



Initiative for Responsible
Mining Assurance

Operationalizing Free, Prior and Informed Consent (FPIC)

Guidance for the Purchasing Sector

responsiblemining.net



May 2025

FPIC

Guidance for the Purchasing Sector

For Indigenous peoples, the right to free, prior, and informed consent (FPIC) is a right guaranteed under international law. FPIC safeguards the protection and realization of other rights, including for example, Indigenous Peoples' right to self-determination; to property; to culture, to non-discrimination; and to a clean and healthy environment. FPIC is a collective decision-making process, that differs from nation to nation. Ultimately, it ensures that Indigenous Peoples have a say in whether and how mining moves forward on their lands and territories.

The IRMA Standard aligns with key globally recognized laws, standards and norms including the United Nations Declaration on the Rights of Indigenous People and International Labor Organization (ILO) Convention 169, the Convention on the Elimination of all forms of Racial Discrimination—that give effect to the rights of Indigenous Peoples.

"... for companies whose operations impact Indigenous Peoples' lands and legal rights, a failure to obtain, in advance and on an ongoing basis, free, prior and informed consent (FPIC) from those Peoples may expose companies to increased legal, reputational or regulatory risks..." (BlackRock, "Our Approach to Engagement on Natural Capital" (Blackrock Investment Stewardship, New York, March 2023)

FPIC, in the context of the IRMA Standard, requires that:

- Engagement with Indigenous Peoples be free from external manipulation, coercion and intimidation;
- Potentially affected Indigenous Peoples be notified that their consent will be sought, and that notification occur sufficiently in advance of commencement of any mining-related activities;
- There is full disclosure of information regarding all aspects of the proposed mining project in a manner that is accessible and understandable to the Indigenous Peoples; and
- Indigenous Peoples can fully approve, partially or conditionally approve, or reject a project or activity, and companies will abide by the decision.

The purpose of this guidance is to answer commonly asked questions to help downstream purchasing companies as they undertake their human rights and environmental due diligence responsibilities and assess potential and actual risks in their mineral supply chains.

Is there an official definition of who is Indigenous?

An official definition of who is “Indigenous” has not been adopted by the United Nations system due to the diversity of the world’s Indigenous Peoples. And this is why an inclusive definition is adopted in the IRMA Standard.

In the UN Declaration on the Rights of Indigenous Peoples, article 33 says, “Indigenous Peoples have the right to determine their own identity or membership based on their own customs, traditions, and decision making” (art. 33). In other words, the UN (including ILO and others) hold the view that self-identification by a people, rather than a government, is a fundamental criterion (although not sufficient in itself) for the identification of Indigenous and Tribal Peoples.

Other characteristics that may be determinant of whether a community or group is Indigenous include:

- Ancient historical ties with respect to living in and using a specific territory (land-based culture);
- Voluntary cultural distinctiveness that is handed down through generations (may include language, special organization, religious or spiritual values, livelihoods, laws and institutions);
- Experience (ongoing or historical) subjugation, marginalization, dispossession, exclusion, or racial discrimination;
- Traditional governance systems;
- Presence on lands (land rights) prior to colonization or occupation by other dominant groups;
- Duration of time using lands, and whether present on them for reasons of displacement or resettlement;
- Distinctly reflected in a census or other sociological data; and / or
- Indications that peoples may be unaware of the rights attached to determination of a group as 'Indigenous' and / or unwillingness to use the term for political / social / economic reasons (adapted from FAO, 2016 and UNDP, 2020.)

These characteristics are generally consistent with definition provided across leading sustainability frameworks like the IFC Performance Standards.

Are there any databases that exist to help identify Indigenous Peoples in different regions?

There is no straightforward answer to this. As part of good risk and impact due diligence, companies should dedicate research to understand the Indigenous communities and cultures connected to the land, both historically and contemporaneously. In many countries, Indigenous Peoples were forcibly removed from their traditional lands. Official records kept by colonial administrations were often used to dispossess Indigenous Peoples of their lands. Many governments still do not recognize Indigenous Peoples within their borders.

- The [International Work Group for Indigenous Affairs](#) (IWGIA) is another good starting resource, with country specific information.
- The [Native-Land](#) database is one starting point. It makes clear, however, that it is not an official record of Indigenous peoples' lands and efforts must be made to speak directly to the First Nations in question. For the US and Canada, it has a lot of relevant data.
- In Australia, relevant information and resources on Indigenous land rights and native title, including contact information for Prescribed Bodies Corporate for native title holders, can be found [here](#).
- At the UN, the UN Special Rapporteur on the Rights on Indigenous Peoples conduct country visits and publish reports on those visits. Further, the Expert Mechanism on the Rights of Indigenous Peoples, which provides the UN Human Rights Council with expertise and advice on the rights of Indigenous Peoples, also produces country and thematic reports of relevance.

How should a buyer respond if they are told by a mining company that there are no impacted Indigenous Peoples in their development?

Investors/buyers need to conduct their own independent due diligence to assess whether there are any potentially impacted Indigenous Peoples.

If a mining company says there are no impacted Indigenous peoples, investors/buyers should ask:

- Does the company have any relevant human rights policies?
- If the company has a human rights policy, does the mining company have an Indigenous Peoples' policy that reflects the minimum standards in the UN Declaration on the Rights of Indigenous Peoples (UNDRIP) and ILO Convention 169? A publicly available policy with detailed implementation guidance that aligns with UNDRIP is the first step in a company showing it has an effective due diligence and risk management system in place to prevent and mitigate potential impacts on the rights of Indigenous Peoples. If it doesn't have that policy, there is a very high risk that they are not able to identify potentially impacted Indigenous Peoples, let alone prevent or mitigate those potential impacts, and remedy any harm that might occur.
- Does the company make an unequivocal policy commitment to respect free, prior and informed consent (FPIC)? Many mining companies continue to qualify when they will respect FPIC. You should be alert to language like, "seek to achieve FPIC" or "if required by law," as this allows companies to assert they tried to obtain FPIC.
- Has the company provided information about the legal regime in the host country and how those laws apply to Indigenous Peoples?
- What measures has the company implemented to ensure alignment with and adherence to relevant international laws safeguarding the rights of Indigenous Peoples?

- Has the company conducted any mapping of potentially impacted Indigenous Peoples' lands? If not, why not? If so, who conducted the mapping and were Indigenous Peoples involved? In many countries, Indigenous Peoples were forcibly removed from their traditional lands—this doesn't mean they do not still have ancestral, cultural, or spiritual ties. Any mapping must adopt an inclusive approach, considering land uses within and outside of "official" territorial boundaries.
- Ask the company to provide information as to how it identified potentially impacted Indigenous Peoples and through which sources?

Depending on where the mining company is operating, we would also advise you to ask if there are any potentially impacted customary land rights holders.

While FPIC is a legal and internationally recognized human right for Indigenous Peoples, the principle of consent can also extend to other communities, particularly customary land rights holders. This is especially the case in Sub-Saharan Africa.

- For example, both the [African Commission's 2012 Resolution on a Human Rights-Based Approach to Natural Resource Governance](#) and the [Economic Community of West African States' Directive on the Harmonization of Guiding Principles and Policies in the Mining Sector \(Art.16\)](#) do not limit the application of FPIC to self-identified Indigenous communities.
- Sierra Leone's [Customary Land Rights Act \(2022\)](#) also extends FPIC to all customary land rights holders (Art.28).
- In the most recent version of its social and environmental safeguards, the World Bank attempted to address this issue by expanding the scope of its [Environmental and Social Standards 7](#): Indigenous Peoples standard to apply both to Indigenous Peoples and to "Sub-Saharan African Historically Underserved Traditional Local Communities. This expansion was designed

to encompass a broader range of communities with historical ties to project areas, who share histories of racism and exclusion.

- [South Africa's High Court](#) has found that the right to give or withhold consent (being the core principle of FPIC) exists as part of customary law.

Are there any "red flags" an investor/buyer should be alert to that may indicate a company has not conducted FPIC properly?

- Absence of any policy commitments regarding Indigenous peoples that is aligned with UNDRIP.
- When a company seeks to develop a project in a jurisdiction where national laws do not recognize Indigenous Peoples' rights.
- If a company says there are no "directly" affected Indigenous Peoples. Companies should be taking an inclusive approach and identifying all "potentially impacted" communities, including those with hunting, fishing, ancestral or historical ties.
- Where the company has relied simply on government approvals and has not shown any evidence of additional due diligence:
- Absence of evidence documenting the mechanism the company uses for engaging with affected or potentially affected communities throughout the project lifecycle.
- Absence of any evidence documenting the relevant FPIC process or processes, and the steps taken to obtain consent from affected communities.
- Absence of evidence of whether the company has a transparent and inclusive process in place for resolving community level disputes or grievances.
- Evidence of legal challenges or violations related to Indigenous rights in the company's history.

Do you have any guidance for how a company should frame its public commitment to UNDRIP and when FPIC is applicable to past (or historical acquisition), current, and future business activities?

A company's public commitment to respect the rights of Indigenous Peoples should fully align with UNDRIP and should include an unequivocal commitment to FPIC.

In terms of past, current and future operations, there is guidance in the **IRMA Standard for Responsible Mining** that might be useful. The Standard sets a clear expectation that companies should "demonstrate that they are operating in a manner that seeks to achieve the objectives of [Chapter 2.2.]" In other words, companies are expected to "demonstrate that they have the free, [prior and] informed consent of Indigenous Peoples for current operations by providing evidence of signed or otherwise verified agreements, or, in the absence of agreements, demonstrate that they have a process in place to respond to past and present community concerns and to remedy and/or compensate for past impacts on Indigenous Peoples' rights and interests. In alignment with this chapter, such processes should have been agreed to by Indigenous Peoples and evidence should be provided to demonstrate agreements are being fully implemented by the companies."

The Standard also makes clear that irrespective of the history of the asset, "where there are proposed changes to the company's plans or activities that may significantly change the nature or degree of an existing impact, or result in additional impacts on Indigenous Peoples' rights, lands, territories, resources, properties, livelihoods, cultures or religions," a company should achieve FPIC. In other words, companies should make clear commitments to respect FPIC for all new projects or expansions of existing ones, where significant impacts on the rights of Indigenous Peoples are likely.

In other words, even for historical acquisitions, a company should demonstrate that they have an agreed process in place to respond to past impacts or

harms and, if there are planned expansions or changes to those existing assets that are likely to have a significant impact on Indigenous Peoples' rights, the company should achieve FPIC prior to moving ahead with those expansion plans.

Additional Resources

1. Reconciliation and Responsible Investment Initiative, "Investor Brief: Responsible Investment and Indigenous Peoples' Rights in the Energy Transition" (RRI, Toronto, November 15, 2023), <https://reconciliationandinvestment.ca/news-events/critical-minerals-responsible-investment/>
2. Submission to OHCHR, issued by the Working Group on Business and Human Rights ([Investors, ESG and Human rights](#) <https://docs.google.com/document/d/116jY5A4PKXBJIXj8vBdcdNBOAzzjILNGezAq8WahOb0/edit#heading=h.bmh9dobaenta>)
3. First Peoples Worldwide, Free, Prior, and Informed Consent Due Diligence Questionnaire (https://www.colorado.edu/program/fpw/sites/default/files/attached-files/fpic_due_diligence_questionnaire-2.pdf)
4. United Nations Global Compact, Business Reference Guide to the United Nations Declaration on the Rights of Indigenous Peoples, https://d306pr3pise04h.cloudfront.net/docs/issues_doc%2Fhuman_rights%2FIndigenousPeoples%2FBusinessGuide.pdf
5. FPIC 360, FPIC Tool Indicators (Monitoring and Verification Framework), https://fpic360.org/wp-content/uploads/2021/04/EO-FPIC360-Tool-Indicators_2020.pdf