

# Indigenous Peoples' Participation in Sustainability Standards for Extractives

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**Landroc. Australia**

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### **German Development Corporation (GIZ)**

The German Development Corporation (GIZ) is a German international development agency that supports sustainable development, balancing economic development with social inclusion and environmental protection. The GIZ sector program 'Extractives for Development' (X4D) supports the development and implementation of sustainability initiatives in the extractives industry. GIZ X4D promotes the equitable participation of Indigenous Peoples in sustainability standards in collaboration with the Aluminium Stewardship Initiative (ASI), which is a voluntary certification scheme that includes a standing Indigenous Peoples Advisory Forum (IPAF) as an advisory body in ASI's governance structure. In the extractives industry, the ASI has taken the lead in the development of participatory governance structures for the benefit of Indigenous Peoples and therefore serves as a model for other sustainability standards in this sector.

### **Landroc**

Landroc is an Australian consulting company that specialises in a wide range of environmental management and Indigenous community consultation services.

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## **EXECUTIVE SUMMARY**

## BACKGROUND

This study explores Indigenous Peoples' participation in sustainability standards for the extractives industry. In this study, 'extractives industry' refers to the mining, forestry, hydrocarbon, industrial agriculture and hydroelectricity sectors. These sectors are increasingly operating on Indigenous Peoples' lands, and commonly have damaging environmental and socio-cultural (including human rights) impacts for the Indigenous Peoples. Sustainability standards (i.e. best-practice operational procedures, including sector-specific Certification Programs) have emerged as means to mitigate these impacts and improve the benefits for Indigenous Peoples facing extractives developments. The best-practice design and implementation of sustainability standards underpinning Certification Programs requires the active participation of Indigenous Peoples in program governance and assurance processes.

## METHOD

The study used literature review, a survey of key informants and case-studies to address three research questions:

- How do certification programs support the participation of Indigenous Peoples in program decision-making and standard-setting, and in data collection for auditing?
- What examples of best-practice can be highlighted in this context?
- What recommendations can be made for developing best-practice in Indigenous Peoples' participation in sustainability standards?

The study focused on the design and implementation of the standards underpinning five extractives industry Certification Programs – the Aluminium Stewardship Initiative (ASI), the Responsible Jewellery Council (RJC), the Forest Stewardship Council (FSC), the Roundtable on Sustainable Palm Oil (RSPO) and Equitable Origin (EO).

The study is primarily intended to support discussions between Indigenous Peoples and other stakeholders at the annual meeting of the ASI's Indigenous Peoples Advisory Forum (IPAF) in Suriname in March 2018. The report presented here therefore provides an overview of the study topic, rather than an in-depth academic analysis. It is primarily designed as an information resource for Indigenous Peoples facing extractives industry developments, but also to inform improved engagement of Indigenous Peoples by extractives industry operators, Certification Programs and auditors.

## FINDINGS

**Literature Review:** Relevant academic and grey literature was reviewed. There are few academic publications focused on Indigenous Peoples' participation in Certification Program governance and assurance processes, with these largely limited to studies on FSC and RSPO. Both the academic and grey literature are dominated by reporting on detrimental environmental and human rights impacts of extractives developments for Indigenous Peoples, and associated conflicts and negotiations/agreements with multinational companies and governments to achieve more equitable and sustainable development outcomes consistent with international norms. Most academic studies are mining-related, and focused on developments in Canada and Australia. 'Consultation' and 'Corporate Social Responsibility' are the

most frequent focal topics in the academic literature, and in both literature sources there is a recent increasing focus on Indigenous Peoples' 'Free, Prior & Informed Consent' (FPIC).

**Key Informant Responses:** A general theme was the difficulty in identifying best-practice examples of Indigenous Peoples' participation in sustainability standards for extractives. Much discussion was based around the importance of Indigenous Peoples' FPIC. Discussions also highlighted difficulties and credibility issues with standard assurance processes (i.e. auditing), and a growing awareness and utilisation of innovative digital technologies to support Indigenous Peoples' participation in data collection for auditing.

**Indigenous Peoples' Free Prior & Informed Consent (FPIC):** Indigenous Peoples' FPIC has emerged as the focal rights-based approach to empower Indigenous Peoples facing extractives industry developments. This section of the report provides a high-level overview of the principle and process of FPIC, including an acceptable definition and highlighting of what FPIC is not, based on the limited implementation experience to date. A simplified 'FPIC Implementation Framework for Indigenous Peoples' is provided, along with lists of a selection of key FPIC-related (grey literature) guides, reports and websites/databases. Readers seeking further detail are also referred to the many academic studies referenced in this section.

**Indigenous Peoples' Participation in Certification Program Governance & Assurance Processes:** This section focuses on the five above-noted Certification Programs and the ISEAL Alliance. The ISEAL Alliance was included because it develops overarching 'Codes of Good Practice' for Certification Program governance and assurance processes that are adopted by, or form the foundation of, the standards underpinning the Certification Programs of interest. We provide an overview of each program and its standard(s), and report on how the program and its standard(s) supports the rights of Indigenous Peoples. In particular, we assess the participation of Indigenous Peoples in the program's governance structure, requirements within the program's standard(s) for the assurance process to involve Indigenous Peoples as legitimate stakeholders, and the program's Complaints Mechanism and facilitation of Indigenous Peoples' access to remedy when breaches of standard requirements are identified. Drawing on the literature and key informant responses, we also discuss the associated perceptions and implementation experiences of Indigenous Peoples, auditors and other stakeholders. There is evidence of Indigenous Peoples' discontent with the assurance processes and Complaints Mechanisms of the FSC and RSPO.

**Examples of Good/Best-Practice Indigenous Peoples' Participation in Sustainability Standards:** Examples include –

- The FSC and the ASI for including permanent Indigenous Peoples bodies/forums in the Certification Program's governance and decision-making structure, including for the development and review of standards.
- Examples discussed at the 2014 IUCN World Parks Congress regarding the use of digital technology by Indigenous Peoples to engage in culturally-appropriate participatory data collection for stakeholder mapping and impacts monitoring.

- The FSC Community Standard currently being designed by and for forest-based communities is set to increase opportunities for Indigenous Peoples to access and benefit from FSC certification. This new standard will describe responsible forest management from an Indigenous community perspective, including verification of community-level FPIC implementation, and will facilitate greater community involvement in, and ownership of, the data collection/monitoring process. This includes the potential for innovative technological applications for crowd-sourcing data, and recognising local expertise in place of employing external auditors.
- The ExxonMobil Papua New Guinea Liquefied Natural Gas (PNG LNG) project for employing multiple, culturally-acceptable community/stakeholder engagement methods, thereby facilitating effective corporate-community communications and community participation (especially from women, vulnerable individuals and minority groups) in a Social Impact Assessment.
- Although there is limited documentation of FPIC success, various best-practice recommendations are emerging from case-studies and independent expert reviews of FPIC implementation attempts by extractives industry operators (see the 'Key FPIC Reports & Databases' section of the report).

**Case Study – Gulkula Mining Company (GMC) Seeking ASI Certification:** This case-study describes the development and operations of an Australian 100% Indigenous-owned and -operated bauxite mining company and its attached Regional Training Centre to support local Indigenous Peoples' employment in the mining operations. GMC is partnering with ASI and the global coffee giant Nespresso to achieve ASI certification and tracking of the company's certified bauxite through the value-chain to its end-use in Nespresso's aluminium coffee pods. The project has involved comprehensive FPIC implementation and ongoing training and participation of local Indigenous Peoples in environmental monitoring. GMC are enthusiastic about working with ASI auditors to verify the company's FPIC implementation and to lead field-based data collection for the standard assurance process.

## RECOMMENDATIONS

- Certification Programs require permanent Indigenous Peoples Advisory Bodies/Forums.
- Context-specific FPIC guides to support extractives industry operators and local Indigenous Peoples.
- Context-specific FPIC verification criteria/frameworks to support auditors.
- Greater transparency of extractives industry operators' FPIC processes and outcomes.
- Auditors require locally-specific cultural awareness training to support improved and culturally-appropriate participation of Indigenous Peoples in data collection for assurance.
- Training to improve Indigenous Peoples' capacity to participate in data collection for assurance, including in the use of innovative technologies (e.g. via mobile phones, GIS/GPS, drones).
- Greater transparency of auditor credentials.
- Certification Program's Complaints Mechanisms must be founded on the UN Guiding Principles on Business and Human Rights (2011).
- Use of bonds to hold extractives industry operators to account for breaches of Indigenous Peoples' human rights.

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## 1. BACKGROUND

This study explores the topic '*Indigenous Peoples' participation in sustainability standards for extractives*'. The following sections provide context to this research topic. The study objectives are then outlined.

### 1.1 Extractives Industry

In this study, the 'extractives industry' refers to mining, forestry, hydrocarbon, industrial agriculture and hydroelectricity industries. This includes state-owned and private corporations (and partnerships) engaged in minerals and metals extraction and processing, timber and non-wood forest products, oil, gas, palm oil and hydroelectric dam operations. These sectors make significant contributions to local, national and global economies.

### 1.2 Sustainability Standards

Extractives industry development has a history of substantial environmental, social and cultural impacts. This includes human rights impacts on Indigenous communities. Many states have responded with national laws requiring environmental and social impact assessments and mitigation strategies, engagement of affected Indigenous Peoples in development planning and decision-making, and mutual agreements on the financial and other benefits to flow to affected communities. But in many cases these laws have been weak, ineffective or poorly enforced. At the same time, and in response to weak national-level action, there has been an emergence of international environmental and human rights laws and declarations (i.e. global norms) to encourage sustainable development including best-practice respect of Indigenous Peoples' rights and benefit sharing by operators. For example, the International Labour Organization (ILO) Convention No. 169 and the United Nations Declaration on the Rights of Indigenous People (UNDRIP) both include social, economic and cultural principles and indicators to protect Indigenous Peoples' rights when facing extractives industry developments.

Beyond international laws and declarations, there are a growing number of initiatives worldwide aimed at fostering the development of a sustainable extractives industry. These initiatives are often market-driven, led by businesses and consumers wanting to understand how their purchasing decisions impact the environment and community, and have involved the introduction of standards that certify the sustainability of management practices including supply chains. Such initiatives include standards developed by international financial institutions and industry-specific certification programs, and in extractives operators' internal governance structures. Certification of standards designed to enhance sustainability is often achieved through a system of auditing or verification by independent third-parties. The standards underpinning these initiatives refer to different aspects of sustainability, including environmental, social, cultural, economic, and the respect of human rights. Indigenous Peoples' right to 'Free, Prior and Informed Consent' (FPIC) about developments impacting their traditional lands, waters and other cultural resources is often a key element of these standards. Extractives industry operators increasingly pursue these sustainability initiatives to highlight their 'Corporate Social Responsibility' (CSR), to manage risk to their reputation and business bottom line, and to support a social license to operate.

Table 1 presents examples of important initiatives promoting sustainability in the extractives industry.



**Table 1. Examples of initiatives promoting sustainability in the extractives industry.**

Category	Sustainability Initiative
<b>International Human Rights Laws &amp; Declarations</b> <p>(policies, conventions, norms)</p>	<ul style="list-style-type: none"> <li>The Universal Declaration of Human Rights (1948) <a href="http://www.un.org/en/universal-declaration-human-rights/">http://www.un.org/en/universal-declaration-human-rights/</a></li> <li>UN Convention on the Elimination of All Forms of Racial Discrimination (1965) <a href="http://www.ohchr.org/EN/ProfessionalInterest/Pages/CERD.aspx">http://www.ohchr.org/EN/ProfessionalInterest/Pages/CERD.aspx</a></li> <li>International Covenant on Economic, Social and Cultural Rights (Article 1, 1966, entry into force 1976) <a href="http://www.ohchr.org/EN/ProfessionalInterest/Pages/CESCR.aspx">http://www.ohchr.org/EN/ProfessionalInterest/Pages/CESCR.aspx</a></li> <li>Indigenous and Tribal Peoples Convention (International Labour Organization C169 (1989)) <a href="http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C169">http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C169</a></li> <li>Rio Declaration on Environment and Development (Principle 22, 1992) <a href="http://www.unesco.org/education/pdf/RIO_E.PDF">http://www.unesco.org/education/pdf/RIO_E.PDF</a></li> <li>World Commission on Dams (1998) <a href="http://staging.unep.org/dams/WCD/">http://staging.unep.org/dams/WCD/</a></li> <li>UN Declaration on the Rights of Indigenous Peoples (UNDRIP) (2007) <a href="https://www.un.org/development/desa/indigenouspeoples/declaration-on-the-rights-of-indigenous-peoples.html">https://www.un.org/development/desa/indigenouspeoples/declaration-on-the-rights-of-indigenous-peoples.html</a></li> <li>UN Guiding Principles on Business and Human Rights, 2011 <a href="http://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf">http://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf</a></li> </ul>
<b>State Law</b>	<p>Requirements for industry operators to undertake Impact Assessments –</p> <ul style="list-style-type: none"> <li>Environmental Impact Assessments (EIA), Social Impact Assessments (SIA), Health Impact Assessments (HIA), and/or Integrated Assessments (IA)</li> </ul> <p>Requirements for industry operators to initiate Negotiated Agreements with impacted Indigenous Peoples –</p> <ul style="list-style-type: none"> <li>Impact &amp; Benefit Agreements (I&amp;BA, Canada), Benefit Sharing Agreements (BSA), Community Benefits Agreements (CBA), Indigenous Land Use Agreements (ILUA, Australia)</li> </ul>
<b>Corporate Social Responsibility (CSR) Policies, Principles &amp; Standards</b>	<p>Industry operators' internal procedures/standards –</p> <ul style="list-style-type: none"> <li>Community Engagement/Consultation, Collaborative Arrangements/Partnerships, Governance Agreements, Social Actions Plans, Social Investment Strategies, Socially Responsible Investment Company recognition</li> </ul> <p>International Financial Institutions' procedures/standards for respecting the rights of Indigenous Peoples –</p> <ul style="list-style-type: none"> <li>World Bank Operational Directive 4.20 (1991), replaced by World Bank Operational Policy (OP) and Bank Procedure (BP) 4.10 (2005) <a href="https://policies.worldbank.org/sites/ppf3/PPFDocuments/090224b0822f89d5.pdf">https://policies.worldbank.org/sites/ppf3/PPFDocuments/090224b0822f89d5.pdf</a></li> <li>Equator Principles (2003) <a href="http://www.equator-principles.com/">http://www.equator-principles.com/</a></li> <li>International Finance Corporation (IFC) Performance Standard 7 (2006, updated 2012) <a href="http://www.ifc.org/wps/wcm/connect/topics_ext_content/ifc_external_corporate_site/sustainability-at-ifc/policies-standards/performance-standards/ps7">http://www.ifc.org/wps/wcm/connect/topics_ext_content/ifc_external_corporate_site/sustainability-at-ifc/policies-standards/performance-standards/ps7</a></li> <li>Inter-American Development Bank (IDB) Operational Policy 7-65 (2006) <a href="https://publications.iadb.org/bitstream/handle/11319/5533/English.pdf?sequence=8">https://publications.iadb.org/bitstream/handle/11319/5533/English.pdf?sequence=8</a></li> <li>European Bank for Reconstruction and Development (EBRD) Social and Environmental Policy Performance Requirement 7 (2008) <a href="http://www.ebrd.com/documents/comms.../pdf-guidance-note-on-indigenous-peoples.pdf">www.ebrd.com/documents/comms.../pdf-guidance-note-on-indigenous-peoples.pdf</a></li> <li>International Fund for Agricultural Development (IFAD) Policy on Engagement with Indigenous Peoples (2009) <a href="https://www.ifad.org/documents/10180/2c0fcca8-e2ed-4adb-9b16-caceb1019fa8">https://www.ifad.org/documents/10180/2c0fcca8-e2ed-4adb-9b16-caceb1019fa8</a></li> </ul>
<b>Extractives Industry Certification Programs &amp; Standards</b>	<p>Mining –</p> <ul style="list-style-type: none"> <li>International Council on Mining and Metals (ICMM) <a href="https://www.icmm.com/en-gb/publications/mining-and-communities/indigenous-peoples-and-mining-good-practice-guide">https://www.icmm.com/en-gb/publications/mining-and-communities/indigenous-peoples-and-mining-good-practice-guide</a>, Responsible Jewellery Council (RJC) <a href="https://www.responsiblejewellery.com/">https://www.responsiblejewellery.com/</a>, Aluminium Stewardship Initiative (ASI) <a href="https://aluminium-stewardship.org/asi-standards/">https://aluminium-stewardship.org/asi-standards/</a>, Initiative for Responsible Mining Assurance (IRMA) (in development) <a href="http://www.responsiblemining.net/">http://www.responsiblemining.net/</a>, Extractive Industries Transparency Initiative (EITI) <a href="https://eiti.org/">https://eiti.org/</a></li> </ul> <p>Forestry –</p> <ul style="list-style-type: none"> <li>Forest Stewardship Council (FSC) <a href="https://ic.fsc.org/en/what-is-fsc-certification/forest-management-certification">https://ic.fsc.org/en/what-is-fsc-certification/forest-management-certification</a>, Program for the Endorsement of Forest Certification (PEFC) <a href="https://www.pefc.org/standards/overview">https://www.pefc.org/standards/overview</a>, Sustainable Forestry Initiative (SFI) <a href="http://www.sfi-program.org/sfi-standards/">http://www.sfi-program.org/sfi-standards/</a>, Responsible Wood (formerly Australian Forestry Standard) <a href="https://www.responsiblewood.org.au/">https://www.responsiblewood.org.au/</a></li> </ul> <p>Hydrocarbons –</p> <ul style="list-style-type: none"> <li>Equitable Origin (EO) <a href="https://www.equitableorigin.org/">https://www.equitableorigin.org/</a></li> </ul> <p>Industrial Agriculture –</p> <ul style="list-style-type: none"> <li>Roundtable on Sustainable Palm Oil (RSPO) <a href="https://rspo.org/certification">https://rspo.org/certification</a>, FairTrade <a href="http://fairtrade.com.au/">http://fairtrade.com.au/</a>, The Rainforest Alliance <a href="https://www.rainforest-alliance.org/business/sas/">https://www.rainforest-alliance.org/business/sas/</a>, FAO Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security <a href="http://www.fao.org/tenure/voluntary-guidelines/en/">http://www.fao.org/tenure/voluntary-guidelines/en/</a></li> </ul>

### 1.3 Indigenous Peoples & Their Participation in Extractives Industry Sustainability Standards

Indigenous Peoples' traditional lands and waters are often rich in sought-after natural resources. Many Indigenous communities are therefore exposed to large-scale extractives industry developments. These operations are typically run by large multinational companies. Across the world, there are stark differences in the level of states' recognition of the rights of Indigenous Peoples and this influences the practices of multinational companies<sup>1</sup>. Many Indigenous communities have experienced profoundly detrimental social, economic, health, cultural and livelihood impacts from extractives industry developments on their traditional lands and waters. With the continued growth of extractives industries across the globe and the sought-after natural resources being increasingly depleted in easily accessible locations, there are increasing demands for access to Indigenous Peoples' more remote lands and waters. This means there is a high potential for continued detrimental impacts on Indigenous Peoples from extractives industry developments. In some cases, to mitigate the negative impacts of multinational companies' extractives developments and improve the benefits flowing to their communities, some groups or communities of Indigenous Peoples have established and operate their own extractives businesses. Examples include commercial forestry and mining operations of varying scales<sup>2</sup>.

Extractives industry operators' adherence to sustainability standards for project certification has the potential to reduce detrimental impacts on Indigenous Peoples and improve the benefits flowing to these communities. While the rights of Indigenous Peoples are increasingly incorporated into the sustainability standards underpinning extractives industry certification programs, there remain community concerns and implementation challenges. For example, Indigenous Peoples often do not participate as equal partners in the design and evaluation of sustainability standards. Key areas of concern for Indigenous Peoples are the setting of standards, and standard assurance processes including their participation in data collection and verifying company implementation of FPIC. Program complaints mechanisms and complainants' access to remedy are also of much concern. Where Indigenous-owned and -operated extractives businesses adhere to sustainability standards for project certification, these cases may provide insights for improving the practices of multinational companies in the key areas of Indigenous community concern<sup>3</sup>.

### 1.4 Study Objectives

This study aims to:

- Provide a comprehensive picture of existing approaches used by extractives industry certification programs to facilitate the participation of Indigenous Peoples in the programs' sustainability standards, including for standard-setting, decision-making, monitoring and evaluation; and
- Generate recommendations for improving the participation of Indigenous Peoples in extractives industry certification programs.

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<sup>1</sup> For example, see Colchester, 2011; MacInnes et al. 2017; Tomlinson, 2017.

<sup>2</sup> For example, see De Pourcq et al. 2009; Hodgdon & Sandoval, 2015; Hodgdon et al. 2015; Che Piu Deza & Hodgdon, 2015; Eichler, 2017; and Taan Forest (BC, Canada) <http://www.taanforest.com/>; numerous other forestry entities in Canada <https://ca.fsc.org/en-ca/newsroom/id/580> and ecoforestry in Papua New Guinea <http://www.greenpeace.org/australia/en/news/forests/Ecoforestry-an-alternative-for-Papua-New-Guinean-forest-communities/> and the Gulkula Bauxite Mine (NT, Australia) <https://www.sbs.com.au/nitv/nitv-news/article/2017/08/06/indigenous-owned-mining-operation-and-training-centre-opens-nt>

<sup>3</sup> For example, see Molnar et al. 2004; Humphries & Kainer, 2006.

The study serves as expert input for a participatory workshop with Indigenous Peoples and other stakeholders to be convened around the annual meeting of the Aluminium Stewardship Initiative's (ASI) Indigenous Peoples Advisory Forum (IPAF) in Suriname in March 2018. During this event, the workshop participants will discuss avenues for improved Indigenous Peoples participation in sustainability initiatives in the extractives industry. This study will support those discussions and provide an information resource for Indigenous communities impacted by extractives industries. It can also inform improved Indigenous Peoples engagement practices by extractives industry operators, certification programs and auditors.

## **2. METHOD**

This study used literature review, a survey of key informants and case studies to address three research questions:

- How do certification programs support the participation of Indigenous Peoples in program governance and assurance processes?
- What examples of best-practice can be highlighted in this context?
- What recommendations can be made for developing best-practice in Indigenous Peoples' participation in sustainability standards?

Key topics of research focus were the involvement of Indigenous Peoples and inclusion of their perspectives in certification program decision-making including the setting of sustainability standards, FPIC implementation and verification, participatory data collection for standards assurance/impact assessment, and program complaints mechanisms and complainants' access to remedy.

The research topics were investigated with a focus on the following extractives industry certification programs:

- Aluminium Stewardship Initiative (ASI);
- Responsible Jewellery Council (RJC),
- Forest Stewardship Council (FSC);
- Roundtable on Sustainable Palm Oil (RSPO); and
- Equitable Origin (EO).

Details of the research methods and data sources are briefly outlined in the following sections. Further details are provided in Appendix 1.

### **2.1 Literature Review**

The literature review assessed relevant academic and grey literature on sustainability standards and Indigenous peoples' rights and participation in sustainability standards. The literature review was largely restricted to documents published in English.

## Review of the Academic Literature

Review of the academic literature involved a search of the Scopus database<sup>4</sup> and systematic mapping of the retrieved literature to identify publication trends, biases and gaps. The Scopus search included studies in all languages. In total, the study analysed 223 relevant academic documents. These documents were nearly all written in English, with two studies written in French, one in Spanish and one in Russian. The analysed documents included articles, reviews and short surveys published in research journals; papers presented at industry conferences; and book reviews and book chapters. Data of interest to the study topic were systematically extracted from the documents. For the majority of the documents, the data extraction was based on the document's title, keywords and abstract (which were all in English). Some documents deemed of particularly high relevance to the study topic were also subject to full-text review. Key data extracted from the documents included publication year, author affiliations, geographic location of the study, extractives industry/project details, and the study's topic(s) of focus<sup>5</sup>. The extracted data were entered in a Microsoft Excel spreadsheet. Key features of the reviewed documents, including their spatial and temporal distributions, were mapped using graphical representations and descriptive statistics.

## Review of the Grey Literature

Review of the grey literature was restricted to documents published in English. Grey literature documents were obtained from google searches; from searching the websites of international aid and human rights organisations, research institutions, environmental/social non-government organisations (NGOs) and the focus certification programs; and from recommendations by key informants. The reviewed grey literature comprised reports, policies, procedures, manuals, guides, news articles and the sustainability standards of the focus certification programs and other international sustainability initiatives that address the rights of Indigenous Peoples.

## 2.2 Survey of Key Informants

A survey of key informants was undertaken between December 1 2017 and January 31 2018. The key informants were individuals with recognised expertise in extractives industry sustainability and Indigenous Peoples rights. They included representatives from certification programs (FSC, ASI, EO, ISEAL Alliance) and environmental/social NGOs (GIZ, Forest Peoples Program, Oxfam International, FORCERT), research institutions (an Australian university), and independent auditors. A total of 53 potential informants were contacted, 33 replied and 17 participated in the survey. Table 2 provides details of the surveyed key informants, highlighting their spread across stakeholder categories and range of expertise. The names of all contacted and surveyed key informants have been withheld to maintain anonymity.

**Table 2. Details of the Surveyed Key Informants**

Stakeholder Category	Position	Region of Expertise
Certification Program	Board Director	International
	CEO	International

<sup>4</sup> Scopus is Elsevier's abstract and citation database. It is the largest database of peer-reviewed literature, comprising scientific journals, books and conference proceedings. The full text of documents found in Scopus can be in any of the 40 languages that the database covers, but the title, abstract and keywords must be in English. See <https://www.elsevier.com/solutions/scopus>

<sup>5</sup> A form of 'keyword/keyphrase' analysis, refined to reflect this study's focus on Indigenous Peoples' participation in sustainability standards for extractives. Details of the focal topics most commonly identified are presented in the Findings (see 'Focal topics in the academic literature and footnotes 11-14).

	Director - Standards & Assurance	International
	CEO	Australia / New Zealand
	Policy & Advocacy Manager	Australia / New Zealand
	CEO	North & South America
	Social Policy Manager	International
<b>NGO</b>	Project Officer – Legal and Human Rights	South-East Asia
	Advisor – Extractives for Development	International
	Program Manager – Regional Resource Governance	West Africa (Liberia, Sierra Leone, Ivory Coast)
	Program Manager – Indigenous Rights & Issues	International
	Program Manager – Good Governance in the Extractives Sector	Democratic Republic of the Congo
	Senior Policy Advisor – Extractives Industries	International
	Consultant – Certification & Indigenous Rights	Australia
<b>Independent Auditor</b>	Director / Consultant – Social mapping specialist	Australia / South Pacific (Melanesia) Region
	Technical Advisor & Coordinator of Standards Technical Committee	Papua New Guinea
<b>Researcher</b>	Professor – Social dimensions of mining	International

All of the surveyed experts were first emailed an Introductory Letter (outlining study aims) that included a 5-point questionnaire (see Table 3). They were encouraged to complete and return the questionnaire, and participate in a follow-up phone, skype or in-person interview. The questionnaire also functioned as an interview guide. The key informant responses included a combination of returned questionnaires and follow-up interviews, questionnaires only, and interviews only. Most of the interviews were via phone or skype conversations. Some in-person interviews were also undertaken in Australia in Brisbane and Cairns (Queensland), Melbourne (Victoria) and Gove (Northern Territory). Many of the interviews included follow-up emails to clarify and/or further elaborate on responses.

**Table 3. Questionnaire & Interview Guide**

Question No.	Question
1.	What can you tell us about Indigenous Peoples' participation in the governance of certification programs in the extractives industry – specifically regarding participation in: <ul style="list-style-type: none"> <li>a. Standard-setting?</li> <li>b. Decision-making?</li> </ul>
2.	What can you tell us about Indigenous Peoples' participation in the monitoring and evaluation of certification programs in the extractives industry – specifically regarding their participation in: <ul style="list-style-type: none"> <li>a. Data collection for auditing?</li> <li>b. The existence of complaints mechanisms and access to remedy?</li> </ul>
3.	Can you describe any best-practice examples of Indigenous Peoples' participation in these governance and assurance processes?
4.	How can practices for Indigenous Peoples' participation in the governance and assurance processes of certification programs in the extractives industry be improved?
5.	Can you suggest any important documents, websites or initiatives to further inform our study?

## 2.3 Case Studies

The literature review and survey of key informants identified examples of Indigenous Peoples' participation in extractives industries and associated sustainability standards that are regarded as good/best-practice. A list of a number of these examples for which case study information is available is first provided. A more detailed case-study is then presented. This detailed case-study uses literature review, key informant survey data, field-based observations,

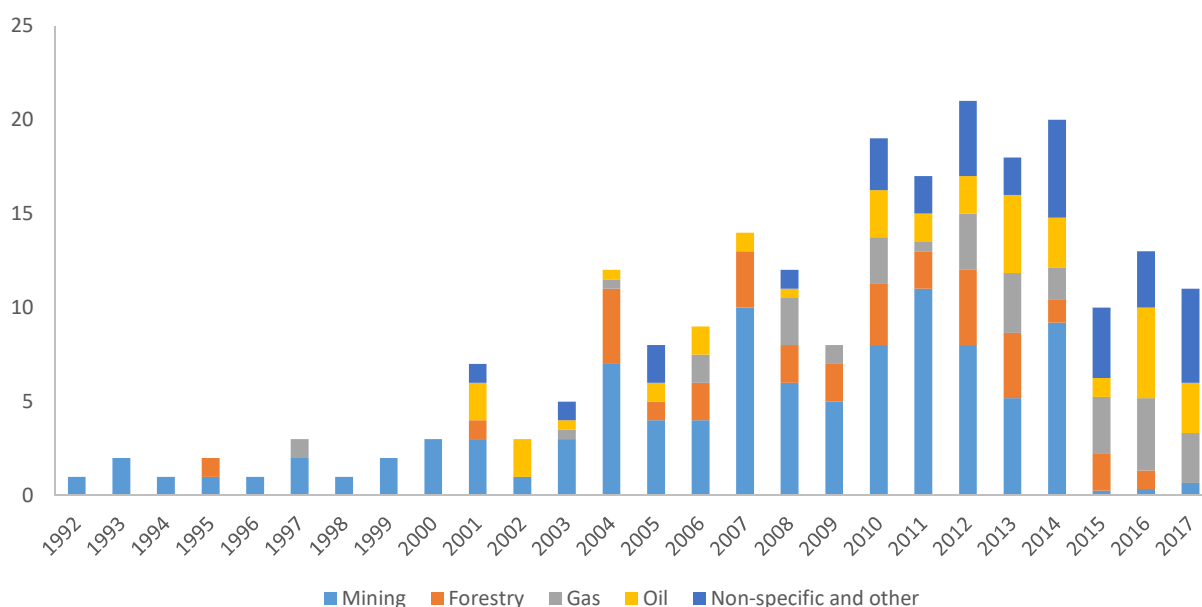
and stakeholder meetings and discussions to describe an Australian 100% Indigenous-owned and -operated bauxite mining company and the organisation's quest for ASI certification.

### 3. FINDINGS

#### 3.1 Trends, Biases & Gaps in the Literature<sup>6</sup>

##### Temporal Evolution of the Academic Literature

The oldest document retrieved was published in 1992. Since the early 2000s there has been a strong increase in the number of publications relating to Indigenous Peoples' participation in sustainability standards for extractives<sup>7</sup>, with mining-related papers dominating until recently (Figure 1). There was a relatively steady rate of forestry-related publications between 2004 and 2015 when they tailed off<sup>8</sup>. Publications relating to the oil and gas industries have increased over recent years, as have publications focused on the extractives sector in general (i.e. 'non-specific' industry focus). The 'non-specific' category in Figure 1 includes small numbers of publications focused on 'other' industries that include palm oil, hydroelectricity, underground water extraction, wind power and geothermal energy.



**Figure 1. Temporal Evolution of the Academic Literature on Indigenous Peoples' Participation in Sustainability Standards for Extractives**

##### Industry & Locational Distribution of the Academic Literature

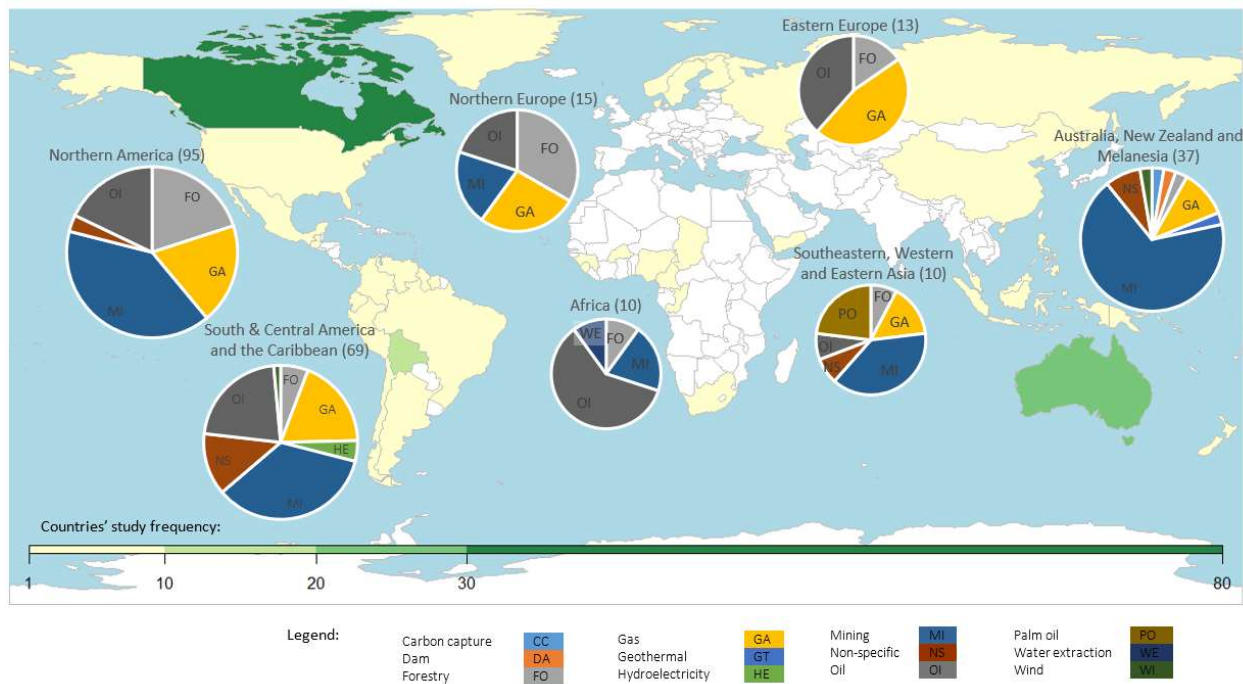
Research relating to Indigenous Peoples' participation in sustainability standards for extractives took place in 38 countries across all continents (Figure 2). Seventy-seven (77) of the 223 retrieved publications were focused on extractives industries and Indigenous Peoples in Canada, making it by far the most frequently studied country. Australia was the second most frequently studied country, with 27 publications relevant to the study topic, followed by Bolivia (14 publications), Ecuador (9), Guatemala (9), Peru (8) and Russia (8). Eighteen (18) countries appeared in

<sup>6</sup> As noted in the Method, the literature review was largely restricted to documents published in English.

<sup>7</sup> The decrease in the number of publications in more recent years may be because recent papers have not yet been indexed to the Scopus database.

<sup>8</sup> Ibid.

only one publication and 32 publications did not specify a country of focus. At a regional level, publications focusing on countries in Northern America (95) and South/Central America and the Caribbean (69) dominated the literature, followed by the Australia/New Zealand/Melanesia region (37).



**Figure 2. Industry & Locational Distribution of the Academic Literature on Indigenous Peoples' Participation in Sustainability Standards for Extractives**

Mining-related studies were by far the dominant industry of focus of publications from the Northern America, South/Central America and the Caribbean, Australia/New Zealand/Melanesian, and Southeastern/Western and Eastern Asia regions. There were no mining-related studies from the Eastern Europe region where oil- and gas-related studies dominated the publications. Oil-related studies (focused on the Niger Delta) dominated the publications from Africa. Forestry-related studies were prominent among the publications from the Northern America and Northern Europe regions. Palm oil-related studies represented nearly a quarter of the publications from the Southeastern/Western and Eastern Asia region. The Australia/New Zealand/Melanesia region had the greatest diversity of extractives industries studied.

### Focal Topics in the Academic Literature

Few publications were retrieved that focused on Indigenous Peoples' participation in the governance and assurance processes of certification programs for the extractives industry. Research on these topics published in academic journals is limited to a small number of papers on Indigenous Peoples' engagement with FSC-certified projects<sup>9</sup> (in Canada and the Scandinavia region) and to a lesser extent RSPO-certified projects<sup>10</sup> (in South-East Asia). The academic literature is dominated by Indigenous Peoples' general engagement with extractives industry developments and/or the detrimental impacts of such developments. The trend is reporting on Indigenous Peoples' human rights;

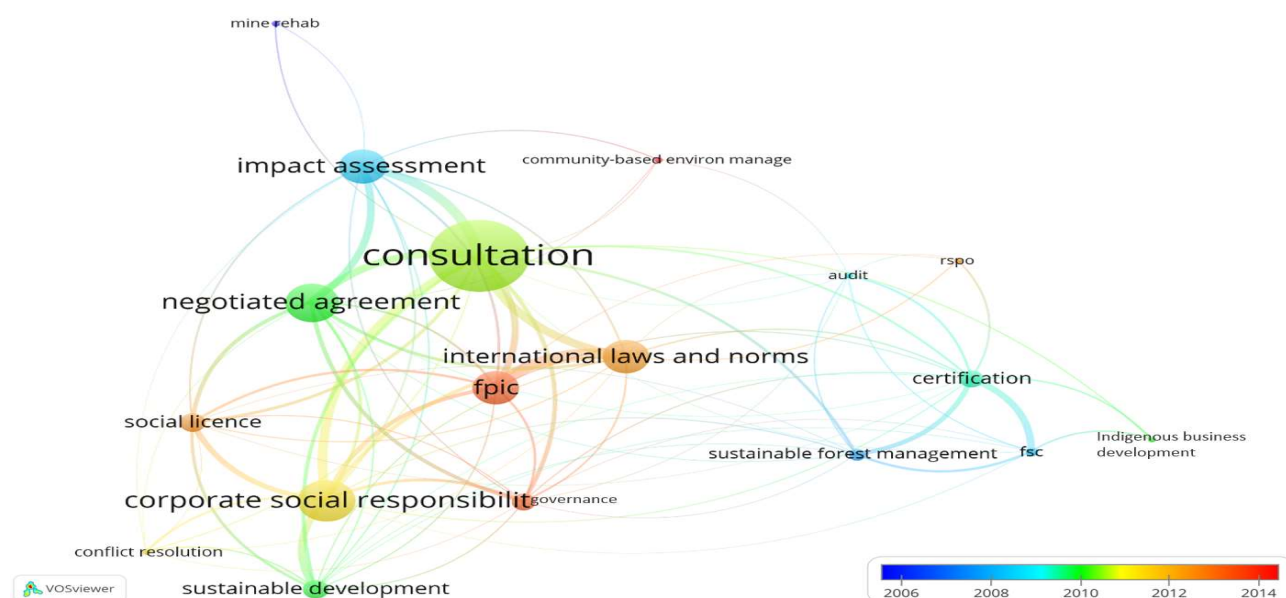
<sup>9</sup> For example, see Elad, 2001; Smith, 2004; Molnar et al. 2004; Keskitalo et al. 2009; Adam & Kneeshaw, 2011; McDermott, 2012; Bostrom, 2012; Mahanty & McDermott, 2013; Teitelbaum & Wyatt, 2013; Johansson, 2014.

<sup>10</sup> For example, see Silva-Castaneda, 2012; Pichler, 2013.



environmental, socio-economic and cultural impacts; the growth and activity of local opposition movements; and associated disputes, conflict and negotiations with multinational companies and governments to achieve more equitable and sustainable development outcomes consistent with international norms.

Figure 3 highlights the focal topics in the academic literature on Indigenous Peoples' participation in sustainability standards for extractives. 'Consultation'<sup>11</sup> and 'corporate social responsibility' were the most frequent focal topics in the literature, followed by 'negotiated agreements'<sup>12</sup> and 'impact assessments'<sup>13</sup>, and 'international laws and norms'<sup>14</sup> and 'FPIC'. This reflects a global recognition of the need for sustainable development and inclusion of Indigenous Peoples and the broader community in the extractives industry, the associated emergence of state regulations (i.e. hard law) and international norms (i.e. soft law), and moves by extractives companies to go beyond regulatory requirements and adopt negotiated agreements and/or voluntary sustainability standards (including internal 'codes of conduct' and to a lesser extent third-party certification) to gain and maintain a 'social license to operate'. There are many publications focused on extractives industries' regulatory requirements (i.e. assessments and agreements) and company compliance, along with critiques citing limitations of these requirements. There are likewise many publications focused on the implementation and outcomes of company adoption of voluntary human rights standards (i.e. UN and International Financial Institution norms, particularly FPIC).



**Figure 3. Focal Topics in the Literature on Indigenous Peoples' Participation in Sustainability Standards for**

**Extractives** Note: listed focal topics have two or more occurrences in the literature; Line thickness represents the number of co-occurrences/connections between two focal topics; Node sizes are relative to the overall frequency of a focal topic's mention in the literature.

<sup>11</sup> Incorporating community engagement/participation, collaboration, stakeholder engagement, community representation/policymaking/decision-making, and Indigenous Peoples' policies.

<sup>12</sup> Incorporating Impact & Benefits Agreements and Treaty Rights (Canada), Collaborative Agreements, Partnerships, Community Benefits Agreements, Benefit Sharing Agreements, Indigenous Land Use Agreements and Native Title (Australia), Land Rights, Forestry Management Agreements, Participatory Management/Governance, Social Action Plans, Social Investment Strategies, Remedy.

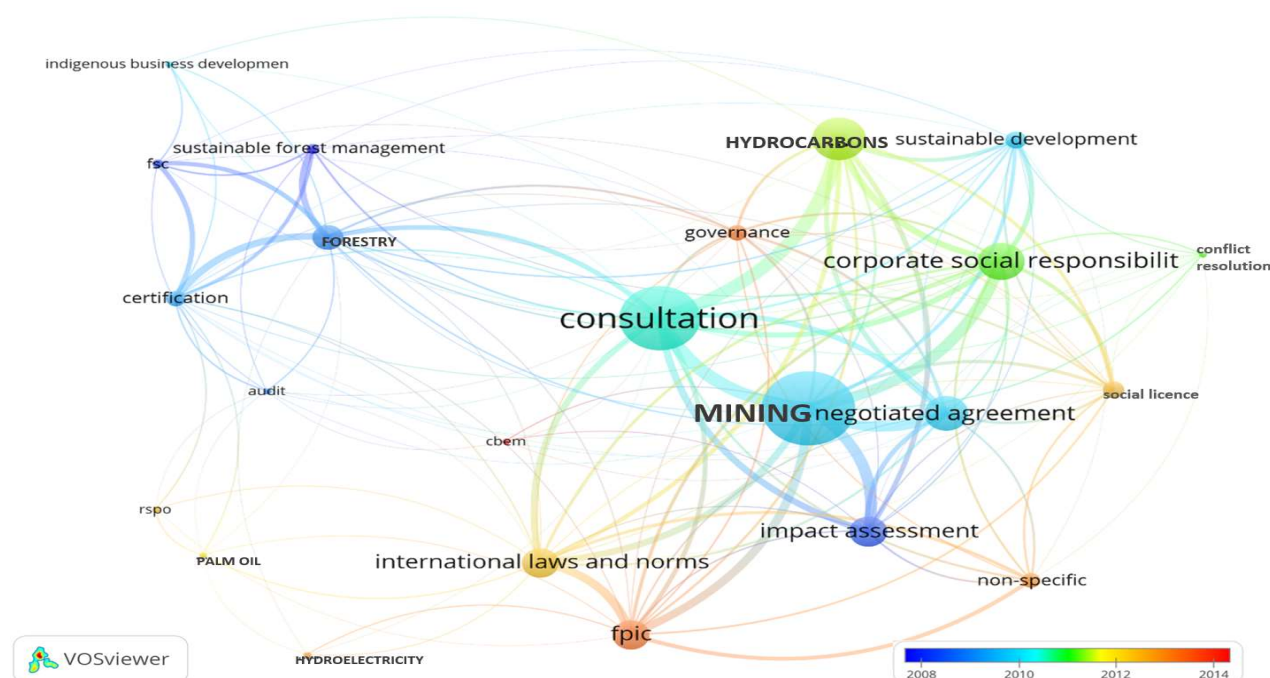
<sup>13</sup> Incorporating EIA, SIA, HIA, IA, risk assessments, and assessments incorporating Indigenous knowledge/perspectives.

<sup>14</sup> Incorporating human rights-associated initiatives - ILO, UNDRIP, International Financial Institutions/Corporations, World Commission on Dams, CDM, Inter-American Court of Human Rights, International Chamber of Commerce, World Bank Extractives Industries Review.



Figure 3 also displays the temporal evolution of focal topics in the literature. This shows that ‘impact assessments’, ‘sustainable forest management’ and associated ‘certification’ were most frequently reported in the literature between 2006 and 2008, while ‘negotiated agreements’, ‘consultation’ and ‘corporate social responsibility’ were most frequently reported between 2010 and 2012. More recently, ‘FPIC’, ‘governance’, ‘social license’ and ‘international laws and norms’ are the most frequently reported topics in the literature. The trend of a recent increase in FPIC-related publications reflects its emergence as the focal rights-based approach to empower Indigenous Peoples facing extractives industry developments.

Figure 4 highlights the dominance of the mining sector in the literature on Indigenous Peoples’ participation in sustainability standards for extractives. All of the most frequent focal topics in the literature are closely linked to mining-related publications, and to a slightly lesser extent to oil- and gas-related (i.e. hydrocarbons) publications. The focal topics of forestry-related publications are most commonly ‘sustainable forest management’, ‘certification’, ‘consultation’ and ‘FSC’, while ‘Indigenous business development’ and ‘audit’ are also more commonly associated with forestry-related publications. Figure 4 also again highlights the trend of a recent increase in publications focused on the extractives sector in general (i.e. ‘non-specific’ industry focus).



**Figure 4. Industry Focus of Topics in the Literature on Indigenous Peoples’ Participation in Sustainability**

**Standards for Extractives** Note: Industries are capitalised (except for ‘non-specific’) and in bold; listed focal topics have two or more occurrences in the literature; Line thickness represents the number of co-occurrences/connections between two focal topics; Node sizes are relative to the overall frequency of a focal topic’s mention in the literature.

### Sources of the Academic Literature

The most frequent source of the retrieved documents was scientific journals. The *Canadian Journal of Development Studies* and the journal *Impact Assessment and Project Appraisal* had 7 publications each. They were followed by *Third*

*World Quarterly, Society and Natural Resources, Resources Policy, Extractive Industries and Society, and Forestry Chronicle*, with 6 documents each. In total, 32 countries were found in the authors' affiliation list. The most frequent authoring country was Canada (67 publications, 30% of the publications), followed by the United States (36, 16%), Australia (34, 15%), the United Kingdom (25, 11%) and the Netherlands (12, 5%).

### **3.2 An Overview of Key Informant Responses**

There was a genuine, strong interest in the study topic among the 33 potential key informants who replied to the request to participate in the study. However, it is noteworthy that more than one-quarter of these (27%, 9 of the 33) subsequently withdrew from the study, stating they did not believe they had adequate expertise to contribute (despite working within the extractives/human rights sector) and/or referring to other more suitable experts. This is perhaps an indication of limited expertise in the field of Indigenous Peoples' participation in sustainability standards for the extractives industry.

The interviews often covered matters outside of but interrelated to the questionnaire topics. A general theme was the difficulty in identifying best-practice examples of Indigenous Peoples' participation in sustainability standards for extractives. It was agreed that these standards are an important tool to support extractives industry sustainability and protect Indigenous Peoples' rights, with much discussion based around the importance of Indigenous Peoples' FPIC and participation in standard-setting, implementation and compliance monitoring (i.e. auditing/assurance processes). Discussions highlighted difficulties and credibility issues with standard assurance processes, and a growing awareness and utilisation of innovative technologies to support Indigenous Peoples' participation in data collection for assurance.

### **3.3 Indigenous Peoples' Free, Prior & Informed Consent (FPIC)**

Indigenous Peoples' rights to the Free, Prior and Informed Consent (FPIC) of projects that may impact them is widely recognized as a fundamental sustainability principle and process for the extractives industry. The FPIC concept is considered to have emerged in the mid-1980s as part of Indigenous Peoples' struggles for self-determination<sup>15</sup> before being enshrined in numerous international human rights laws and declarations, commencing with the International Labour Organization (ILO) Convention No. 169 in 1989. Since then, FPIC has been included in a growing number of international norms and other standards and best-practice human rights guidance documents including in the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP), in instruments of International Finance Institutions (in particular the World Bank's IFC) and industry certification programs, and in some company's internal policies<sup>16</sup>. Some states have also incorporated Indigenous Peoples' right to FPIC into their national legislation<sup>17</sup>. FPIC is now a core internationally recognized safeguard or best-practice standard for respecting Indigenous Peoples' collective territorial, self-governance and cultural rights<sup>18</sup>. The FPIC principle and process attempts to ensure Indigenous Peoples can shape the direction and outcomes including benefits of resource developments that may impact them. As stated

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<sup>15</sup> Colchester & Ferrari, 2007; Hanna & Vanclay, 2013.

<sup>16</sup> For details on the international emergence and evolution of FPIC and its application in the extractives sector, see for example Mackay, 2004; Carino & Colchester, 2010; Doyle & Carino, 2013; Mahanty & McDermott, 2013; MacInnes et al. 2017; Tomlinson, 2017.

<sup>17</sup> But this remains uncommon – For details see Carino & Colchester, 2010, p.431.

<sup>18</sup> Doyle, 2015.

by one key informant *'FPIC is about setting the parameters for discussion, to maximize (Indigenous Peoples') participation and gain some balance of power'*.

While there is debate over a universally accepted definition, the United Nations Permanent Forum on Indigenous Peoples recognizes that FPIC should ultimately aim for a fairer treatment of Indigenous Peoples facing resource developments and other significant projects through:

- the absence of coercion, intimidation or manipulation (**Free**);
- consultation commencing early enough so there is adequate time for local decision-making processes and consent to be given (or not) prior to the commencement of development activities (**Prior**);
- access to sufficient and appropriate information for a considered choice e.g. on the nature of the activity – its size, pace, reversibility, scope, rationale, duration, location – and its likely impacts (**Informed**); and
- the right to consent, or to withhold consent, with due regard to customary institutions, gender and age (**Consent**)<sup>19</sup>.

The limited FPIC implementation experience to date suggests it is also important for industry operators and Indigenous Peoples to understand that FPIC is not<sup>20</sup>:

- **Consultation** – consultation is clearly a critical component of the consent-seeking process, but is not in itself sufficient to demonstrate that the right of communities to give or withhold their consent has been respected.
- **Pushing for 'yes'** – the whole purpose of FPIC is that it respects communities' right to say 'no' to a project. The withholding of consent at any stage of the process should be respected.
- **A stand-alone right** – FPIC needs to be respected alongside Indigenous Peoples' other human rights including rights and freedoms relating to self-governance, participation, representation, culture, identity, property, development and, crucially, to lands and territories.
- **A linear, tick-the-box process** – FPIC is not a one-off event that ends with the signing of an agreement by the community. It is instead an iterative process that guarantees continuous dialogue, giving Indigenous Peoples a voice at every stage of project planning and implementation.
- **A one-way process** – FPIC is about both the company providing communities with impartial and comprehensive information about a project and the company learning from the communities as to their customary tenure, livelihoods, history, social organisation, representation and decision-making structures, and aspirations for development. The FPIC process therefore needs to be one of participatory information gathering, planning and decision-making, with Indigenous Peoples playing a central role in the design and implementation of practices including impact assessments, stakeholder mapping and project monitoring.
- **An individual right** – FPIC must involve collective community consultation, participation and decision-making, rather than being sought on a one-to-one basis or among unrepresentative elite groups within a community.

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<sup>19</sup> UNPFIP, 2010. Other similar and/or more detailed descriptions can be found in Hanna & Vanclay, 2013 (p.150); Hill et al. 2014 (p.11); Colchester et al. 2015 (p.6) and Doyle, 2015 (p.4).

<sup>20</sup> These points are adapted from Colchester et al. 2015 (pp.6-7), with additional insights from this study's key informants.

- **A matter limited to interactions between companies and Indigenous Peoples** – The role of the State is also critical, as it is ultimately the State that is the bearer of the duty to uphold Indigenous Peoples’ right to FPIC.

Despite widespread endorsement of FPIC among many extractives industry operators and governments, its effective implementation has been limited and remains a challenge. Both the principle and process of FPIC (including the meaning and extent to which it is a right of Indigenous Peoples) remain contentious and contested<sup>21</sup>, with much uncertainty and debate amongst industry operators and governments as to what constitutes good international FPIC practice. There are different interpretations of the concept in different extractives industries, both amongst industry operators and industry sustainability standards. FPIC implementation is still evolving, with practices being shaped by national- and local-level politics and associated legal and policy frameworks for project appraisal, tenure and Indigenous Rights, including cultural contexts and decision-making protocols of Indigenous Peoples<sup>22</sup>. Research suggests FPIC is therefore being inconsistently and inadequately implemented in many extractives industry developments across the world<sup>23</sup>. Key challenges for effective FPIC implementation include the limited implementation experience amongst extractives industry operators and Indigenous Peoples<sup>24</sup>, ongoing difficulties with corporate-Indigenous Peoples/community relations<sup>25</sup>, the lack of verifiable implementation procedures and protocols<sup>26</sup>, and the ongoing debate as to whether FPIC represents a right for Indigenous Peoples to veto proposed projects<sup>27</sup>. Another major challenge for many Indigenous Peoples is that they are located in countries where the governments still do not formally recognise them or their collective rights to FPIC. For sustainability standard-setters (i.e. certification programs) in the extractives industry, emerging challenges are identifying what represents successful FPIC implementation from the perspective of different Indigenous Peoples and how this can be verified through program assurance processes. These important challenges are currently being addressed in a research project being undertaken by Equitable Origin in partnership with the ISEAL Alliance<sup>28</sup>.

To aid Indigenous Peoples’ understanding and implementation of their collective right to FPIC, Oxfam Australia has developed a simplified seven-step FPIC implementation framework<sup>29</sup>. The framework is part of a practical guide designed to facilitate dialogue between communities and project developers including financial institutions that provide financial support for developments on Indigenous Peoples’ lands. The seven steps are outlined in Table 4.

<sup>21</sup> Szablowski, 2010; Fontana & Grugel, 2016; Tomlinson, 2017; Schilling-Vacaflor, 2017.

<sup>22</sup> McCarthy, 2012; Haalboom, 2012; Doyle & Carino, 2013; ICMM, 2015; Tomlinson, 2017.

<sup>23</sup> Whitmore, 2005; Castillo & Alvarez-Castillo, 2009; Carino & Colchester, 2010; Finley-Brooks & Thomas, 2011; Minter et al. 2012; Flemmer & Schilling-Vacaflor, 2016; Papillon & Rodon, 2017; Machado et al. 2017; Dunlap, 2017.

<sup>24</sup> Although this FPIC implementation experience in varying locations and industry projects is increasing, and potentially transferrable lessons (both positive/good-practice and negative/poor-practice) are therefore also emerging. See for example Doyle & Carino, 2013; Gibson Macdonald & Zezulka, 2015; Collins, 2015.

<sup>25</sup> Such challenges include differing styles of communications, philosophies, timing, expectations etc. See for example Zandvliet & Anderson, 2009; Lehr & Smith, 2010.

<sup>26</sup> And related is that these need to be bespoke, or tailored to particular regional or local contexts.

<sup>27</sup> For example Wasserstrom & Gerrits (2013) note that native rights advocates and their supporters argue that FPIC should give Indigenous Peoples the right to veto development projects within their traditional territories, but not surprisingly, host-country governments often claim that restrictive interpretations violate national sovereignty and existing law. Ultimately, they insist that FPIC cannot derail investments that will benefit all citizens. See also Tomlinson, 2017.

<sup>28</sup> See <https://www.equitableorigin.org/2017/11/enabling-free-prior-and-informed-consent-through-voluntary-standards/>

<sup>29</sup> See Hill et al. 2014.

**Table 4. A Simplified Seven-Step FPIC Implementation Framework for Indigenous Peoples**

Step	Step Details
<b>1. Establish who is developing the planned project</b>	This will identify who should be seeking your consent, and may include private companies, governments and/or financial institutions. If needed, seek assistance from local or international NGOs and the media.
<b>2. Request information from the project developers</b>	Understand how the project will impact your community so the community can make informed decisions. Request this information (such as Environmental and Social Impact Assessments) in your own language and/or in other culturally-appropriate formats. Develop a list of key questions of community concern.
<b>3. Hold discussions within your community</b>	Begin discussing details of the project with all potentially affected community members, including women and children. Use maps, posters and videos to highlight the potential impacts and benefits. Identify if there are other potentially affected communities that you can partner with to negotiate with project developers.
<b>4. Community negotiations with the project developers</b>	Your community must be given enough time to consider the information and decide how you want to negotiate. Project developers should ensure your FPIC in the early stages of project planning and before each new stage of the project. Work together to prevent 'elite capture' of the community and developer negotiation process. Consider the community's expectations for sharing the potential benefits from the project.
<b>5. Seek independent advice</b>	Do not solely rely on information that project developers provide to the community. Independent technical and legal advice can help to ensure the community is fully informed on the issues being negotiated, including the short- and long-term impacts and benefits and the rights available to the community.
<b>6. Make decisions as a community</b>	FPIC is a collective right. The community must make a collective decision to say 'yes' or 'no' to the project in accordance with your own traditional decision-making processes. If the decision is 'yes', obtain a written, legally-binding agreement that clearly outlines the commitments and procedures to follow if these are not met.
<b>7. Maintain on-going communications with the project developers</b>	FPIC is an ongoing, iterative process, reflecting the long-term nature of large-scale development projects. Ongoing monitoring of project impacts and benefits by community representatives is essential. There should be regular dialogue and agreement between project developers and the community. A permanent stakeholder forum is a good way to achieve this and establish trust between the developer and the community.

### 3.4 Key FPIC Reports & Databases

The grey literature associated with Indigenous Peoples' participation in sustainability standards for extractives is extensive. Indigenous Peoples' right to FPIC and associated FPIC implementation guidance notes and community experiences are key features of this literature. A selection of highly relevant material is listed below, including reports and links to databases that may be of interest to readers.

#### FPIC Guides Produced by Extractives Industry Certification Programs

- Aluminium Stewardship Initiative (ASI) – see '*ASI Indigenous Peoples Advisory Forum (IPAF) Fact Sheet 2: Indigenous Peoples' Free, Prior & Informed Consent*'<sup>30</sup>.
- Responsible Jewellery Council (RJC) – see pp.170-179 (*COP 31 - Indigenous Peoples & Free Prior Informed Consent*) of the '*Responsible Jewellery Council Standards Guidance*'<sup>31</sup>.
- Forest Stewardship Council (FSC) – see '*FSC Guidelines for the Implementation of the Right to Free, Prior and Informed Consent (FPIC)*'<sup>32</sup>.
- Roundtable on Sustainable Palm Oil (RSPO) – see '*Free, Prior & Informed Consent Guide for RSPO Members*'<sup>33</sup>.

<sup>30</sup> Doyle, 2015.

<sup>31</sup> RJC, 2013.

<sup>32</sup> FSC, 2012.

<sup>33</sup> Colchester et al. 2015.

## Other FPIC-Related Reports

- *'From Controversy to Consensus? Lessons learned from government and company consultations with Indigenous organizations in Peru and Bolivia'*<sup>34</sup> <https://www.oxfamamerica.org/static/media/files/samro-backgroundunder-final-09-19-121.pdf>
- *'Conflict or Consent? The oil palm sector at a crossroads'*<sup>35</sup> <https://www.forestpeoples.org/sites/fpp/files/publication/2013/11/conflict-or-consentenglishlowres.pdf>
- *'Community Consent Index: Oil, Gas and Mining Company Positions on Free, Prior and Informed Consent (FPIC)'*<sup>36</sup> <https://www.oxfamamerica.org/static/media/files/community-consent-index.pdf>
- *'Understanding Successful Approaches to Free, Prior and Informed Consent in Canada'*<sup>37</sup> <http://borealcouncil.ca/reports/understanding-successful-approaches-to-free-prior-and-informed-consent-in-canada/>
- *'The Right to Decide: The Importance of Respecting Free, Prior and Informed Consent (Briefing Paper)'*<sup>38</sup> <http://amazonwatch.org/assets/files/fpic-the-right-to-decide.pdf>
- *'Lessons from Implementing Free, Prior and Informed Consent (FPIC) in the Philippines: A Case Study for Teaching Purposes – Facilitators Guide July 2016'*<sup>39</sup> <https://www.csr.uq.edu.au/publications/lessons-from-implementing-free-prior-and-informed-consent-fpic-in-the-philippines-a-case-study-for-teaching-purposes-facilitator-s-guide-july-2016>
- *'Making Free Prior & Informed Consent A Reality: Indigenous Peoples & the Extractives Sector'*<sup>40</sup> <http://solutions-network.org/site-fpic/files/2012/09/Making-Free-Prior-Informed-Consent-a-Reality-DoyleCarino.pdf>
- *'Handbook on Free, Prior and Informed Consent – For Practical Use by Indigenous Peoples' Communities'*<sup>41</sup> [http://www.thai-ips.org/Documents/FPIC\\_Handbook\\_Final.pdf](http://www.thai-ips.org/Documents/FPIC_Handbook_Final.pdf)
- *'Implementing a Corporate Free, Prior and Informed Consent Policy: Benefits and Challenges'*<sup>42</sup> <http://www.foleyhoag.com/publications/ebooks-and-white-papers/2010/may/implementing-a-corporate-free-prior-and-informed-consent-policy>
- *'Getting it Right: Making Corporate-Community Relations Work'*<sup>43</sup> <https://www.routledge.com/Getting-it-Right-Making-Corporate-Community-Relations-Work/Zandvliet-Anderson/p/book/9781906093198>
- *'Testing Community Consent: Tullow Oil Project in Kenya'*<sup>44</sup> [https://www.oxfam.org/sites/www.oxfam.org/files/file\\_attachments/bp-testing-community-consent-tullow-oil-kenya-081117-en.pdf](https://www.oxfam.org/sites/www.oxfam.org/files/file_attachments/bp-testing-community-consent-tullow-oil-kenya-081117-en.pdf)

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<sup>34</sup> Greenspan, 2012.

<sup>35</sup> Colchester & Chao, 2013.

<sup>36</sup> Voss & Greenspan, 2012.

<sup>37</sup> Gibson Macdonald & Zezulka, 2015.

<sup>38</sup> Amazon Watch, 2011.

<sup>39</sup> Collins, 2016.

<sup>40</sup> Doyle & Carino, 2013.

<sup>41</sup> IAITPF & IPF, 2011.

<sup>42</sup> Lehr & Smith, 2010.

<sup>43</sup> Zandvliet & Anderson, 2009.

<sup>44</sup> Mullins & Wambayi, 2017.

- 'FPIC and the Extractive Industries: A guide to applying the spirit of free, prior and informed consent in industrial projects'<sup>45</sup> <http://pubs.iied.org/pdfs/16530IIED.pdf>
- 'Indigenous Peoples Guidebook on Free Prior and Informed Consent and Corporation Standards'<sup>46</sup> [http://solutions-network.org/site-fpic/files/2012/09/First-Peoples-Worldwide-FPIC-Guidebook\\_5.10.12.pdf](http://solutions-network.org/site-fpic/files/2012/09/First-Peoples-Worldwide-FPIC-Guidebook_5.10.12.pdf)
- 'Training Manual for Indigenous Peoples on Free Prior and Informed Consent (FPIC)'<sup>47</sup> [https://aippnet.org/wp-content/uploads/2014/11/FPIC\\_Manual-Small.pdf](https://aippnet.org/wp-content/uploads/2014/11/FPIC_Manual-Small.pdf)

### Websites of FPIC-related Documents, Publications & Projects

- The Forest Peoples Programme (FPP) 'Resources on Free, Prior & Informed Consent (FPIC)' includes documents published exclusively in Spanish and French – <http://www.forestpeoples.org/en/environmental-governance-legal-human-rights-responsible-finance/training-tool/2017/resources-free>
- The 'Indigenous Peoples and Resource Extraction in the Arctic: Evaluating Ethical Guidelines' project – <http://goxi.org/profiles/blogs/indigenous-peoples-and-the-extractive-industries-evaluating>
- Indigenous Peoples Foundation for Education and Environment 'Publications (including case studies)' – <http://www.thai-ips.org/publications.html>
- Tebtebba Foundation (Indigenous Peoples' International Centre for Policy Research & Education) 'Free, Prior & Informed Consent' resources – <http://www.tebtebba.org/index.php/all-resources/category/67-free-prior-and-informed-consent>
- Mines and Communities (Human Rights) – <http://www.minesandcommunities.org/list.php?f=21>
- FPIC Solutions Dialogue 'Resources' – <http://solutions-network.org/site-fpic/bibliography/>
- International Finance Corporation's (IFC) *Performance Standard 7: Indigenous Peoples* (2012) – [http://www.ifc.org/wps/wcm/connect/topics\\_ext\\_content/ifc\\_external\\_corporate\\_site/sustainability-at-ifc/policies-standards/performance-standards/ps7](http://www.ifc.org/wps/wcm/connect/topics_ext_content/ifc_external_corporate_site/sustainability-at-ifc/policies-standards/performance-standards/ps7)
- Equitable Origin blog on the organisation's current (2017-2018) project entitled 'Enabling FPIC through Voluntary Standards'. The project aims to demystify the FPIC concept and produce a practical guidance for FPIC that is developed in partnership with Indigenous Peoples and can be used by standard-setting bodies and assurance providers – <https://www.equitableorigin.org/2017/11/enabling-free-prior-and-informed-consent-through-voluntary-standards/>

### 3.5 Indigenous Peoples' Participation in Certification Programs' Governance & Assurance Processes

The following sections provide details of the five certification programs of interest and Indigenous Peoples' participation in the governance and assurance processes of these programs. The ISEAL Alliance is included as it is an organisation that develops overarching 'Codes of Good Practice' on program governance and assurance processes that are adopted by, or form the foundation of, the standards underpinning the certification programs of interest. The

<sup>45</sup> Buxton & Wilson, 2013.

<sup>46</sup> First Peoples Worldwide, 2012.

<sup>47</sup> AIPP, 2014.

focus of analysis in the following sections is on the evolution of program processes over the last five years (i.e. 2013 – 2018).

### 3.5.1 ISEAL Alliance

#### Organisation Overview<sup>48</sup>

The ISEAL Alliance is a global membership association for sustainability standards. This non-government organisation strives to increase the uptake and impact of sustainability standards on a global scale. ISEAL Alliance's mission is to strengthen sustainability standards for the benefit of people and the environment. To achieve this, the organisation works with its members to support them in developing innovative and credible sustainability standards for their sectors. The ISEAL Alliance membership base is diverse and includes organisations such as the Forest Stewardship Council (FSC), the Responsible Jewellery Council (RJC), the Roundtable on Sustainable Palm Oil (RSPO), Equitable Origin (EO), Fairtrade International, the Rainforest Alliance, the Sustainable Agriculture Network (SAN) and the Marine Stewardship Council (MSC).

ISEAL Alliance members must comply with three ISEAL Codes of Good Practice in developing and implementing their standards. The Codes are underpinned by the ISEAL Credibility Principles (2013) which comprise a set of ten core values<sup>49</sup> that capture how standards and certification should operate in any sector to be effective and achieve positive social, environmental and economic impacts. They are considered to define the foundations of credible sustainability standards systems. The ISEAL Codes of Good Practice provide a globally-recognised framework used by leading sustainability standards. They currently focus on three core elements of a sustainability standard – Standard-setting (i.e. how a standard should be developed, structured and revised – underpinned by multi-stakeholder consultation and decision-making), Assurance (i.e. assessing compliance with standards – using rigorous and accessible methods to ensure accurate and transparent results) and Impacts (i.e. monitoring and evaluation systems – providing a roadmap to measure progress against sustainability goals and to improve practices over time). Indigenous Peoples are not identified in the ISEAL Credibility Principles, and only briefly mentioned in the Standard Setting Code. The ISEAL Credibility Principles and Codes of Good Practices commonly refer to 'stakeholders'<sup>50</sup>. The rights of Indigenous Peoples as legitimate stakeholders is most reflected in the ISEAL Credibility Principles No. 5 Engagement, No. 6 Impartiality and No. 7 Transparency, which underpin a number of the 'Desired Outcomes' in the Codes of Good Practices.

For further information see <https://www.isealalliance.org/> and <http://www.standardsimpacts.org/>

The ISEAL Credibility Principles (2013) can be found here [https://www.isealalliance.org/sites/default/files/resource/2017-11/ISEAL\\_Credibility\\_Principles.pdf](https://www.isealalliance.org/sites/default/files/resource/2017-11/ISEAL_Credibility_Principles.pdf)

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<sup>48</sup> Information contained in this section and all subsequent *Organisation Overview* sections is sourced from the organisation's website(s) and program documents, and interviews with key informants.

<sup>49</sup> These are – Sustainability, Improvement, Relevance, Rigour, Engagement, Impartiality, Transparency, Accessibility, Truthfulness, and Efficiency. These 'core values' were published in 2013 following a year-long global consultation with input from more than 400 stakeholders.

<sup>50</sup> Defined as an 'individual or group that has an interest in any decision or activity of an organisation' - Adapted from ISO 26000, (2010).



The three ISEAL Codes of Good Practice (Standard Setting, Assurance, Impacts) can be found here <https://www.isealliance.org/credible-sustainability-standards/iseal-codes-good-practice>

### **Involvement of Indigenous Peoples in Program Governance Processes –**

It is unclear what involvement Indigenous Peoples have had as stakeholders in the development of the ISEAL Credibility Principles and Codes of Good Practice. Development of the Credibility Principles was guided by an international multi-stakeholder Steering Committee and a year-long public consultation involving contributions from more than 400 stakeholders via in-person workshops (held in Brazil, USA, UK, China and India) and on-line comment<sup>51</sup>. International consultations since 2004 have guided development of the Codes of Good Practice. ISEAL has a Technical Committee functioning as an informal multi-stakeholder governance body to provide strategic advice and input to the organisation's membership and Board and to manage Code review processes. The Codes are reviewed every five years. A revised version 2 of the Assurance Code will be published in 2018. This analysis references version 1. The most recent versions of the Standard Setting and Impacts Codes, referenced here, are from 2014.

The ISEAL Credibility Principles outline the relation to organisation governance and standard-setting of Principles No. 5 Engagement and No. 7 Transparency. Details are provided in Table 5.

**Table 5. ISEAL Credibility Principles' ('Engagement' & 'Transparency') Relation to Organisation Governance & Standard-Setting.**

<b>Credibility Principle</b>	<b>Relation to organisation governance and standard-setting</b>
<b>Engagement:</b> Standard-setters engage a balanced and representative group of stakeholders in standards development. Standards systems provide appropriate and accessible opportunities to participate in governance, assurance, and monitoring and evaluation. They empower stakeholders with fair mechanisms to resolve complaints.	<p><b>Governance &amp; Operations:</b> Stakeholders have an opportunity either to participate directly in the governance bodies of a standards system or at a minimum to have their positions and priorities represented in governance discussions and decision-making. Governance bodies are often either elected or appointed and the process by which these bodies are constituted should be transparent, along with the balance in composition of the bodies.</p> <p><b>Standard-setting:</b> The standard-setter outlines to stakeholders why the standard is important and how they can participate in the standards development or revision process. The standard-setter then identifies stakeholder groups and key representatives within those groups who are likely to have an interest in the standard or who are likely to be affected by its implementation. The standard-setter brings together a balanced and representative group of interested stakeholders for deliberation and decision-making in the drafting and consultation process, paying particular attention to those stakeholders who will be directly affected by the standard's implementation. The standard-setter offers a range of mechanisms for soliciting input from stakeholders, and implements proactive strategies for engaging them. Extra efforts are made to engage stakeholder groups in the standards development process that are underrepresented or disadvantaged. The standard-setter publishes comments received, and how they took these comments into account.</p>

<sup>51</sup> ISEAL Alliance, 2013.

<p><b>Transparency:</b> Standards systems make relevant information freely available about the development and content of the standard, how the system is governed, who is evaluated and under what process, impact information and the various ways in which stakeholders can engage.</p>	<p><b>Governance &amp; Operations:</b> Information about how a standards system operates and makes decisions is made easily available. This includes information about the scheme owner's governance system and members, its business model and its funding sources. Stakeholders have access to documented decision-making where it does not compromise confidentiality. Information is available on how to make a complaint, any recorded complaints, their status and resolution.</p> <p><b>Standard-setting:</b> Information about standards development is made freely and publicly available at least through an organisation's website. This includes, at least, information on governance (how decisions are made and by whom, and how to participate in decision-making and standards development) and on consultation (stakeholder input and how it was addressed in standards development).</p>
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Source: ISEAL Alliance, 2013, 2014.

In the Standard-Setting Code, Clauses 5.2 (Stakeholder Identification), 5.3 (Public Summary), 5.4 (Public Consultation), 5.6 (Decision-Making), 5.7 (Standards' Availability), 5.8 (Review and Revision of Standards) and 6.4 (Local Applicability) outline Requirements for organisations to meet the Desired Outcomes associated with Indigenous Peoples' participation (as a potential stakeholder, including as a 'disadvantaged stakeholder') in the standard-setting process. 'Stakeholder mapping' is identified as an important part of stakeholder identification, but achieving representative participation by stakeholders in standard-setting activities is not a mandatory requirement, only an '*aspirational good practice*'<sup>52</sup>. However, Indigenous Peoples are identified as potentially '*directly affected stakeholders*' that should be able to participate in governance bodies' decision-making on the content of standards<sup>53</sup>.

### **Involvement of Indigenous Peoples in Program Assurance Processes –**

The ISEAL Credibility Principle No. 7 Transparency arguably requires for Indigenous Peoples' involvement (as a potential stakeholder) in program assurance processes, noting that the information made available should include '*stakeholder input and how it was addressed*'<sup>54</sup>. However, the ISEAL Assurance Code appears to have no mandatory requirement for Indigenous Peoples to participate in certification program assurance processes. For example, Requirement 5.2.4 (System Review) notes only that in reviewing their assurance program, standard systems owners '*can include stakeholder consultation regarding the quality of the assurance system*'<sup>55</sup>. Additionally, Stakeholder Engagement (6.1.4) in assurance processes is not a mandatory Code Requirement but a recommended Optional Good Practice. This is despite the guidance notes highlighting that '*active inclusion of stakeholders in the assurance process increases the transparency and thus public confidence in the process, and can be a vital source of information for assurance*'<sup>56</sup>.

<sup>52</sup> ISEAL Alliance, 2014, p. 12.

<sup>53</sup> Ibid, p. 14.

<sup>54</sup> ISEAL Alliance, 2013, p. 13.

<sup>55</sup> ISEAL Alliance, 2012, p. 12.

<sup>56</sup> Ibid, p. 14.

The ISEAL Credibility Principle No. 7 Transparency also underpins Indigenous Peoples' involvement (as a potential stakeholder) in standards systems' impact assessment. The ISEAL Impacts Code highlights that the relation of Transparency to impacts includes *'Stakeholders are aware of the standards system's intended outcomes and impacts, and how the monitoring and evaluation system will assess progress towards those objectives. Evaluation results are also open to the scrutiny of all stakeholders'*<sup>57</sup>. Clauses 6.1 (Stakeholder Identification) and 6.2 (Stakeholder Consultation) of the Impacts Code detail the mandatory requirements for stakeholder engagement in the design of a standard's Monitoring & Evaluation system. Other Clauses (i.e. 7.3 – Unintended Effects, 8.6 – Quality Assurance for Outcome and Impact Evaluations, 8.7 – Monitoring and Evaluation Reports, 10.1 – Publicly-available Information About the Monitoring & Evaluation System, 10.2 – Transparency of Evaluations) also outline the mandatory requirements for standards system owners to engage or consult with all relevant stakeholders for various purposes. Clauses 8.9 (Communication of Evaluation Results), 8.10 (Benefits of Monitoring & Evaluation for Entities Involved in the Standards System), 8.11 (Ethical Guidelines) and 10.4 (Increased Transparency, Public Access, and Engagement) outline additional Aspirational Good Practices that standards system owners are encouraged to pursue.

### **Program Complaints Mechanism & Indigenous Peoples' Access to Remedy –**

The ISEAL Alliance welcomes comments and feedback on its Credibility Principles and Codes of Good Practice from any stakeholder at any time<sup>58</sup>. In the ISEAL Standard-Setting Code, Clause 5.11 (Resolving Complaints) specifies the following Desired Outcome – *'Stakeholders have access to a transparent mechanism for raising concerns about the standard-setting process and having those concerns considered'*<sup>59</sup>. This requires standard-setting organisations to *'make impartial and documented efforts to resolve procedural complaints related to standard-setting, based on a publicly documented complaints resolution mechanism'*, and to *'disclose, at least to interested parties, decisions taken on procedural complaints'*<sup>60</sup>. In the ISEAL Assurance Code under Section 6.7 (Ongoing Scrutiny), Requirement 6.7.3 (Complaints) states the *'standards system owner shall have a documented complaints procedure that is accessible and responsive'*<sup>61</sup> before outlining the type of complaints the procedure shall facilitate and what the procedure shall require the standard system owner to do. Guidance notes highlight that *'standards system owners may consider the complaints system an essential component of the assurance scheme, as it allows them to include stakeholders in the assurance process'* and that the complaints system provides an incentive *'for everyone to comply with the requirements of the standards programme'*<sup>62</sup>.

In terms of stakeholders' access to remedy, under Section 6.4 (Consistent Assessment) of the ISEAL Assurance Code, Requirement 6.4.10 (Remediation and Sanctions) requires standards system owners to *'define and make publicly available how different gradations of nonconformity are addressed and remediated (for clients and for assurance providers)'*<sup>63</sup>. Guidance notes highlight the preference for resolving non-conformities before enforcing punitive sanctions, and outline the range of sanctions that standards systems owners can choose to employ in the case of

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<sup>57</sup> ISEAL Alliance, 2014a, p.9.

<sup>58</sup> Stakeholders are encouraged to submit comments and feedback to [info@isealliance.org](mailto:info@isealliance.org)

<sup>59</sup> ISEAL Alliance, 2014, p.17.

<sup>60</sup> Ibid.

<sup>61</sup> ISEAL Alliance, 2012, p.27.

<sup>62</sup> Ibid.

<sup>63</sup> ISEAL, 2012, p.21.

systemic failures. These sanctions range from suspension and public notifications to terminations of certificates. Criteria for imposing sanctions should be unambiguous so as to achieve their desired effect of incentivising conformance.

### 3.5.2 Aluminium Stewardship Initiative (ASI)

#### Organisation Overview

The Aluminium Stewardship Initiative (ASI) is a global, multi-stakeholder, non-profit standards setting and certification organisation focused on the responsible production, sourcing and stewardship of aluminium. The ASI was established in response to recommendations in the 2010 *Responsible Aluminium Scoping Phase Main Report*<sup>64</sup> that assessed the industry's sustainability-related risks and opportunities. Under the coordination of the International Union for Conservation of Nature (IUCN), a Standards Setting Group was established which developed the first version of the ASI Performance Standard, setting out responsible environmental, social and governance performance requirements for the aluminium value chain, from mine-site to downstream users.

The ASI was incorporated as a legal entity in June 2015 with a multi-stakeholder membership base from industry associations (including the mining, processing, automotive and packaging sectors), civil society (including human rights organisations) and other supporter groups. The ASI Standards Committee was convened in 2016 and currently comprises 23 individuals. Following two public consultations and in-depth discussions and deliberation of the feedback received by the ASI Standards Committee, the ASI Standards and Certification program - an independent, third-party certification program underpinned by a revised ASI Performance Standard (Version 2)<sup>65</sup> and a new complementary ASI Chain of Custody Standard (Version 1)<sup>66</sup> - was approved by the ASI Board of Directors in December 2017. The rights of Indigenous Peoples are addressed in Part C (Social) of the Performance Standard, under Section 9 (Human Rights). Criterion 9.1 (Human Rights Due Diligence), 9.3 (Indigenous Peoples), 9.4 (FPIC), 9.5 (Cultural & Sacred Heritage) and 9.6 (Resettlements) mention Indigenous Peoples, highlighting that the entity must implement policies and processes to ensure respect for the rights and interests of Indigenous Peoples, consistent with international standards, including the ILO Convention 169 and the UN Declaration on the Rights of Indigenous Peoples. Meaningful implementation of FPIC is of particular importance to the integrity of the ASI<sup>67</sup>. Certifications under the ASI Standards are set to begin in 2018.

For further information see <https://aluminium-stewardship.org/>

The ASI Performance Standard V2 (December 2017), the ASI Chain of Custody Standard V1 (December 2017) and associated guidance documents can be found here <https://aluminium-stewardship.org/asi-standards/>

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<sup>64</sup> Helan & Miller, 2010 - This report was prepared by a global group of stakeholders from the aluminium industry, civil society, research and policy organisations, and industrial users of aluminium products.

<sup>65</sup> ASI, 2017a

<sup>66</sup> ASI, 2017b

<sup>67</sup> Doyle, 2015.

### **Involvement of Indigenous Peoples in Program Governance Processes –**

The ASI has established an Indigenous Peoples Advisory Forum (IPAF) to function as a standing forum in the organisation's formal governance structure. The convening of the IPAF stemmed from multi-day meetings of Indigenous Peoples' rights stakeholders held in Thailand in 2015<sup>68</sup>, with additional meetings in Malaysia in 2016 and Australia in 2017. These meetings were facilitated by organisations supporting the ASI including the Asia Indigenous Peoples Pact (AIPP), the Forest Peoples Programme (FPP) and the IUCN. Meeting participants were from India, Cambodia, Australia, Guinea, Malaysia, Thailand, Suriname, the Philippines, Nepal, Bangladesh and the UK. Discussions included review of the ASI draft Performance Standard and otherwise focused on ASI's governance, assurance model and complaints mechanism, and the future role of the IPAF in ASI's programs. Terms of Reference for the establishment and functioning of the IPAF have been developed. The IPAF comprises representatives from Indigenous Peoples organisations and Indigenous Peoples' rights experts that have connections to the aluminium value chain.

Indigenous Peoples have participated in the setting of the ASI Standards by having two nominated IPAF representatives on the ASI Standards Committee. This has ensured Indigenous Peoples have had input into the development of the ASI Standards and appropriate indicators to measure implementation of the standards in practice. Being embedded in the ASI's governance structure, the IPAF ensures Indigenous Peoples will continue to have input into future revisions of the ASI Standards and other aspects of the organisation's decision-making. To influence ASI decision-making, the IPAF is scheduled to meet annually and resulting resolutions and recommendations will be tabled for consideration by the ASI Standards Committee and/or ASI Board. The ASI is also convening a Human Rights Working Group in 2018. The Working Group's terms of reference are expected to include providing additional guidance on FPIC and how to conduct human rights due diligence for the value chain.

Further details of the ASI IPAF including reports summarising outcomes of past meetings can be found here <https://aluminium-stewardship.org/about-asi/indigenous-peoples/>

### **Involvement of Indigenous Peoples in Program Assurance Processes –**

Development of the ASI Assurance Manual V1 (2017)<sup>69</sup> involved consultation with the IPAF that resulted in some direct inputs into the final version. The Assurance Manual outlines three ways in which Indigenous Peoples may participate in the Assurance Process – as auditees, as participants in audit planning, and as part of an audit team. Section 8.1 (Audit Process Overview) of the Manual notes that in conducting an audit, Indigenous Peoples may be interviewed to provide objective evidence to validate an entity's conformance with the Standard. This participation of Indigenous Peoples as potential auditees is supported by text in Sections 5.9 (Types of Objective Evidence), 5.11 (Sampling Techniques) and 7.7 (Preparing for an Audit – Informing and Training Personnel and Stakeholders). As participants in audit planning, Section 8.5.1 (Audit Scope Factors for Consideration) notes that where Indigenous Peoples are present, the audit scope should consider their expectations for the audit process (i.e. establishing the audit scope and planning the audit activities). Section 8.6 of the Manual (The Audit Team) also makes provision for the inclusion of Indigenous

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<sup>68</sup> A key output of this meeting was a report (Doyle et al. 2015) presenting a global overview of Indigenous Peoples' experiences with the aluminium industry. It includes case studies from Australia, Cambodia, Guinea, India and Suriname, and a comprehensive guidance on FPIC.

<sup>69</sup> ASI, 2017c.

Peoples on an audit team, particularly where warranted by local cultural factors that need to be reviewed when establishing the audit team make-up to suit the audit scope and objectives.

The ASI Assurance Manual also has an Oversight Mechanism (Section 9.1) to support the integrity and credibility of the ASI assurance model. Under this mechanism, if Indigenous Peoples are affected by an entity's activities/operations, the IPAF and local Indigenous Peoples will have input into the involvement of Indigenous Peoples and/or Indigenous rights experts in witness audits and associated investigations. An ASI Oversight Procedure to explain the oversight process in more detail is currently being drafted and is expected to be published on the ASI website by mid-2018. Also currently in draft form and expected to be published by mid-2018 is the ASI Monitoring & Evaluation Plan which will include a number of indicators that entity's will be required to report against to establish the impacts the ASI certification program is having in meeting the organisation's overall objectives for responsible production and sourcing of aluminium. There is information about this on the ASI website under the Theory of Change section<sup>70</sup>. The IPAF has helped with the analysis and review of relevant content in the draft Monitoring & Evaluation Plan.

The ASI Assurance Manual V1 (2017) can be found here <https://aluminium-stewardship.org/asi-standards/asi-assurance-manual/>

#### **Program Complaints Mechanism & Indigenous Peoples' Access to Remedy –**

The ASI has recently implemented a Complaints Mechanism<sup>71</sup> founded on the UN Guiding Principles on Business and Human Rights (2011). Development of the ASI Complaints Mechanism included valuable input from the IPAF, based on experience with other mechanisms and processes. The ASI Complaints Mechanism aims to ensure the fair, timely and objective resolution of complaints relating to ASI's standards setting processes, certification program, auditor conduct, and ASI policies and procedures. It is considered an important part of the overall ASI governance model, allowing stakeholders to raise issues of concern and have these investigated and addressed as appropriate. Indigenous Peoples (individuals and organisations) are identified as stakeholders eligible to submit a complaint. The IPAF plays an advisory role regarding supporting resources for complaints involving Indigenous communities and how learning from complaints processes that involve Indigenous Peoples should be addressed by the ASI. Implementation of the ASI Complaints Mechanism has not yet been tested. The organisation is developing a protocol for complaints record-keeping and a complaints database that will be used to categorise all complaints and associated responses, and where appropriate organise these into a 'Frequently Asked Questions' format that will be published on the ASI website for full transparency.

The ASI Complaints Mechanism V1 (November 2015) can be found here <https://aluminium-stewardship.org/asi-certification/asi-complaints-mechanism/>

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<sup>70</sup> <https://aluminium-stewardship.org/why-aluminium/theory-of-change/>

<sup>71</sup> ASI, 2015.

Details of the ASI Complaints Mechanism and Disciplinary Procedures can also be found in Section 11 of the ASI Assurance Manual V1 (2017).

### **3.5.3 Responsible Jewellery Council (RJC)**

#### **Organisation Overview**

The Responsible Jewellery Council (RJC) is a not-for-profit standard setting and certification organisation established to reinforce consumer confidence in the jewellery industry by advancing responsible ethical, social and environmental business practices for diamonds, gold and platinum group metals. The RJC was established in 2005 by a group of 14 organisations from the diamond and gold jewellery industry. It currently has more than 1,000 member companies that span the jewellery supply chain from the mine-site to retail sectors. The RJC is a whole-of-supply chain standards initiative and seeks to work with a wide range of stakeholders in defining and implementing responsible jewellery practices through its two certification standards – the RJC 2013 Code of Practices and the RJC 2012 Chain of Custody Standard. Members commit to, and are independently audited against, these standards.

The RJC 2013 Code of Practices comprises six Core Elements, of which No. 2 ‘Responsible Supply Chain and Human Rights’ and No. 6 ‘Responsible Mining’ include Provisions that concern Indigenous Peoples’ rights. Under Core Element No. 2, Provision No. 6 ‘Human Rights’, Indigenous Peoples are not specifically mentioned. Provisions No. 30, 31, 34 and 40 under Core Element No. 6 all directly or indirectly address Indigenous Peoples’ rights, particularly No. 31 which relates to Indigenous Peoples FPIC in accordance with the IFC Performance Standard 7. The RJC Standards Guidance (2013) document provides details about FPIC including points to consider in its implementation. The RJC 2013 Code of Practice is currently under review and the process is anticipated to run until December 2018.

For further information see <https://www.responsiblejewellery.com/>

The RJC 2013 Code of Practices and the RJC Standards Guidance (2013) document can be found here <https://www.responsiblejewellery.com/rjc-certification/code-of-practices-certification13/>

The RJC 2012 Chain of Custody Standard can be found here <https://www.responsiblejewellery.com/chain-of-custody-certification/>

#### **Involvement of Indigenous Peoples in Program Governance Processes –**

Indigenous Peoples are not mentioned in the RJC governance structure. The RJC’s 7 Members Forums, from which representatives are elected to the organisation’s various committees that support decision-making by the RJC Board, do not include an Indigenous Peoples forum. For the RJC Standards Committee, whose responsibilities include informing the design, implementation and continuous improvement of RJC Certification, the RJC Board appoints 12 individuals from RJC’s major stakeholder sectors. Individuals are selected based on their expertise on the issues being addressed by the RJC Standards and/or their potential to influence implementation of the RJC Standards. The RJC Governance Handbook notes these individuals will include (among others) representatives from NGOs, academic and

research institutions, and international institutions. The RJC's multi-stakeholder standards development process, involving a range of supply chain participants and stakeholders in the RJC Standards Committee, is considered a key strength of the organisation. However, while the Standards Committee includes individuals with expertise in human rights, artisanal mining, responsible sourcing, and community development, there is currently no clear representation by Indigenous Peoples and no clear process for facilitating this. The RJC Governance Handbook is described as a 'living document' that may be revised based on implementation experience and emerging good practice.

The RJC Governance Handbook (2012) can be found here [https://www.responsiblejewellery.com/files/RJC\\_Governance\\_Handbook\\_2012-update\\_OCT.pdf](https://www.responsiblejewellery.com/files/RJC_Governance_Handbook_2012-update_OCT.pdf)

The RJC Standards Setting Public Systems Report (2015) can be found here <https://www.responsiblejewellery.com/files/RJC-Standards-Setting-Public-Systems-Report-March2015.pdf>

### **Involvement of Indigenous Peoples in Program Assurance Processes –**

The RJC Standards Guidance (2013) document provides general information and advice for companies to undertake the community engagement (COP 30) that will support conformance with various aspects of the RJC Code of Practices, including for Indigenous Peoples' FPIC, community development, and mine rehabilitation and closure. Details of the assurance (i.e. audit) process for companies to achieve RJC certification are outlined in the RJC Assessment Manual (2013). The assurance process is consistent with the ISEAL Assurance Code. RJC accredits independent auditors that companies can select to audit their operations against the RJC Code of Practices. Audits are based on objective evidence which is defined as verifiable information, records, observations and/or statements of fact<sup>72</sup>. Auditors are instructed to look for not only documents, policies and other records, but to also seek confirmation of practices through other forms of objective evidence such as interviews with interested parties. Indigenous Peoples are not specifically mentioned, but as a potential stakeholder, they can be sources of information for evaluating conformance under issues such as community engagement, although this is not mandatory.

The RJC Assessment Manual (2013) can be found here <https://www.responsiblejewellery.com/files/RJC-Assessment-Manual.pdf>

### **Program Complaints Mechanisms & Indigenous Peoples' Access to Remedy –**

The RJC has an established Complaints Mechanism (updated in 2012) that aims to ensure the fair, timely and objective resolution of complaints relating to potential non-conformance with RJC Certification or with the organisation's own policies and procedures. The publicly-available Complaints Mechanism document includes the complaints submission and investigation processes, and the form that must be used to lodge complaints. The RJC considers the Complaints Mechanism a 'living document' that will be revised based on implementation experience and emerging good practice.

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<sup>72</sup> RJC, 2013a.



The current (2012) version of the RJC Complaints Mechanism can be found here [https://www.responsiblejewellery.com/files/T007\\_2012\\_RJC\\_Complaints\\_Mechanism\\_v2.pdf](https://www.responsiblejewellery.com/files/T007_2012_RJC_Complaints_Mechanism_v2.pdf)

### **3.5.4 Forest Stewardship Council (FSC)**

#### **Organisation Overview**

The Forest Stewardship Council (FSC) is a global not-for-profit multi-stakeholder certification organization that sets world best-practice standards for responsibly managed forests, both environmentally and socially. A coalition of non-governmental organisations led by the World Wildlife Fund (WWF) established the FSC in 1994. Today, 199 million hectares of forests across 84 countries are FSC certified. FSC's member base includes a global network of environmental, social and economic stakeholders. The broad member base is consulted in the development of the organisation's sustainable forest management standard which comprises ten Principles and related Criteria. This International Standard sets out the global requirements for achieving FSC responsible forest management certification. National-level standards (i.e. National Forest Stewardship Standards) are also developed, in order to reflect the diverse legal, social and geographical conditions of forests throughout the world. The FSC's International Generic Indicators (IGIs) support the development of national-level standards.

In the FSC International Standard V5-2 (2015), Principle 3 relates to Indigenous Peoples' Rights and specifically states *'The organisation shall identify and uphold Indigenous Peoples' legal and customary rights of ownership, use and management of land, territories and resources affected by management activities'*. Principle 3 has six associated Criteria that outline measures for judging whether or not the Principle has been fulfilled. FSC is considered a leader among sustainability standards for its early inclusion of Indigenous Peoples' FPIC<sup>73</sup>. The requirement for Indigenous Peoples' FPIC is highlighted in three of Principle 3's six Criteria (i.e. Criteria 3.2, 3.3 and 3.6).

For further information see <https://ic.fsc.org/en>

The FSC International Standard (2015) Principles and Criteria can be found here <https://ic.fsc.org/en/document-center/id/59>

The FSC Document Centre, containing up-to-date versions of documents (including policies, procedures, standards etc.) from the FSC normative framework can be found here <https://ic.fsc.org/en/document-center>

#### **Involvement of Indigenous Peoples in Program Governance Processes –**

The FSC governance structure is based around the organisation's member base, with all members having an equal say in the development of FSC standards, policies and procedures. FSC members are divided into three chambers – Environmental, Social and Economic. Indigenous Peoples are represented through the Social Chamber including via national-level Indigenous Working Groups. There are three levels of FSC decision-making – the General Assembly, the Board of Directors and the Director General. The General Assembly (held every 3 years) is the top FSC decision-making

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<sup>73</sup> Carino & Colchester, 2010.

platform where each chamber holds 33.3 percent of the vote on all FSC matters, ensuring the decision-making system is balanced and consensus-based<sup>74</sup>. Indigenous Peoples are also represented on the FSC Board of Directors. Despite this representation and the strong formal position of Indigenous Peoples in the FSC Standard, some observers have argued Indigenous Peoples were merely playing a consultative role and lacked any real decision-making power in FSC governance<sup>75</sup>.

During the 2011 General Assembly, a Permanent Indigenous Peoples Committee (PIPC) was established with the aim of ensuring Indigenous Peoples will have a fair and equal representation within FSC governance and decision-making processes<sup>76</sup>. The PIPC held its inaugural meeting in October 2013<sup>77</sup> and has since held regular meetings including side events at General Assemblies. Part of the committee's work is to engage Indigenous Peoples around issues of forest management and FSC certification. As a permanent Standing Committee of the FSC International Board of Directors, the PIPC will also provide ongoing advice to the Board on decisions within the FSC system that impact Indigenous Peoples, including the development and review of FSC Standards, Principles and Criteria, and associated guidance documentation. Strengthening of Indigenous Peoples' rights to FPIC and field-testing of the FSC FPIC Guidelines have been a focus of the PIPC. At the 2017 General Assembly, the PIPC proposed a motion to become a fourth FSC International Chamber<sup>78</sup>, like the current governance structure of FSC Canada. This motion generated much debate but was contentiously voted down. Some key informants felt a fourth Indigenous Chamber is vital for ensuring the principle of self-determination and FPIC is truly embedded in the FSC system, and that without such a chamber it will be hard for FSC International (and any certification system in the extractives industry) to overcome a perception of tokenism or institutional bias, whereas others worry that ringfencing Indigenous Peoples' concerns into a fourth chamber will only further isolate their interests, and would prefer to see increased Indigenous Peoples' participation and influence in all three FSC chambers. In the meantime, the PIPC continues to progress the establishment of an Indigenous Peoples Office to be based in Panama. This is designed to strengthen the role of the PIPC within FSC International and provide a solid structure for guiding the FSC Board of Directors and carrying out their own projects.

### **Involvement of Indigenous Peoples in Program Assurance Processes –**

The FSC International Standard 'Stakeholder Consultation for Forest Evaluations'<sup>79</sup> outlines the requirements for certification bodies (i.e. auditors) to consult with Indigenous Peoples when evaluating a forest manager's conformity with an applicable forest stewardship Standard. Section 2.3e of the Standard identifies Indigenous Peoples as a stakeholder that must be contacted directly by the auditor. Other parts of Section 2 outline the information that must be provided to directly affected Indigenous Peoples prior to the evaluation and the methods that can be used to provide this information. Section 3.3 then outlines the requirement for the consultation techniques employed by the auditor to be culturally-appropriate to the Indigenous Peoples being consulted. In sum, consultation with representatives and members of Indigenous Peoples directly affected by a forest management enterprise would

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<sup>74</sup> FSC, 2018.

<sup>75</sup> Sandstrom and Widmark, 2007; Tikina et al. 2010; Roberge et al. 2011; Teitelbaum and Wyatt, 2013.

<sup>76</sup> That is, an 'equal participation' among the 3 FSC Chambers. See <https://ic.fsc.org/en/what-is-fsc/what-we-do/empowerment-of-people/pipc>

<sup>77</sup> <https://ic.fsc.org/en/news-updates/fsc-press-releases/id/548>

<sup>78</sup> <https://ga2017.fsc.org/ready-for-fourth-chamber/> & <https://ga2017.fsc.org/the-family-needs-to-grow/>

<sup>79</sup> FSC, 2009.

typically be undertaken to verify compliance with Principles 1, 3, 4, 5 and 9 of the FSC International Standard<sup>80</sup>. In practice, Indigenous Peoples should be directly consulted to verify compliance with all FSC Principles and Criteria. For example, Principles 7 and 8 include specific requirements for the annual review of management planning documents based on stakeholder comments received throughout the year, and conflicts have arisen when there has been no consultation with Indigenous Peoples for the verification of Principle 6.

The FSC 'Stakeholder Consultation' Standard makes no mention of involving Indigenous Peoples in participatory data collection during the auditing process. There are reports of stakeholders' (including Indigenous Peoples') dissatisfaction with their role in data collection/monitoring for sustainable forest management and the need to improve Indigenous Peoples involvement<sup>81</sup>. Key informants also suggested the limited or lack of Indigenous Peoples' involvement in the auditing process is a growing concern for many impacted communities, and addressing the issue remains a challenge for many auditors. Challenges include the remote locations that auditors work in, identifying the appropriate people to involve in the process, training more Indigenous Peoples as auditors, and overcoming the capacity constraints of many Indigenous Peoples to fully engage in voluntary yet time-consuming audit processes. Adding to these challenges is the *'lack of specific local cultural awareness amongst individual auditors'*, making it *'difficult to properly assess the actions of certified operations in areas requiring culturally-appropriate engagement'*. Another key informant noted many auditors are overseas-based, meaning they *'lack local cultural and socio-ecological experience'*, and that this impacts their ability to devise culturally-appropriate data collection techniques or correctly assess the feedback being given from an Indigenous point of view. Key informants highlighted the importance of increasing Indigenous Peoples participation in data collection to ensure greater credibility in the FSC assurance process, citing examples of communities' growing distrust of company-appointed auditors. This is also reflected in the literature<sup>82</sup>, along with arguments of substandard assessments by auditing firms and *'systematic weaknesses (exist) over the efficacy of the monitoring regime where responsibility is delegated to auditing firms that are fundamentally failing to identify and mitigate illegal practices'*<sup>83</sup>.

Lessons for improving the credibility and transparency of assessments made on Certificate Holders' efforts to respect and uphold the rights of Indigenous Peoples in the FSC assurance process may be found in the work FSC International has done to develop and extensively field-test FPIC Implementation Guidelines for both companies, communities and auditors<sup>84</sup>. This project has involved company, community & auditor training activities and 360-degree evaluations of company practices, gap analyses with the new FSC requirements and compliance action plans at 12 sites in different countries, scales of operation and forestry contexts.

The FSC Standard for Stakeholder Consultation for Forest Evaluation (2009) can be found here <https://ic.fsc.org/en/document-center/id/66>

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<sup>80</sup> Ibid.

<sup>81</sup> Smith, 2004; Roberge et al. 2011.

<sup>82</sup> McDermott, 2012.

<sup>83</sup> MacInnes et al. 2017, p.157.

<sup>84</sup> Introductory information about the FSC FPIC Implementation field-tests (2014) can be found here <https://ic.fsc.org/en/news-updates/id/791>

### **Program Complaints Mechanisms & Indigenous Peoples' Access to Remedy –**

FSC has a web-based complaints mechanism known as the Dispute Resolution System (DRS). This system provides the means for stakeholders to submit and track complaints and appeals. Stakeholders are required to use an on-line form to submit complaints about decisions, performances or any other issues within the FSC scheme – including the operation of the FSC certification system, the FSC Network, the FSC accreditation program or the performance of FSC accredited certification bodies. Under the DRS, FSC is '*committed to facilitating consistent and timely evaluation of complaints and appeals raised by stakeholders*'<sup>85</sup>. The DRS seeks to ensure problems are resolved in a fair and transparent way, and it is also recognised as an important means for feedback to FSC and a mechanism that drives continuous improvement in the system<sup>86</sup>.

FSC International has previously acknowledged the shortcomings of the 2009 DRS framework and in 2013 launched a public consultation to revise the system's guiding and normative framework, aiming to simplify and streamline the procedures and eliminate any confusion. Input received from 7 stakeholders (that did not include any responses from Indigenous Peoples) led to changes to the DRS<sup>87</sup>. Despite the revisions, some authors have described the FSC DRS as remaining '*tedious*'<sup>88</sup> and key informants also expressed concerns about the system, describing it as '*dysfunctional*' and a '*horribly cumbersome system*' involving processes that are '*complex, unwieldy and tortuously lengthy – even for people with knowhow and technology*'. One informant suggested that given the system's complexity '*you'd think it is designed to stop people making complaints*'. Concerns about the difficulties for many Indigenous Peoples to engage with the system ('*I imagine pretty impossible*') or their general lack of awareness of the availability of the system and/or '*a lack of clarity regarding its functioning*' (both at the national and international levels), were also expressed. Some informants suggested that at the very least a simplified procedural infographic was needed, along with clearer identification of points of contact for complainants, and increased resources to resolve disputes within a more acceptable timeframe.

The FSC Dispute Submission Form can be found here <https://ic.fsc.org/en/submit-a-dispute> or complainants can email to [dispute.resolution@fsc.org](mailto:dispute.resolution@fsc.org)

Details of the FSC DRS including the DRS Standard, Procedures and associated documents (including Fact Sheet) can be found here <https://ic.fsc.org/en/what-is-fsc/what-we-do/dispute-resolution>

### **3.5.5 Roundtable on Sustainable Palm Oil (RSPO)**

#### **Organisation Overview**

The Roundtable on Sustainable Palm Oil (RSPO) is a not-for-profit association established in 2004 to promote the production and use of sustainable palm oil. The RSPO vision is to transform the markets by making sustainable palm oil the norm. The organisation has brought together stakeholders from across the palm oil industry to develop and

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<sup>85</sup> FSC, 2018a.

<sup>86</sup> FSC, 2012a.

<sup>87</sup> For full details of the 2013 DRS Consultation see <https://ic.fsc.org/en/what-is-fsc/what-we-do/dispute-resolution/drs-consultation>

<sup>88</sup> MacInnes et al. 2017, p.154.

implement global standards for sustainable palm oil. Members of RSPO and participants in its activities represent all stages in the palm oil supply chain, including plantation companies, processors and traders, consumer goods manufacturers and retailers of palm oil products, financial institutions, environmental NGOs and social NGOs. Currently, there are over 3,500 RSPO members from 91 countries, over 2.5M ha of global palm oil plantations are RSPO certified, and approximately 19% of palm oil is RSPO certified.

The RSPO certification scheme includes the RSPO Principles and Criteria for the Production of Sustainable Palm Oil (Including Indicators and Guidance, 2013) (i.e. the RSPO Standard) and the RSPO Supply Chain Certification Standard which supply chain actors are audited against. It is noted that the RSPO Standard is generic, and so it is further adapted for use by countries through National Interpretations. The RSPO Standard comprises 8 Principles and associated environmental and social Criteria that companies must comply with to produce Certified Sustainable Palm Oil (CSPO) and help to minimize the negative impact of palm oil cultivation on the environment and communities. The rights of Indigenous Peoples are addressed in Principles No. 2 (specifically Criterion 2.2 and 2.3), No. 6 (specifically Criterion 6.1, 6.2, 6.3, 6.4, 6.5 and 6.13) and No. 7 (specifically Criterion 7.1, 7.5 and 7.6), with FPIC a commonly mentioned mechanism for operators to meet the criterion. FPIC has been a central requirement of the RSPO Standard since it was first adopted in 2005, and the revised 2013 version further reinforces the importance of respecting FPIC. A recent independent assessment has concluded that RSPO is the most robust standard among the palm oil certification schemes, but there remain significant challenges (relating to governance, audits, remedy, and human rights defenders) that need to be addressed in the standard's next revision<sup>89</sup>, which is due in 2018.

For further information see <https://rspo.org/about>

The RSPO Standard (2013) can be found here <https://www.rspo.org/key-documents/certification/rspo-principles-and-criteria>

Details of the RSPO Standard review, including Review Taskforce membership and a timeline can be found here <https://www.rspo.org/principles-and-criteria-review#tfm>

### **Involvement of Indigenous Peoples in Program Governance Processes –**

As a multi stakeholder, participatory roundtable that works on the basis of consensus, RSPO considers it essential that all members contribute to the organisation's decision-making processes. Various social NGOs representing Indigenous Peoples and their human rights provide input into RSPO decision-making, including the development and review of the RSPO Standard<sup>90</sup>. These organisations include Sawit Watch, the Forest Peoples Programme and Oxfam International, all of which have been key stakeholders in getting Indigenous Peoples rights incorporated into the RSPO

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<sup>89</sup> MacInnes, 2017.

<sup>90</sup> For a full list of these social NGOs see

[https://www.rspo.org/members?keywords=&member\\_type=&member\\_category=Social+or+Development+Organisations+%28Non+Governmental+Organisations%29&member\\_country=](https://www.rspo.org/members?keywords=&member_type=&member_category=Social+or+Development+Organisations+%28Non+Governmental+Organisations%29&member_country=)

Standard, particularly regarding Indigenous Peoples' control over land and other natural resources<sup>91</sup>. However, a recent independent assessment has found that Indigenous Peoples remain poorly represented in RSPOs governance structure and recommends RSPO establish a permanent Indigenous Peoples committee (similar to the structures found in FSC and ASI) to facilitate direct liaison with the organisation's Board<sup>92</sup>.

The RSPO governance structure includes numerous Standing Committees, Working Groups and Task Forces<sup>93</sup>. While there is no evidence of Indigenous Peoples organisations' direct involvement in these bodies, the social NGOs are active participants, including in the Standards and Certification Standing Committee, the Human Rights Working Group, and the Principles & Criteria Review Taskforce. The work of the Human Rights Working Group is directly linked to the globally accepted UN Guidelines on Business and Human Rights. RSPO is considered to have gone further than most certification programs in upholding Indigenous Peoples' right to FPIC<sup>94</sup>, but this issue has still been a particularly challenging and controversial one in the development and review of the RSPO Standard<sup>95</sup>. FPIC guides for RSPO members have been developed<sup>96</sup>, and a key task of the Human Rights Working Group for 2017 was to enhance the understanding and effective implementation of the FPIC process by RSPO member companies.

### **Involvement of Indigenous Peoples in Program Assurance Processes –**

The RSPO has developed an Audit Checklist to aid auditors in assessing a company's compliance with the requirements of each of the RSPO Standard's Principles and Criteria, and for use by a company to design their management system for adherence to the requirements<sup>97</sup>. This document outlines questions for auditors that to be answered should require Indigenous Peoples, as affected stakeholders, to be engaged as a source of evidence in the auditing process. This engagement has particular relevance to verifying a company's compliance with the RSPO FPIC requirements. The RSPO FPIC Guide<sup>98</sup> provides a comprehensive outline of the requirements for affected Indigenous Peoples' participation in a company's project planning and management, such as through participatory mapping studies and associated Social and Environmental Impact Assessments, and High Conservation Value Assessments. A major challenge for RSPO is ensuring that companies are actually applying these standards in practice<sup>99</sup>, given the widespread accusations of company non-compliance and grievances with the auditing process<sup>100</sup>.

While the RSPO audit procedures are required to be attentive to the inputs of various stakeholders<sup>101</sup>, research has highlighted that RSPO auditors' preference for documents as the ultimate form of proof has led to a disregard as valid evidence other forms of proof put forward by local communities<sup>102</sup>. Villagers therefore see their lack of industrial forms

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<sup>91</sup> Research has noted the particularly important role of Sawit Watch – See Silva-Castaneda, 2012 ('*The legitimacy of the RSPO depends largely on the active participation of this Indonesian NGO*', p.365)

<sup>92</sup> MacInnes, 2017.

<sup>93</sup> For details of the RSPO governance structure, see <https://www.rspo.org/about/how-we-work>

<sup>94</sup> Carino & Colchester, 2010.

<sup>95</sup> Marti, 2008; Anderson, 2012; Silva-Castaneda, 2012; Reitberg & Slingerland, 2016.

<sup>96</sup> FPP, 2008; Colchester et al. 2015.

<sup>97</sup> RSPO, 2015.

<sup>98</sup> Colchester et al. 2015.

<sup>99</sup> MacInnes, 2017.

<sup>100</sup> Marti, 2008; Pichler, 2013; Lomax, 2015; Reitberg & Slingerland, 2016; FPP, 2017.

<sup>101</sup> RSPO, 2007.

<sup>102</sup> Silva-Castaneda, 2012. Other 'cultural evidence/proofs' including traditional territorial/land-use markers such as trees, planted fields, graves, hunting areas and agroforestry systems have been disregarded. Such evidence can be obtained from interviews and field observations, but may require modern technologies to translate into formal proofs that will be recognized by auditors.

of proof (i.e. documents) as one of the main causes of their powerlessness in contesting non-compliance<sup>103</sup>. Auditor impartiality is another issue of concern for impacted Indigenous Peoples<sup>104</sup>, with one key informant noting a growing distrust of RSPO auditors in some areas due to their *'being too close to the companies, there is a perception that they don't comply with (the auditing) requirements'*. A recent analysis has been more scathing, noting the RSPO system based entirely on the ability of company-assigned auditors to monitor company operations is critically flawed<sup>105</sup>.

The RSPO has also established an Assurance Taskforce in recognition of the complex and difficult challenges the organisation faces in improving its assurance system<sup>106</sup>. The Assurance Taskforce will take a lead role in formulating and implementing a plan to upgrade and enhance the robustness and effectiveness of RSPO's assurance system, covering impacts assessments, verification, audits, and oversight. The Taskforce includes a Reference Panel that includes social NGO representatives with expertise on Indigenous Peoples rights, but it is not clear if there is currently direct Indigenous Peoples' representation on this panel or within the other layers of the Taskforce.

### **Program Complaints Mechanisms & Indigenous Peoples' Access to Remedy –**

The RSPO has an established Complaints System, as required under Criterion 6.3 of the RSPO Standard<sup>107</sup>. As at 31 August 2017, 41% of all complaints received by RSPO related to FPIC and 58% of complaints related to activities in Indonesia. The Complaints System includes the RSPO Dispute Settlement Facility (DSF) which aims to ensure aggrieved parties facing barriers to the Complaints System are assisted with the information, advice and expertise necessary to engage in a complaints process on fair, informed and respectful terms, focusing on mediation to help resolve disputes. There is a DSF Advisory Group that includes experts on Indigenous Peoples' rights.

The RSPO describes its Complaints System as a *'fair, transparent and impartial process to duly handle and address complaints against RSPO members or the RSPO system itself'*<sup>108</sup>, but one key informant noted the system *'is a slow process, and issues are not always resolved'*. Other observers have condemned the system for failing to secure justice for impacted communities in Peru, Liberia and Indonesia<sup>109</sup>, while research has highlighted the dissatisfaction and many frustrations Indigenous communities have with the system<sup>110</sup>, and also criticised the system's *'tedious procedures'*<sup>111</sup> and its weakness in avoiding the inclusion of clear sanctioning mechanisms (i.e. penalties) for noncompliance with agreed remediation<sup>112</sup>. With complaints commonly associated with FPIC for the use of Indigenous Peoples' lands<sup>113</sup>, a further criticism of the Complaints System is its focus on compromising about adequate compensation for the land rather than a withdrawal from Indigenous lands<sup>114</sup>. A recent independent assessment has highlighted that a major challenge for RSPO is the need to address the unreliability of complaints and remedy

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<sup>103</sup> Ibid.

<sup>104</sup> Silva-Castaneda, 2012; MacInnes, 2017.

<sup>105</sup> EIA, 2015.

<sup>106</sup> Details of the RSPO Assurance Taskforce can be found here <https://www.rspo.org/about/who-we-are/task-forces/assurance-task-force>

<sup>107</sup> For an overview of the RSPO Complaints System and Procedures, including tips for using the procedure, see Lomax, 2015.

<sup>108</sup> RSPO, 2018.

<sup>109</sup> FPP, 2017.

<sup>110</sup> Lomax, 2015 (see pp.11-13).

<sup>111</sup> MacInnes et al. 2017, p.154.

<sup>112</sup> Pichler, 2013.

<sup>113</sup> For example, see - Colchester et al. 2011; Rietberg & Slingerland, 2016

<sup>114</sup> Pichler, 2013.



procedures when non-compliances are identified<sup>115</sup>. This assessment further highlighted the need for a mechanism to hold RSPO-certified companies accountable for human rights violations and other damages even when companies cease to be RSPO-certified, and recommends a bond system as a means of ensuring remedy<sup>116</sup>.

Details of the RSPO Complaints System including statistics of complaints received can be found here <https://www.rspo.org/members/complaints>.

### 3.5.6 Equitable Origin (EO)

#### Organisation Overview

Equitable Origin (EO) is an independent, not-for-profit organisation dedicated to promoting socially and environmentally responsible energy development. It is the only standards and certification system for the oil and gas industry. EO was founded in the Amazon Basin in 2009 and has brought together oil and gas companies, governments, local and indigenous communities, academics and NGOs to develop standards for social and environmental responsibility in oil and gas exploration and production. Over the following three years through a multi-stakeholder consultation process, the EO100 Standard for Responsible Energy Development (2012) was created based on stakeholder feedback, expert input and alignment with existing global standards and regulations. EO is active in Ecuador, Colombia, Mexico and the United States. The first EO-certified development site, a large oil field in Colombia, was achieved in 2014<sup>117</sup>.

In the EO100 Standard for Responsible Energy Development (2012), Principle 4 directly relates to Indigenous Peoples' Rights while Principle 2 (Human Rights, Social Impacts and Community Development) is also highly relevant to Indigenous Peoples' rights. Principle 4 states '*Energy development activities must be carried out in ways that recognize, respect and address the specific rights, traditions and cultural implications for Indigenous Peoples whose territory or livelihoods may be affected by the project*'. The EO100 Standard's Principles include numerous Provisions and associated Performance Targets. Indigenous Peoples' FPIC and their Engagement & Participation are key Provisions of Principle 4. The EO100 Standard is currently under review. This process commenced in 2016 and was scheduled for completion in 2017. Feedback has been received and the EO100 Standards Technical Committee has proposed various changes. A final revised EO100 Standard is set to become publicly available in early 2018.

For further information see <https://www.equitableorigin.org/>

The 2012 version of the EO100 Standard for Responsible Energy Development can be found here <https://www.equitableorigin.org/library/>

Guidance resources for the EO100 Standard's Principles, including FPIC-related documents, can be found here <https://www.equitableorigin.org/eo100-for-responsible-energy/eo100-standard-guidance-resources/>

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<sup>115</sup> MacInnes, 2017, p.9.

<sup>116</sup> Ibid.

<sup>117</sup> [http://www.csrwire.com/press\\_releases/37317-Equitable-Origin-Certifies-First-Ever-Sites-for-Responsible-Oil-Production](http://www.csrwire.com/press_releases/37317-Equitable-Origin-Certifies-First-Ever-Sites-for-Responsible-Oil-Production)



Details of the EO100 Standard Review process and a side-by-side comparison of the changes proposed by the EO Standards Technical Committee and the 2012 (A) version of the EO100 Standard can be found here <https://www.equitableorigin.org/eo100-for-responsible-energy/overview/eo100-standard-review/>

### **Involvement of Indigenous Peoples in Program Governance Processes –**

EO's governance structure includes Indigenous Peoples representation. The Board of Directors, Advisory Council and Standards Technical Committee all include Indigenous right experts. In accordance with the ISEAL Standard-setting Code, development and review of the EO100 Standard has involved all relevant stakeholders, including Indigenous Peoples. For standard-setting, EO engaged in extensive targeted consultation with Indigenous communities affected by energy projects and their representative Indigenous Peoples' organisations, mostly in Ecuador and Columbia. This included over 70 workshops with Indigenous Peoples and the establishment of partnerships with several Indigenous Peoples organisations. This has led to Indigenous Peoples' representation on a formal Consultation Committee established in 2011. In 2013, EO initiated a Regional Stakeholder Council (Latin America) to facilitate on-the-ground stakeholder engagement and participation in Standard development and review processes, to participate in implementation, assurance, and monitoring and evaluation activities, and to identify local and national contextual interpretations of the Standard, where needed. This Regional Stakeholder Council includes representatives from the Indigenous Peoples' Organisations COICA (Coordinator of Indigenous Organisations of the Amazon Basin) and OPIAC (Organisation of Indigenous Peoples of the Colombian Amazon)<sup>118</sup>. EO's Board of Directors now has an Indigenous Peoples representative appointed by COICA to ensure the rights and voice of Indigenous Peoples are reflected, embodied and respected in EO's standard-setting processes.

The ongoing engagement of COICA, other Indigenous Peoples organisations and other Indigenous rights experts is fundamental to updating and revising the Principles and Provisions of the EO100 Standard, particularly for Principle 4 (Indigenous Peoples' Rights). As a result, based on the principles of multi-stakeholder engagement, FPIC, conflict mitigation, and local participation in the decision-making and monitoring processes, EO considers the EO100 Standard to be a powerful tool for Indigenous Peoples to hold corporations accountable for how they operate in their territories. EO is now moving to incorporate a dedicated stakeholder category of Indigenous Peoples into its Board structure which will allow for more Indigenous Peoples' participation at the organisation's leadership level.

Details of EO's governance structure can be found here <https://www.equitableorigin.org/about-us/governance/>

The EO Procedure for Standard Development and Governance can be found here [https://d2oc0ihd6a5bt.cloudfront.net/wp-content/uploads/sites/1738/2016/05/EOP-101\\_Standard\\_Development\\_and\\_Governance\\_2015.pdf](https://d2oc0ihd6a5bt.cloudfront.net/wp-content/uploads/sites/1738/2016/05/EOP-101_Standard_Development_and_Governance_2015.pdf)

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<sup>118</sup> See <http://coica.org.ec/cnuevo/> and <http://www.opiac.org.co/>

### **Involvement of Indigenous Peoples in Program Assurance Processes –**

Provisions 4.2 (Engagement & Participation) and 5.13 (Monitoring) of the EO100 Standard outline requirements for companies to involve Indigenous Peoples in project planning and management. This includes engagement via participatory stakeholder mapping and the design and implementation of environmental monitoring. The latter may also include providing capacity-building and training programs to enable Indigenous Peoples to acquire the technical skills necessary to independently undertake monitoring and sampling<sup>119</sup>. EO's assurance process also requires Indigenous Peoples' participation, with the Regional Stakeholder Council helping to facilitate this. EO recognises that audits can be a blunt tool and that inputs from impacted Indigenous Peoples can therefore enhance the rigour and credibility of the verification process. EO approves Assessment Bodies through a formal process to ensure their competency, and companies can select from these EO-approved and trained independent auditors to undertake the auditing of their operations against the EO100 Standard. To ensure objectivity and impartiality, EO has also established an Assurance Oversight Committee that will act as an independent body to oversee EO's processes related to the approval of Assessment Bodies and all certification decisions<sup>120</sup>. There is currently no direct Indigenous Peoples' representation on this Committee. The EO assurance process, outlining how auditors evaluate project performance, is detailed in the EO100 Standard Guidance and the EO100 Audit Protocol. EO's assurance process is evolving as the organisation works to continually improve the system. Current work in this area is focused on the development of guides and tools including mobile phone apps to support Indigenous Peoples and auditors to monitor FPIC and verify whether or not it is being achieved.

### **Program Complaints Mechanisms & Indigenous Peoples' Access to Remedy –**

EO has an established Comments, Complaints and Appeals procedure. EO welcomes input on the EO100 Standard and any element of EO's certification and assurance system at any time from any individual or organization. Stakeholders can make submissions using an online form.

The EO online form for Comments, Complaints and Appeals can be found here <https://www.equitableorigin.org/about-us/comments-complaints-appeals/>

The EO Procedure for Certification System Comments, Complaints and Appeals can be found here [https://d2oc0ihd6a5bt.cloudfront.net/wp-content/uploads/sites/1738/2016/05/EOP-203 Complaints and Appeals 2015.pdf](https://d2oc0ihd6a5bt.cloudfront.net/wp-content/uploads/sites/1738/2016/05/EOP-203_Complaints_and_Appeals_2015.pdf)

### **3.6 Examples of Good/Best-Practice Indigenous Peoples' Participation in Sustainability Standards**

The literature review and key informant interviews uncovered examples of what are described as 'good-practice' or 'best-practice' Indigenous Peoples' participation in sustainability standards for extractives, and Indigenous Peoples' participation in extractives and other natural resource management projects on their traditional lands. The latter

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<sup>119</sup> EO, 2015.

<sup>120</sup> See <https://www.equitableorigin.org/about-us/our-team/assurance-oversight-committee/>

examples, while unrelated to sustainability certification, may provide guidance for improving practices in the implementation of extractives industry standards. Examples are outlined below.

- The ICMM '*Good Practice Guide: Indigenous Peoples & Mining*'<sup>121</sup> includes 26 case-studies designed to inform best-practice Indigenous Peoples' engagement/participation in the mining and metals sector. They include coverage of FPIC implementation, participatory agreements and monitoring, and grievance mechanisms.
  - One notable case-study describes a gold mine in Suriname<sup>122</sup> where the mining company has documented its historic community engagement activities (considered by the company to be 'based on FPIC principles'<sup>123</sup>) completed since the mine's exploration phase, which was over a decade before the ICMM had adopted its FPIC position statement. The goal of the documentation process was to assess the past engagement activities and outcomes (i.e. agreements) against the concepts of FPIC. To support this process, the company recently commissioned an independent Expert Advisory Panel to identify gaps that may require other engagement mechanisms or agreements to align with FPIC. The Panel's report<sup>124</sup> provides recommendations for best-practice operationalising of FPIC at this mine, while also highlighting current FPIC implementation challenges and associated best-practice guidance for the broader extractives industry.
  - Another notable case-study describes the successful implementation of participation agreements between a diamond mining company and local Indigenous communities in north-western Canada<sup>125</sup>. The agreements provide the framework for the partners to work together to maximize the project's benefits to the communities through employment, training and building local business capacity. Indigenous Peoples are also represented on an Environmental Advisory Board. The partnership success at this site is also documented in the academic literature<sup>126</sup>
- The FSC's PIPC and the ASI's IPAF were frequently highlighted as best-practice examples of providing Indigenous Peoples with permanent representation in a certification program's governance and decision-making structures. The ASI and the Initiative for Responsible Mining Assurance (IRMA)<sup>127</sup> were also praised for recognising and consulting with Indigenous Peoples, as a separate group from social or environmental NGOs, from the very start of standard development<sup>128</sup>, for their clear and strong positions on FPIC<sup>129</sup>, for requiring impacted Indigenous Peoples' participation (i.e. interviews) in their standard assurance processes, and for their comprehensive complaints/grievance mechanisms<sup>130</sup>.

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<sup>121</sup> ICMM, 2015. The '*Good Practice Guide*' is designed as a tool to promote best-practice across the mining and metals sector, with the aim of providing an effective framework for ICMM members to generate long-term benefits for both impacted Indigenous communities and companies.

<sup>122</sup> Ibid, p.115.

<sup>123</sup> Anaya et al. 2017.

<sup>124</sup> Ibid.

<sup>125</sup> ICMM, 2015, p.98.

<sup>126</sup> Missens et al. 2007.

<sup>127</sup> <http://www.responsiblemining.net/>

<sup>128</sup> MacInnes et al. 2017.

<sup>129</sup> For example see the FPIC provisions in the draft IRMA Standard - <http://www.responsiblemining.net/irma-standard/irma-standard-draft-v2.0/chapter-2.10-free-prior-and-informed-consent-fpic/>

<sup>130</sup> For details of the IRMA Grievance Mechanism see <http://www.responsiblemining.net/irma-standard/irma-standard-draft-v2.0/chapter-2.13-grievance-mechanism-and-access-to-other-remedies/> Details of the ASI Complaints Mechanism can be found in the ASI section of this report.

- The draft IRMA Standard was also considered to be best-practice in terms of the requirement for companies to be transparent about their FPIC process. There are precedents for this level of transparency, such as with the Argyle Diamond Mine Indigenous Land Use Agreement (ILUA) in Australia<sup>131</sup>. Greater transparency of FPIC processes and outcomes will support other communities in achieving their FPIC goals.
- The FSC Community Standard – Increased opportunities for Indigenous Peoples to access and benefit from FSC certification can be found in the work currently being undertaken by a collective of Indigenous and traditional communities, community-based organisations and NGOs - led by Forests of the World, Timberwolf Consultants and NEPCon - to develop a dedicated FSC certification standard and verification system designed by and for forest-based communities<sup>132</sup>. This new FSC Community Certification Standard is designed to describe integral, responsible forest management from an Indigenous community point of view, including verification of community-level FPIC implementation, and to facilitate greater community involvement in, and ownership of, the data collection/monitoring process. This includes the potential for innovative technological applications for crowd-sourcing data, and recognising local expertise and carrying out participatory guarantee exchanges amongst peers, in place of employing external auditors.
- Insights from a recent IUCN World Parks Congress<sup>133</sup> – Indigenous speakers (from more than 30 Indigenous Organisations mainly from Africa, Canada and Australia) workshopped their experiences with participatory mapping and monitoring, describing a mix of techniques where communities themselves built physical 3D maps which were then located at a central village (or moved between villages) and became a place for people to visit and mark their connections to places. This process, combined with digital tracking and monitoring, is being used as a powerful tool for Indigenous communities to map their territories and monitor the effects of changed land-use. The mapping has also assisted in resolving disputes. The Open Forum on Participatory Geographic Information Systems & Technologies was present at the Congress, with many Forum members describing their work on social aspects of mapping and using participatory mapping for governance, disputes and monitoring<sup>134</sup>. The key informant that attended the Congress stated *'The mix of physical mapping and digital technology has provided space for connections between elders who know the land and younger people with an interest in digital technology. Though mainly in relation to Parks work, the techniques they used and the empowerment it created has obvious potential as a means for participating in extractives industry certification processes. The Congress participants showed there is great enthusiasm within Indigenous communities for innovative digital technologies'*.
- Ulula<sup>135</sup> (meaning 'reveal' in South African Chichewa language) – a USA-based company established to support stakeholder engagement and community-based monitoring for responsible supply chains. It provides an innovative dashboard solution for transparent and real-time presentation of data and has potential application in the assurance processes of extractives industry sustainability standards.

<sup>131</sup> See <http://www.gelganyem.com.au/index.php/gelganyem/our-agreement-gelganyem.html> and <http://www.atns.net.au/agreement.asp?EntityID=2591>

<sup>132</sup> <http://www.nepcon.org/projects/delivering-social-and-environmental-benefits-involving-communities-fsc-system>

<sup>133</sup> <http://www.worldparkscongress.org/>

<sup>134</sup> See [www.ppgis.net](http://www.ppgis.net)

<sup>135</sup> <http://ulula.com/who-we-are/>

- ExxonMobil Papua New Guinea (PNG) Limited's Liquefied Natural Gas (PNG LNG) project was noted as a best-practice example of stakeholder engagement and associated Indigenous Peoples' participation in project Social Impact Assessment. The company employs multiple community engagement methods, facilitating effective two-way (i.e. corporate-community) communication and culturally-acceptable protocols to ensure community inclusiveness and representation of views especially from women, vulnerable individuals and minority groups. For further details including company policies on managing community impacts, resettlement and respecting human rights see <https://pnglng.com/Community/Community>

### 3.7 Case-Study: Gulkula Mining Company Seeking ASI Certification

#### Background

Indigenous Peoples in Australia have a chequered history with mining. The Indigenous Peoples of north-east Arnhem Land in the Northern Territory, the Yolngu People, fiercely fought against the development of the large-scale Nabalco (a Swiss company) bauxite mine and refinery in Nhulunbuy in 1963. The Yolngu Peoples' fight was a significant early step to recognise Indigenous land rights in Australia. The Nabalco mine was developed on the traditional lands of several clan groups of the Yolgnu People, including the Gumatj clan. One Gumatj elder, Dr Galarrwuy Yunupingu AM, is a recognised leader in the Australian Indigenous community. The Gumatj vision has always been one where Yolngu People are the masters of their own destiny. Dr Yunupingu has led many negotiations with the mining industry and government, to ensure respect for the land and specific sacred sites, and gain a fair distribution of the economic benefits for local Traditional Owners.

*'We will continue to fight for the right to make our own decisions about our own land. ...We want to develop our own land.'* Dr Galarrwuy Yunupingu AM.

A recent significant milestone for achieving the Gumatj vision was the creation of the Gulkula Mining Company (GMC) and the granting of a mining exploration and development lease to operate the Gulkula Bauxite Mine. GMC is 100% owned and operated by the Gumatj clan. The granting of the mining lease to the local Traditional Owners of the land, with the mining to be undertaken by a company wholly-owned by these Traditional Owners, is a first in Australia and is believed to be one of the first such arrangements in the world.

#### Gulkula Bauxite Mine & the Gulkula Regional Training Centre

GMC went through the same approval processes as required by all mining companies under Northern Territory government legislation<sup>136</sup>. This process included establishing a mining agreement that includes royalty payments and other benefits for the Traditional Owners. Even though in this case the Gumatj people as owners of GMC had to agree on the royalties and other benefits they must effectively pay themselves, it was important to do everything by the book, for GMC to be treated like all other companies seeking to develop a mine.

<sup>136</sup> See Appendix 2 for details of land and mineral resource ownership in Northern Territory and the process to obtain a Mining & Exploration Licence from the Northern Territory government.

The Gulkula Bauxite Mine is a low-impact, small-scale operation (i.e. 890 ha) located on the Dhupuma Plateau, the site of the famous annual Garma Festival<sup>137</sup>. GMC commenced mining at the site in October 2017. The mine's operations are closely linked to the adjacent Gulkula Regional Training Centre (GRTC) which was jointly funded by government and industry to support Indigenous employment at the mine.



The GRTC accommodation facility.

GMC's objectives for the Gulkula Bauxite Mine include:

- Establish a small-scale commercial bauxite mine with an estimated 15-year life
- Provide jobs for Yolngu People from the region supported by the GRTC and on-the-job training
  - Job opportunities include mining, civil works, hospitality, administration, environmental and cultural management, mine rehabilitation
- Production from 100,000 to 500,000 tonnes per year over the first 4 years
- Land disturbance estimated at 35 ha over the first 4 years of mining
- Limit disturbance from year 5 onwards, to approximately 15 ha per year
- Progressive mine rehabilitation for multiple uses.

#### GMC Bauxite Mine Project History

- The concept of Gumatj mining their own country on the Dhupuma Plateau started around 2007
- GMC established under Gumatj Corporation in 2011
- GMC's exploration lease granted in 2014
- GMC conducted exploration drilling in 2014-2015
- A resource assessment completed in 2015
- GMC has met all government regulatory and Northern Land Council reporting requirements
- GMC has completed all environmental assessments and gained all approvals
- GMC have finalised a Mine Management Plan (a key document describing all mining activities, compliance/monitoring and reporting requirements)
- GRTCs first cohort of trainees graduated in December 2017. The second cohort will commence in early 2018
- GMC submitted an application to join ASI in December 2017
- First sale of bauxite sold to Rio Tinto in January 2018

Dr Yunupingu, the chair of GMC, said the mine and training centre were *'a big part of our future, we are determined to be a part of the economic life of this nation and to use our assets for the betterment of our people's lives'*. Gumatj Corporation Deputy Chairman Djawa Yunupingu said *'Our aim is to create a sustainable, Indigenous-owned business that will deliver long-term economic benefits for the Yolngu people'*, while the CEO Klaus Helms has stated *'The commencement of a 100-percent Indigenous-owned training centre and mining operation is a testament to what Indigenous people can achieve working in partnership with business and government – this a major step forward in building a sustainable future for our local people'*.

#### Aluminium Stewardship Initiative (ASI) Certification of GMC Bauxite

The Aluminium Stewardship Initiative (ASI) Performance Standard (V2 2017) and other best-practice standards provide real opportunities for the extractives sector to improve working relationships with Indigenous Peoples in the regions that they work within. GMC believe they provide a good example of how Indigenous Peoples can establish a vision for sustainable development of their community, and over time and with the right partnerships, work towards achieving

<sup>137</sup> <http://www.yyf.com.au/>

that vision. The ASI was identified as a partner to help GMC achieve the Gumatj vision. GMC has therefore become a member of the ASI, with the aim of having GMC bauxite certified under the ASI Performance Standard. The decision to pursue this certification progressed following discussions with the ASI and Nespresso about the global coffee giant's sustainability initiatives. Nespresso has a clear understanding of the value chain for the production of coffee, from tree to cup, and is increasingly focused on sustainable sourcing of materials. The discussions with GMC have centred around the potential to track GMC bauxite through the value chain and to its end-use in Nespresso's aluminium coffee pods. GMC are hopeful this can be achieved and will result in a long-term supply chain partnership with Nespresso, and have therefore commenced working towards achieving ASI certification.

### **FPIC implementation & verification**

Even though the Gumatj clan are the recognised Indigenous Traditional Owners of the Gulkula Bauxite Mine project area and owners of GMC, they were still required to go through the formal process of applying to the Northern Territory government for an exploration and mining licence and a notice of 'Consent to Negotiate' with the Northern Land Council (NLC). The NLC is an Indigenous organisation governed by a strong board of Indigenous People, supported by professional administration, legal and technical operations teams led by Indigenous people. The NLC mandate includes support for Northern Territory Indigenous Peoples on a wide range of matters associated with access to, and development of, their traditional lands. This includes facilitating the assessment process for development proposals including mining projects. The NLC assessment process has been developed by Indigenous Peoples over many years to ensure a best-practice, comprehensive and culturally-appropriate community consultation approach. The NLC thoroughly document each step of the community consultation to ensure they have engaged the correct people (i.e. the clan and family groups who are the rightful owners of particular parts of 'country', and therefore are the right people to speak for that country) – they complete a comprehensive anthropological review of the area (a social/cultural mapping exercise), and they document when and where they met with the local Indigenous Peoples, the information shared, the feedback received, and the agreements reached.

For the Gulkula Bauxite Mine project, the NLC completed a comprehensive community consultation with all of the project area's Traditional Owners and the Indigenous Yolgnu Peoples in the broader region who may be impacted by the proposed exploration and mining operations (this can be positive e.g. jobs/business opportunity or negative such as being impact by increased road usage). In addition, NLC held numerous community-based information sessions alongside GMC to share project details including ownership and governance, scale of proposed operations, the potential environmental and social impacts and benefits, and to respond to any questions or clarify any issues of community concern. Following completion of the NLC assessment and community consultation process, the local Indigenous Peoples expressed their strong support for the GMC project and submitted expressions of interest for young Yolngu People to get involved with the GRTC.

The Gumatj clan and the broader Yolgnu Peoples made an informed decision to mine their own land and invest the financial benefits in their own people and community, including through the activities of the GRTC. The community consultation that underpinned this decision was undertaken in a locally culturally-appropriate manner – it involved all



relevant stakeholders, it involved no coercion, it provided all the appropriate information to the community well ahead of any development activities, and it resulted in an informed and collective community decision to consent to the project. GMC are confident the community consultation process and outcome is consistent with the principles and practice of FPIC, and the company looks forward to working with the ASI Performance Standard auditors to verify its compliance with the standard's FPIC requirements.

### **Participatory data collection for assurance**

During the formative development stages of GMC's Gulkula Bauxite Mine, specialists were engaged to undertake the necessary site assessments including exploratory bauxite resource drilling, flora and fauna assessments, surface/ground water assessments; and the establishment of permanent monitoring sites including initial data collection. Yolgnu People worked alongside the specialists to complete all of these environmental assessments. This practice provided the Indigenous field staff with a wide range of new skills and experience that can now be further developed through the GRTC and GMC. Gumatj also partnered with the NT Corrective Services Agency to provide opportunities for young Indigenous men soon to be released from jail to gain work experience through the environmental assessment stage of the mine's development. For these young men, the work experience provided them with much positive reinforcement before being released back into their communities, and for some the experience helped them gain new employment upon release.



**Gumatj Traditional Owner conducting water quality monitoring**

The GRTC commenced operations in late 2017. The Centre provides local Indigenous Peoples with complementary office-based and field-based training in a wide range of disciplines with direct hands-on experience. The Centre's first cohort of trainees have focused on operations of plant and equipment, mining camp operations, environmental assessments and monitoring, and mine rehabilitation. The trainees now based with GMC have commenced mining operations and are learning on the job. They are also playing an important role in data collection for impact assessment to meet the Northern Territory government's regulatory and reporting requirements. For example, they have been trained in the collection and recording of surface water data at monitoring sites, with this information then being used for reporting to the government and NLC. On an annual basis, the NLC then report the information back to the Traditional Owners so there is a broad understanding of how GMC monitor their potential impacts on the environment, what they report, and the involvement of Yolgnu People trainees in the process. Over time, if any impacts are identified they will be assessed, technical advice sought, and informed decisions about how to manage any impacts will be made. This transparent process includes Yolgnu Peoples, the NLC and the Northern Territory government.



The GRTC is already enhancing the Yolgnu Peoples' capacity to provide competent support in environmental monitoring associated with the Gulkula Bauxite Mine. This will continue with each new cohort of trainees and as the Centre expands its suite of training programs, which is planned to include technical aspects of ASI certification. GMC is hopeful their local Indigenous employees' new environmental monitoring skills can be utilised in the future auditing of the company's operations against the ASI Performance Standard. There is clear capacity and enthusiasm within GMC and the broader community for local Indigenous Peoples to actively participate in the ASI assurance process – as auditees, as participants in audit planning, and as part of an audit team. For the GRTC trainees, this additional experience would further enhance their skills and qualifications, equipping them to enter the wider workforce beyond the mine and thereby help further develop the communities of north-east Arnhem Land.

#### **4. RECOMMENDATIONS: Best-Practice Indigenous Peoples' Participation in Sustainability Standards**

Indigenous Peoples impacted by extractives projects seeking certification could be better informed and educated about the certification process and their means of engaging in it. Local NGOs could be better trained to support Indigenous Peoples' culturally-appropriate participation in sustainability standards for extractives.

##### **4.1 Indigenous Peoples' Participation in Certification Program Governance –**

- It is imperative that certification programs' management and operational staff understand the rights-based approach of engagement with Indigenous Peoples. This requires the application of FPIC principles so that space is opened up early on in a meaningful way to ensure there is equal participation by Indigenous Peoples (among all standard-setting stakeholders) in standard development and review, and that working practices and proposals are jointly agreed. While acknowledging the limited resources of certification programs and the constraints on the amount of time and energy that genuine Indigenous community representatives may be able to give, equal participation of Indigenous Peoples as a legitimate stakeholder must occur for there to be practical governance input including consensus decision-making. Such decision-making requires reasonable timeframes (from both program and Indigenous Peoples' perspectives) to ensure issues can be properly discussed and materials can be circulated more widely and reviewed outside of a smaller group of decision-makers.
- The best-practice approach to a certification program's governance structure is to include a permanent Indigenous Peoples body/forum, like the FSC's PIPC and the ASIs IPAF. Representation on the body/forum should be via Indigenous Peoples' self-selection. The body/forum should have clearly defined Terms of Reference that include participation in standard-setting and review, audits of certificate holders, the assessment and resolution of grievances/complaints received from or directly impacting Indigenous Peoples, and the development of regularly updated (based on emerging best-practice) information materials for Indigenous Peoples to better inform them as to how they can participate in the review and implementation of the standard.
- Certification programs should have dedicated budgets and staff to facilitate Indigenous Peoples' participation in program governance and consider cultural awareness training for the dedicated staff.

## 4.2 Indigenous Peoples' FPIC –

- While there are numerous publicly-available FPIC implementation guides, these are typically not context-specific and often appear overly complex. There is a need for more region- or location-specific guides to provide user-friendly support to Indigenous Peoples facing an extractives development requiring their FPIC. Such context-specific guides are necessary to ensure the FPIC process (design and implementation) is in the context of local laws and will be culturally-appropriate to the impacted community<sup>138</sup>. Context-specific FPIC guides will require the use of local languages (and avoidance of overly technical language) and allowance for the community to develop their own methodology based on local traditional authority and decision-making structures (i.e. no imposition of outside methodologies - what is considered best-practice in one region may not be in another). Ideally, these traditional structures would be a united community voice inclusive of all community members – women, men, youth, elderly – to correct any potential power imbalances and/or attempts by operators to create community division for their benefit.
- There is a need for context-specific FPIC verification criteria or frameworks to provide guidance for auditors when assessing a company's FPIC implementation processes and outcomes against a standard's requirements. Such criteria or frameworks would also benefit impacted Indigenous Peoples by supporting their ability to effectively monitor company practices and provide objective data for the assurance process.
- There should be greater transparency of companies' FPIC implementation. Ideally, sustainability standards would require full public disclosure of companies' FPIC processes and outcomes (i.e. negotiated agreements), while also respecting Indigenous Peoples' confidentiality surrounding community benefits (e.g. financial) if they so desire. Greater public disclosure would require companies to keep detailed records (i.e. written documentation) of all community consultation and engagement including essential social mapping data (see the GMC case-study above). A requirement to publish this information would reduce the risks of impacted community members being overlooked in the FPIC process. Full disclosure of a project's FPIC implementation and outcomes would also benefit other Indigenous Peoples grappling with their own FPIC challenges in other contexts by facilitating exchanges of experiences and lessons learnt.
- We also highlight the well-documented need for extractives operators to 'get it right' in terms of their interactions with local Indigenous Peoples / communities. The 'Getting It Right' book<sup>139</sup> offers best-practice recommendations for making corporate-community relations work – that is, for operators to more efficiently and effectively accomplish their production goals while simultaneously ensuring that impacted local Indigenous Peoples / communities are better (rather than worse) off as a result of their presence. This must involve appropriate allocations of company time and resources to understanding and implementing the locally-appropriate process- and outcome-based approaches for effective trust-building and relationship-building. The book reports on the regularity and similarity of complaints across different contexts, showing there are clear and predictable patterns in the ways that corporate-community relations go wrong, and drawing out lessons for operators to improve their corporate-community relations. It also highlights lessons

<sup>138</sup> 'Culturally-appropriate FPIC processes' are critical – 'the FPIC process should be community-defined' (see Doyle & Carino, 2013, pp.18-23).

<sup>139</sup> Zandvliet & Anderson, 2009.

for companies to appropriately and positively interact with governments and NGOs in ways that promote, rather than undermine, the welfare of the citizens of the countries where they operate.

#### **4.3 Indigenous Peoples' Participation in Program Assurance Processes –**

- The participation of impacted Indigenous Peoples in the auditing of company operations against a certification program's standard is key to a truly credible assurance process. It can also be critical to gaining true local acceptance of an extractives project. To facilitate this participation, auditors should undertake locally-specific cultural awareness training. This training should be delivered by local Indigenous community members to fully inform auditors of the local environmental and socio-cultural context. Such training would help to ensure auditors implement culturally-appropriate participatory data collection methods and can correctly assess and understand the input from the local Indigenous Peoples.
- Where possible, agreed environmental and socio-cultural components of certification audits should be led by members of Indigenous communities impacted by an extractives project. Where this is not currently possible due to capacity constraints, the impacted Indigenous Peoples should be fully engaged as active participants in the audit process - as auditees, as participants in audit planning, and as part of an audit team. FPIC principles should also apply to this practical implementation of certification.
- In most cases, impacted Indigenous Peoples will need training to build their capacity to lead and/or actively participate in the auditing process. Certification programs should support this needed community capacity-building to help build a base of skilled 'citizen scientists'<sup>140</sup> among impacted Indigenous communities. Training should include the use of innovative technological applications for assurance-related data collection and reporting, such as via mobile phones, handheld GPS/GIS devices and drones.
- The use of mobile phones to participate in the auditing process could be implemented through regular SMS messages incorporating short questions relevant to a project sent directly to registered impacted community members, particular target groups, or utilising geo-referencing technologies to send messages to all mobile phones in a particular geographic region<sup>141</sup>, thereby avoiding intermediaries. Participation could be incentive-based (e.g. by provision of phone credit) and limited to one response per registered community member. Drone technology could be utilised to provide up-to-date imagery of a project's footprint, ongoing operations and compliance with standard requirements. For improved data disclosure to improve the credibility of assurance processes, auditors should consider the use of real-time data presentation platforms (such as the above-described Ulula dashboard). While digital technologies clearly have application in improving Indigenous Peoples' participation in standard assurance processes, it is important they are used to complement and not replace direct dialogue between people.
- The integrity and credibility of a certification program's standard assurance process can be supported by an independent Oversight Committee, like the ASI's Oversight Mechanism that is currently being developed. This committee should include Indigenous Peoples representatives, and in cases where Indigenous Peoples contest the integrity of auditing, it would have direct input into the involvement of Indigenous Peoples and/or

<sup>140</sup> For example, see the work of the Australian Citizen Science Association <https://csna.gaiareources.com.au/who-we-are/>

<sup>141</sup> This technology is increasingly used by emergency services to notify/alter people within a defined geographic area.

Indigenous rights experts in witness audits and associated investigations. The Oversight Committee could also manage a 'safe' database of Indigenous Peoples' evidence collected via digital technologies such as mobile phones and drones.

- There should be greater transparency of auditor credentials. Auditors assigned by a company or program should provide all interested parties (including impacted Indigenous communities and their supporting NGOs) with fully disclosed company profiles/capability statements that must include their history of engagement with companies and Indigenous communities. This full disclosure would help to prevent inappropriate auditor appointments, and give impacted Indigenous Peoples greater confidence in the credibility of standard assurance processes.

#### **4.4 Indigenous Peoples' Access to Complaints Mechanisms & Remedy–**

- Certification programs' complaints mechanisms should be founded on the UN Guiding Principles on Business and Human Rights (2011). The mechanism should be readily accessible by all stakeholders, with clear contact points (i.e. dedicated staff), and simple to use with clear instructions and acceptable timeframes for responses and resolution. For particularly contentious complaints, programs should have a clearly outlined mechanism for independent assessment and identification of suitable remedy. There should be full transparency of complaints and associated remedy, underpinned by thorough record keeping and reporting (on program websites, in annual reports etc.) of the lessons learned from the management and resolution of past complaints. The process should not limit a complainants' access to alternative judicial or administrative mechanisms.
- Our final recommendation is drawn from a recent comparative analysis of Palm Oil certification standards but adjusted for relevance to all extractives industry sustainability standards beyond the RSPO (and relevant to governments where appropriate). The recommendation relates to the need for a financial mechanism to hold certified companies accountable for any environmental and socio-cultural damages (including human rights violations) they incur on Indigenous Peoples and their traditional territories – *'To bring [the certification program] into compliance with the norms for nonjudicial remedies set out by the UN Guiding Principles on Business and Human Rights, a mechanism to hold certified companies [and governments] accountable for human rights violations and other damages (even if the company ceases to be certified) is required. We recommend the use of a bond. The bond would act as an agreement between the certificate holder [and the certification program] to uphold the standard's principles, and to provide remedy to a third party in circumstances where these are violated'*<sup>142</sup>.

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<sup>142</sup> MacInnes, 2017, p.9.

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## 6. APPENDICES

### 6.1 Appendix 1. Research Methodology Review & Systematic Mapping of the Academic Literature

The Scopus search was conducted on November 7, 2017. The search string of keywords was:

*TITLE-ABS-KEY (( "indigenous" OR "Aborigin\*") AND ( "decision-making" OR "FPIC" OR "prior and informed consent" OR "Participat\*" OR "consult\*" OR "certif\*" OR "sustainability standard\*" OR "complaint mechanism\*" OR "FSC" OR "Forest Stewardship Council" OR "RSPO" OR "Roundtable on Sustainable Palm Oil" OR "RJC" OR "Responsible Jewellery Council" OR "Equitable origin" OR "ASI" OR "Aluminium Stewardship Initiative" OR "Socially Responsible Investment" OR "CSR" OR "Corporate Social Responsibility") AND ( "extract\*" OR "hydropower" OR "energy" OR "gas" OR "oil" OR "agricult\*" OR "mining" OR "forestry" ))*

The search yielded 1,633 documents. Two members of the research team reviewed the documents and removed any that were deemed irrelevant to the study or that were duplicates. Documents not in English and those without an author and/or abstract were also removed. A total of 1,452 documents were removed. The remaining 181 documents were included in the analysis. A further 5 documents were added based on expert advice. An additional search was also carried out to check for relevant documents not uncovered in the initial search. This search involved scanning the reference lists of the 10 most cited papers gathered in the initial search and 18 other documents identified as 'key documents', being of most direct relevance to the study topic. A further 37 documents were gathered from this additional search, giving a total of 223 documents.

Data were systematically extracted from the documents based on their title, keywords and abstracts. The 10 most cited documents and the 18 other 'key documents' were also subject to full-text review. Data extracted from the documents included:

- Year of publication
- Document type and source title (i.e. name of journal, book or conference)
- Author and Index Keywords
- Author affiliations
- Country, Region and Location of the study
- Indigenous Peoples studied
- Extractives industry (i.e. mining, forestry, hydrocarbons, palm oil, hydroelectricity)
- Industry details (i.e. project type/name)
- Study focus (i.e. main topic(s) of interest to the study topic).



Statistical analyses were undertaken using Microsoft Excel and the SPSS Statistics software (Version 22). The freeware package VOSViewer<sup>143</sup> was used to construct bibliometric maps, and world maps were prepared using the package rworldmap<sup>144</sup> in the software R 3.2.4 and Microsoft Excel.

### **Review of the Grey Literature**

The google searches used the study title (*'Indigenous Peoples' participation in sustainability standards for extractives'*) and associated keywords/phrases (e.g. *'extractives industry certification program'*, *'standard-setting'*, *'decision-making'*, *'FPIC implementation'*, *'assurance'*, *'complaints mechanisms'*).

### **Survey of Key Informants**

The key informants were targeted for broad representation across stakeholder categories (i.e. certification programs, NGOs, researchers, auditing companies and independent auditors, extractives companies), extractives industry sectors and regions of the world. The contacted key informants were encouraged to complete the provided questionnaire and then participate in a follow-up interview to help elaborate on their responses and engage in a general discussion of the research topic. Follow-up/reminder emails were sent to those key informants who had not replied within 10 days of the initial email. Of the 53 potential informants contacted, 20 did not reply. A further 7 replied and initially expressed an interest in participating in the survey but did not provide any further response (and did not reply to follow-up emails), and 9 declined to participate (after initially agreeing to participate) stating they believed they did not have adequate expertise and/or referred to others who did. The contacted potential informants who did not participate were from across the full range of targeted stakeholder categories. Many of the contacted and/or surveyed key informants recommended other experts that could inform the study. Some of these recommended experts were included in the 17 informants that were surveyed. Among the surveyed informants, 3 were unavailable for interview and only returned the completed questionnaire, 9 participated in the interview only, and 5 completed the questionnaire and participated in a follow-up interview. Questionnaire responses were summarised and tabulated. Each phone/skype interview averaged 20-30 minutes, while the in-person interviews averaged 60 minutes. Notes were taken during the interviews and these datasets were also summarised and tabulated. Manual content and thematic analysis was used to review the tabulated questionnaire and interview data.

## **6.2 Appendix 2. GMC Case-Study Details**

### **Mineral Resources in Australia**

In Australia, the Federal Government own all of the mineral resources in the ground. Access to these mineral resources is provided to the private sector through several competitive means to establish exclusive rights for set periods of time. During the application phase, companies must engage with the impacted Indigenous communities, undertake assessments of the mineral resources to confirm economic viability, and complete environmental and social impact assessments. Large projects may be subject to fast-tracking if considered of regional, state or national significance by the government(s). The concept of Indigenous Peoples' consent is in this context – they sometimes have the opportunity to negotiate to maximise benefits that may include a royalty payment aimed at offsetting the socio-economic and other community impacts, identify protective measures around areas of high cultural significance, secure best endeavour commitments for Indigenous employment or Indigenous business outcomes, and in some circumstances, play a role in environmental management programs.

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<sup>143</sup> van Eck & Waltman, 2010.

<sup>144</sup> South, 2011.

## Land and Mineral Resource Ownership in the Northern Territory, Australia

Over 80% of all minerals mined from the Northern Territory come from Indigenous Peoples land. The Northern Territory Land Rights Act (NTLRA 1976) provides for the granting of inalienable freehold title for Aboriginal land, which means that the land cannot be bought, sold, or mortgaged. Once granted, Aboriginal land cannot be taken back under any law of the Northern Territory (more information available at [www.austrade.gov.au/land-tenure/Land-tenure](http://www.austrade.gov.au/land-tenure/Land-tenure) ). Under the NTLRA, Aboriginal landowners have the right to say 'yes' or 'no' to mining and minerals exploration on their land. (<https://www.nlc.org.au/our-land-sea/economic-development/mining-and-minerals> ). While Indigenous Peoples may be granted title and ownership of the land, the mineral rights are reserved to the government. Each Australian state or territory has separate legislative frameworks to support access rights to mineral resources.

## Mining and Exploration Licence – Summary of the Process in the Northern Territory, Australia

(adapted from Northern Land Council (<https://www.nlc.org.au/our-land-sea/economic-development/mining-and-minerals> ))

1. **Exploration Licence Application** The mining company applies to the Northern Territory government for a licence or permit.
2. **Consent to Negotiate** The NT Mines Minister grants the mining company 'consent to negotiate' with the Northern Land Council (NLC).
3. **Application for Consent** The mining company must submit a detailed application to the NLC. These details include mining company details; site conditions scientific studies of flora, fauna, hydrology, special studies on key plant and animal species. Socio-economic and cultural heritage assessments. Statutory and non-statutory requirements. Operational activities, mine design, geology, mine reserves, processing activities policies and procedures, environmental management structure, safety planning, emergency procedures, implementation, monitoring and reporting, incident reporting, and a social and environmental impact assessment which are included in the Mine Management Plan.
4. **Acceptance or refusal** The NLC technical specialists and advisers review details provided by the mining company, to ensure it includes all information required for an informed decision by impacted Indigenous Peoples.
  1. The mining company presents the project to the Indigenous People. A representative of the Federal Minister for Aboriginal Affairs may also attend.
  2. The traditional landowners have the right to refuse consent to an exploration proposal that affects their land. Refusal freezes the application for five years after which the same company may re-apply.
  3. The traditional landowners may consent and instruct the NLC to negotiate an agreement with the company.
5. **Negotiations** Negotiations must be concluded within 12 months. The NLC provides the company with a draft agreement containing fundamental clauses, and the company is invited to use this document as a basis for negotiations. A liaison committee of traditional landowners can be involved in negotiations. The negotiated agreement is then presented at a meeting of traditional landowners for their consideration.
6. **NLC Full Council** Once the traditional landowners have instructed the NLC to enter into the Agreement, the NLC Full Council (that includes senior Indigenous Peoples from across the Northern Territory) to review the process and ensure that due process has been adhered to. The NLC must then seek the final approval of the Federal Minister for Aboriginal and Torres Strait Islander Affairs to enter into the Agreement.
7. **Mining Lease Application** The mining company applies to the Northern Territory government to assess the information provided by the mining company including if it has met all the government and NLC requirements for a licence or permit to be granted. If granted, the Mineral Lease permit will include details of any terms and conditions including monitoring of environmental, social and or cultural impacts and the reporting requirements to maintain the Mineral Lease.