



# (COP 31) INDIGENOUS PEOPLES AND FREE PRIOR INFORMED CONSENT

## A *Definitions and applicability*

There is no universally accepted definition of “**Indigenous Peoples**”. The term “Indigenous Peoples” is used here in a generic sense to refer to a distinct social and cultural group possessing the following characteristics in varying degrees:

- Self-identification as members of a distinct indigenous cultural group and recognition of this identity by others;
- Collective attachment to geographically distinct habitats or ancestral territories in the project area and to the natural resources in these habitats and territories;
- Customary cultural, economic, social, or political institutions that are separate from those of the dominant society or culture;
- A distinct language or dialect, often different from the official language or languages of the country or region in which they reside.

Similarly, there is no universally accepted definition of **Free, Prior and Informed Consent** (FPIC). For the RJC Code of Practices, FPIC builds and expands on mutual engagement processes and should be established through good faith negotiation between Members and affected Indigenous Peoples. As a process, FPIC requires an ongoing respectful relationship based on trust during the planning period, the operation phase and until mine rehabilitation and closure. FPIC goes beyond consultation, in requiring a clear agreement of the affected Indigenous Peoples. However FPIC does not necessarily require unanimity and may be achieved even when individuals or groups within the community explicitly disagree.

The ICMM Position Statement on Indigenous Peoples and Mining notes that FPIC comprises both a process and an outcome. Through this process Indigenous Peoples are: (i) able to freely make decisions without coercion, intimidation or manipulation; (ii) given sufficient time to be involved in project decision making before key decisions are made and impacts occur; and (iii) fully informed about the project and its potential impacts and benefits. The outcome is that Indigenous Peoples can give or withhold their consent to a project, through a process that strives to be consistent with their traditional decision-making processes while respecting internationally recognized human rights and is based on good faith negotiation.

Source:

- *International Finance Corporation (IFC) Performance Standard 7 – Indigenous Peoples (2012)*  
<http://www.ifc.org/performancestandards>
- *ICMM Position Statement on Indigenous Peoples and Mining(2013)*  
<http://www.icmm.com/publications/icmm-position-statement-on-indigenous-peoples-and-mining>

**The **Indigenous Peoples and Free Prior Informed Consent** section of the COP is applicable to Members in the Mining Sector.**

Provision 31.3 on Free Prior and Informed Consent (FPIC) is applicable to Members with new Mining Facilities, or significant changes to existing Facilities, that are associated with any of the circumstances identified below:

- Impacts on lands and natural resources subject to traditional ownership or under customary use;
- Relocation of Indigenous Peoples from lands and natural resources subject to traditional ownership or under customary use;
- Significant impacts on critical cultural heritage that is essential to the identity and/or cultural, ceremonial, or spiritual aspects of Indigenous Peoples lives; or
- Use of cultural heritage, including knowledge, innovations or practices of Indigenous Peoples for commercial purposes.

While Provision 31.3 on FPIC is applicable in the above circumstances from the early stages of project development, retrospective conformance is not expected. The requirement is triggered at Mining Facilities where these circumstances are present either during the period since joining the RJC or through changes since the last Verification Assessment, whichever is most recent. For all other Mining Facilities with affected Indigenous Peoples, 31.2 requires Members to seek to obtain broad-based support and to have this support formally documented, including through impact-benefit agreements.

See also the Guidance chapters for **Community Engagement**, **Resettlement**, **Impact Assessment**, and **Mine Rehabilitation and Closure**.

## B *Issue background*

Establishing which groups of people are considered Indigenous is not always straightforward. Indigenous Peoples may be referred to in different countries by such terms as “Indigenous ethnic minorities”, “aboriginals”, “hill tribes”, “minority nationalities”, “first nations” or “tribal groups.” Ascertaining whether a particular group is considered as Indigenous Peoples may require informed judgement, taking into account the characteristics outlined in Section A above.

In the context of the mining industry, Indigenous Peoples can be generally (but not universally) understood as communities whose people are the descendants of the original inhabitants of a country or region, with a distinct social or cultural identity that may be vulnerable or disadvantaged in the current social and economic context.

Many Indigenous Peoples’ cultures and identities are inextricably linked to the lands on which they live and the natural resources on which they depend. In many cases, their cultures, identities, traditional knowledge and oral histories are connected to these lands and natural resources. Project impacts on lands, forests, water, wildlife, and other natural resources may affect their institutions, livelihoods, economic development, and their ability to maintain and develop their identities and cultures. In many parts of the world, Indigenous Peoples suffer from a history of discrimination and exclusion that has left them on the margins of larger societies. Many often still experience discrimination, high levels of poverty, and other forms of political and social disadvantage.

The interests of Indigenous Peoples in mining projects can be one or more of the following:

- owners of formal title to land or recognised legal interests in land or resources;
- claimants for ownership of land or resources;
- customary owners of land or resources but without formal legal recognition of customary ownership;
- occupants or users of land either as customary owners or as people whose customary land are elsewhere;
- in material objects or resources of cultural significance;
- in landscapes which have special significance because of association, tradition or beliefs;
- members of host communities whose social, economic and physical environment may be affected by mining and associated activities (including, for example, river-dependent communities).

The rights of Indigenous Peoples are being increasingly addressed under both national and international law. Under international law, key UN human rights conventions and declarations provide the core rights framework for the world’s Indigenous Peoples. In addition, some countries have passed legislation, or ratified other international or regional conventions for the protection of Indigenous Peoples such as ILO Convention 169. While such legal instruments establish responsibilities of states, it is increasingly expected that private sector companies conduct their affairs in a way that would uphold these rights and not interfere with states’ obligations under these instruments.

Not all governments in the past, or today, have recognised Indigenous Peoples’ distinct identity, legitimate interests or their rights as articulated in relevant international conventions. In this context, agreement making between companies and affected communities has emerged as an important vehicle for dialogue on Indigenous Peoples’ development aspirations, negotiation of development benefits and mitigation of impacts. Formally documented support for development projects can take the form of written agreements or other types of records that are recognized by the appointed leaders, spokesperson or representatives of the community. A process of informed consultation and participation, which recognises broad-based or collective decision-making processes, should underpin development of relationships, agreement making, program delivery and regular reviews of progress with Indigenous Peoples.

Free, prior and informed consent (FPIC) for project-related decision making with Indigenous Peoples involves both a process and an outcome. FPIC has been incorporated into the United Nations Declaration on the Rights of Indigenous Peoples and the International Labour Organization’s Indigenous and Tribal Peoples Convention 169. Both instruments relate to the relationship between Indigenous Peoples and nation-states. In 2012, the International Finance Corporation (IFC) brought FPIC into a private sector performance standard. The revised IFC Performance Standard 7 requires IFC clients to obtain the FPIC of indigenous communities under specific circumstances, including mineral resource development projects involving adverse impacts. As a result of this revision, FPIC will also become part of the policy of the more than 70 banks that are signatories to the Equator Principles (EP). The IFC move is the most recent indication of the growing acceptance among multilateral development agencies, NGOs and responsible investors that indigenous people have a right to participate in decisions affecting their land and resources. FPIC refers to the combination of a mutually accepted and documented process of culturally appropriate negotiation between the company and appropriate institutions representing Indigenous Peoples and evidence of agreement between the parties as the outcome of the negotiations. Where alternatives have been explored and adverse impacts are unavoidable, IFC Performance Standard 7 calls on developers to minimize, restore, and/or compensate for these impacts in a culturally appropriate manner commensurate with the nature and scale of such impacts and the vulnerability of the affected communities of indigenous peoples.

## B *Issue background (cont)*

While specific definitions vary, and continue to evolve in different jurisdictions, FPIC envisages consent that is:

- obtained free of coercion or manipulation;
- secured prior to commencement of activities affecting Indigenous Peoples' lands, territories and resources;
- informed by meaningful participation and consultation, and based on the full disclosure of relevant aspects of the proposed project in a form that is understandable and accessible; and
- enabled by Indigenous Peoples participating through their own freely chosen representatives and customary or other institutions.

Implementation of FPIC by the private sector must take place within the context of state-based and traditional decision-making processes. The interaction of an FPIC process with state-based development consent processes is clearest where there is domestic legislation for companies to be able to put it into practice. Such legislation, and statutory authorities to oversee the process, exists in countries such as the Philippines and some parts of Australia. Where such legislation does not exist, the terms of the FPIC process itself must first be negotiated between the company and affected Indigenous Peoples.

Successful mining projects require the broad support of the communities in which they operate, including of Indigenous Peoples, from exploration through to closure. Without the support of affected Indigenous Peoples, underpinned by informed consultation and participation, projects face significant social, financial and reputational risk rising from the potential for conflicts to emerge. Interactions between mining companies and Indigenous Peoples should occur in the context of broader community engagement but, at the same time, give special attention to the particular histories, capacities, priorities and interests of Indigenous Peoples. It is recognized that Indigenous Peoples play a vital role in sustainable development; that mineral development projects can help advance the economic development of Indigenous communities; and these communities in turn can play a vital role in the development of natural resources.

### ICMM GOOD PRACTICE GUIDE

This tool aims to assist mining companies to be aware and respectful of cultural, social, economic and political complexities associated with developing projects in close proximity to Indigenous communities. While there is no 'one-size-fits-all' approach, the Guide outlines practices that can be adapted by companies and communities to their own circumstances. The Guide includes case studies of both good and poor practice in areas such as participation, agreement making, managing impacts and sharing benefits, and dealing with grievances, with lessons that can be learned from each example.

*Source: ICMM Good Practice Guide - Indigenous Peoples and Mining (2012).*

### ICMM POSITION STATEMENT

In 2013, the ICMM issued a position statement on Indigenous Peoples and Mining which adopts a commitment to work to obtain the consent of Indigenous Peoples for new projects (and changes to existing projects) that are located on lands traditionally owned by or under customary use of Indigenous Peoples and are likely to have significant adverse impacts on Indigenous Peoples. The position statement outlines ICMM's view of FPIC as a process based on good faith negotiation, through which Indigenous Peoples can give or withhold their consent to a project. These processes should strive to be consistent with Indigenous Peoples' traditional decision-making processes while respecting internationally recognized human rights.

*Source: ICMM Position Statement on Indigenous Peoples and Mining*

## C Key international instruments

### INTERNATIONAL

The United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) was adopted by the UN General Assembly in September 2007 after 22 years of development and negotiation. The Declaration sets out the individual and collective rights of Indigenous Peoples, as well as their rights to culture, identity, language, employment, health, education and other issues. Declarations are not subject to ratification by States and do not have legally binding status. A Declaration adopted by the General Assembly reflects the collective views of the United Nations which must be taken into account by all member States in good faith.

The International Labour Organisation (ILO) Convention 169 on Indigenous and Tribal Peoples was adopted in 1989, and has been ratified by 22 countries as of 2013. Genuine and effective consultation with Indigenous Peoples about their priorities is fundamental to ILO 169. However the Convention does not grant the right of veto over projects that affect them. As with other ILO Conventions, 169 is aimed at governments and is binding only on states that have ratified it. Many states consider the Convention problematic because it clashes with their constitutional provisions that require that all ethnic groups are treated equally before the law. This is particularly the case in African states with diverse, ethnically heterogeneous national populations. While private companies do not have any direct obligations under the Convention, it has clear implications for their activities and operations. Further, there may be legal obligations for companies arising from national legislation implementing the Convention or similar frameworks.

Both UNDRIP and ILO169 are significant landmarks in the recognition and protection of the rights of Indigenous Peoples at the international level. They are aligned in spirit and many of the key provisions are mutually reinforcing. The Declaration's provisions deal with all the areas covered by the Convention and addresses a number of additional subjects that are not covered by the Convention.

Updated in 2012, the International Finance Corporation (IFC) Performance Standard 7 – Indigenous Peoples (2012) provides a detailed standard and associated guidance for the private sector. The objectives of the standard are to:

- Ensure that the development process fosters full respect for the human rights, dignity, aspirations, culture and natural resource-based livelihoods of Indigenous Peoples.
- Anticipate and avoid adverse impacts of projects on communities of Indigenous Peoples, or when avoidance is not possible, to minimize and/or compensate for such impacts.
- Promote sustainable development benefits and opportunities for Indigenous Peoples in a culturally appropriate manner.
- Establish and maintain an ongoing relationship based on Informed Consultation and Participation (ICP) with the Indigenous Peoples affected by a project throughout the project's life cycle.
- Ensure the Free, Prior, and Informed Consent (FPIC) of the Affected Communities of Indigenous Peoples when the circumstances described in the Performance Standard are present.
- Respect and preserve the culture, knowledge and practices of Indigenous Peoples.

### NATIONAL

National law is the vehicle for implementing international instruments such as ILO Convention 169 or similar state-based frameworks. The legal framework for Indigenous Peoples varies significantly from country to country, depending on the history of colonisation, migration and/or conflict, and continues to evolve. Some countries may not recognise indigeneity or ethnicity as an acceptable category for making distinctions in terms of relative entitlements. It is essential that Members maintain an understanding of, and act in accordance with, applicable law in all jurisdictions of operation.

## D Suggested implementation approach

*The Suggested implementation approach provides general guidance for implementing the mandatory requirements of the Code of Practices. The guidance is not normative and should be seen as a starting point for information and support.*

**Indigenous Peoples and Free Prior Informed Consent** should be implemented in conjunction with COP provisions on **Human Rights**, **Community Engagement**, and where applicable, **Resettlement**. **Community Engagement** covers approaches to community development, engagement, and operational-level grievance mechanisms. Engagement, wherever possible, should be undertaken through traditional authorities within Indigenous communities and with respect for traditional decision-making structures and processes. COP provisions on **Impact Assessment** and **Mine Rehabilitation and Closure** are also relevant. Social impact assessments, or other social baseline analyses, and closure planning for projects which may impact on Indigenous Peoples must examine their interests and perspectives and be based on consultation with them.

## D Suggested implementation approach (cont)

### COP 31.1: RESPECT FOR RIGHTS OF INDIGENOUS PEOPLES:

**Members in the Mining Sector shall respect the rights of Indigenous Peoples as articulated and defined in applicable provincial, national and international laws and their social, cultural, environmental and economic interests, including their connection with lands and waters.**

#### Points to consider:

- **Management responsibility:** Responsibility for relationships with Indigenous Peoples should fall to a senior management function, often the person responsible for community engagement and development programs. Careful consideration should be given to the make-up of the team that develops and maintains an ongoing relationship with Indigenous peoples. Affected Indigenous communities need to know who is the contact person for all issues related to the mine's activities, and must have access to a rights-compatible grievance mechanism as required in COP 30.3.
- **Specialist skills:** Draw on experienced and expert assistance to develop policies, training, strategies, plans and actions. Ensure that these draw on appropriate language, anthropological, cultural and social skills.
- **Written policy and procedures:** Policy and procedures should include the business' approach to affected Indigenous Peoples and address:
  - Respect for the rights, interests, aspirations, culture and natural resource-based livelihoods of Indigenous Peoples;
  - Clearly identifying and fully understanding the interests and perspectives of Indigenous Peoples regarding a project and its potential impacts;
  - Designing projects, using a participative approach, to avoid adverse impacts on Indigenous Peoples and minimizing, managing or compensating for residual impacts;
  - Engaging and consulting with Indigenous Peoples in a fair, timely and culturally appropriate way throughout the project cycle to seek broad-based support for mining activities;
  - Negotiating partnerships and/or programs that provide benefits and mitigate impacts from mining projects;
  - Obtaining Free Prior Informed Consent in applicable circumstances;
  - Arrangements to protect cultural property or sites of religious significance for Indigenous People;
  - The role of affirmative action and partnerships to build the participation of Indigenous people in the mine workforce or associated businesses;
  - Seeking to build long-term partnerships with Indigenous Peoples to support self-empowered regional and community development such as through education, training, healthcare, and business enterprise support;
  - Gender considerations and their intersections with the above;
  - Where appropriate, considering different approaches where different Indigenous Peoples might have different needs and realities;
  - Where appropriate, encouraging governments or other institutions including NGOs to participate in alleviating and resolving any problems or issues faced by Indigenous Peoples near mining operations;
  - Monitoring the progress of engagement approaches, agreements, and evaluating impacts in conjunction with key stakeholders.
- **Training:** Ensure that all staff relating with Indigenous Peoples receive relevant training to ensure sufficient knowledge of key principles, local issues and appropriate conduct. To provide employment opportunities for Indigenous people, opportunities for training and education may need to be made available to qualify indigenous workers who might otherwise not meet usual employability criteria. Where Indigenous people are also mine workers, consideration should be given to the need for cultural awareness training for all staff. The objective should be building cross-cultural understanding: for company personnel to understand Indigenous Peoples' culture, values and aspirations, and for Indigenous Peoples to understand a company's principles, objectives, operations and practices.

## D *Suggested implementation approach (cont)*

### COP 31.2: BROAD-BASED SUPPORT:

**Members in the Mining Sector shall seek to obtain broad-based support of affected Indigenous Peoples and to have this support formally documented, including partnerships and/or programs to provide benefits and mitigate impacts.**

Note that this provision applies in all cases where there are affected Indigenous Peoples, while the FPIC provision applies under particular circumstance as noted. For Mining Facilities with affected Indigenous Peoples, implementation of this provision will vary according to the context.

**The following general guidance may or may not be relevant to the operating situation:**

- **Assessment:** The potential impact of the business on Indigenous Peoples should be assessed. The business should utilise the services of qualified social scientists and other professionals to carry out:
  - ethnographic and archival research;
  - participatory approaches with the affected communities of Indigenous Peoples, including women;
  - assessment of the traditional institutions;
  - mapping of Indigenous land use in areas that may be impacted by mining activities; and
  - investigation of the applicable national and regional laws and regulations, including customary laws, and laws reflecting host country obligations under international law.
- **Engagement:** Undertake an engagement process with affected Indigenous Peoples as required in [Community Engagement](#) (see Standards Guidance for that chapter). The engagement process should be carried out in an inclusive, equitable, culturally appropriate and rights-compatible manner. In the case of new projects, companies should agree on the appropriate engagement process with potentially impacted Indigenous Peoples and relevant government authorities. Consider how best to:
  - Build the company's institutional capacity to deal appropriately with the needs of the affected Indigenous Peoples;
  - Involve Indigenous Peoples' representative bodies and organizations (e.g., councils of elders or village councils), as well as members of the Affected Communities of Indigenous Peoples;
  - Provide sufficient time for Indigenous Peoples' decision-making processes;
  - Ensure the engagement process is consistent with Indigenous Peoples' decision-making processes, and be commensurate with the nature and scale of the potential impacts
  - Provide mechanisms to address differences of opinion that may arise during the engagement process; and
  - Where required, provide support to build community capacity for good faith negotiation.
- **Broad-based support:** Use the above engagement process, to build broad-based support of affected Indigenous Peoples for the mining operations, for example through partnerships and/or programs that provide benefits and mitigate impacts through the project lifecycle. These should be built on an understanding of the interests and development aspirations of the affected Indigenous Peoples and on building mutual trust.



## D Suggested implementation approach (cont)

### COP 31.3: FREE PRIOR AND INFORMED CONSENT (FPIC):

For new Mining Facilities, or significant changes to existing Facilities, that are associated with any of the circumstances identified below:

- Impacts on lands and natural resources subject to traditional ownership or under customary use;
- Relocation of Indigenous Peoples from lands and natural resources subject to traditional ownership or under customary use;
- Significant impacts on critical cultural heritage that is essential to the identity and/or cultural, ceremonial, or spiritual aspects of Indigenous Peoples lives; or
- Use of cultural heritage, including knowledge, innovations or practices of Indigenous Peoples for commercial purposes;

Members in the Mining Sector shall, as described in International Finance Corporation (IFC) Performance Standard 7:

- a. Work to obtain the Free, Prior and Informed Consent of affected Indigenous Peoples, during the planning and approval stages, through a process that strives to be consistent with their traditional decision-making processes while respecting internationally recognized human rights and based on good faith negotiation; and
- b. Document the mutually accepted process between the Member and the affected Indigenous Peoples, and relevant government authorities, and the evidence of agreement between the parties as the outcome of the negotiations.

#### Points to consider:

- FPIC builds on the community engagement processes required under [Community Engagement](#) – see separate Guidance chapter for this provision. Principles of supporting communities to make decisions that are consistent with traditional decision-making processes, allowing sufficient time and providing full information are important components of this approach. It is essential to build a framework for consent that represents a broad-based FPIC process from among the affected communities, not from individuals acting without the knowledge of the broader community.
- Under 31.3, Free Prior Informed Consent is required where relocation or [Resettlement](#) of Indigenous Peoples is envisaged – see separate Guidance chapter for this provision.
- The Guidance for IFC Performance Standard 7 (Indigenous Peoples) can provide additional information to support the following suggested approach to COP 31.3. Where Applicable Law does not define a FPIC process, the Member and affected communities of Indigenous Peoples will establish the terms of the FPIC process through good faith negotiation. The following should be documented:
  - the mutually accepted process between the client and Affected Communities of Indigenous Peoples, and
  - evidence of agreement between the parties, as the outcome of the negotiations.
- As part of the FPIC process, Members should, consistent with IFC Performance Standard 7:
  - Document efforts to avoid and otherwise minimise impacts;
  - Identify, assess and document resources uses and ensure affected Indigenous communities are informed of their land rights;
  - Offer compensation, preferably land-based or compensation-in-kind in lieu of cash compensation; and
  - Ensure continued access to natural resources, and ensure fair and equitable sharing of benefits associated with the use of resources that are central to the identity and livelihood of affected Indigenous communities.
- Note: FPIC does not necessarily require unanimity and may be achieved even when individuals or groups within the community explicitly disagree. In IFC's view, it is not possible to achieve the outcome without the process, and it is not inevitable that a legitimate process will lead to an outcome of agreement.
- Note: Governments may sometimes be responsible for managing the interests of Indigenous Peoples in a way that limits companies involvement – and that in such situations, RJC Members should collaborate with the responsible authorities to achieve outcomes consistent with the principles of this provision. In situations where consent may not be forthcoming despite the best efforts of all parties, and in balancing the rights and interests of Indigenous Peoples with the wider population, a government might determine that a project should proceed and specify the conditions that should apply.

## D Suggested implementation approach (cont)

### Q&A - INDIGENOUS PEOPLES AND FREE PRIOR INFORMED CONSENT

#### 1. Does COP 31 apply if the communities affected by the mine are not Indigenous Peoples?

Not to all communities. The requirement in the COP is specific to Indigenous Peoples. However input from competent professionals may be sought to determine whether a particular group is Indigenous. The ICMM Position Statement on Indigenous Peoples (2013) notes that in some countries, the term indigenous may be controversial and local terms may be in use that are broadly equivalent (such as tribal peoples, first peoples, native people, aboriginal people). In other situations, there may be no recognition of indigeneity by states, or the term may have negative associations that discourage people from acknowledging indigenous identity. In line with the ICMM Position Statement, RJC Members should apply the principles of FPIC to groups that exhibit the commonly accepted characteristics of Indigenous Peoples, as outlined in Section A of the RJC Guidance.

#### 2. Does the FPIC provision apply to mines that have already received development consent or have been operating for some time?

The FPIC provision applies to new Mining Facilities and significant changes to existing Facilities, and does not apply retrospectively. All Members must nevertheless maintain ongoing engagement with affected Indigenous communities throughout the project lifecycle, in accordance with COP 30 and 40, and respect their rights, and obtain their broad-based support, in accordance with COP 31.1 and 31.2. Where significant changes to existing Facilities occur, then the FPIC provision is triggered.

#### 3. Is agreement-making, such as an Impact-Benefit Agreement, a suitable FPIC process?

Yes, where agreement-making is carried out in good faith and with informed consultation and participation of Indigenous Peoples, it can be considered a suitable FPIC process under the IFC Performance Standard 7. Guidance. IFC Guidance should be consulted for more detail on key principles and how to take account of varying social contexts and circumstances.

#### 4. Is FPIC a right to veto?

The representatives of Indigenous Peoples and their organisation and many NGOs advocating for human rights consider FPIC principles as a right to veto over decisions that may affect them. Many governments and companies do not share this view. The Forest Stewardship Council (FSC) notes that in general terms FPIC is a right to say "Yes" or "No" to a proposed activity, but this does not accord a general "veto power".

The FSC Guidelines quote the UN Special Rapporteur on the Rights of Indigenous Peoples (UN Document A/HRC/12/34, 2009, par. 46) where FPIC, as articulated in the UNDRIP, should be regarded as 'establishing consent as the **objective** of consultations with indigenous peoples' (emphasis added). For more information on this, and general information about implementing FPIC in the forestry sector, see the FSC Guidelines for the implementation of the right to free prior informed consent (FPIC).

### CHECK

- Do you understand the legal rights of affected Indigenous Peoples under applicable law, and their social, cultural, environmental and economic interests?
- Do you have policies and procedures in place to ensure you respect the rights of Indigenous Peoples?
- Have you assessed the potential impact of the business on Indigenous Peoples?
- Do you have an engagement process in place that seeks to obtain broad-based support of affected Indigenous Peoples?
- Has this support been documented?
- Are programs in place to provide benefits to Indigenous Peoples and mitigate impacts?
- Do you understand the conditions under which you should seek to obtain FPIC and the process that should be followed?
- Have the FPIC process and the outcomes of the negotiations, if concluded, been properly documented?



## E Further information

The following websites have further information on Indigenous Peoples and Free, Prior and Informed Consent:

- Association for Mineral Exploration British Columbia – Mineral Exploration, Mining and Aboriginal Community Engagement: A Guidebook (Canada) (2005)  
[http://commdev.org/userfiles/files/843\\_file\\_6E830BA41323EB5F.pdf](http://commdev.org/userfiles/files/843_file_6E830BA41323EB5F.pdf)
- Business for Social Responsibility - Engaging With Free, Prior, and Informed Consent (2012)  
[http://www.bsr.org/reports/BSR\\_Engaging\\_With\\_FPIC.pdf](http://www.bsr.org/reports/BSR_Engaging_With_FPIC.pdf)
- Canadian Foundation for the Americas - Sustainable Communities: Mining and Indigenous Governance (Americas) (2008)  
[www.focal.ca/pdf/indigenous\\_FOCAL\\_sustainable%20communities%20mining%20indigenous%20governance\\_March%202008.pdf](http://www.focal.ca/pdf/indigenous_FOCAL_sustainable%20communities%20mining%20indigenous%20governance_March%202008.pdf)
- Foley Hoag - Implementing a Corporate Free, Prior, and Informed Consent Policy (2010)  
[http://www.foleyhoag.com/NewsCenter/Publications/eBooks/Implementing\\_Informed\\_Consent\\_Policy.aspx](http://www.foleyhoag.com/NewsCenter/Publications/eBooks/Implementing_Informed_Consent_Policy.aspx)
- Forest Stewardship Council - FSC Guidelines for the implementation of the right to free prior informed consent (FPIC), Version 1 (2012)  
<https://ic.fsc.org/newsroom.9.254.htm>
- ILO Convention 169, Concerning Indigenous and Tribal Peoples in Independent Countries (1989)  
[www.ilo.org/ilolex/english/convdisp1.htm](http://www.ilo.org/ilolex/english/convdisp1.htm)
- International Council on Mining and Metals (ICMM) – Good Practice Guide - Indigenous People and Mining (2012)  
<http://www.icmm.com/library/indigenouspeoplesguide>
- International Finance Corporation (IFC) Performance Standard 7 – Indigenous Peoples (2012)  
[http://www1.ifc.org/wps/wcm/connect/1ee7038049a79139b845faa8c6a8312a/PS7\\_English\\_2012.pdf?MOD=AJPERES](http://www1.ifc.org/wps/wcm/connect/1ee7038049a79139b845faa8c6a8312a/PS7_English_2012.pdf?MOD=AJPERES)
- International Finance Corporation (IFC) Guidance Note 7 – Indigenous Peoples (2012)  
[http://www1.ifc.org/wps/wcm/connect/50eed180498009f9a89bfa336b93d75f/Updated\\_GN7-2012.pdf?MOD=AJPERES](http://www1.ifc.org/wps/wcm/connect/50eed180498009f9a89bfa336b93d75f/Updated_GN7-2012.pdf?MOD=AJPERES)
- Indigenous Peoples Links (PIPLinks), Ecumenical Council for Corporate Responsibility (ECCR), and the Middlesex University School of Law - Making Free Prior & Informed Consent a Reality: Indigenous Peoples and the Extractive Sector (2013)
- Leading Practice Sustainable Development Program for the Mining Industry (Australia) - Working with Indigenous Communities (2007)  
[www.ret.gov.au/resources/Documents/LPSDP/LPSDP-IndigenousCommunitiesHandbook.pdf](http://www.ret.gov.au/resources/Documents/LPSDP/LPSDP-IndigenousCommunitiesHandbook.pdf)
- Oxfam Australia - Guide to Free Prior and Informed Consent (2010)  
<http://resources.oxfam.org.au/pages/view.php?ref=528>
- Sustainalytics - Licence to Operate. Indigenous Relations and Free Prior and Informed Consent in the Mining Industry (2011)  
[http://www.sustainalytics.com/sites/default/files/indigenouspeople\\_fpic\\_final.pdf](http://www.sustainalytics.com/sites/default/files/indigenouspeople_fpic_final.pdf)
- United Nations Declaration on the Rights of Indigenous Peoples (2007)  
[www.un.org/esa/socdev/unpfii/documents/DRIPS\\_en.pdf](http://www.un.org/esa/socdev/unpfii/documents/DRIPS_en.pdf)
- United Nations Expert Mechanism on the Rights of Indigenous Peoples, Advice No. 2: Indigenous peoples and the right to participate in decision-making. (2011)  
[http://www.ohchr.org/Documents/Issues/IPeoples/EMRIP/Advice2\\_Oct2011.pdf](http://www.ohchr.org/Documents/Issues/IPeoples/EMRIP/Advice2_Oct2011.pdf)
- World Resources Institute - Business without Conflict: the business case for community consent (2007)  
[http://pdf.wri.org/development\\_without\\_conflict\\_fpic.pdf](http://pdf.wri.org/development_without_conflict_fpic.pdf)