and is relatively clear in saying that the right to FPIC implies the right to withhold consent and that such decision must be respected. . .”

Cultural Heritage

IRMA defines cultural heritage as the legacy of physical structures, landscapes, and artifacts, as well as intangible attributes of a group or society, such as language, activities or knowledge, that has cultural, scientific, spiritual, or religious value. Mining can harm cultural heritage in tangible ways, such as damage to sites of spiritual significance, or intangible ways, such as inappropriate use of traditional knowledge.

For example, a new mine cannot score above IRMA Transparency if developed in or adversely affects:

- World Heritage Sites, and areas on a State Party’s official Tentative List for World Heritage Site Inscription;
- International Union for Conservation of Nature (IUCN) protected area management categories I-III; and
- core areas of UNESCO biosphere reserves.

Existing mines located in such protected areas must demonstrate that the mine was developed prior to the area’s official designation, management plans have been developed and are being implemented, and the operating company is collaborating with

IRMA Expert Working Group

Backgrounder

management authorities to integrate management plans into the protected area's management plans.

To safeguard irreplaceable cultural heritage and respect Indigenous People's right to self-determination, the IRMA Standard prohibits operating companies from carrying out new exploration or developing new mines in areas where Indigenous Peoples are known to live in voluntary isolation.

Holistic Coverage in the IRMA Standard

In addition to FPIC and cultural heritage, the rights of Indigenous Peoples are inseparable from many other issues covered in the IRMA Standard including, but not limited to, stakeholder engagement, human rights, environmental and social impact assessment and management, benefit sharing, mine reclamation and closure, water management, waste management, and biodiversity, ecosystems services and protected areas.

Engaging Indigenous Peoples in IRMA Governance, Standards and Audits

IRMA's multi-stakeholder governance model is unique among mining sector standards as it gives equal voting rights to six sectors: directly affected communities, NGOs, labor unions, mining companies, purchasing companies, and the investor and finance sector. The directly affected communities sector has included Indigenous leaders since IRMA was founded in 2006.

The IRMA Standard was developed through over 10 years of dialogue across stakeholder sectors, including with Indigenous Peoples. Regular review and updates to the IRMA Standard continue to be directly informed by Indigenous Peoples and institutions, including through our Expert Working Group on Indigenous Rights and FPIC.

IRMA requires third-party auditors to announce audits in advance so that stakeholders are aware of upcoming audits; to conduct on-site audits at the mine site level; and to interview rights holders, members of affected communities—including Indigenous Peoples—and mine workers.

IRMA audit reports are public documents including over 100 pages of information about the audited mine site. Where a mine site has activities that affect the rights or interests of Indigenous Peoples the IRMA audit report will include coverage of compliance with the FPIC Chapter, providing transparent public access to site-level information.