

FPIC – Free, Prior and Informed Consent

A Guidance Document for Indigenous Peoples
Affected by ASI-Certified Operations

VERSION 1
April 2025



Aluminium Stewardship Initiative (ASI)

ASI is a not-for-profit Standards setting and Certification organisation for the Aluminium value chain.

Our **vision** is to maximise the contribution of Aluminium to a sustainable society.

Our **mission** is to recognise and collaboratively foster responsible production, sourcing and stewardship of Aluminium.

Our **values** include:

- Being inclusive in our work and decision-making processes by promoting and enabling the participation of representatives in all relevant stakeholder groups.
- Encouraging uptake throughout the Bauxite, Alumina and Aluminium value chain, from mine to downstream users.
- Advancing material stewardship as a shared responsibility in the lifecycle of aluminium from extraction, production, use and recycling.

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The official language of ASI is English. ASI aims to make translations available in a range of languages and these will be posted on the ASI website. In the case of inconsistency between versions, reference shall default to the official language version.

ASI – Aluminium Stewardship Initiative Ltd (ACN 606 661 125)

FPIC – Free, Prior and Informed Consent: A Guidance Document for ASI Entities

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FPIC – Free, Prior, and Informed Consent

A Guidance Document for Indigenous Peoples Affected by ASI-Certified Operations

Anders Blom

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The drafting of this series of Free, Prior and Informed Consent guidance documents was led by Anders Blom, an expert in Indigenous Peoples' human rights-based issues, with the input and support of the Free, Prior and Informed Consent Working Group. The Working Group consisted of three experienced IPAF members, Marina Wangurra, Abu Karimu and Nicholas Barla, and three ASI secretariat, Mark Annandale, Jessica Patterson de Oliveira Pereira and Vicky Tran. The range of knowledge, geographical location and gender within the Working Group ensured a broad perspective was reflected in the guidance documents.

These Guidance documents were developed after IPAF and ASI members expressed a need for additional guidance on the Free, Prior and Informed Consent process, so that all stakeholders understand the importance of FPIC, what the process is and how to implement it. The Guidance documents aim to help understand what best practice engagement and consent looks like, as well as supporting ASI members correctly upholding Indigenous Peoples rights and complying with the ASI Performance Standard.

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1. Preface

We are Indigenous Peoples; we are part of the 500 million Indigenous Peoples live on a quarter of Mother Earth's surface. We have been here and lived on our land since the beginning of time. Our land is not ours, but we have been given it by our ancestors to manage it for future generations. Our land is the cradle in which our culture has been created. Our land is the place where our history is described in every stone, in every tree, in every natural formation. In connection to our land, we have developed our cosmovision of existence where we merge our social, cultural, spiritual, traditional and daily life into comprehensible rules of living. Our ancestors actively participate in our cosmovision, and our future existence depends on future generations being able to pass this on in a never-broken chain.

We are Indigenous Peoples, and we were here when the pharaohs of Egypt built their pyramids, a culture that has weathered as the stone has turned to gravel. We were here when Genghis Kahn built and lost the world's greatest empire. We were here when the conquistadors came sailing and brought new diseases to our people. We were here on our land when the European colonizers came to our shores. We were here and we will be here when today's cultures and societies are faced with decisions about their future existence.

Our land is the most important thing we have; therefore, we need to protect it, not with war and violence but with reason, consultation, and cooperation. At every moment when our land is threatened, we must practice our self-determination. This is not always easy and rarely appreciated by our outside world. Faced with changes and intrusions into our land, we must always demonstrate our self-determination by freely giving or withholding our informed consent to these changes. We call this process FPIC – Free Prior and Informed Consent.

In this manual, we want to provide information and advice on how brothers and sisters can exercise their self-determination by preparing and applying FPIC in situations where they are affected by ASI-Certified Entities.

Indigenous Peoples Advisory Forum (IPAF) through Anders Blom

2. Introduction

The Aluminium Stewardship Initiative (ASI) Board of Directors decided on 11 December 2023 to start the development of guidance documents for the implementation of Free, Prior, and Informed Consent (FPIC) within ASI-Certified operations. In ASI's new Performance Standard V3.1, the implementation of FPIC has become a mandatory obligation for the companies and organisations whose ASI-Certified operations may affect us Indigenous Peoples, indirectly or directly.

Implementing FPIC is not easy – many international organisations have developed FPIC guidance for their members and companies looking to meet their corporate social responsibility commitments. Most of these manuals are written for use by certified companies in various fields. Guidance documents written directly for us Indigenous Peoples are not as common. The issue of implementing FPIC within ASI is also not unproblematic – how can this be implemented in a way that satisfies both national and international law as well as the ASI Performance Standard?

ASI's board decided to approach the FPIC concept from three different perspectives: the certified companies known as Entities, the Indigenous Peoples, and the Auditors. As a result, there is now an orientation decision to develop three guidance documents in the field of FPIC:

- I. ASI guidance document for the implementation of FPIC aimed primarily at ASI-Certified companies known as Entities
- II. ASI guidance document for the implementation of FPIC aimed primarily at Indigenous Peoples
- III. ASI guidance document/checklist for the implementation and verification of FPIC aimed primarily at companies/Auditors who check compliance with ASI's Performance Standard

A first guidance document has already been written for Entities throughout ASI's value chain that have a responsibility and obligation to apply FPIC in their operations. This document was developed under the guidance of the Indigenous members of IPAF (Indigenous Peoples Advisory Forum) together with representatives of the ASI Secretariat. IPAF is designed to be a communications and engagement platform between representatives of Indigenous Peoples and ASI.

This guidance document, aimed at Indigenous Peoples and affected Indigenous Local Communities, has also been developed under the leadership of IPAF and the ASI Secretariat.

In this document, IPAF addresses Indigenous Peoples whose daily lives may be affected by an ASI-Certified Entity. Here, ASI presents advice on how Indigenous

Peoples and Local Communities can prepare for an FPIC process. This advice is linked to the responsibility that an ASI-Certified Entity has in accordance with the ASI Performance Standard, V3.1.

ASI hopes that this guidance creates the conditions to strengthen Indigenous Peoples' self-determination further while striving to establish good relations with the Entities that work in accordance with the ASI Performance Standard.

This manual does not place responsibility on Indigenous Peoples to initiate an FPIC process in relation to an ASI-Certified Entity. On the contrary, this responsibility lies with the ASI-Certified Entity that may affect Indigenous Peoples and their land. However, IPAF sees a well-executed FPIC process as an important tool for Indigenous Peoples to exercise their rights and self-determination. Therefore, ASI invites all affected Indigenous Peoples to adopt the guidance in this manual and use the FPIC process to create the conditions for informed decisions, be these an approval or a rejection of proposed project plans.

In discussions about protecting the rights of Indigenous Peoples and implementing FPIC, attention is more often paid to the risks to companies that do not meet these standards. Alternatively, it is valuable to emphasise the benefits of performing FPIC processes in good faith. This FPIC guidance must be seen from this perspective. This document aims to support the vital task of fostering positive relationships between Indigenous Peoples and the surrounding world with a desire to manage the planet sustainably.

3. FPIC – Free, Prior, and Informed Consent

3.1 Introduction

Free, Prior, and Informed Consent (FPIC) refers to the right for us Indigenous Peoples to give, modify, or withhold our consent for any action that would impact on our lands, resources, territories, or rights. FPIC is derived from our right to self-determination, which is a cornerstone of our Indigenous People's rights. Therefore, consent is not merely the signing of a contract but is instead a process in which Indigenous Peoples, and our communities must have substantial control over matters affecting ourselves, our territories and our way of living.

Free, Prior, and Informed Consent is a manifestation of Indigenous Peoples' right to self-determine our political, social, economic, spiritual, and cultural priorities. It constitutes four interrelated and cumulative rights for Indigenous Peoples: the right to be consulted; the right to participate; the right to give, modify, or withhold consent for a planned operation; and the right to our lands, territories, and

resources. Free, Prior, and Informed Consent cannot be achieved if one of these components is missing.

Indigenous Peoples' connection to land transcends physical and geographical aspects. As part of Mother Earth, our land binds history to the present, connects ancestors to the living, and serves as the foundation of our cultural continuity. Losing land is not just about forfeiting the opportunity to practice our way of life—including – our Traditionally Practised Ecosystem Services—it also erases historical narratives and threatens cultural survival.

On a personal level, a lost and obliterated land can make it difficult to identify with one's origins and cause a loss of relationships and contact with one's ancestors.

Indigenous Peoples have actively participated in the development of the international agreements and laws that lay the foundation for FPIC.¹ Not least, this work has been significant to the development of the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP).² The basis for ASI's commitment to FPIC has been expressed by the United Nations Permanent Forum for Indigenous Issues as follows:

*"Land is the foundation of the lives and cultures of Indigenous peoples all over the world... Without access to and respect for their rights over their lands, territories and natural resources, the survival of Indigenous Peoples' particular distinct cultures is threatened."*³

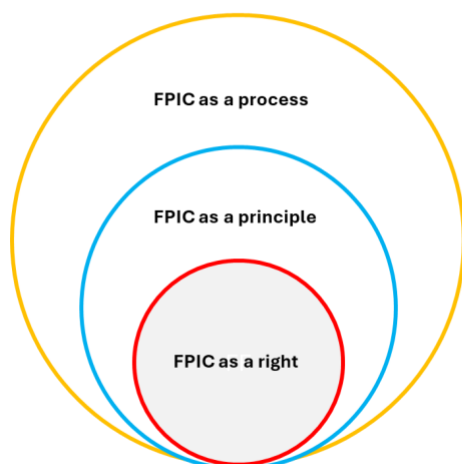
FPIC as a concept contains many dimensions—it can be seen as a right, a process, and a principle.

When considering FPIC as a principle or process, rights remain integral and cannot be disregarded. Defining FPIC solely through process or principles and neglecting rights is akin to sailing a boat without water.

¹ https://www.un.org/development/desa/indigenouspeoples/wp-content/uploads/sites/19/2019/01/UNDRIP_E_web.pdf

² The United Nations is an international governing body formed in 1945 to increase political and economic cooperation among its member countries. The UN grew out of the League of Nations following World War II; now, nearly every country in the world is a member. The United Nations' role is to achieve international cooperation in solving international problems of an economic, social, cultural, or humanitarian character, and in promoting and encouraging respect for human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion.

³ Permanent Forum on Indigenous Issues, Report on the Sixth Session, 25 May 2007



FPIC as a right:

All people have the right to self-determination. However, the right to give, withhold and withdraw consent is a collective right specific to us Indigenous Peoples. The normative framework for the right to FPIC is based on international law.

FPIC as a principle (e.g. within ASI):

As such, FPIC does not depend on the approval of national laws and regulations to be a valid standard of human existence. As a result, actions respecting FPIC in e.g. the ASI Performance Standard might directly conflict with national laws and/or a nation's administrative policy

FPIC as a process:

FPIC is also seen as a process that offers tools for better practice in an engagement with us Indigenous Peoples during a resource development cycle. This view of FPIC falls in line with the human rights-based principle of participatory decision-making.

Defining the constituent components of FPIC can be complicated. Since FPIC is derived from the right to self-determination, Indigenous Peoples must have an opportunity to decide for ourselves how this concept should be interpreted. Despite this, several UN bodies have elaborated on which principles should be embodied in the four components that constitute FPIC.⁴ In this document, the definitions below guide FPIC:

❖ **“Free”** implies consent is sought in the absence of any actual or perceived coercion, intimidation, or manipulation. Indigenous Peoples should determine the format of the consultations. “Free” denotes that Indigenous Peoples have the right, rather than an obligation, to participate in FPIC consultations, aligning with our self-determination. A prerequisite for an FPC process to be considered “Free” is that the concerned Indigenous Peoples have sufficient capacity and resources to participate in the process.

❖ **“Prior”** implies consent is sought sufficiently in advance of any decisions or actions that may impact Indigenous Peoples’ enjoyment of our rights. We should have adequate time to make our decisions in accordance with our traditional decision processes and through our own freely chosen representatives and institutions.

⁴ The interpretations of the four components of Free, Prior, and Informed Consent have been addressed at a high level by UN bodies such as the UN Permanent Forum on Indigenous Issues, the FAO and, standard-setting working groups such as the UN Working Group on Indigenous Populations.

❖ **“Informed”** implies that there is full disclosure of all the information that Indigenous Peoples need to meaningfully assess the potential risks and benefits of the project (including its location, duration, scope, impacts, benefits, and/or partnership models). This information must be provided in an accessible format and through a process agreed upon by the affected Indigenous Peoples, involving participation in, or conducting of, Impact Assessments, access to funding for independent technical and legal advice, and negotiations regarding benefits.

❖ **“Consent”** implies respect by all parties, irrespective of the outcome, for the freely taken, informed, and autonomous decision of Indigenous Peoples. This decision should be the outcome of good faith, rights-based consultations, and cooperation with the affected Indigenous Peoples. It should align with their chosen procedures and timeframes and be premised on our indigenous rights-based principles of self-determination, inclusivity, consensus, harmony, and intergenerational well-being. Where consent is provided, agreed conditions should be formalised in a legally binding document. Where consent is withheld or modified, the decision of the affected Indigenous Peoples must be respected.

FPIC, which derives from the right to self-determination, is a collective right for Indigenous Peoples, and it requires the consent of the affected Indigenous group or local community as a whole. No individual member of an Indigenous Community can make their own FPIC decision for themselves or the entire group, community, or tribe.

When Indigenous Peoples make decisions in these matters, we should do so in accordance with the traditional forms of decision-making that prevail in our community or tribe. As with any collective decision, disagreements and different perceptions of what is acceptable and what is not can arise. Therefore, the FPIC process should adequately consider the competing priorities of individuals and groups among the affected Indigenous Peoples and their communities. It is important that this process includes women, children, the elderly, and vulnerable groups in the decision-making process.

3.2 FPIC as a Right

FPIC as a right:

All people have the right to self-determination. However, the right to give, withhold and withdraw consent is a collective right specific to us Indigenous Peoples. The normative framework for the right to FPIC is based on international law.

FPIC has become an increasingly widespread concept and is applied more frequently to Indigenous Peoples and our right to self-determination. It is about Indigenous Peoples' right to decide on our political status and our social, cultural, and financial development. FPIC has existed as a concept in international law⁵ for several decades, but it was through the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) that FPIC gained wider spread. The Declaration can be seen as an interpretation of the Declaration of Human Rights. It states a minimum level for how Indigenous Peoples issues should be handled. In a historic vote on September 13, 2007, 144 countries voted for the UNDRIP Declaration, 11 abstained, and only four (Australia, Canada, New Zealand, and the United States) voted against it. Since 2007, those four countries have reversed their positions and now officially endorse the UNDRIP.

FPIC is a crucial instrument of international law for Indigenous Peoples to achieve self-determination and freedom from discrimination. Several articles of UNDRIP reinforce the Right of Self-Determination and FPIC over development affecting Indigenous lands, territories, and resources. State governments and corporations have recommendations and sometimes obligations to implement the UNDRIP and uphold its standards in their relations with the Indigenous Peoples. The right to FPIC is also present in some national legislations where UNDRIP has been incorporated into national law, including in the Philippines, Australia, Bolivia, Peru, and the Republic of Congo. However, many states argue that the UNDRIP regulations are already integrated into existing legislation, a point contested by many Indigenous Peoples and experts in international law.

Within the United Nations, there are many different councils whose task is to interpret International Law. One such council is the Human Rights Council. Under this Council, there is an Expert Mechanism on the Rights of Indigenous Peoples

⁵ International law is a system, often under the control and supervision of the United Nations, of treaties and agreements between nations that governs how nations interact with other nations, including their citizens and businesses. International law is enshrined in conventions, treaties, and standards. Treaties are binding for the countries that have ratified them, while agreements and declarations are seen as strong recommendations to follow.

(EMRIP). In December 2017, EMRIP conducted a study regarding FPIC to determine in which Conventions FPIC appears alongside UNDRIP. It is important to remember that UNDRIP as a declaration is only an advisory, non-binding legal instrument on a national level. A Convention, however, is binding and must be implemented if accepted (i.e., ratified) by a country.

The EMRIP report⁶ made several conclusions:

- ❖ *Free, prior, and informed consent (FPIC) is a human rights norm grounded in the fundamental rights to self-determination and to be free from racial discrimination.*
- ❖ *FPIC is guaranteed by the **International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the International Convention on the Elimination of All Forms of Racial Discrimination and the ILO Indigenous and Tribal Peoples Convention, 1989 (No. 169).***
- ❖ *The provisions of the UNDRIP, including those referring to free, prior, and informed consent, **do not create new rights for Indigenous Peoples**, but rather provide a contextualised elaboration of general human rights principles and rights as they relate to the specific historical, cultural, and social circumstances of Indigenous Peoples.*

Traditional Indigenous decision-making processes are a fundamental part of FPIC and must be respected as a collective right, even if this may be in conflict with traditional decision-making in the affected Indigenous community. It is acknowledged that traditional decision-making is based on Indigenous Peoples' worldview, including our view on cultural and traditional practices and sustainable principles. Making decisions about developments that have a permanent impact on the land, such as mining, are not considered sustainable based on these principles. As part of the FPIC process, Indigenous communities can seek specialist advice, support, and information to help make informed decisions. This support may also come from other members of the affected Indigenous communities, which may include younger people who may be exposed to modern practices and technology, as well as from other forms of education that support their communities in making informed decisions.

When we talk about Indigenous Peoples' rights, it is important to note that we are not talking about creating new rights, but rather about recognition and respect for

⁶ Free, prior and informed consent: a human rights-based approach; Study of the Expert Mechanism on the Rights of Indigenous Peoples; A/HRC/39/62

the rights Indigenous Peoples already have. It is about equality and reciprocity in relation to the surrounding world. Chief Hin-mah-too-yah-lat-kekt, known as Chief Joseph, the leader of the wal-lam-wat-kain (Wallowa) band of Nez Pace, expressed this sentiment more than 150 years ago in the following way:

*The earth is the mother of all people, and
all people should have equal rights upon it.*



3.3 FPIC as a Principle

FPIC as a principle (e.g. within ASI):

As such, FPIC does not depend on the approval of national laws and regulations to be a valid standard of human existence. As a result, actions respecting FPIC in e.g. the ASI Performance Standard might directly conflict with national laws and/or a nation's administrative policy

In today's international world where social media spreads messages across the globe at lightning speed, many companies have realised that it can pay to behave in an ethically defensible manner in relation to the environment, stakeholders, and Indigenous Peoples. This can create good relations with investors and customers, which is necessary for a company to survive in a sustainable and financially stable way.

Two terms emerge frequently in corporate discourse: corporate social responsibility (CSR) and environmental, social, and governance (ESG). Both terms relate to the social responsibilities of businesses. While CSR holds businesses accountable for their social commitments in a qualitative manner, ESG helps measure or quantify such social efforts.

To be able to prove the ambitions described in CSR documents and ESG policies, however, verification tools are required. This need has created space to develop different standards and certification models that companies can follow and adapt to in order to behave sustainably and ethically. Today, there are performance standards in many different industries. The aluminium industry is an example of such an industry. To be credible in relation to customers and investors, most serious certification standards have built-in requirements that compliance with the standard is checked by independent auditors, a third-party control.

The Aluminium Stewardship Initiative (ASI) is an industry-led initiative that aims to promote sustainability throughout the aluminium value chain. Both the aluminium industry and aluminium users benefit from ASI certification by demonstrating their commitment to social, environmental, and ethical standards. For this purpose, ASI has developed a Performance Standard (3.1).

ASI's Performance Standard is globally applicable and encompasses all stages of the aluminium value chain: primary aluminium production (including bauxite mining, alumina refining and aluminium smelting), semi-fabrication and material conversion processes, recycling, and use in final products.

In many certification standards in various industries, Indigenous Peoples' rights have been included, often with reference to UNDRIP and other instruments of international law such as ILO 169. This also means that the right to FPIC is often mentioned as a guiding principle in regards to relations with Indigenous Peoples.

It is recognised in international law that states are typically designated as primarily responsible for practising and obtaining FPIC. Companies have often avoided formal FPIC processes unless there are legal mandates by countries whose laws require FPIC to be obtained. The introduction of FPIC in many certification standards is now gradually influencing many companies to implement FPIC processes regarding the Indigenous Peoples who may be affected by their activities.

It is in a company's best interests to respect Indigenous Peoples' rights. Without support from Indigenous Peoples and our communities, the financial and operational viability of the project can be at risk, in addition to risks of litigation and reputational costs. By obtaining strong consent via an FPIC process from Indigenous Peoples and our communities, businesses will have a deeper and more durable social license to operate.⁷

⁷ A social license to operate (or SLO) refers to the ongoing acceptance of a company or industry's standard business practices and operating procedures by its employees, stakeholders, and the general public.

Problematically, states often do not seek consent or consult with Indigenous Peoples before granting licenses to companies. With the growing expectation that companies should fulfil their responsibility to respect human rights regardless of a state's action and laws, there is now a firm expectation in the global marketplace that companies themselves should obtain consent through participation in FPIC processes that can create the basis for sustainable decisions where respect for Indigenous Peoples' rights is guaranteed.

This means that in certain contexts, such as when a company is certified in accordance with a standard that prescribes FPIC, FPIC is not dependent on an endorsement by national or international law to be a valid standard for Indigenous Peoples' existence. As a result, actions respecting FPIC may risk conflicting with national laws or falling within a policy gap. However, this is not a problem for Indigenous Peoples—instead, the certified company must deal with this. If the company wants to continue to be certified, it must meet the requirements of the standard behind the certification, regardless of whether or not FPIC is accepted by the authorities in the country concerned.

The fact that a government authority may have granted a company a license in accordance with its current regulations does not remove the obligation, according to most certification standards, for this company to carry out an FPIC process with the affected Indigenous Peoples. This process can end in the company not obtaining consent for the planned operation.

A clear example of FPIC as a principle is a certification model such as the ASI Performance Standard, where FPIC is a mandatory criterion. Through its Performance Standard, ASI incorporates FPIC as a mandatory principle for ASI-Certified Entities who want to enjoy the benefits of being able to show the market a credible Third-Party controlled brand.

3.3.1 FPIC as a Principle within ASI

The ASI Performance Standard consists of 11 principles structured into three sections:⁸

- a. Principles 1–4. Governance: Business Integrity; Policy and

⁸ The full ASI Performance Standard can be found at <https://aluminium-stewardship.org/asi-standards/performance-standard>.

- Management; Transparency; Material Stewardship
- b. Principles 5–8. Environment: Greenhouse Gas Emissions; Emissions, Effluents and Waste; Water Stewardship; Biodiversity and Ecosystem Services
 - c. Principles 9–11. Social: Human Rights; Labour Rights; Occupational Health and Safety

For Indigenous Peoples, it is above all principle 9, with its various criteria, that is of particular importance. The majority of these criteria are connected to how an ASI-Certified Entity⁹ must behave in relation to Indigenous Peoples. Criterion 9.4 is especially relevant when it comes to the application of FPIC.

- Criterion 9.1: Human Rights Due Diligence
- Criterion 9.3: Indigenous Peoples
- Criterion 9.4: Free, Prior, and Informed Consent (FPIC)
- Criterion 9.5: Cultural and Sacred Heritage
- Criterion 9.6: Displacement
- Criterion 9.7: Affected Populations and Organisations

Criterion 9.1: Human Rights Due Diligence

Criterion 9.1 describes what obligations an ASI-Certified Entity has when it comes to avoiding violations of Human Rights.¹⁰ To do this, the Entity must regularly carry out a so-called Human Rights Due Diligence. Human Rights Due Diligence is a way for companies to proactively manage potential and actual negative effects on Human Rights in the areas in which they are active. This investigation involves mapping how one's industrial activities can affect, for example, the Indigenous Peoples who live and carry out their traditional activities in the direct and indirect areas that may be affected by the ASI-Certified Entity.

The ASI-Certified Entity must also write a Human Rights policy document that must be evaluated and renewed at least every five years. The policy document must consider gender issues and other Human Rights issues of importance, including those concerning Indigenous Peoples. If Indigenous Peoples are affected by the Entity

⁹ All aluminium companies that are certified in accordance with the ASI Performance Standard are called an Entity.

¹⁰ Human rights are rights we have simply because we exist as human beings – they are not granted by any state. These universal rights are inherent to us all, regardless of nationality, sex, national or ethnic origin, colour, religion, language, or any other status. They range from the most fundamental—the right to life—to those that make life worth living, such as the rights to food, education, work, health, and liberty. All human beings are born free and equal in dignity and rights. Freedom from discrimination is what ensures this equality.

and its operations, we must also be consulted. Where the Entity identifies, through due diligence and/or grievances, as having caused or contributed to adverse Human Rights impacts, it shall provide for or cooperate in their remediation through legitimate processes.

Criterion 9.3: Indigenous Peoples

Criterion 9.3 describes how an ASI-Certified Entity should behave in relation to Indigenous Peoples. An important part of this is developing processes for identifying the Indigenous Peoples who may be affected by the Entity's operations.

The concept of Indigenous Peoples can be interpreted differently in different parts of Mother Earth. The definition of Indigenous Peoples found in the ASI Performance Standard is the definition developed by the United Nations Permanent Forum for Indigenous Issues.¹¹

Indigenous Peoples are regarded as such based on:

- Self-identification as Indigenous Peoples at the individual level and accepted by our Indigenous community as a member
- Historical continuity with pre-colonial and/or pre-settler societies
- Strong link to territories and surrounding natural resources
- Distinct social, economic, or political systems
- Distinct language, culture, and beliefs
- Form non-dominant groups of society
- Resolve to maintain and reproduce their ancestral environments and systems as distinctive peoples and communities

Indigenous Peoples establish our belonging to a specific group through self-identification. However, some Indigenous Peoples who meet the Permanent Forum's criteria (as well as ASI's), may choose not to identify themselves as Indigenous for various reasons. This could be due to risks to personal or collective well-being in societies with sensitive political climates. Alternatively, in contexts where tribal identity prevails, belonging to an overarching Indigenous identity may not have been considered. For example, some Indigenous Peoples live in voluntary isolation from the rest of the world.

Many different titles and names fit within the concept of Indigenous Peoples. In North America, for example, Indigenous Peoples often call themselves First Nations. In India, there are over 100 million Indigenous Peoples who call themselves Adivasi (original inhabitants). In parts of the world, Indigenous Peoples might call themselves Tribal

¹¹ The United Nations Permanent Forum on Indigenous Issues has developed this modern understanding; https://www.un.org/esa/socdev/unpfii/documents/5session_factsheet1.pdf

Peoples, Scheduled Tribes, Aboriginals, Original Peoples, Native Peoples, or Autochthon Peoples, among other names. This is acknowledged in the ASI Performance Standard.

The term “Affected Populations” appears in a large part of ASI’s criteria. When a criterion refers to Affected Populations, the relevant ASI Entity must assess whether this refers to Indigenous Peoples.

Groups/Peoples who meet the criteria for being Indigenous must be treated according to the requirements prescribed by the Performance Standard, regardless of how they identify themselves.

To fulfil its responsibility according to Criterion 9.3, the ASI-Certified Entity must, among other things, develop the internal capacity to handle these issues as well as policies that support this work. The processes and policies that the Entity is obliged to develop must also be compatible with international standards, including ILO Convention 169 and the UNDRIP.

Criterion 9.3 is also very clear that the ASI-Certified Entity is responsible for the affected Indigenous People being informed about what rights Indigenous People have with reference to the ASI Performance Standard. These rights include the mandatory right to FPIC and the Certification process, including Audit processes, complaints mechanisms, and other key points of the ASI Certification process. Indigenous Peoples must be informed of these rights in a way that is understandable, accessible, and transferable to our cultural and linguistic context. It should not be assumed that Indigenous Peoples know the regulations, rights, and principles that govern the planning and execution of an FPIC process within the ASI system.

A relevant question is whether an impact on affected Indigenous Peoples should be limited to the direct Area of Influence. However, the interpretation that applies here is that the “presence” of Indigenous Peoples refers not only to their physical presence in the direct Area of Influence, but also in a wider context to Indigenous Peoples who have ties to traditional lands and territories that may be affected by the company’s operations in surrounding areas.

The Entity must analyse what impact its current operations, within its Area of Influence and Associated Facilities, have directly and indirectly on the affected

Indigenous Peoples and their land, resources, and Traditionally Practised Ecosystem Services.¹²

In this context, Associated Facilities can include agreements with subcontractors regarding electricity supply, for example from wind power or hydropower, and infrastructure in the form of roads, railways, and ports, even if these are not owned directly by the Entity but are necessary for the Entity's operations.

Criterion 9.4: Free, Prior, and Informed Consent (FPIC)

The most important criterion for applying the principle of FPIC within ASI-Certified operations is Criterion 9.4.

Where the presence of Indigenous Peoples or their lands, territories, and resources is identified by the ASI-Certified Entity, FPIC processes are mandatory for New Projects or Major Changes initiated from 1 January 2022 onwards. This criterion applies to all those projects, but only to those initiated after the Entity joined ASI if that happened after 1 January 2022.

Where the presence of Indigenous Peoples or our lands, territories, and resources is identified, FPIC processes are mandatory for existing projects or Facilities that may have significant impacts on Indigenous Peoples. For Entities engaged in Bauxite Mining, this obligation is linked to situations where the start of a new phase of operations is imminent and prior to altering an existing Mine Rehabilitation and Closure Plan.

Where there is an obligation to conduct FPIC processes, the Entity has an obligation to ensure that any consent to the relevant operations has the support and confirmation of the affected Indigenous Peoples and their community.

Examples of situations where the Entity must engage Indigenous Peoples in an FPIC process are many, but may include:

- Impacts on Indigenous Peoples lands, natural resources, and traditional ecosystem services subject to traditional ownership or under customary use

¹² Traditionally Practised Ecosystem Services are based on Indigenous Peoples' ongoing accumulation of knowledge, practices, and beliefs about relationships between living beings in a specific ecosystem over hundreds or thousands of years through direct contact with the environment, handed down through generations, and used in life-sustaining ways. This knowledge includes the relationships between people, plants, animals, natural phenomena, landscapes, and timing of events for activities such as nomadic animal husbandry, hunting, fishing, trapping, agriculture, and forestry. It encompasses the worldview of a people, which includes ecology, spirituality, human and animal relationships, and more.

- Resettlement¹³ of Indigenous Peoples from our lands and natural resources subject to traditional ownership or under customary use.
- Any impacts on critical cultural heritage that is essential to the identity and/or cultural, ceremonial, or spiritual aspects of Indigenous Peoples
- Use of Indigenous Peoples' cultural heritage, including traditional knowledge, innovations/intellectual property, or practices for commercial purposes.

Criterion 9.4 stipulates that the Entity shall consult and cooperate in good faith with the affected Indigenous Peoples. What does that mean for Indigenous Peoples? The good faith principle is a key component of most historic and modern legal orders, and a general principle of international law. The principle requires parties to deal honestly and fairly with each other and to refrain from taking unfair advantage. The obligation to act in good faith also means that negotiations between Indigenous Peoples and the ASI-Certified Entity should be conducted in a culturally sensitive manner, through Indigenous Peoples' own representative institutions, i.e., representatives chosen by ourselves in accordance with our own procedures.

FPIC is based on an expanding cooperation, which is established through culturally appropriate processes undertaken in good faith, to achieve agreement or consent. This **goes beyond consultation**. Consultation is merely a tool to achieve the goal of the affected Indigenous Peoples reaching an informed consent decision, which may involve acceptance of the proposal, rejection of the proposal, or the introduction of a modified proposal.

For Indigenous Peoples, this means that the relevant ASI-Certified Entity should be expected to exhibit the following:

- Willingness to engage in the FPIC process at reasonable times and frequencies, in a way that is culturally appropriate to the affected Indigenous Peoples
- Presentation of appropriate expertise during the FPIC process, including expertise in sociology/anthropology and knowledge of the local context, culture, and language of the affected Indigenous Peoples. It is equally important to ensure that the affected Indigenous Peoples have sufficient capacity and knowledge to participate equally in the process. It is the responsibility of the Entity to ensure that this capacity is available through the Indigenous Peoples' own selection of advisors and experts.

¹³ 'Resettlement' in this context may refer to both physical displacement—relocation or loss of shelter, and economic displacement—loss of assets, or access to assets, that leads to loss of income sources or other means of livelihood, as a result of project-related land acquisition and/or restrictions on land use (Adapted from IFC Performance Standards, 2012).

- Provision to the affected Indigenous Peoples of all information necessary for an informed negotiation, including information about their rights, in accordance with the ASI Performance Standard, and the meaning of FPIC
- Presentation of issues of importance in a language and via media that the affected Indigenous Peoples prefer and can understand
- Use of acceptable and agreed-upon procedures for information meetings and negotiations, which may involve moving meetings to a place that the affected Indigenous Peoples are comfortable with and at times that suit their needs and lifestyles
- Making clear to the affected Indigenous Peoples that the right to give, withhold or modify consent is part of the FPIC process. It must also be clear to all parties that a given consent need not be final. If conditions change in the ongoing industrial project or its immediate surroundings, this may give rise to reconsideration of the consent presented. **A yes can become a no and a no can become a yes.**
- Paying special attention to ensure that women, youth, elders, and Vulnerable or At- Risk people can participate meaningfully in the FPIC process
- Willingness to change initial position and modify offers
- Provision of sufficient time for decision-making that is governed by the traditional decision-making processes of the Indigenous Peoples' community
- Respecting the decision made by the affected Indigenous Peoples

The ASI Performance Standard and its guidance documents refer to Local Communities on several occasions. But even if Indigenous Peoples often live in what can be described as a Local Community, this does not automatically mean that all Local Communities contain Indigenous Peoples. The rights of the two groups can often be separate. It is important to clarify the difference between these rights when discussing the right to FPIC. A Local Community where the dominant majority of its members can identify themselves as Indigenous according to the definition applied by ASI has the right to demand an FPIC process if they are affected by an ASI-Certified Entity. According to the ASI Performance Standard, a Local Community where the inhabitants cannot be considered Indigenous according to the definition used by ASI do not have a right to demand an FPIC process, regardless of what they call themselves.

Local Communities consist of groups of people living together who may not originally come from that locality, while Indigenous Peoples are typically originally from a particular locality and have ancestral ties to it. The term Local Community generally refers to any people located in an operation's or project's geographical proximity,

particularly those subject to actual or potential direct project-related risks and/or adverse impacts on their physical environment, health, or livelihoods. Additionally, it often refers to a group of people or families who live in a particular locality, sometimes share a common interest (water users associations, fishers, herders, grazers, and the like), often have common cultural and historical heritage, and exhibit different degrees of cohesiveness. Often, these Local Communities consist of Indigenous Peoples.

If a Local Community is inhabited by Indigenous Peoples according to the definition applied by ASI, then FPIC must be applied in all relevant matters that the Performance Standard prescribes for Indigenous Peoples. In this context, it cannot be taken for granted that the residents of the Local Community will call themselves Indigenous. However, this should not stop the Entity from considering the affected inhabitants of the Local Community as Indigenous Peoples.

FPIC is a high-status issue in the ASI Performance Standard. Incorrect handling of FPIC by an ASI-Certified Entity can lead to losing the right to be certified in accordance with the ASI Performance Standard. For an Entity, this can be devastating for their relationship with customers, partners, and investors.

Criterion 9.6: Displacement

Displacement is usually the biggest impact to which Indigenous Peoples can be exposed. Losing one's home is traumatising, and so is losing the opportunity to exercise the traditional ecosystem services that are usually associated with one's cultural identity. This applies to farmers, gatherers, hunters, fishermen, and nomadic pastoralists. Criterion 9.6 requires ASI-Certified Entities to avoid or minimise displacement. If displacement is deemed necessary, then a Resettlement Action Plan will be drawn up for the affected Indigenous Peoples.

Displacement, whether voluntary or involuntary, refers to both physical displacement, meaning relocation or loss of shelter and land, and economic displacement—loss of assets or access to assets such as traditional ecosystem services, leading to loss of sources of income or other livelihoods, because of project-related land acquisition and/or restrictions on land use.

Involuntary displacement occurs when Indigenous Peoples do not have the right to refuse land acquisition or restrictions on land use that lead to physical or economic displacement. This occurs in cases of legal expropriation of Indigenous Peoples' tenure rights or temporary or permanent restrictions on land use and negotiated

settlements where the buyer can resort to expropriation or impose legal restrictions on land use if negotiations with the seller fail.

The criterion applies to New Projects and Major Changes initiated before 2022, but the criterion applies only to those projects initiated after the Entity joined ASI. For New Projects and Major Changes initiated from 1 January 2022 onwards, the criterion applies to all projects. If Indigenous Peoples are affected, an FPIC process must be conducted.

Criterion 9.7: Affected Populations and Organisations

In this criterion, the obligation to respect the legal and customary tenure rights¹⁴ of Affected Populations and Local Communities is highlighted. As previously mentioned, both Affected Populations and Local Communities can consist of Indigenous Peoples. When an ASI-Certified Entity has identified that an Affected Population meets the criteria for being considered Indigenous Peoples, the regulations mentioned above and FPIC apply.

The criterion refers to legal and customary tenure rights that must be respected. Today, it is common for Indigenous Peoples and Local Communities to lack legal titles to land but to use this land based on customary rights.

Customary or traditional rights are those rights and obligations held by an individual, a group, or a community that are rooted in custom. Different from laws in their origin and generally unwritten, customary rights are nonetheless true rights that exist on their own merit. Thus, they have the force of law according to the law and legal doctrine of most, if not all, States.

Customary rights are the result of practices and usages which have the following characteristics:¹⁵

- they are constant and regular, being repeated time and again
- they are longstanding (at least one generation of 20 years)
- they are widespread within the group or community
- they are seen by the individual, group, or community as creating rights and obligations among themselves

¹⁴ Land tenure is the relationship, whether legally or customarily defined, among Indigenous Peoples with respect to land. "Land" in this context includes other natural resources such as water and trees. Rules of tenure define how property rights to land are allocated within societies. They define how access is granted to rights to use, control, and transfer land, as well as associated responsibilities and restraints. In simple terms, land tenure systems determine who can use which resources for how long, and under what conditions.

¹⁵ <https://faolex.fao.org/docs/pdf/lao6293.pdf>

In practice, today, customary law often coexists with formal state law.

FPIC References in Other Principles and Criteria

The ASI Performance Standard and its guiding document contain many references to FPIC besides those mentioned under principle 9 above. The list below contains the other criteria in which references to FPIC occur.

- **Criterion 2.9:** Before a Merger and Acquisition, the Entity shall obtain Indigenous Peoples' Free, Prior, and Informed Consent to approve the planned operations.
- **Criterion 2.10:** Before a Closure, Decommissioning, and Divestment, the Entity shall obtain Indigenous Peoples' Free, Prior, and Informed Consent for the proposed plans.
- **Criterion 6.1:** During the impact assessment and development approval stages of Emission to Air, the Free, Prior and Informed Consent process should be incorporated.
- **Criterion 6.2:** During the impact assessment and development approval stages of Discharges to Water, the Free, Prior, and Informed Consent process should be incorporated.
- **Criterion 8.1:** When Indigenous Peoples are present in or around the Entity's Area of Influence, they should be active participants in the Biodiversity assessment. New Projects or Major Changes that have a significant Biodiversity impact on Indigenous Peoples trigger the requirement for a Free, Prior, and Informed Consent process.
- **Criterion 8.6:** When an Entity is engaged in Bauxite Mining and Indigenous Peoples are present in the Area of Influence, exploration in a Protected Area cannot be done before the Indigenous Peoples have given their Free, Prior, and Informed Consent.
- **Criterion 9.8:** When an Entity is performing a Human Rights risk-based due diligence over its Aluminium supply chain according to the OECD Guidance and an FPIC process has been undertaken, the Entity has to consider any implications for FPIC in the presence of conflict, including military, paramilitary, police or armed security presence in the affected Indigenous Peoples' territory.

3.4 FPIC as a Process within ASI

3.4.1 Introduction

The ASI Performance Standard (3.1) sets out requirements for what an ASI-Certified Entity must be able to do to implement FPIC but does not prescribe how systems and procedures are designed and implemented to achieve this. This is why it is important to develop a guidance document on how the regulations should be developed in action and practice. The first guidance document on FPIC addressed to ASI-Certified Entities described the process of implementing FPIC from the Entity's perspective. This guidance document turns to Indigenous Peoples and how we should prepare to be able to participate on equal terms with an ASI-Certified Entity. The structure of this guidance document will reference and reflect the steps that the ASI-Certified Entity is recommended to take.

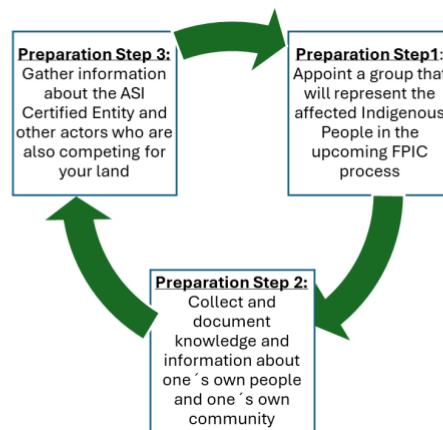
Applying FPIC as a process integrates Indigenous Peoples' rights and ASI's Principles of FPIC into a practice that falls within the framework of Indigenous Peoples' self-determination and participatory decision-making.

A well-implemented FPIC process is a tool to show respect for Indigenous Peoples' rights, culture, and cosmovision, while ensuring that an Entity meets all the requirements in ASI's Performance Standard. FPIC is not a tick-box activity, but rather is a process that requires a great deal of commitment and engagement from both the Entity and the Indigenous Peoples concerned.

The guidance document aimed at ASI-Certified Entities stipulated that the FPIC process should be carried out in a total of nine steps: three preparatory steps and six steps related to the implementation of FPIC. This guidance document also follows this division but with the goal that the affected Indigenous Peoples should be as well prepared as possible for an upcoming FPIC process.

3.4.2 Preparations for an FPIC Process

The process of preparing Indigenous Peoples or a Local Community consisting of Indigenous Peoples to initiate and participate in an FPIC process follows a three-step model:



Each step requires preparations and efforts by the affected Indigenous Peoples. Working through the three steps creates a good foundation for participating in an FPIC process.

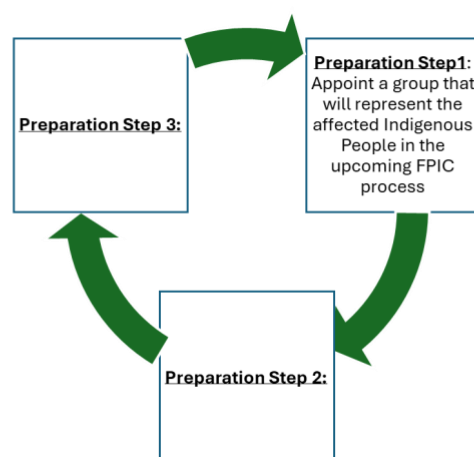
An important question that Indigenous Peoples should ask ourselves is when the preparatory work should begin. For many Indigenous communities, this question arises when an ASI-Certified Entity makes contact and wants to initiate an FPIC process. Being faced with such a sudden request can arouse uncertainty and confusion and lead the affected Indigenous Peoples to make rash decisions. Should this scenario occur, it is important to be patient and take sufficient time to prepare.

Another strategy is to prepare for an upcoming FPIC process before an ASI-Certified Entity has come with its request. Indigenous People know our territories and if there are activities on these lands that affect or may affect us. If there are companies that carry out bauxite mining or other aluminium activities, you can check whether they are certified in accordance with ASI. This is easily solved by contacting ASI and/or IPARD and asking about this.¹⁶ If it turns out that this is the case, then there is every reason to start preparations so that when the question of an FPIC process arises, the Indigenous Peoples who will be affected are already well prepared.

Preparing for an FPIC process in relation to an ASI-Certified Entity also creates a readiness to act in relation to other industrial or otherwise impacting activity in relation to one's own territory.

3.4.2.1 Preparation: Step 1

¹⁶ Information on how to contact ASI and IPAF can be found on the ASI website:
www.https://aluminium-stewardship.org/



Meeting an ASI-Certified Entity in an FPIC process can be a challenge. This is a situation with which many Indigenous Peoples have no experience. Nor can it be expected that everyone in an Indigenous community has the knowledge, will, and commitment to actively participate in such a process. One way to solve this is to appoint a group that represents the collective. With a pronounced trust from the collective, this group becomes the point of contact and plays an active role in the FPIC process initiated by the ASI-Certified Entity.

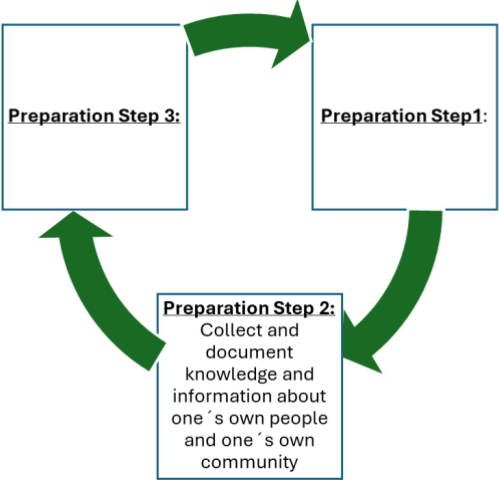
Recommendations	How and Why
Assemble an FPIC working group that represents the relevant Indigenous Peoples by reflecting all parts of the affected group and local community	<p>FPIC is not a one-man show. FPIC is a collective right for Indigenous Peoples, which means that the FPIC working group must be able to represent the entire collective, including men and women, youth and the elderly, and vulnerable groups.</p> <p>A group that will represent the affected Indigenous Peoples should not be too large. An excessively large group can be difficult to handle in the FPIC process. A group of about five people is suitable.</p> <p>It is also important that the decision of who should be part of the FPIC working group is made using the traditional decision-making process of the Indigenous Peoples in question. This is a way of creating respect, credibility, and a mandate for the FPIC group in question.</p>

	<p>Even if the appointed group has been given a mandate to represent the affected Indigenous Peoples, the appointed group then has a responsibility to regularly anchor its work in the FPIC process in the traditional decision-making methods of the Indigenous community.</p> <p>Making decisions over the heads of other members of the Indigenous community disregards the self-determination that FPIC represents.</p>
<p>The appointed FPIC working group should be assigned the capacity they need to properly represent their people</p>	<p>Indigenous Peoples have in many respects a unique knowledge concerning their territories and culture that has been developed over generations. This knowledge is invaluable in an upcoming FPIC process, but it is not sufficient to achieve a good result. In addition to traditional knowledge, the appointed FPIC working group must also acquire knowledge about how to negotiate and conclude agreements, as well as how Indigenous rights are designed both internationally and nationally/regionally. Today, some Indigenous Peoples already have such knowledge, but for the majority these are new areas of knowledge.</p> <p>If this knowledge and capacity is not available within one's own group or tribe, then help can be obtained from elsewhere. Within the network formed by ASI's IPAF (Indigenous Peoples Advisory Forum) there is information that can be useful. ASI's Secretariat can also help with advice and contacts. These can be reached via info@aluminium-stewardship.org.</p>
<p>Even if the appointed FPIC working group has acquired knowledge for the upcoming FPIC process, it can be</p>	<p>An advisor should come from an Indigenous organisation with experience in FPIC processes and/or negotiations with various industrial counterparts. If you find it difficult to identify such an advisor, it may be advisable to contact an NGO¹⁷ that works with human rights in the region in question.</p>

¹⁷ A non-governmental organisation (NGO) is a group that functions independently of any government with the objective of improving social conditions. NGOs are typically non-profit institutions. They are sometimes called civil society organisations and are established on community, national, and international levels to serve a social or political goal such as a humanitarian cause or the protection of the environment.

useful to identify advisors who can provide support in an upcoming FPIC process	<p>Within the network formed by ASI's IPAF, there is information on suitable advisors that can be useful. ASI's Secretariat can also help here with advice and contacts.</p> <p>If the advisor(s) in question are to participate in the upcoming FPIC process, the cost for these must be paid by the ASI-Certified Entity.</p>
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3.4.2.2 Preparation: Step 2



Indigenous Peoples often have knowledge of our land, our history and our ancestors that go way back in history. This knowledge is often passed down orally and is not always documented. Prior to an FPIC process, it is important to collect and document both oral and written sources regarding the affected Indigenous Peoples' territory, history, language, culture, customs, practices, laws and the treatment of Indigenous Peoples by regional and national governments. This is particularly important in relation to issues concerning territory, land, and resources. This step is an important preparation to demonstrate the tenure rights that exist, whether these are based on customary rights or land titles.

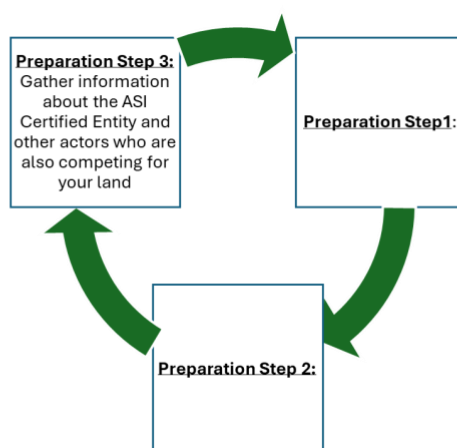
Recommendations	How and Why
Mapping of the affected	Maps are a powerful tool for navigation and being able to see one's place on Mother Earth. Historically, Indigenous Peoples have been excluded from the map—now is the

<p>Indigenous Peoples' territory</p>	<p>time to change that. Mapping the area that you, as Indigenous Peoples, have traditionally used and are considered to have rights to is an important first step. Sometimes these maps already exist, but if this is not the case then this work should be initiated by the selected FPIC group. Maps are often a prerequisite for having a good dialogue with an ASI-Certified Entity.</p> <p>Maps come in different forms. They can be simple and hand-drawn, but they can also be an advanced geographical map developed with modern information technology (GIS).¹⁸ If you do not have the capacity to handle GIS maps, a good start is to work with analogue maps and drawings that describe the borders of the territory, possible land conflicts with other Indigenous and non-Indigenous peoples, and conflicts with authorities. The maps can also contain descriptions of culturally and spiritually important places, as well as places on the land that are important for daily life, such as water sources, fishing grounds, hunting areas, and good farming land.</p> <p>Today, there are many Indigenous Peoples all over Mother Earth who have developed expertise in this area. Within IPAF, there is also experience with this which can be shared.</p> <p>It is important to remember that maps developed by Indigenous Peoples constitute intellectual property that belongs to the affected Indigenous Peoples, not to authorities or companies seeking to establish themselves within the Indigenous community's territory.</p>
<p>Documenting your history</p>	<p>Indigenous Peoples have a long history. This is a history that contains both joy and sorrow. Most Indigenous Peoples have a story that goes all the way back to the creation of our people. This history is often the key to understanding how Indigenous cultures have developed over time. Indigenous history is not always written down, but has lived on in oral storytelling, songs, and</p>

¹⁸ A geographic information system (GIS) consists of integrated computer hardware and software that store, manage, analyse, edit, output, and visualise geographic data.

	ceremonies. Before an FPIC process, it can be a strong asset if this history is summarised in writing. This helps you, the affected Indigenous Peoples, to demonstrate how you have developed your relationship with your land and how your culture and language have arisen in a way that is accessible to an outside world that does not always understand Indigenous People and their origins.
Describe the benefits of your Traditionally Practised Ecosystem Services	Indigenous traditional industries or Traditionally Practised Ecosystem Services enable survival by contributing food, clothing, building materials, firewood, and more. These resources may not be used solely by Indigenous Peoples. Some of what your land creates for your survival is also used to create commercial income. Indigenous Peoples sometimes sell, for example, meat and fish, vegetables, firewood, timber, and handcrafted products. These represent a commercial value that Indigenous communities often don't consider. Try to compile this value, as it can become an important part of FPIC negotiations.

3.4.2.3 Preparation: Step 3



An FPIC process is a dialogue. As in all dialogues, the better prepared you are, the better the result. It is important to try to understand the intentions of the ASI-Certified Entity that, through its activities and/or planned activities, affects Indigenous Peoples

to an extent that requires an FPIC process. Obtain information about the Entity's proposed plans and activities. Assess whether the Entity has a history of operating in Indigenous Territory or whether the organisation is new to it. Learn if the company has behaved correctly in its previous interactions with Indigenous Peoples and check if the company's ASI certification has undergone external audits and with what result.

Recommendations	How and Why
<p>Learn about the ASI-Certified Entity that might become your counterpart in an upcoming FPIC process</p>	<p>Try to find out who the owners and financiers of the ASI-Certified Entity are. What is their story and track record when it comes to Indigenous Peoples? This can provide useful information about what kind of company it is. Many modern companies today have policies drawn up in accordance with their ESG (Environmental, Social, and Governance) standard. Taking a look at this can be a good guide as to what the company's ethical profile looks like.</p> <p>Try to find out how the ASI-Certified Entity makes its decisions. Are the decisions made within the Entity or at a head office far from the Entity? Companies often have a hierarchical decision-making process that can be difficult to understand, but realising this can also be important for the upcoming FPIC process. It must be remembered that the basic drive for the Entity is to generate profitable income. This is always the overall driving force for the Entities and their decision-making.</p> <p>Many major industrial projects in various developing countries are financed by the World Bank and the International Finance Corporation (IFC).¹⁹ These lenders often require that the loan funds not be used in a way that violates human rights such as Indigenous Peoples' rights. Companies that receive financial support from the IFC are responsible for adhering to IFC's Performance Standards, which includes the right for Indigenous Peoples to be</p>

¹⁹ With 189 member countries, staff from more than 170 countries, and offices in over 130 locations, the World Bank Group is a unique global partnership: five institutions working for sustainable solutions that reduce poverty and create shared prosperity in developing countries. The IFC is one of these institutions. IFC is the largest global development institution focused on the private sector in developing countries.

	<p>consulted in a FPIC process. An ASI-Certified Entity that has financed its operations with this type of loan but has not invited the affected Indigenous People to an FPIC process in view of a given loan is a negative signal.</p> <p>ASI can help to provide descriptions of the ASI-Certified Entity, as well as their contact details.</p>
The ASI-Certified Entity's history within ASI	<p>Try to find information about how long the ASI-Certified Entity has been a member of ASI and what status their certificate has. Has the Entity undergone any audit and if so, with what result? Information about this can be found on ASI's website at</p> <p>https://aluminium-stewardship.org/audit-enquiry</p> <p>and help with understanding this can be obtained via IPAF and the ASI Secretariat.</p>
Learn more about the ASI and its Certification model	<p>The Aluminium Stewardship Initiative (ASI) is a global non-profit, multi-stakeholder organisation that sets standards for auditing and certifying the transparency and sustainability of aluminium at all stages of its production and transformation.</p> <p>To learn more about ASI and the rules that apply in relation to Indigenous Peoples, it is recommended to contact the ASI Secretariat and IPAF. IPAF consists of Indigenous representatives from around the world.</p>
Gather information about other industrial and public actors who also claim to use land and resources within your territory	<p>Many Indigenous people today feel that their land is threatened from many sides. Interest in mining, forestry, and energy projects tends to increase. In addition to this, the global climate crisis has created a need to exercise traditional ecosystem services at the same time as the market and governments are demanding new minerals and fossil-free energy types that will help counteract this climate crisis. These new critical minerals and the location of the new fossil-free energy forms are often found within Indigenous territories. The combined impact of all these intrusions is, in some cases, very large for Indigenous Peoples. Before an upcoming FPIC process with an ASI-Certified Entity, it is important to be able to compile the</p>

	<p>impact that the affected Indigenous People are exposed to by various actors alongside the ASI-Certified Entity. This compilation does not need to be detailed at this stage in the FPIC preparations because an analysis of the combined impact or cumulative effect will be included in the impact assessment that will take place later in the process if the affected Indigenous People decide to proceed.</p> <p>In an FPIC process dealing with encroachment on Indigenous territory, it is the total impact that will be important for the final decision on whether consent should be given to the ASI-Certified Entity.</p>
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3.5 Implementing the FPIC Process

The FPIC process is mandatory for an ASI-Certified Entity, where Indigenous People or our land, territories, and resources may be affected by the Entity's activities. This obligation applies to New Projects or Major Changes within the Entity initiated from 1 January 2022 onwards. This criterion applies to all these projects, but only to those projects initiated after the Entity joined ASI after 1 January 2022.

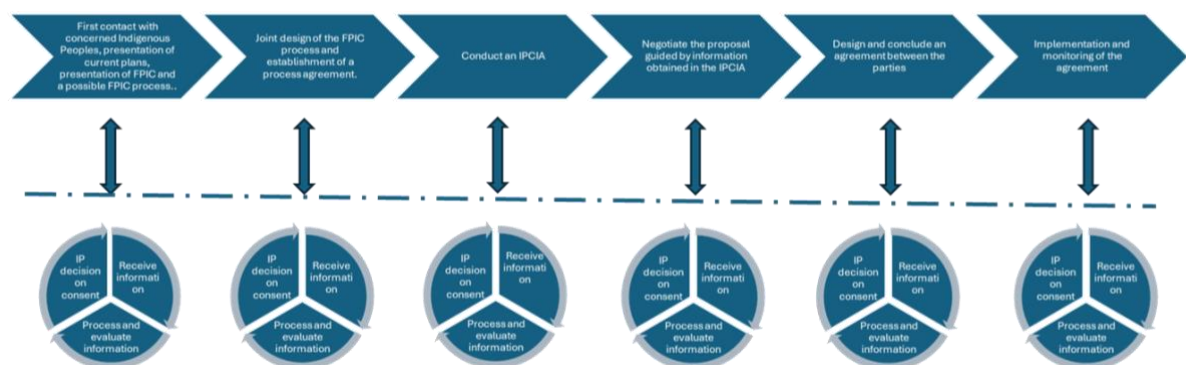
FPIC processes are also mandatory to existing projects or facilities that may have adverse impacts on Indigenous Peoples. For Entities engaged in Bauxite Mining, this obligation is linked to situations where the start of a new phase of operations is imminent and prior to altering an existing mine rehabilitation and closure plan.

Examples of situations where it is necessary for an Entity to initiate an FPIC process are many, but may include:

- Impacts on Indigenous lands, natural resources, and traditional ecosystem services subject to traditional ownership or under customary use
- Resettlement of Indigenous Peoples from lands and natural resources subject to traditional ownership or under customary use
- Any impacts on Indigenous critical cultural heritage that are essential to the identity and/or cultural, ceremonial, or spiritual aspects of Indigenous Peoples

- Use of cultural heritage, including traditional knowledge, innovations/intellectual property, or practices of Indigenous Peoples for commercial purposes

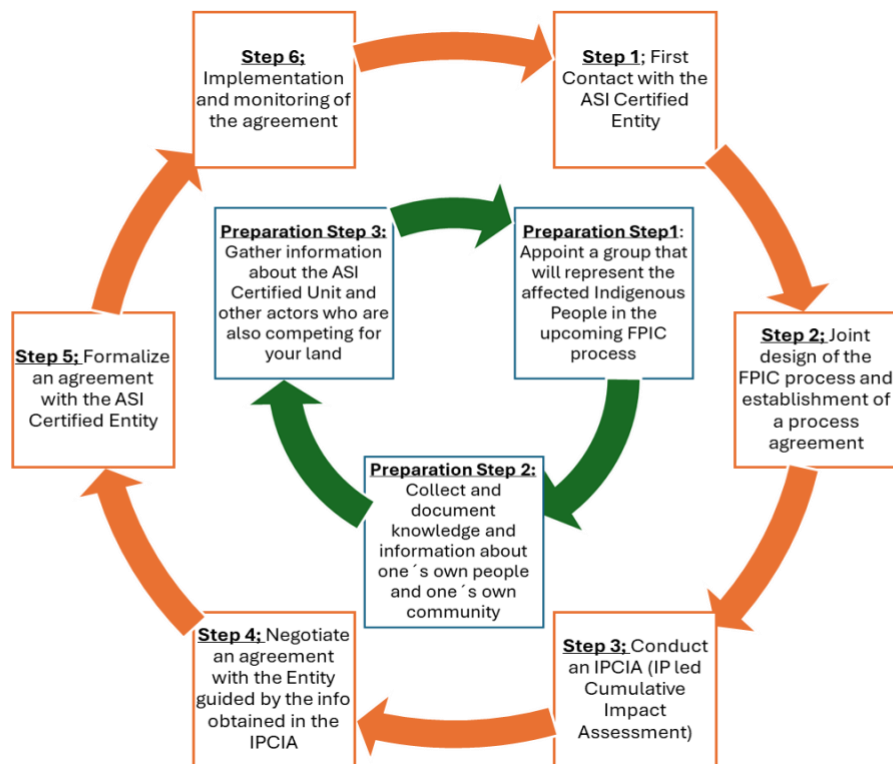
To implement the mandatory FPIC process, ASI has developed, recommended by IPAF, a process for the ASI-Certified Entity that is carried out in six steps. Each step contains a recommended action for the Entity followed by a corresponding action from the affected Indigenous Peoples.



In the Western and industrial world, processes are often described in a linear way. This is based on the tradition of thought prevalent in that world. In the Indigenous world, there is a tradition of thinking and acting in a circular way, which influences this guidance document.

However, even from a Western perspective, an FPIC process is not linear, with a clear start and end. In the FPIC process, the Entity has an opportunity to create a lifelong relationship with the affected Indigenous Peoples that will restart when notable changes occur in its operations. Such a restart does not mean that the FPIC process starts from the beginning again, but that the new process moves in a circle around the facts and relationships that have already been established.

The process that IPAF recommends to Indigenous Peoples can be illustrated as follows:



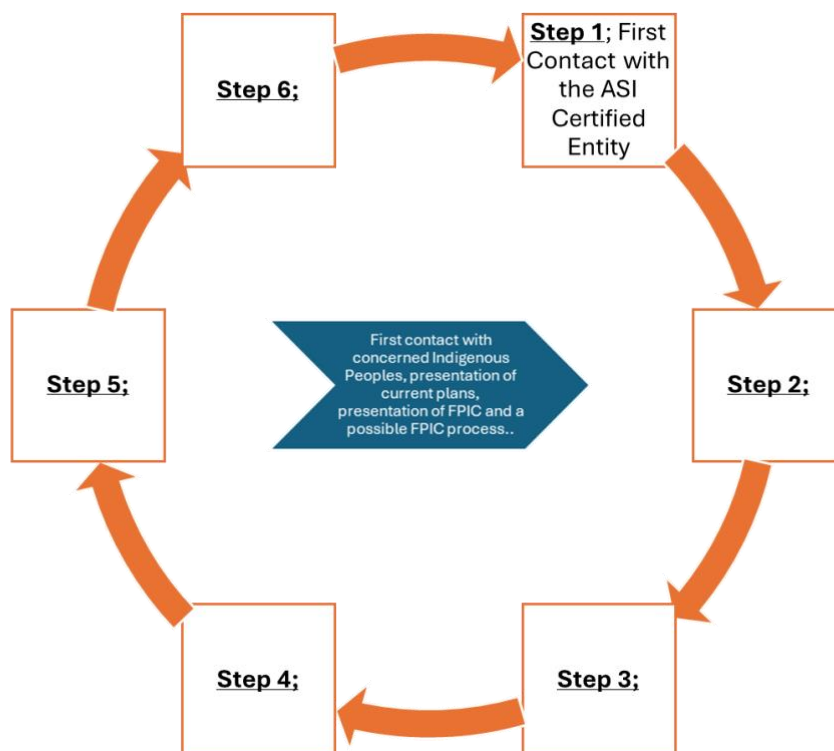
This guidance document now describes how Indigenous Peoples can prepare and participate in the FPIC process that the ASI-Certified Entity may initiate. This guidance follows the steps that the Entity has been recommended to follow but is adapted based on Indigenous Peoples' conditions, wishes, needs, and cosmovision.

It is important to remember that it is not mandatory for Indigenous Peoples to participate in the FPIC process. However, the ASI-Certified Entity is obliged to offer an FPIC process when this is called for due to the impact that the Entity can have on Indigenous Peoples and their lands and resources.

In this context, FPIC is based on the fact that an ASI-Certified Entity must respect the rights of Indigenous Peoples and the informed decisions we may make regarding whether to give, withhold, or present a modified consent.

IPAF recommends that the affected Indigenous Peoples do not immediately dismiss a request for an FPIC process. The Indigenous Peoples affected by the process can always give notice after any step that they do not wish to continue. Therefore, IPAF suggests approaching the process with an open mind because it can be an opportunity to exercise self-determination to an extent that exceeds the possibilities allowed by national and regional regulations.

3.5.1 Step 1: First Contact with the ASI-Certified Entity



The duty and responsibility to initiate an FPIC process rests on the ASI-Certified Entity that, within its Area of Influence, coexists with Indigenous Peoples.

An FPIC process within ASI normally begins with an ASI-Certified Entity contacting the Indigenous Peoples who may be affected by the Entity's operations. If the Entity follows the recommendations in ASI's guidance document aimed at Certifying Entities, the Entity will try to approach the affected Indigenous Peoples in a culturally appropriate way with respect for their prevailing protocols. Ideally, the Entity in question has trained staff appointed for the purpose of holding meetings with the affected Indigenous Peoples.

There may also be a situation where an Entity does not call for an FPIC process via a first contact and meeting even though they conduct activities that may or already affect Indigenous Peoples. This can occur for several reasons:

- The Entity does not understand or has not identified that there are Indigenous Peoples in their Area of Influence who are affected by their activities

- The Entity has not perceived that the area of responsibility where they have an obligation to initiate an FPIC process goes beyond the direct area, for example around a Bauxite mine
- The Entity knows that there are Indigenous Peoples affected by their activities but still chooses not to initiate an FPIC process

Entities that do not initiate an FPIC process because they did not realise that there are Indigenous Peoples affected by their activities and operations has not done their homework. The Entity must map the Affected Populations potentially impacted by the Entity's activities and identify those who are considered Indigenous Peoples. The Entity's Area of Influence extends both upstream and downstream, such as a Bauxite mine or a smelter, and includes Associated Facilities such as infrastructure, power supply, and other indirect impacts.

It can sometimes be difficult for an Entity to understand who Indigenous Peoples are, but it is not impossible. An Entity cannot take for granted that all who are to be considered Indigenous Peoples in accordance with the definition applied within ASI call ourselves Indigenous Peoples.

According to the definition applied by ASI, Indigenous Peoples can be identified as follows:

- a. Affected Populations recognised by authorities as Indigenous Peoples and self-identified as Indigenous Peoples in accordance with the United Nations' definition (and ASI's)
- b. Affected Populations recognised by authorities who identify themselves as Indigenous Peoples, even if under a name other than Indigenous Peoples, and meet the definition of Indigenous Peoples as described by the United Nations (and ASI)
- c. Affected Populations who choose not to or have no reason to identify themselves as Indigenous Peoples must be recognised as being Indigenous where the UN's (and ASI's) definition of and criteria for being considered as Indigenous Peoples applies to them. Sometimes, these groups are referred to as Traditional Peoples. In this group, there are also Indigenous Peoples who live in voluntary isolation from the outside world. These groups do not always self-identify as Indigenous Peoples because this is a foreign concept to them, but they are still generally considered Indigenous.
- d. Affected Populations where the authorities in a country or region deny them the right to call themselves Indigenous Peoples despite meeting the UN's (and

ASI's) must be considered as Indigenous Peoples, whether they identify themselves as such or not.

- e. Residents in Local Communities who, if the criteria for Indigenous Peoples apply to them, must be considered as Indigenous Peoples regardless of whether they are recognised as such by authorities in a country or region.
- f. Local Communities where both Indigenous Peoples and non-Indigenous people live side by side, sometimes in harmony, sometimes in conflict. Those who meet the criteria for Indigenous Peoples must be recognised, even if the authorities in a country or region deny them the right to call themselves Indigenous Peoples, while those who do not do so lack Indigenous status.

If a people or group identifies themselves as belonging to one of these six categories, then in accordance with ASI's Performance Standard, they must be considered Indigenous Peoples and thereby have the right to an FPIC process. An Entity that does not understand this or has not familiarised itself sufficiently with this issue violates ASI's Performance Standard.

An Entity that recognises that there are Indigenous Peoples who may be or are already affected by their activities but chooses to ignore this has seriously and unjustifiably breached ASI's Performance Standard.



For the ASI-Certified Entity, the purpose of the first contact and meeting is to:

- Inform the affected Indigenous Peoples about their plans for activities that may have a negative impact on them
- Create relationships with the affected Indigenous Peoples
- Present what FPIC is and which rules apply to it in accordance with ASI's Performance Standard
- Invite the affected Indigenous peoples to a joint FPIC process

Indigenous Peoples take self-determination very seriously. This is not least since this self-determination includes not only us, but also our ancestors and future generations, as well as Mother Earth. Since FPIC is an expression of self-determination, we also take FPIC very seriously.

The result of an FPIC process can have major consequences for Indigenous Peoples. Therefore, we must always enter such a process with great seriousness and commitment. It would be irresponsible to decide whether to participate in an FPIC process without giving it adequate consideration, and it would also be equally irresponsible to randomly decide to give or withhold consent without an informed basis.

It is IPAF's view that most Indigenous Peoples have a lot to gain by agreeing to participate in an FPIC process if this is conducted with honest intentions and in good faith by the ASI-Certified Entity. Indigenous Peoples who partake in an FPIC process can always leave it at any time. What you, the affected Indigenous Peoples, then risk is that your rights will not be respected by the Entity. If this were to occur, there are opportunities to lodge a complaint with ASI. If the FPIC process is undertaken in good faith, there can be a lot to gain in reaching its third step, which, after a participatory impact analysis, will allow you to make an informed decision.

When invited to participate in an FPIC process, Indigenous Peoples can use the wheel of reflection:

1. Receive the information from the ASI-Certified Entity
2. Carefully evaluate the information provided
3. Arrive at an informed decision about whether to accept an initial contact with the Entity. Remember that FPIC is linked to the collective rights of Indigenous Peoples, which means that this decision must have the support of the entire Indigenous collective that is affected. This is a decision that cannot be taken by any individual leader and instead must be made in accordance with traditional forms of decision-making that apply to the entire collective.

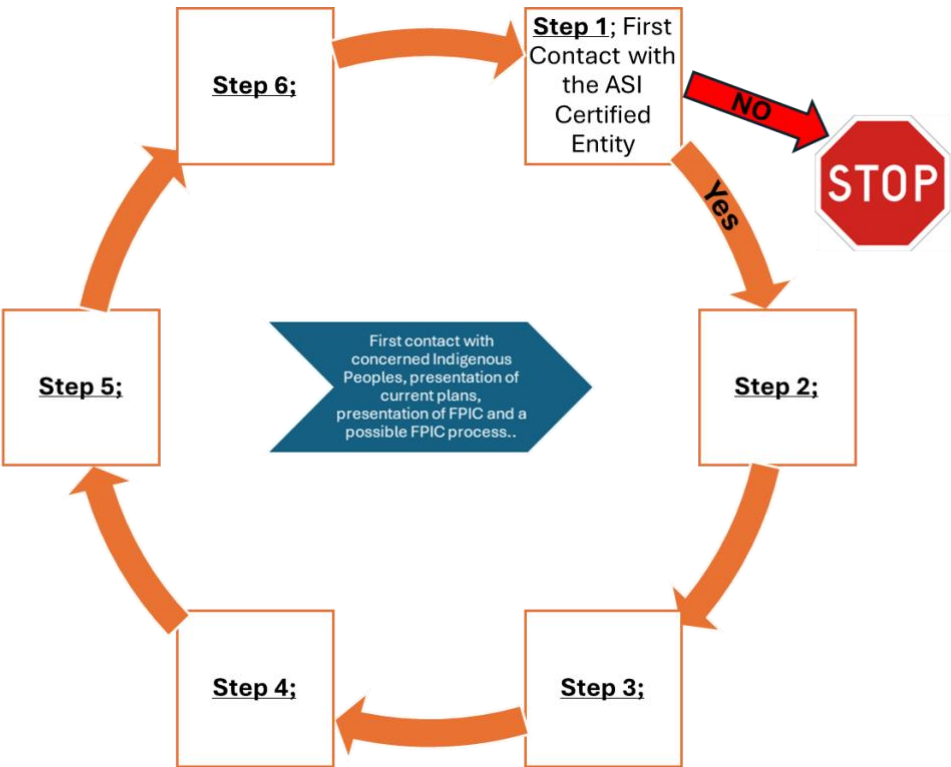


Recommendation	How and Why
<p>Ask for time to organise and prepare yourself</p>	<p>When a request to be included in an FPIC process comes from an ASI-Certified Entity, you should not feel any pressure to give an answer immediately. Request to be given the time needed to prepare yourselves before deciding on whether you wish to participate in the upcoming FPIC process, which starts with a first meeting. If you have not already completed the three preparatory steps previously recommended in this document, now is the time to do so.</p> <p>Appoint the group that will represent you in the FPIC process (if you haven't already done so) and collect all relevant information about your people, land and culture, as described in the preparation steps. Also, learn more about the Entity, ASI, and ASI's Performance Standard.</p>
<p>Choose a time and a place that is comfortable for you</p>	<p>The ASI-Certified Entity has an obligation to adapt to the context and culture of the affected Indigenous Peoples. This means that the affected Indigenous Peoples decide when and where a first meeting can take place. For example, for a nomadic people, it may be impossible to arrange a meeting when they are in a season when moving of livestock takes place.</p>

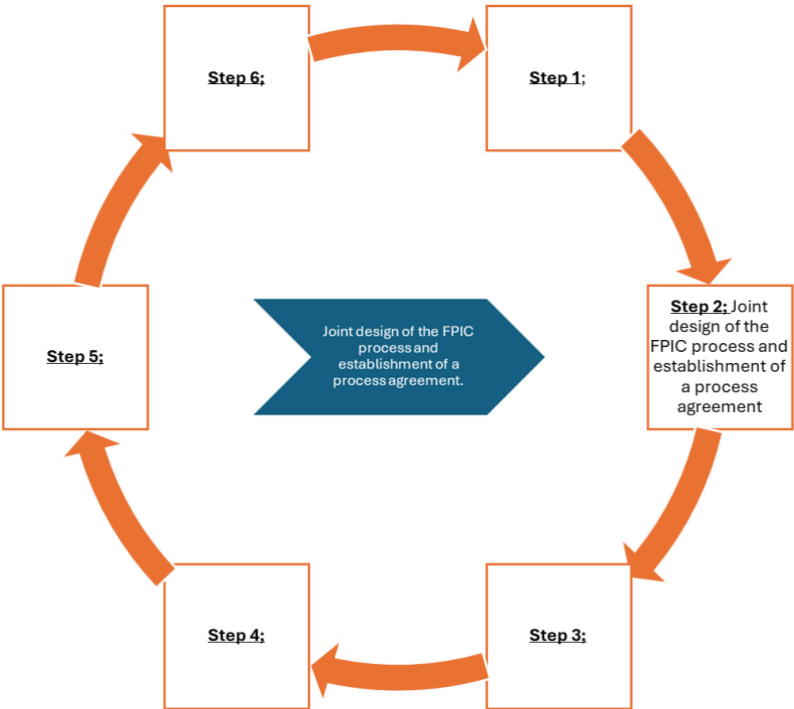
	<p>It is also important that a potential meeting enables as many of the affected Indigenous Peoples as possible to gather.</p> <p>When you are ready for a meeting, make sure to call the Entity and their representatives to a place of your choice and show Indigenous hospitality. It is you, the affected Indigenous Peoples, who host the meeting and set the agenda.</p> <p>In the invitation, you present the expectations you have for the meeting, what type of information you want the Entity to present, and in what language this should take place. You do not have to adapt to a language that is not your own. If the Entity needs a translator, this is something that the Entity must solve.</p>
Consider the proposal for the FPIC process and distinguish between the process and the proposed activities	<p>Starting an FPIC process does not mean that you have taken a position on the measures that the ASI-Certified Entity wants to implement, which are the basis for the FPIC process. What you must decide is whether you want to be part of an FPIC process and how it can develop. IPAF recommends that the first time you start an FPIC process with the Entity, you follow the six steps described in this guidance document. These steps correspond to the steps that the Entity has been recommended to follow in its FPIC guidance document. Once a working relationship is established between you and the Entity, you can simplify the FPIC process for future discussions.</p> <p>The Entity may ask you to decide at the first meeting if you wish to initiate the proposed FPIC process. Don't feel compelled to decide at this first meeting. Notify the Entity that you will analyse what has emerged and decide about the continuation via your traditional decision-making process. However, it may be polite to give a preliminary notice of when this can happen and in what form you will announce your decision. This can be done, for example, via your elected representatives or a new meeting that you call.</p>

<p>Make your decision about the process (and possibly the project)</p>	<p>After you have internally applied the “wheel of reflection,” it is time to make your decision. Make sure to get the broadest support possible for your decision, where all groups in your community are involved, including the elderly, young people, women, men, and vulnerable groups.</p> <p>A reason to refuse to participate in the FPIC process may be that, based on previous experience, you cannot trust the ASI-Certified Entity. It will then be up to the Entity to show that they have improved and ask you to reconsider your decision. Another reason to say no to both the FPIC process and the proposed industrial measures that the Entity wants to implement is that these proposals will greatly endanger your culture and future and you have already carried out impact analyses that show this. Such a decision can therefore be said to be informed and must be respected by the Entity within the framework of their ASI certification.</p>
<p>Address any ongoing activities without FPIC</p>	<p>Indigenous Peoples know our lands and territories. If you become aware that there are industrial Bauxite/Aluminium activities by an ASI-Certified Entity that negatively affect your people, culture, land, and traditional ecosystem services without this Entity having been in contact with you, the affected Indigenous Peoples, then you must react. A first step is to check with the ASI Secretariat that this Entity is certified in accordance with the ASI Performance Standard. If this is the case, you must immediately contact the Entity and demand an FPIC process. If the Entity does not comply with this request, you must complain directly to the ASI Secretariat, which will then help you handle this complaint. An alternative may also be to present a complaint to the third-party auditor who reviews whether the Entity complies with the ASI Performance Standard. As it can be difficult to know who this auditor is, it is probably easier to seek advice from the ASI Secretariat.</p>

If your decision is to proceed with the FPIC process, it is time to move to Step 2. If your decision is not to proceed, the process stops here.



3.5.2 Step 2: Joint Process Design and Process Agreements



A contributing factor to many FPIC processes that have failed shows is that there has not been agreement between the affected Indigenous Peoples and the ASI-Certified Entity on how the FPIC process should be carried out and what the parties' expectations are of the process and outcome. In addition, the process can fail if there is an imbalance in the resources and capacity that the parties can invest in the process.

In an FPIC process, Indigenous Peoples are almost always at a disadvantage in terms of capacity, knowledge, and resources to carry out such a process. However, this does not mean that they lack knowledge and capacity in other areas, quite the opposite. There is no one who can understand their landscapes better than them. In these landscapes, our culture has developed over centuries through long-term interaction. These landscapes are called Indigenous Cultural Landscapes (ICLs) because they are living landscapes to which Indigenous Peoples attribute environmental, social, cultural, spiritual, and economic value because of our enduring relationship to the land, water, flora, fauna, and spirit, as well as their present and future importance to Indigenous cultural identity. They are landscapes over which Indigenous Peoples exercise responsibility for stewardship. This is knowledge that is invaluable in an FPIC process.

To prevent failures in a future FPIC process, a common design must be negotiated in this initial phase of the project and confirmed via a process agreement. In this agreement, issues of capacity imbalance, respect for traditional knowledge, and regulation of purely procedural issues and more are decided.

It is important to state that a process agreement in no way means the affected Indigenous Peoples have taken a position on the issue that lies behind the entire FPIC process. That case must be dealt with in the ongoing process. The only function of the process agreement is to create clear rules of the game, which means that the probability of moving forward in the process increases significantly.

The scope of the work to design the FPIC process and conclude an agreement will vary depending on whether it is the first negotiation with the Entity or if this is a recurring issue in an already established relationship. Regardless, great care should be taken to ensure that both parties design their process in a way that reflects good faith and a desire for consensual solutions.

The willingness of the Entity to draw up a process agreement is an important first step in assessing how serious the Entity is.

The FPIC process may last a long time, so it pays to reflect at this early stage in the process on how you, the affected Indigenous Peoples, want this process to develop, what rules should apply during the process, and how you want any conflict to be handled. Take time to discuss this with your community, use the wheel of reflection below, and when you are done, it is time to come to a decision about this step.



Recommendations	How and Why
<p>Seek an advisor for the process agreement</p>	<p>Negotiating a process agreement can be experienced by many Indigenous Peoples as a difficult task. Many Indigenous Peoples and their communities have bad experiences with negotiations and the resulting agreements. This can lead to hesitation to enter such a negotiation. If you feel uncertain about how to handle this, it is recommended that you seek an external advisor or supervisor. If you choose this option, it is you as the rightsholder who chooses the advisor, not the ASI-Certified Entity. However, you should expect the Entity to finance the cost of this advisor.</p> <p>An alternative could also be to consider involving an independent verifier or observer in the FPIC process at this early stage. Such an independent observer could be recommended by ASI and/or IPAF. The cost of this falls on the Entity.</p>
<p>The process agreement</p>	<p>The process agreement is the result of the talks and negotiations that you, the affected Indigenous Peoples, and</p>

	<p>the Entity have conducted. These conversations may have gone on for a long time, especially in cases where this is the first time you have negotiated with each other.</p> <p>The format of the agreement is itself a matter to be agreed upon by you and the Entity. The final agreement should be in a form and language that all concerned will understand.</p> <p>A process agreement may include overarching principles such as respecting your governance protocols and decision-making methods and striving for mutual understanding and transparent, good faith engagement.</p> <p>Key elements of a process agreement may include:</p> <ul style="list-style-type: none"> • An agreed-upon scope of the FPIC process, including a clear description of the activities that the Entity is planning. • The protocols for meetings, negotiations, and decision-making in all stages of the FPIC process. • Flexible timelines that respect traditional decision-making methods. • Designated representatives for both parties in the FPIC process. • Conditions for verification, monitoring, and observation of the FPIC process. • Conditions for withdrawal from the FPIC process. • Financial commitments for the FPIC process from the Entity. • Acceptable use for affected Indigenous Peoples of advisors, supervisors, and observers and their funding (primarily from the Entity). • Capacity building measures for the affected Indigenous Peoples, if necessary. • Agreement on the scope of mapping and impact assessments and acknowledgement that this must be carried out participatorily (see Step 3) • Mechanism to formalise the FPIC agreement. • Types of documents to be shared, such as the results of impact assessments. • Information exchange processes. • Treatment of affected Indigenous Peoples' intellectual property rights, such as the information obtained from mapping.
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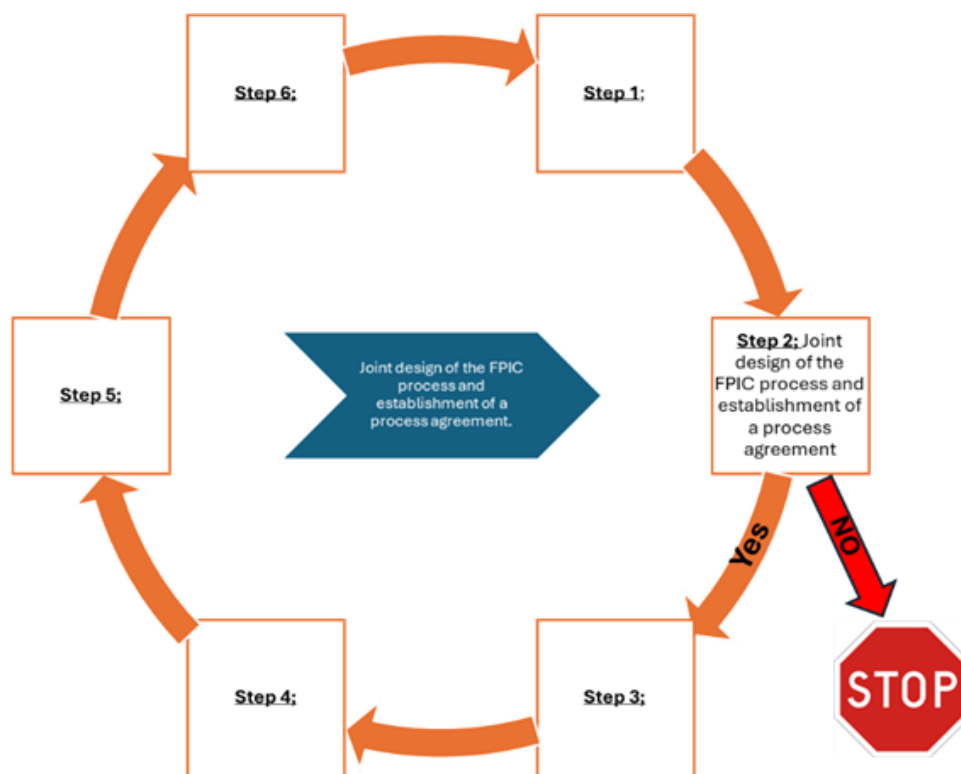
	<ul style="list-style-type: none"> • Mechanisms for dispute resolution. • Recording of actions taken in the process. • Date of signature and expiration date, if applicable.
Dispute resolution	<p>In the process agreement, it is recommended that you and the ASI-Certified Entity establish a mutually agreed-upon dispute resolution mechanism. A dispute resolution process is a mutually agreed-upon proactive measure to resolve disagreements under an existing agreement and/or prevent negotiations from collapsing. Within ASI, there are established procedures for how to present complaints. It is the Entity's responsibility to inform all affected rightsholders/Indigenous Peoples about the ASI grievance mechanism.</p> <p>Things to consider when developing this conflict resolution model:</p> <ul style="list-style-type: none"> • Keep it simple and accessible • Mutually agree upon a process that is manageable for and culturally appropriate to the affected Indigenous Peoples • One way to approach this issue is to jointly choose a neutral third party, a mediator, to support and guide the dialogue in the areas where a conflict has arisen. With many Indigenous Peoples, there may already be developed conflict resolution methods that can be used. • If you and the Entity cannot resolve the conflict, contacting ASI/IPAF is recommended, which, guided by the ASI Complaint Mechanism, can contribute to creating the conditions for conflict resolution.
Past grievance	<p>Many Indigenous Peoples have historical and sometimes unresolved conflicts within their territories that sometimes can be linked to the ASI-Certified Entity. Early discussions about the boundaries of ASI certification and the responsibility of the Entity are critical to establishing reasonable expectations and strategies for redress. Previous decisions that have affected legal and/or customary rights may not be within the scope of the Entity's responsibility.</p> <p>As a general guide, it is reasonable to assume that compensation for historical wrongdoings by the state remains the state's responsibility. The Entity may, however,</p>

	<p>be held liable for any unauthorised acts that led to the confiscation, taking, occupation, use, or damage of the land, territories, and resources of the affected Indigenous Peoples without their free, prior, and informed consent.</p> <p>However, even at this early stage, the rightsholders, meaning the affected Indigenous Peoples, may decide to decline the negotiation of an FPIC agreement. For example, you may claim that your legal and/or customary rights have been violated by the Entity and redress is required.</p> <p>It may be appropriate to create a space in the process agreement to deal with this type of conflict as part of the ongoing FPIC process. One way to resolve this is for you, the affected Indigenous Peoples, to request that past grievances be addressed before consent is given for future activities that may affect your legal or customary rights.</p>
Documentation	<p>Do not forget the need for documentation. The process agreement is itself a document, but it can also be useful to document which meetings and processes have preceded the process agreement.</p> <p>If you are not comfortable with written documents, you can choose to use other traditional forms of documentation to record what has been agreed upon. If you do not want to keep this documentation yourself, this task can be assigned to one of your appointed advisers.</p>

When the process agreement negotiated by the representatives of the affected Indigenous Peoples begins to feel complete, it is time to use the wheel of reflection with the affected Indigenous Peoples' community in accordance with the decision-making processes that apply to them.



If the joint efforts to design a process agreement acceptable to both you, the affected Indigenous Peoples, and the ASI-Certified Entity have succeeded, the process moves on to the next step. This step involves conducting a participatory impact assessment.

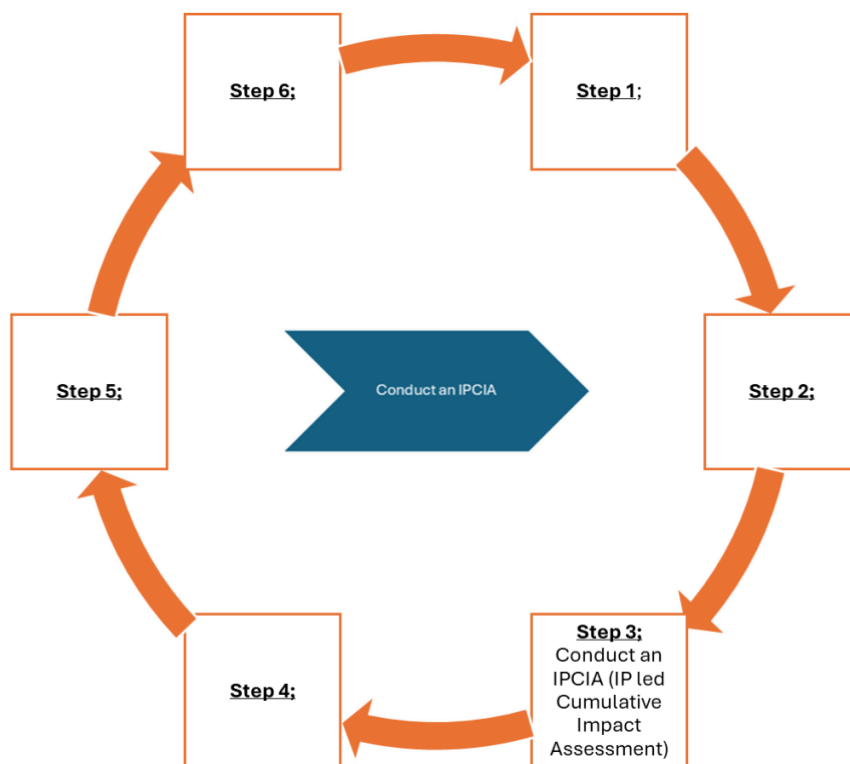


If negotiations to create a process agreement have not succeeded, it means that the FPIC process, in the absence of consent, has stalled. The Entity cannot implement planned actions if the Entity wants to continue to operate in accordance with the ASI

Performance Standard. The responsibility to be able to resume negotiations regarding the process agreement lies primarily with the Entity.

Carrying out a planned activity even though FPIC has not been achieved can lead to serious consequences regarding the Entity's ASI certification. If an Entity chooses to go ahead with its plans without you, the affected Indigenous Peoples, having given your consent, it likely means that your rights are being violated. In criterion 9.3 of the ASI Performance Standard, it is stated that the Entity is obliged to respect the rights of Indigenous Peoples as described in, among other things, ILO Convention 169 and the UN Declaration on Indigenous Peoples. In criterion 9.1, it is required that the Entity does not cause any violations of human rights, which includes Indigenous rights.

3.5.3 Step 3: Conduct an Indigenous-Led Participatory Cumulative Impact Assessment (IPCIA)



To enable Indigenous Peoples to make informed decisions in an FPIC process, it is required that a careful analysis of the negative impact that may be created by the ASI-Certified Entity is carried out. Such an analysis is primarily performed for the affected Indigenous Peoples through their traditional decision-making process and not for the ASI-Certified Entity. In most countries, there are regulations that require,

for example, a Bauxite company to carry out an environmental impact analysis before starting mining activity. However, this is not the same as the impact analysis that must be carried out to create the basis for the affected Indigenous Peoples' informed decisions.

If an Entity claims that the impact analysis they have initiated on their own is sufficient, this must be questioned, as their analysis is most likely insufficient for an FPIC process.

Most Indigenous Peoples who live and practice our traditional livelihoods in our Indigenous Cultural Landscapes are affected by many different disturbances and encroachments on our lands and rights. We can experience impacts from, for example, forestry, mining, infrastructure, settlements, energy production, and climate change. When we assess the adverse impact that an ASI-Certified Entity can create, we must therefore do this from a perspective that considers the total or cumulative impact to which we are exposed.

Cumulative effects can be described as how an activity or measure, together with other ongoing, past, and future activities/measures, affects the Indigenous Peoples in an area.

In northern Europe, in the area known as Sápmi, where the Sami Indigenous people live, the Sami reindeer herders have developed a method to carry out cumulative studies on their own when their land and rights are threatened by competing land interests. This method is called IPCIA, meaning Indigenous-led participatory and cumulative impact assessment on Indigenous Cultural Landscapes and traditional ecosystem services. The Sami organisation Protect Sápmi, which is a member of IPAF, has, with the support of ASI, written a guidance document on how an IPCIA can be implemented. This manual is available via ASI's website.²⁰ Today, the method has spread to India and Australia.

What is distinctive about this methodology is:

- The impact studies are led by Indigenous specialists who, together with affected Indigenous Peoples, produce the information and write the report.
- The method uses maps, often digital geographic maps, to describe both the boundaries of the affected Indigenous Cultural Landscape and the extent of the affected land. It is also important to document and map culturally and spiritually important areas.

²⁰ <https://aluminium-stewardship.org/asi-ipaf-work-with-the-protect-sapmi-foundation-norway-supporting-broad-dissemination-of-indigenous-led-participatory-and-cumulative-impact-assessment-ipcia>

- The method analyses the traditionally practised ecosystem services that exist in the Indigenous Cultural Landscape and how sensitive these systems are to disturbance. Examples of such ecosystem services are nomadic pastoralism, agriculture, gathering of plants, hunting, and fishing.
- The method is largely based on documenting and using traditional knowledge, but if there is modern scientific knowledge that is relevant, this is integrated into the analyses. Working with traditional knowledge also means working with the language used by the affected Indigenous Peoples.
- The method always considers the cumulative impact that different activities can have on the affected Indigenous Peoples.

It is not uncommon for Indigenous Peoples to be invited to act as informants in impact assessments carried out by external commercial consultants on behalf of various industry players. However, the question of participation in impact assessments is more complex than involving the affected Indigenous Peoples as informants. The experience that the Sami Indigenous organisation Protect Sápmi has built up over more than a decade shows that even if Indigenous Peoples have participated in impact investigations, this is no guarantee that their values, knowledge, and right to self-determination have been integrated into the investigation and assessment processes. This is not necessarily due to malice on the part of those who carried out the analyses, but it is often more about the fact that those who carried out the work, typically external consultants, did not have sufficient knowledge and linguistic understanding to be able to value and assess what came out of the processes. Indigenous Peoples often have rich linguistic nuances to describe important phenomena in our culture that far exceed mainstream languages such as English. Within the Sami language, for example, there are nearly 600 words for snow. These words are all significant in explaining their traditionally practised ecosystem services, in this case, reindeer husbandry, in a holistic way. In order not to lose these nuances and the underlying traditional knowledge, it is necessary that those who interpret and assess this information also come from this environment and have the necessary Indigenous knowledge.

Carrying out an IPCIA is a big step towards creating the conditions for a well-executed FPIC process. Indigenous Peoples who are well informed tend to make decisions that can be constructive both for themselves and any industrial partners wishing to begin operations within Indigenous Cultural Landscapes. A lack of relevant information often leads to contradictions and deadlocks in the relationship between Indigenous Peoples and various industrial interests. The absence of real information about the ecosystem services that exist within an Indigenous Cultural Landscape

can also lead to mis-investment in places that are in all aspects unsuitable. According to the Sami People, there are examples of individual Indigenous communities who, via a knowledge-based dialogue, have been able to designate places for wind power installations that have been better for both developers and the local community.

Recommendations	How and Why
<p>How to learn about undertaking an IPCIA</p>	<p>For Indigenous Peoples who have never worked on a participatory cumulative study, this task can feel difficult, if not impossible. However, do not be discouraged, as Indigenous Peoples often have the knowledge and abilities to take on this challenge. No one knows our land better than we do and no one knows better what our practised ecosystem services require to survive. No one has a greater understanding of our culture and our language. It is this traditional knowledge that forms the basis of an IPCIA. In most cases, however, a trained Indigenous person will be needed to keep up practical progress and summarise analyses and results in a way that is also comprehensible to the ASI-Certified Entity.</p> <p>To get started with this work, it is recommended to study the IPCIA guidance document which is available on ASI's website. If there is a need for further training and supervision, IPAF can recommend and help with contacts with other Indigenous organisations that have experience with this work. Here there is also a need to develop consulting organisations that are owned and run by Indigenous people who can be guides/facilitators in this type of process. Work to support such a development is already underway within ASI/IPAF. The capacity building that may be needed for the affected Indigenous Peoples is something that should be agreed upon in the process agreement, as part of step 2 in the FPIC process. This is a cost that for which the ASI-Certified Entity is primarily responsible.</p>
<p>Participatory mapping</p>	<p>Historically, mapping has predominantly been an instrument of colonisation and administrative control. However, this has changed as mapping has increasingly become an instrument for Indigenous Peoples to challenge</p>

the dominant narrative of land use and tenure. Mapping is used today by Indigenous Peoples as a method to document land use in order to negotiate land and resource rights. The goal of the mapping is to record hunting, fishing, trapping, and gathering patterns as well as important cultural and religious sites. Therefore, maps and mapping techniques have increasingly played an important role in supporting evidence of land rights in disputes and impact assessments.

The translation of cultural, spiritual, and other significant traditional attachments to a territory is not always a simple process. There are a variety of mapping techniques and methods. They vary from highly participatory approaches involving sketch maps to more technical efforts using geographic information systems (GIS), Global Positioning Systems (GPS), and remote sensing. All these methods are technically quite advanced and there is an obvious risk that these tools in the “wrong” hands may be used against the Indigenous Peoples involved in a process, especially if the mapping is carried out by specialists who are not themselves part of the Indigenous community.

The response to these dangers has been an increased focus on participatory mapping, enabling Indigenous Peoples to directly create our own maps rather than relying on surveyors and specialised technicians. Mapping has moved from a traditionally high-tech and specialised field to being much more accessible and participatory, allowing Indigenous communities to play a role. There are several names for such mapping techniques, such as “participatory land use mapping,” “participatory resource mapping,” and so on. All these refer to the idea of the affected Indigenous Peoples’ direct involvement.

Participatory mapping is a central component of an IPCIA. One can divide the functions of participatory mapping into three areas:

1. Mapping to determine the boundaries of an Indigenous Cultural Landscape (ICL) where the affected Indigenous Peoples live. Most often, this is an area of land where the

	<p>Indigenous Peoples have developed a customary law based on the fact that they have lived and practiced their culture in this area since time immemorial. Less often, it involves land for which there are land titles. This is something that you might have already done in the preparatory steps.</p> <p>2. Mapping to determine how an ICL is used, and which traditional ecosystem services are practiced within this ICL. Here, the following may be described:</p> <ul style="list-style-type: none"> a. Areas for settlements b. Areas for hunting c. Areas for collecting food d. Areas for fishing e. Pastureland for pastoralists f. Areas for drinking water g. Areas that have spiritual significance h. Areas that have a special cultural significance, etc. <p>3. Mapping to determine the external impact on an ICL and its traditional ecosystem services. For example, this may involve considering what negative impact the presence of a new mine has on an ICL and its traditional ecosystem services. In this case, it is important to think through and draw on the map both direct and indirect impacts. It is important to consider the larger area around a mine that may be affected, which includes the entire area that can be affected by, for example, falling dust, disturbing noise, and so on.</p>
How to introduce participatory mapping	<p>Many Indigenous Peoples have already started to apply participatory mapping in our homelands. There is therefore a lot of information and help available via various national and international networks. In order to start such work, however, certain basic knowledge is usually required and there is often a need for training and assistance from Indigenous Peoples who have already acquired this knowledge. Through IPAF, affected Indigenous Peoples can get in touch with experienced Indigenous Peoples and their organisations, which can be helpful. The cost of this</p>

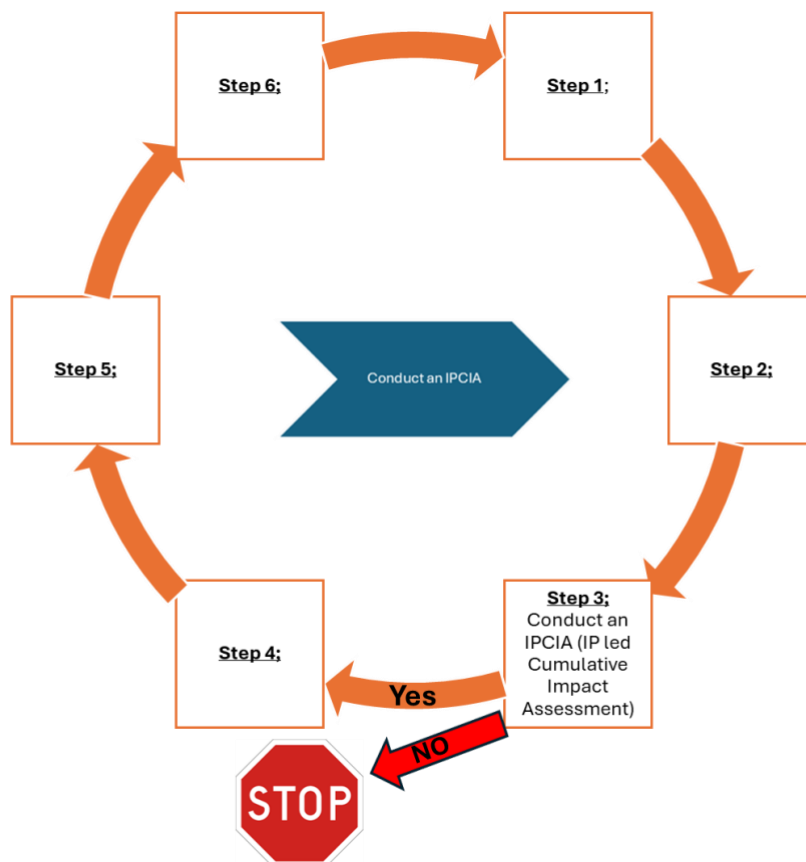
	capacity development must normally be paid for by the ASI-Certified Entity.
Intellectual property	It is important to remember that maps developed, even if with the support of an Indigenous organisation, constitute intellectual property belonging to the affected Indigenous Peoples and not authorities or companies wishing to establish themselves within the affected ICL. It may be important to include confidentiality and usage protocols for data and maps that may be sensitive to the affected Indigenous Peoples in the process agreement. Sometimes, there is information that Indigenous Peoples do not want to share with others. It could be information about holy places, culturally significant environments, and more. To ensure that the affected Indigenous people have control over their intellectual rights, care must be taken to control who has access to information and how they may use it. A good rule of thumb is to ensure that sensitive information and maps are never released without a signed confidentiality and data sharing agreement in place.

When all the information and maps are in place, it is time to make the final analysis of the consequences of ASI-Certified Entity's planned measures. In this work, the extent to which the planned activities will impact the affected Indigenous Peoples is ascertained, which creates the basis for discussing whether it is possible to introduce adaptation and/or compensation measures.

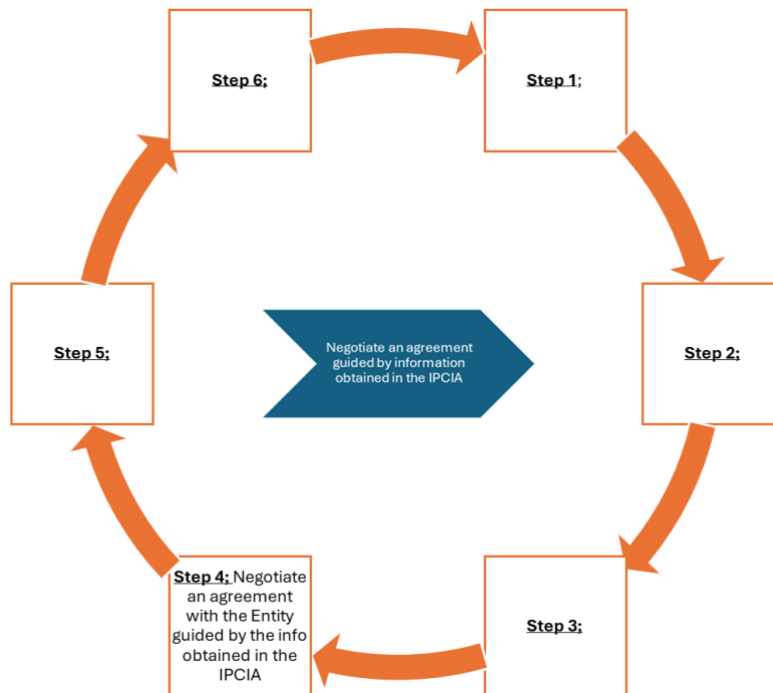
Next, the affected Indigenous Peoples must decide whether the analysis and the proposed mitigation measures show that it may be possible to move forward. It is important that the implemented IPCIA is now anchored in the wheel of reflection with the affected Indigenous Peoples. This requires a commitment from the entire Indigenous community, including women, men, young people, and the elderly. If the IPCIA has been carried out in a desirable way, these groups will have already participated in the investigation process, but if certain groups have not participated fully in this work, it may require both time and effort for them to absorb this information.



This reflective process ends with a decision that follows the traditional decision-making methods applicable to the affected Indigenous Peoples. A decision after a well-conducted IPCIA creates an indisputable situation where a decision made by Indigenous Peoples can be considered, in a real sense, informed. However, remember that this decision may involve giving consent, refraining from giving consent, or giving a modified consent containing certain conditions.



3.5.4 Step 4: Negotiate an Agreement with the Entity Guided by the Information Obtained in the IPCIA



If you, the affected Indigenous Peoples, have decided to proceed in the FPIC process after your IPCIA in step 3, step 4 now begins. In this step, negotiations with the Entity begin. With the help of the completed IPCIA, you now know how the Entity's plans together with all other ongoing influencing factors will affect your ICL from a cumulative perspective. This information is the basis for deciding whether it is possible to move forward in the process.

A negotiation may contain many components. The following proposals can/should be included:

- Adaption and modification of initial plans
- Mitigation measures
- Compensations
- Benefit sharing
- Rehabilitation at closure
- Confidential Information
- Implementation plan
- Monitoring plan
- Communication plan
- The forms for a future agreement
- Complaint mechanism

Recommendations	How and Why
To negotiate	<p>At its core, negotiation skills involve back-and-forth communication designed to reach an agreement between two or more parties. In this case, the negotiations are between an Indigenous Peoples and an ASI-Certified Entity. Negotiations are an inherent part of any kind of joint action, problem solving, and dispute resolution, and can be verbal, non-verbal, explicit, implicit, direct, or undertaken through intermediaries.</p> <p>Negotiating can seem scary but Indigenous Peoples actually do it all the time in our decision-making forums. However, the process of negotiating with a party that we, the affected Indigenous Peoples, have not previously known is usually new. It is not reasonable that everyone in an Indigenous community should have this ability, which is why the group that you have previously appointed to represent you is useful. Although this is a very committed and serious group, they may still need support in the form of external advisors and internal training. If you feel the need for an external advisor, IPAF can help you find one. The cost of this falls on the Entity.</p> <p>Negotiators can improve their negotiation skills through confidence-building education, practice, and thorough preparation. Simply acknowledging fear is an important first step in improving negotiation skills.</p> <p>Here is some negotiation advice that will help you achieve better results:</p> <ul style="list-style-type: none"> • Conduct the negotiations in person rather than communicating by phone or email. As convenient as electronic media can be, they lack the visual cues that body language offers in negotiations that help convey valuable information and create connections in face-to-face conversations. • Insist on choosing where the negotiation will take place. The safer you feel with the environment in which the negotiation takes place, the better the result

	<ul style="list-style-type: none"> • Insist on using your own language in the negotiation. If the Entity must arrange interpretation if necessary • Before talks begin, identify key issues and assurances that you need from the other side • It is important to build a relationship with your counterpart by spending time together and sharing information. Invite the Entity representatives to a social and or cultural event to get a sense of their character. The deeper the relationship, the more likely your counterpart will treat you as a friend rather than a passing acquaintance when negotiating. • Finally, before and during negotiations, seek out others who have achieved favourable outcomes in similar situations. No deal is perfect, but your chances of reaching a satisfactory deal are improved when you feel confident that your goals match results earned by others in similar circumstances. Use the IPAF network to seek this advice.
Adaption and modification of initial plans	As a result of the impact analysis/IPCIA, information has likely emerged about where the affected Indigenous Peoples want changes made or clarifications from the Entity. This will be a good start for the initial negotiations.
Mitigation measures	<p>Mitigation measures are means to prevent, reduce, or control harmful effects of a project proposed by an ASI-Certified Entity. They include adaptation measures and compensation for any damage to Indigenous Peoples' rights and their ICLs, which may take the form of refraining from an action, replacement, restoration, or otherwise.</p> <p>In a situation where the affected Indigenous Peoples are willing to negotiate a possible consent, mitigation measures will be a central part of these negotiations.</p>
Compensations	<p>If you, the affected Indigenous Peoples, consider that mitigation measures are not feasible or the most effective way to deal with negative impacts, compensatory measures can be taken.</p> <p>Compensation measures refer to measures that the Entity pays to compensate you and your community for</p>

	<p>damages and infringements caused by the Entity. They can also refer to compensation for damages that arise as a result of the Entity's activities and the infringement of your rights that this creates. These measures may include financial compensation.</p> <p>As a compensation measure, the parties can agree in a negotiation that damage prevention or compensation measures must be implemented, for example development, research, and training efforts. It can also be brought up that compensation is paid to the Indigenous Peoples and their community without connection to a specific measure.</p> <p>It can sometimes be difficult to calculate the number and size of different types of financial compensation. Don't be afraid to seek advice from other Indigenous Peoples who may have similar experiences. A contact with IPAF can provide access to such information.</p>
Benefit sharing	<p>Benefit sharing is an issue that may come up in the ongoing negotiations. Benefit sharing agreements are privately negotiated and legally enforceable agreements that establish formal relationships between Indigenous Peoples and the Entity.</p> <p>Indigenous Peoples and Local Communities increasingly call for more equitable benefit sharing by the extractive industries, alongside the effective management of the environmental and social risks of industrial activity.</p> <p>Benefit sharing can encompass taxation and revenue distribution, job creation, ownership of companies and shares, negotiated agreements, and community development programmes.</p> <p>The effects of benefit sharing mean that the affected Indigenous People and the Entity in question create a closer relationship, almost a business relationship. However, it also means shared risk-taking. If the Entity's business suffers, there is no benefit to share.</p>
Rehabilitation at closure	<p>The issue of rehabilitating an Indigenous Cultural Landscape following the closure of an ASI-Certified</p>

	<p>operation, including mining operations, will most likely come up in an FPIC negotiation.</p> <p>Indigenous Peoples have had many negative experiences where, for example, the winding down of a mining operation can create major problems if it was not handled correctly. A shutdown is not only about managing remaining environmental risks, but also about recreating the landscape, ecosystem, and ecosystem services that have been lost through the industrial activity.</p> <p>In a negotiation, it is important to ensure that the Entity allocates resources, sometimes large resources, for this rehabilitation work. In many countries and regions, there are rules for how much a mining company must set aside for these efforts, but experience shows that these provisions are usually too small, if they exist at all.</p>
Implementation plan	<p>In all negotiations, it is important to translate results into concrete plans, especially in FPIC negotiations. A plan for implementing the results of the FPIC negotiation should be simple, clear, and contain a schedule, responsibilities, funding, and measurable results in the form of indicators, which will enable a quantifiable measure of performance over time for a specific goal.</p> <p>Both the affected Indigenous Peoples and their representatives, as well as representatives of the Entity, should have equal say in this plan and its implementation. It is important that you, the affected Indigenous Peoples, analyse what resources you need for this work and ask the Entity to provide capacity for this work.</p>
Monitoring plan	<p>If you, the affected Indigenous Peoples, have agreed with the Entity on measures to be implemented, it is important to simultaneously agree on how this can be followed up. This can be executed through a monitoring and evaluation plan. The important thing is that the parties agree on how to follow up the result of the negotiations and how to act in the event of an unfulfilled goal, whether it is a deliberate or unintentional deviation from the implementation plan. The planning of this will have a direct impact on the sixth step of the FPIC process, which involves the monitoring of concluded agreements.</p>

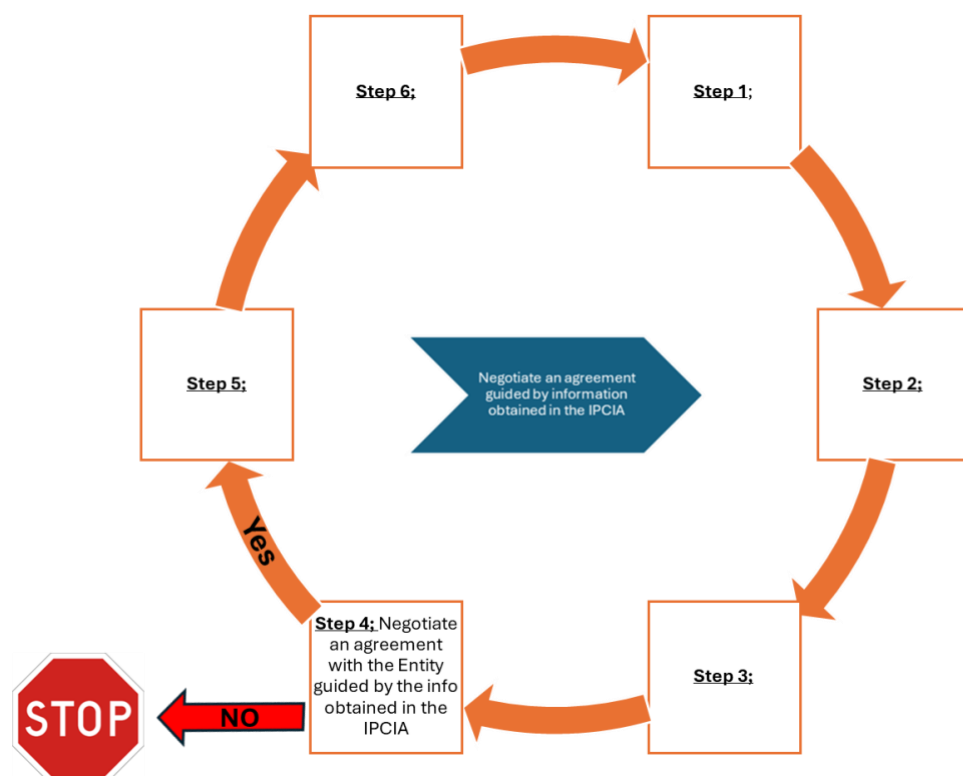
Communication and Information	As the FPIC process progresses, there will be a need to provide information to those members of the affected Indigenous community who have not participated in negotiations and the process. For a group appointed to represent their community, this aspect must not be neglected. It may be appropriate in the negotiation to agree with the counterparty, the Entity, how this should be done. Here, of course, the language issue and cultural aspects are important. An agreement on information and communication can be part of the ongoing negotiation.
Confidential Information	In a negotiation, the Entity will probably want to draw up a confidentiality agreement. This may be because the FPIC negotiation will reveal sensitive business information. For you, the affected Indigenous Peoples, it is important to remember that the FPIC process is about protecting your self-determination and rights. It is therefore important to ensure that there are confidentiality agreements that protect you. These agreements can include rules that protect sensitive information regarding your culture, sacred places, and social and health information. There may also be information that is related to intellectual property rights based on your traditional knowledge that need to be protected.
Documentation	<p>Negotiations take time and must be allowed to take the time needed. To create a basis for an FPIC agreement from all these meetings, they must be documented with detailed notes, which often have to be written in multiple languages, for example your native language and the Entity's preferred language. Detailed notes are needed to remember what has been agreed upon and to be integrated into the upcoming agreement in Step 5. It is important that all these notes, no matter in what form they are presented, are approved by both parties in the FPIC process.</p> <p>If meeting notes are made by the Entity's representatives, it is important that whoever performs these translations has a sufficient professional background and cultural knowledge to understand all the nuances of the respective languages, otherwise the results may be misleading and cause unnecessary conflicts.</p>

Once a negotiation has been concluded or if it has stalled, it should be discussed and decided upon using the traditional model of decision-making that applies to the affected Indigenous Peoples.

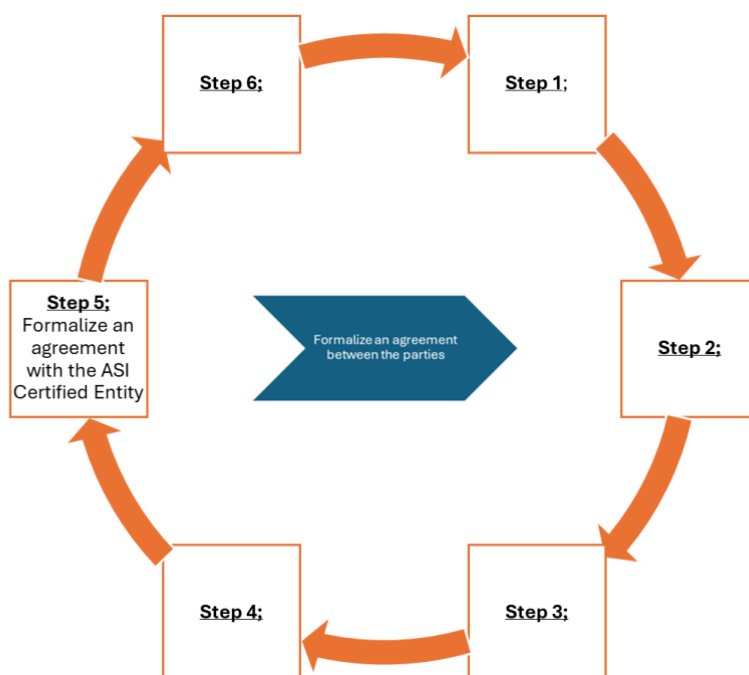


Such a discussion can result in accepting the negotiation result and giving consent, rejecting the project and refusing to give consent, or coming up with a modified suggestion.

If the decision is to proceed with the FPIC process, then the fifth step in this process begins, which entails formalising the negotiation result in an agreement.



3.5.5 Step 5: Formalise an Agreement with the ASI-Certified Entity



After a successful negotiation and when the outcome of the negotiation is approved and accepted by the affected Indigenous Peoples and your traditional decision-making forums, the next step is to formalise the negotiated outcomes into a binding agreement using a mutually agreed-upon form of consent. An agreement can be drawn up in different ways, and it is important that the affected Indigenous Peoples feel comfortable with the format of the agreement, be it written, oral, traditional ceremony, or a combination.

There may be situations where the affected Indigenous Peoples feel reluctant to enter into a legally binding agreement with the Entity due to the possible risk of negative legal repercussions in the country where they live and reside. In this case, alternative forms of agreement can be used, such as a memorandum of understanding or protocol agreements. These options should explicitly state objectives for respecting the right to grant, withhold, or withdraw FPIC. It is useful to address this scenario early in the development of the process agreement during Step 2.

Once an FPIC Agreement is reached, all parties are bound by it, and consent cannot be arbitrarily withdrawn. The agreement should specify the conditions under which consent is given and on what grounds it can be withdrawn. A revoked consent may be due to the Entity withholding important information about its industrial operations, violating existing agreements, or not respecting the rights of the affected Indigenous

Peoples. Such a situation also triggers the conflict management mechanism upon which the parties should have agreed.

The format of a consent agreement may include the following:

- Description and naming of Affected Populations/Indigenous Peoples/Local Communities
- Agreed-upon signatory parties and information on their right to represent the parties
- Mutually agreed-upon material evidence of consent
- Description of the geographical location and the traditional ecosystem services practised at the site. This information is contained in the IPCIA carried out during Step 3 of the FPIC process
- Description of the Entity and the planned actions that form the basis of the FPIC process
- Description of project and implementation plans
- Agreed-upon mitigation measures, adaptation measures, and compensation measures, plus designation of responsibility and financing for these
- Financial agreements between the parties, including agreement on benefit sharing for the affected Indigenous Peoples
- Requirements agreed between the parties, including rules and restrictions imposed on the parties (such as limiting the use of certain areas of the Indigenous cultural landscape)
- Duration/Period
- Plan for follow-up of the agreement
- Conditions for withdrawal of consent
- Complaint mechanisms/conflict management
- Confidentiality Agreement
- Appendices such as IPCIA, management plans, details of agreed-upon economic development activities, and associated detailed processes for implementation

Recommendations	How and Why
Develop a formalised agreement	Many Indigenous Peoples do not have previous experience of drafting agreements with external companies. The task can seem daunting and insurmountable. An agreement can come with associations of an incomprehensible legal text drawn up by trained lawyers. An FPIC agreement does not have to be drafted in this way. The important thing is that the agreement must be understood by you, the

	<p>affected Indigenous Peoples. Choose the language and form of presentation that suits you best and try to make it as simple as possible. Formulating the agreement should involve the same Indigenous representatives who participated in the entire process, including the completed negotiations. It may be a good idea to seek help and advice from an external advisor who has previously participated in such work. If you need such an advisor, which is recommended, and lack the resources to pay for such services, the Entity will ensure that you receive the resources to make this happen. It is not always best to hire a lawyer because they may not understand your cultural background and the values base govern your actions. The IPAF network might help you find advisors for this task.</p>
<p>Check the agreed-upon signatory parties' right to represent the parties</p>	<p>It is important that whoever signs the agreement on behalf of the affected Indigenous Peoples has been given a mandate by their community through their traditional decision-making model. Remember that the right to FPIC is a collective right that requires a majority of the affected Indigenous Peoples to support the decision. It is also important that you, the affected Indigenous Peoples, check that the person who signs for the Entity has a mandate to represent the Entity in signing the agreement.</p>
<p>Establish conditions for withdrawal of consent</p>	<p>By entering into an FPIC agreement with the Entity, you, the affected Indigenous Peoples, cannot arbitrarily break the agreement and take back a given consent. If the Entity does not abide by the terms of the given consent, however, there may be reasons to withdraw consent or offer a modified consent. It is therefore very important to describe in the agreement what these conditions are. How much impact on your ICL have you accepted? Which mitigation measures are to be implemented within a given time frame? Which compensations are you to receive and when? The more detailed this description is, the better grounds you have for deviating from the original agreement.</p> <p>A withdrawal of consent does not have to be negative. This may mean that a previously given consent with certain restrictions can now, after implementation of adaptation measures and compensatory measures, be re-evaluated. In order to achieve such a development, the affected</p>

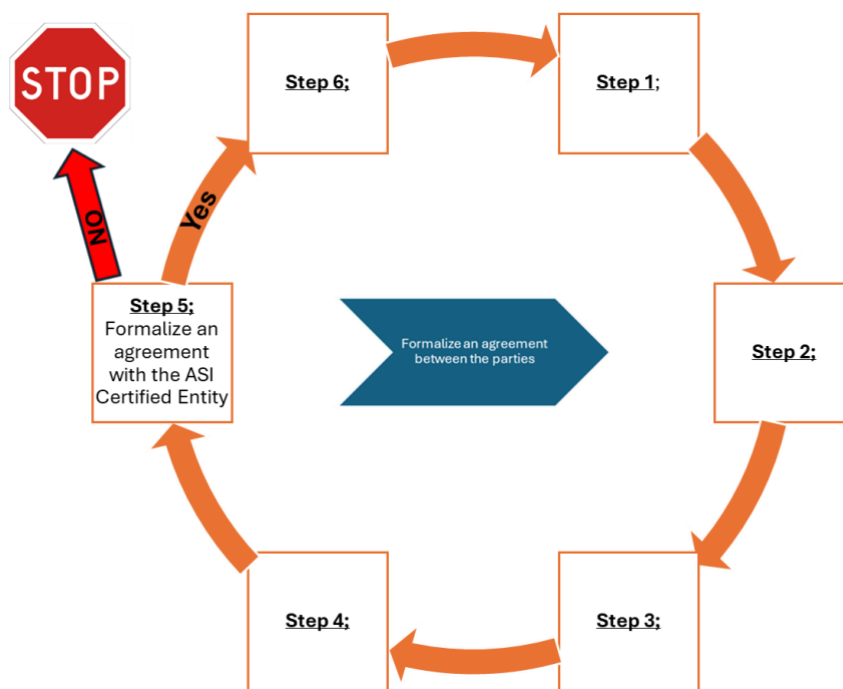
	Indigenous Peoples and the Entity need to have a close and trusting dialogue not only during the FPIC process but above all after an agreement is in place.
Agree upon grievance mechanisms/conflict management	If a dispute arises in the interpretation of the agreement, it is good to agree on how these should be handled so that they do not turn into a serious conflict. Within the ASI Performance Standard, there are developed methods for conflict management and complaint mechanisms. It is the Entity's responsibility to inform the affected Indigenous Peoples about how these are designed. The ASI Complaints Mechanism proposes to integrate dialogue-based conflict management methods such as meetings and mediation into the FPIC agreement. Mediation should consist of independent persons who try to find ways for parties in conflict to approach each other. Prior to the determination of the clause in the agreement that will regulate conflict management, you, the affected Indigenous Peoples, are advised to contact ASI and IPAF to obtain the latest information on appropriate solutions.

When the FPIC representatives appointed by you, the affected Indigenous people, are satisfied with the design of the agreement, be sure to inform your community, reflect on the agreement, and decide on its content using your traditional decision-making forums. Also, you will need to decide who will sign the agreement. It might be an idea to hold a ceremony around the signing of the FPIC agreement where representatives of the Entity participate.

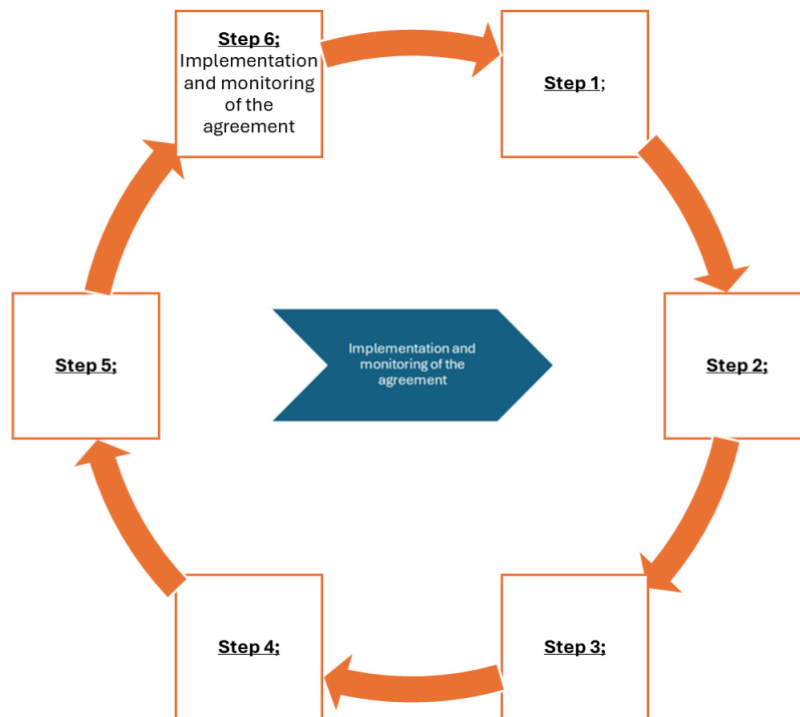


If the affected Indigenous Peoples and the ASI-Certified Entity have now established a consent agreement, the FPIC process moves to its last step, Step 6.

However, if the parties have not been able to agree, the Entity cannot proceed with its plans without risking seriously violating the requirements of the ASI Performance Standard. When you have come this far in the FPIC process, it is worth trying to get back to the negotiating table to find a common solution using some of the conflict resolution tools that have been developed during the process.



3.5.6 Step 6: Implementation and Monitoring of the Agreement



Step 6 in the FPIC process is the endpoint but also, at the same time, the beginning of a continued relationship between the affected Indigenous Peoples and the ASI-Certified Entity. All the work that the participating Indigenous Peoples have put into the process together with the Entity in question must now be followed up to see if the agreed measures, adaptations, and plans have been implemented. This includes setting up processes for monitoring and evaluation, as well as protocols for complaints in case there are different perceptions about the implementation of the agreement.

The task of forming a joint method for the implementation of the plans is an issue that should have been discussed in the completed negotiation in Step 4 and formalised in the agreement in Step 5.

This evaluation method includes a shared understanding between the two parties, the affected Indigenous Peoples and the Entity, of the implementation and monitoring methodology. Which activities are to be implemented and monitored? Which indicators are to be followed up? How are the results to be documented and reported to the affected Indigenous Peoples and what human and financial resources will be required to implement this?

By establishing a mutually agreed-upon methodology, it is possible to quickly and transparently address issues that may arise during the life of a project and support the quality assurance requirements of project management. There is a useful methodology that includes monitoring, evaluation, and learning, which is sometimes called MEL.

This is also an opportunity to learn from mistakes and exemplars to facilitate future FPIC processes. If this has been the first FPIC process between the affected Indigenous Peoples and the ASI-Certified Entity, then the next FPIC process can be carried out in a significantly simpler way. Now that the affected Indigenous Peoples and the relevant Entity know each other, routines for negotiations, contract writing, and follow-up are in place.

Recommendations	How and Why
Monitoring	<p>Before monitoring the FPIC process, the affected Indigenous Peoples must remember the purpose of the FPIC process. It is about creating guarantees that our rights and self-determination have not been violated. Indigenous Peoples should therefore ask ourselves a number of questions:</p> <ul style="list-style-type: none"> • What are the major challenges with the planned project and its adaptation and compensation measures? Do any components threaten Indigenous rights and self-determination? • What goals have been set or implemented through the FPIC process to meet these challenges, and are they specific, realistically achievable, and measurable within a given time frame? • Will new processes and initiatives from the Entity be implemented that could affect these goals? What will the change look like in six months, a year, two years, and at the end of the initiative?
Evaluations	<p>Evaluation refers to the periodic assessment and analysis of ongoing or completed projects.</p> <p>Although evaluation techniques may change, the end result is the same: evaluation gives the affected Indigenous Peoples and the Entity an opportunity to regularly check the effectiveness of this process with its subsequent programs/projects. This ensures that money spent and resources invested will contribute to achieving desired outcomes for the affected Indigenous Peoples.</p>

Learning	<p>Learning is the process by which information gathered through monitoring and evaluation is considered and intentionally used to continuously improve a project and the FPIC process to better achieve common desired outcomes.</p> <p>It must be remembered that an FPIC process is not a one-time process but a long and comprehensive relationship between the affected Indigenous Peoples and an ASI-Certified Entity. The first FPIC process will be followed by new ones as new needs and wants emerge in the relationship. Active learning in these processes can create a more flexible way of working, where the ongoing relationship can be deepened. It is important to see this learning as an opportunity, not a threat.</p>
Independent evaluator	<p>To avoid open conflicts between the parties, it can be beneficial to connect with an independent evaluator who can assess the work of monitoring, evaluating, and learning. Such an evaluator should be recruited jointly by the affected Indigenous Peoples and the relevant ASI-Certified Entity. If the parties themselves cannot find a suitable person for this task, ASI and IPAF can assist in finding such a person. The cost of this effort is financed by the Entity, but it is important that the hired resource is not considered biased as a result.</p>
Documentation	<p>Following up implementation and fulfilment of the agreement is a long-term endeavour that involves many aspects and potential discussions regarding compliance and deviations. Note-taking is therefore crucial. Both parties should take part in this documentation, taking into consideration the language and cultural understanding within and between the parties.</p>

If the affected Indigenous Peoples have made it through all six steps, plus the three initial preparatory steps, then we have done a great job for our people, our land, our culture, our rights and our self-determination. Such a process can be exhausting, frustrating, and challenging. The outcome of this process largely depends on the participants' attitude and commitment. Was the FPIC process entered into with a negative outlook or seen as an opportunity? There is a saying from the Cherokee First Nations that applies here:

There is a battle of two wolves inside us all.

***One is evil. It is anger, jealousy, greed,
resentment, lies, inferiority and ego.***

***The other is good. It is joy, peace, love, hope,
humility, kindness, empathy and truth.***

The wolf that wins? The one you feed.