

# Free, Prior and Informed Consent (FPIC) Guidance for ASI-Certified Entities



## FPIC Guidance Working Group

Following advice from the Indigenous People's Advisory Forum (IPAF), the Aluminium Stewardship Initiative (ASI) Board of Directors actioned the development of Free, Prior and Informed Consent (FPIC) guidance documents, for 1) ASI Certifying Entities, 2) Indigenous Peoples and 3) ASI certified auditors.

This guidance was drafted by Anders Blom, one of the founders of the Norwegian foundation Protect Sápmi, and a member of IPAF. A working group was formed, consisting of 4 IPAF members and 3 ASI secretariat, who closely supported and collaborated on the development of this document. Moreover, the wider IPAF network were informed about the development and progress of the guidance.



## Content

### 1. Introduction

- **What is FPIC?**
- **What is Indigenous Peoples?**

### 2. ASI & FPIC

- **Implementing FPIC in certified operations**
- **Preparing for the FPIC process**
- **Implementing FPIC**



Adivasi woman, Koraput, Odisha, India

# Introduction



# What is FPIC?

the definition

## Free

The consent is **free, given voluntarily and without coercion, intimidation or manipulation.**

A process that is self-directed by the community from who consent is being sought, unencumbered by coercion, expectations or timelines that are externally imposed.

## Prior

The consent is sought **sufficiently in advance** of any authorisation or commencement of activities.

## Informed

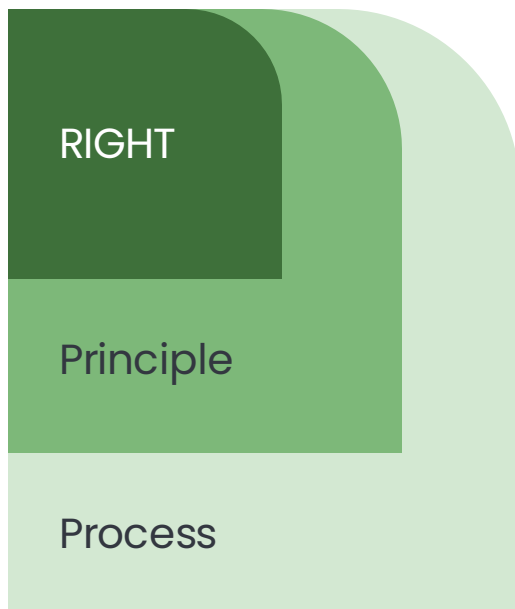
The engagement and type of **information** that should be **provided prior** to seeking consent **and also** as part of the **ongoing** consent process.

## Consent

A **collective decision** made by the right holders and reached through a customary decision-making processes of the communities.

# What is FPIC?

putting it into different contexts



## FPIC as a right

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

## FPIC as a principle

As such, FPIC is not dependent on an endorsement by national laws and legislation to be a valid standard for human existence. As a result, actions respecting FPIC may directly conflict with national laws, or fall within a policy gap.

## FPIC as a process

FPIC is also viewed as a process that offers better practice engagement tools throughout a resource development cycle. This view of FPIC falls in line with the **Human Rights**-based principle of participatory decision-making.

# What is FPIC?

as seen in International Law

In August 2018, the **United Nations Expert Mechanism on the Rights of Indigenous Peoples (EMRIP)** released a study on a Human Rights-based approach to Free, Prior and Informed Consent in accordance with its mandate under Human Rights Council resolution 33/25 (A/HRC/39/62).

3. Free, prior and informed consent is a Human Rights norm grounded in the **fundamental rights to self-determination** and to be free from racial discrimination guaranteed by the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights and the International Convention on the Elimination of All Forms of Racial Discrimination. The **United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP)** established a universal framework of minimum standards for the survival, dignity and well-being of IPLC. Its provisions, including those referring to free, prior and informed consent, do not create new rights for indigenous peoples, but rather provide a contextualized elaboration of general human rights principles and rights as they relate to the specific historical, cultural and social circumstances of indigenous peoples (see A/HRC/9/9, para. 86).

...

14. Free, prior and informed consent is a manifestation of indigenous peoples' right to self-determine their political, social, economic and cultural priorities. It constitutes three interrelated and cumulative rights of indigenous peoples: **the right to be consulted; the right to participate; and the right to their lands, territories and resources.** Pursuant to the Declaration, free, prior and informed consent cannot be achieved if one of these components is missing.

# What is FPIC?

in voluntary market-related sustainability instruments

9.4 **Free, Prior, and Informed Consent (FPIC).** The Entity shall Consult and cooperate in good faith with the Indigenous Peoples concerned through their own representative institutions in order to obtain their Free, Prior and Informed Consent (FPIC):

- a. For New Projects or Major Changes to existing projects that may have Material impacts on the Indigenous Peoples associated culturally and living on the relevant lands within the Entity's Area of Influence, prior to the approval of any project affecting their lands or territories and other resources, particularly in connection with the development, utilization or exploitation of mineral, water, energy or other resources.
- b. Where engaged in Bauxite Mining:
  - i. Prior to commencing a new phase of operations affecting their lands or territories and other resources, particularly in connection with the development, utilization or exploitation of mineral, water or other resources.
  - ii. Prior to altering an existing Mine Rehabilitation and closure plan affecting their lands or territories and other resources, particularly in connection with the development, utilization or exploitation of mineral, water or other resources.
- c. Where FPIC is required in 9.4 a or b: Demonstrate that the consent is supported by the Indigenous Peoples community.

← In its new performance standard (V3.1), ASI has decided that FPIC should be mandatory in certified operations. This is not dependent on national regulations or national recognition of Indigenous Peoples, nor does the granting of a license remove the Entity's obligation to conduct FPIC under the ASI Performance Standard.



# What is Indigenous Peoples?

the definition under ASI

- Self-identification as Indigenous Peoples at the individual level and accepted by the community as their 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.



Spiritual leader "Mamo" of the Kogui Tribe,  
Sierra Nevada de Santa Marta, Colombia

# What is Land-connected Communities?

the definition under ASI

Indigenous Peoples can appear under different names and concepts – some groups do not explicitly identify as Indigenous. The term **Land-connected Communities** is used to ensure that groups who fall into the definition of Indigenous, but do not self-identify as such, are considered and protected under the ASI Performance Standard, therefore ensuring that a Free, Prior and Informed Consent process is carried out. The definition is:

*Land-connected Communities* refer to those who do not self-identify or are not recognised as Indigenous Peoples, but for whom land is essential to upholding universal human rights. *Land-connected Communities* are *culturally differentiated groups* which recognize themselves as such, which have their *own forms of social organization*, with strong ties to a locality, despite maybe not originally coming from that locality. They rely on *natural resources as a condition for their cultural, social, religious, ancestral and economic continuity*. These communities are non-dominant, have distinct social and political systems, culture and language. Examples of these communities include Quilombolas as well as local communities in Guinea

The use of the term Land-connected Communities should not be used to weaken recognition of Indigenous Peoples' affirmed rights and identities. **Whilst Indigenous Peoples and Local Communities often overlap, they are not always the same and may have distinct rights.**



Bauxite mining, Weipa, Australia



Native American Intertribal Chumash gathering, California, USA



Arawete Tribe men, Amazon Region, Brazil



Aboriginal woman, Cape York, Australia

## ASI & FPIC

# Implementing FPIC in certified operations



# How can FPIC be implemented in certified operations?

The main references and criteria regarding Indigenous Peoples and FPIC can be found under principle 9, Human Rights.

## C. Social (Principles 9–11)

### 9. Human Rights

#### Criterion 9.1: Human Due Diligence

Criterion 9.2: Gender Equity and Women's Empowerment.

#### 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 9.8: Conflict-Affected and High-Risk Areas

Criterion 9.9: Security practice



# Criterion 9.3

## Indigenous Peoples

### 9.3 Indigenous Peoples. The Entity shall:

- a. Implement Policies and processes that ensure respect for the rights and interests of Indigenous Peoples, consistent with international standards, including ILO Convention 169 and UN Declaration on the Rights of Indigenous Peoples.
- b. Develop and document a process for identifying Indigenous Peoples based on their linguistic, social, governance and resource-linked characteristics rather than state recognition.
- c. Demonstrate internal capacity (personnel, resources) to implement the process through evidence-based analysis that includes meaningful stakeholder engagement.
- d. Review the Policies and processes at least every 5 years.
- e. Review the Policies and processes after any changes to the Business that alter risks to the rights and interests of Indigenous Peoples.
- f. Review the Policies and processes on any indication of a control gap.
- g. Publicly disclose the latest versions of the Policies and processes.
- h. Demonstrate internal capacity to map indigenous communities by their cultural characteristics, rather than legal designations, and to engage meaningfully.
- i. Inform Indigenous Peoples of the relevant ASI Performance Standard requirements and the ASI Certification Audit process, including their involvement, in a manner that is accessible, timely and understandable.

#### *Application:*

This criterion applies to all Facilities where the presence of Indigenous Peoples or their lands, territories and resources is identified through an assessment that is rooted in meaningful stakeholder engagement.

## Highlights

9.3 applies to all Entities where Indigenous Peoples or their land and resources are identified through meaningful Rightsholders engagement and assessment processes. Indigenous Peoples consist of any group who can be identified with the definition of Indigenous Peoples in the ASI glossary, including affected populations and Local Communities.

# Criterion 9.3

## Indigenous Peoples

### 9.3 Indigenous Peoples. The Entity shall:

- a. Implement Policies and processes that ensure respect for the rights and interests of Indigenous Peoples, consistent with international standards, including ILO Convention 169 and UN Declaration on the Rights of Indigenous Peoples.
- b. Develop and document a process for identifying Indigenous Peoples based on their linguistic, social, governance and resource-linked characteristics rather than state recognition.
- c. Demonstrate internal capacity (personnel, resources) to implement the process through evidence-based analysis that includes meaningful stakeholder engagement.
- d. Review the Policies and processes at least every 5 years.
- e. Review the Policies and processes after any changes to the Business that alter risks to the rights and interests of Indigenous Peoples.
- f. Review the Policies and processes on any indication of a control gap.
- g. Publicly disclose the latest versions of the Policies and processes.
- h. Demonstrate internal capacity to map indigenous communities by their cultural characteristics, rather than legal designations, and to engage meaningfully.
- i. Inform Indigenous Peoples of the relevant ASI Performance Standard requirements and the ASI Certification Audit process, including their involvement, in a manner that is accessible, timely and understandable.

#### *Application:*

This criterion applies to all Facilities where the presence of Indigenous Peoples or their lands, territories and resources is identified through an assessment that is rooted in meaningful stakeholder engagement.

Entities must analyse the direct and indirect impacts of their operations, including upstream and downstream effects, on Indigenous Peoples and their land, resources, and traditional Ecosystem Services within their **Area of Influence** and **Associated Facilities**. Indigenous Communities have many different labels, whilst some don't identify as Indigenous. "Affected Populations" could fall under ASI's Indigenous criteria.

Regardless of national recognition and regulations, ASI Entities must adhere to the ASI Standard's definition of Indigenous Peoples and conduct the FPIC process.



# Criterion 9.3

## Indigenous Peoples

### 9.3 Indigenous Peoples. The Entity shall:

- a. Implement Policies and processes that ensure respect for the rights and interests of Indigenous Peoples, consistent with international standards, including ILO Convention 169 and UN Declaration on the Rights of Indigenous Peoples.
- b. Develop and document a process for identifying Indigenous Peoples based on their linguistic, social, governance and resource-linked characteristics rather than state recognition.
- c. Demonstrate internal capacity (personnel, resources) to implement the process through evidence-based analysis that includes meaningful stakeholder engagement.
- d. Review the Policies and processes at least every 5 years.
- e. Review the Policies and processes after any changes to the Business that alter risks to the rights and interests of Indigenous Peoples.
- f. Review the Policies and processes on any indication of a control gap.
- g. Publicly disclose the latest versions of the Policies and processes.
- h. Demonstrate internal capacity to map indigenous communities by their cultural characteristics, rather than legal designations, and to engage meaningfully.
- i. Inform Indigenous Peoples of the relevant ASI Performance Standard requirements and the ASI Certification Audit process, including their involvement, in a manner that is accessible, timely and understandable.

#### *Application:*

This criterion applies to all Facilities where the presence of Indigenous Peoples or their lands, territories and resources is identified through an assessment that is rooted in meaningful stakeholder engagement.

Entities need to build internal expertise to recognise Indigenous Peoples based on cultural traits rather than legal status, and to have the competence to engage in a culturally appropriate manner.

Entities are responsible for clearly explaining the ASI Performance Standard to Indigenous Peoples, including FPIC requirements, certification, auditing, and the complaints mechanism in a way that is understandable, accessible, and transferable to their cultural and linguistic context.

# Criterion 9.4

## Free, Prior, and Informed Consent (FPIC)

9.4 **Free, Prior, and Informed Consent (FPIC).** The Entity shall Consult and cooperate in good faith with the Indigenous Peoples concerned through their own representative institutions in order to obtain their Free, Prior and Informed Consent (FPIC):

- a. For New Projects or Major Changes to existing projects that may have Material impacts on the Indigenous Peoples associated culturally and living on the relevant lands within the Entity's Area of Influence, prior to the approval of any project affecting their lands or territories and other resources, particularly in connection with the development, utilization or exploitation of mineral, water, energy or other resources.
- b. Where engaged in Bauxite Mining:
  - i. Prior to commencing a new phase of operations affecting their lands or territories and other resources, particularly in connection with the development, utilization or exploitation of mineral, water or other resources.
  - ii. Prior to altering an existing Mine Rehabilitation and closure plan affecting their lands or territories and other resources, particularly in connection with the development, utilization or exploitation of mineral, water or other resources.
- c. Where FPIC is required in 9.4 a or b: Demonstrate that the consent is supported by the Indigenous Peoples community.

### *Application:*

For New Projects and Major Changes initiated pre-2022: this criterion applies only to those projects initiated after the Entity joined ASI.

For New Projects and Major Changes initiated from 01 January 2022 onwards: this criterion applies to all projects.

Criterion 9.4(a) applies to all Facilities.

Criterion 9.4(b) applies to all Bauxite Mines.

Criterion 9.4(c) applies if either 9.4(a) or (b) applies.

## Highlights

9.4 Where the presence of Indigenous Peoples or their lands, territories and resources is identified, FPIC processes are mandatory for New Projects or Major Changes, initiated from 1 January 2022 onwards. Entities engaged in Bauxite Mining had specific requirements. When FPIC is required, consent by the Indigenous community must be demonstrated.

# Criterion 9.4

## Free, Prior, and Informed Consent (FPIC)

9.4 **Free, Prior, and Informed Consent (FPIC).** The Entity shall Consult and cooperate in good faith with the Indigenous Peoples concerned through their own representative institutions in order to obtain their Free, Prior and Informed Consent (FPIC):

- a. For New Projects or Major Changes to existing projects that may have Material impacts on the Indigenous Peoples associated culturally and living on the relevant lands within the Entity's Area of Influence, prior to the approval of any project affecting their lands or territories and other resources, particularly in connection with the development, utilization or exploitation of mineral, water, energy or other resources.
- b. Where engaged in Bauxite Mining:
  - i. Prior to commencing a new phase of operations affecting their lands or territories and other resources, particularly in connection with the development, utilization or exploitation of mineral, water or other resources.
  - ii. Prior to altering an existing Mine Rehabilitation and closure plan affecting their lands or territories and other resources, particularly in connection with the development, utilization or exploitation of mineral, water or other resources.
- c. Where FPIC is required in 9.4 a or b: Demonstrate that the consent is supported by the Indigenous Peoples community.

### *Application:*

For New Projects and Major Changes initiated pre-2022: this criterion applies only to those projects initiated after the Entity joined ASI.

For New Projects and Major Changes initiated from 01 January 2022 onwards: this criterion applies to all projects.

Criterion 9.4(a) applies to all Facilities.

Criterion 9.4(b) applies to all Bauxite Mines.

Criterion 9.4(c) applies if either 9.4(a) or (b) applies.

FPIC processes are required for New Projects or Major Changes involving Indigenous Peoples and their lands, starting from 1 January 2022. This applies to projects initiated after the Entity joined ASI if this occurred after 1 January 2022. For Bauxite Mining Entities, FPIC must be conducted before changing existing Mine Rehabilitation and closure plans. Consent by the Indigenous community must be demonstrated.

The granting of a license by a government authority does not remove the obligation for the Entity to conduct an FPIC process.

# Criterion 9.4

## Free, Prior, and Informed Consent (FPIC)

9.4 **Free, Prior, and Informed Consent (FPIC).** The Entity shall Consult and cooperate in good faith with the Indigenous Peoples concerned through their own representative institutions in order to obtain their Free, Prior and Informed Consent (FPIC):

- a. For New Projects or Major Changes to existing projects that may have Material impacts on the Indigenous Peoples associated culturally and living on the relevant lands within the Entity's Area of Influence, prior to the approval of any project affecting their lands or territories and other resources, particularly in connection with the development, utilization or exploitation of mineral, water, energy or other resources.
- b. Where engaged in Bauxite Mining:
  - i. Prior to commencing a new phase of operations affecting their lands or territories and other resources, particularly in connection with the development, utilization or exploitation of mineral, water or other resources.
  - ii. Prior to altering an existing Mine Rehabilitation and closure plan affecting their lands or territories and other resources, particularly in connection with the development, utilization or exploitation of mineral, water or other resources.
- c. Where FPIC is required in 9.4 a or b: Demonstrate that the consent is supported by the Indigenous Peoples community.

### *Application:*

For New Projects and Major Changes initiated pre-2022: this criterion applies only to those projects initiated after the Entity joined ASI.

For New Projects and Major Changes initiated from 01 January 2022 onwards: this criterion applies to all projects.

Criterion 9.4(a) applies to all Facilities.

Criterion 9.4(b) applies to all Bauxite Mines.

Criterion 9.4(c) applies if either 9.4(a) or (b) applies.

Examples of situations requiring FPIC  
(subject to traditional ownership or customary use):

- Impacts on lands, resources, and traditional Ecosystem Services
- Resettlement of Indigenous Peoples from lands and natural resources
- Any impacts on critical cultural heritage that is 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.

# Criterion 9.4

## Free, Prior, and Informed Consent (FPIC)

This process for an Entity means:

- Willingness to engage and share information in a culturally appropriate manner sometimes adapting to Indigenous procedures
- Sufficient internal knowledge of language, culture and context of the community.
- Ensuring the Indigenous community has the capacity to participate equally in the process, using their own selection of advisors/experts
- Informing the community about their rights in accordance with the ASI Performance Standard and the FPIC process. **The right to give, withhold or modify consent must be clear.**
- Special attention should be made to ensure women, youth, elders and vulnerable groups can participate meaningfully in the FPIC process
- Willingness to change initial position and compromise
- Provide sufficient time for decision-making in culturally sensitive manners

Consultations must be held “in good faith and a form appropriate to the circumstances, to achieve agreement or consent” to the proposed measure

– Article 6(2) ILO Convention 169 for Indigenous Peoples

## ASI & FPIC

# Preparing for the FPIC process



# Preparing for the FPLC process

---

## STEP 1

Cultural competence required of Entity operational staff who engage directly with or make decisions that impact upon IPLC's

---

## STEP 2

IPLC and affected populations self-identify and/or are identified by the Entity within its Area of Influence

---

## STEP 3

Conduct Human Rights Due Diligence concerning IPLC's, and affected populations in line with ASI Performance Standards. Document in a policy document.

# Preparing for the FPLC process

---

## STEP 1

Cultural competence required of Entity operational staff who engage directly with or make decisions that impact upon IPLC's

---

## STEP 2

IPLC and affected populations self-identify and/or are identified by the Entity within its Area of Influence

---

## STEP 3

Conduct Human Rights Due Diligence concerning IPLC's, and affected populations in line with ASI Performance Standards. Document in a policy document.

## RECOMMENDATION #1

Within the Entity operational staff create and integrate an understanding, knowledge and recognition of IPLC's, their culture, rights and cosmovision.

## HOW & WHY?

Seek contact with IPLC representatives and their organisations in the region. Where possible, organise workshops where IPLC Organisations act as educators, and knowledge mediators. This may include cultural awareness training.



# Preparing for the FPLC process

---

## STEP 1

Cultural competence required of Entity operational staff who engage directly with or make decisions that impact upon IPLC's

---

## STEP 2

IPLC and affected populations self-identify and/or are identified by the Entity within its Area of Influence

---

## STEP 3

Conduct Human Rights Due Diligence concerning IPLC's, and affected populations in line with ASI Performance Standards. Document in a policy document.

## RECOMMENDATION #2

Recruit personnel within the Entity who have experience and training in working with and demonstrated understanding of Indigenous Peoples. Entity staff can include IPLC peoples.

## HOW & WHY?

It is best if the Entity can hire permanent staff for this task. A prerequisite for the team that is formed to be able to act in a culturally appropriate way.

# Preparing for the FPLC process

---

## STEP 1

Cultural competence required of Entity operational staff who engage directly with or make decisions that impact upon IPLC's

---

## STEP 2

IPLC and affected populations self-identify and/or are identified by the Entity within its Area of Influence

---

## STEP 3

Conduct Human Rights Due Diligence concerning IPLC's, and affected populations in line with ASI Performance Standards. Document in a policy document.

## RECOMMENDATION #3

The hired group of internal IPLC experts must be given the status and resources required to act independently and with the confidence of management.

## HOW & WHY?

Decision-making power must be granted to the Entity's representatives when attending information meetings and participating in project negotiations and making commitments on behalf of the Entity.

# Preparing for the FPLC process

---

## STEP 1

Cultural competence required of Entity operational staff who engage directly with or make decisions that impact upon IPLC's

---

## STEP 2

IPLC and affected populations self-identify and/or are identified by the Entity within its Area of Influence

---

## STEP 3

Conduct Human Rights Due Diligence concerning IPLC's, and affected populations in line with ASI Performance Standards. Document in a policy document.

### **A and B.**

Recognized, Self-identified Indigenous Peoples and Affected Populations who identify themselves as Indigenous, even if under a name other than Indigenous Peoples

### **C.**

Affected Populations who chose or had no reason to identify themselves as Indigenous Peoples must be recognized as being Indigenous where the definition and criterion match

# Preparing for the FPIC process

---

## STEP 1

Cultural competence required of Entity operational staff who engage directly with or make decisions that impact upon IPLC's

---

## STEP 2

IPLC and affected populations self-identify and/or are identified by the Entity within its Area of Influence

---

## STEP 3

Conduct Human Rights Due Diligence concerning IPLC's, and affected populations in line with ASI Performance Standards. Document in a policy document.

### D.

Affected Populations where the authorities in a country or region deny them the right to call themselves Indigenous Peoples despite meeting the criteria for being Indigenous whether they identify as Indigenous Peoples or not

### E.

Local Communities and their inhabitants who, if the criteria for Indigenous Peoples apply to them, must be considered as Indigenous Peoples

### F.

Local Communities where both Indigenous Peoples and non-indigenous people living side by side, sometimes in harmony with each other, sometimes in conflict

# Preparing for the FPLC process

---

## STEP 1

Cultural competence required of Entity operational staff who engage directly with or make decisions that impact upon IPLC's



Use the UN Guiding Principles on Business and Human Rights as a guide

---

## STEP 2

IPLC and affected populations self-identify and/or are identified by the Entity within its Area of Influence



Develop a Human Rights Policy following the Due Diligence process based off the Due Diligence process

---

## STEP 3

Conduct Human Rights Due Diligence concerning IPLC's, and affected populations in line with ASI Performance Standards. Document in a policy document.



Have regular exchanges with IPLC members to address policy issues

# Preparing for the FPLC process

## STEP 1

Cultural competence required of Entity operational staff who engage directly with or make decisions that impact upon IPLC's

According to Criterion 9.1 in the ASI Performance standard, an ASI Certified Entity must conduct a Human Rights Due Diligence guided by the UN Guiding Principles on Business and Human Rights. This Due Diligence shall, result in:

## STEP 2

IPLC and affected populations self-identify and/or are identified by the Entity within its Area of Influence

## STEP 3

Conduct Human Rights Due Diligence concerning IPLC's, and affected populations in line with ASI Performance Standards. Document in a policy document.

- A gender-responsive Human Rights Due Diligence to be designed and implemented together with affected populations. The process must identify, prevent, mitigate any negative Human Rights impact regarding affected populations.
- A policy document taking into account gender issues, issues concerning intersectionality and Indigenous issues
- A mapping of Affected Populations and Organisations to ensure that these are engaged in the Due Diligence process. The identification mapping of Indigenous Peoples concerned under the second step will of course be instrumental in this work.

ASI & FPIC

# Implementing FPIC





Jokkmokk Kommune, Sweden

Indigenous Peoples (IPLC) often have a circular way of thinking, acting and decision-making.

The FPIC process does not have a clear start and end, but rather it's a continuous process of relationship building and consultation.



# Implementing FPIC

## Overview

### Step 1

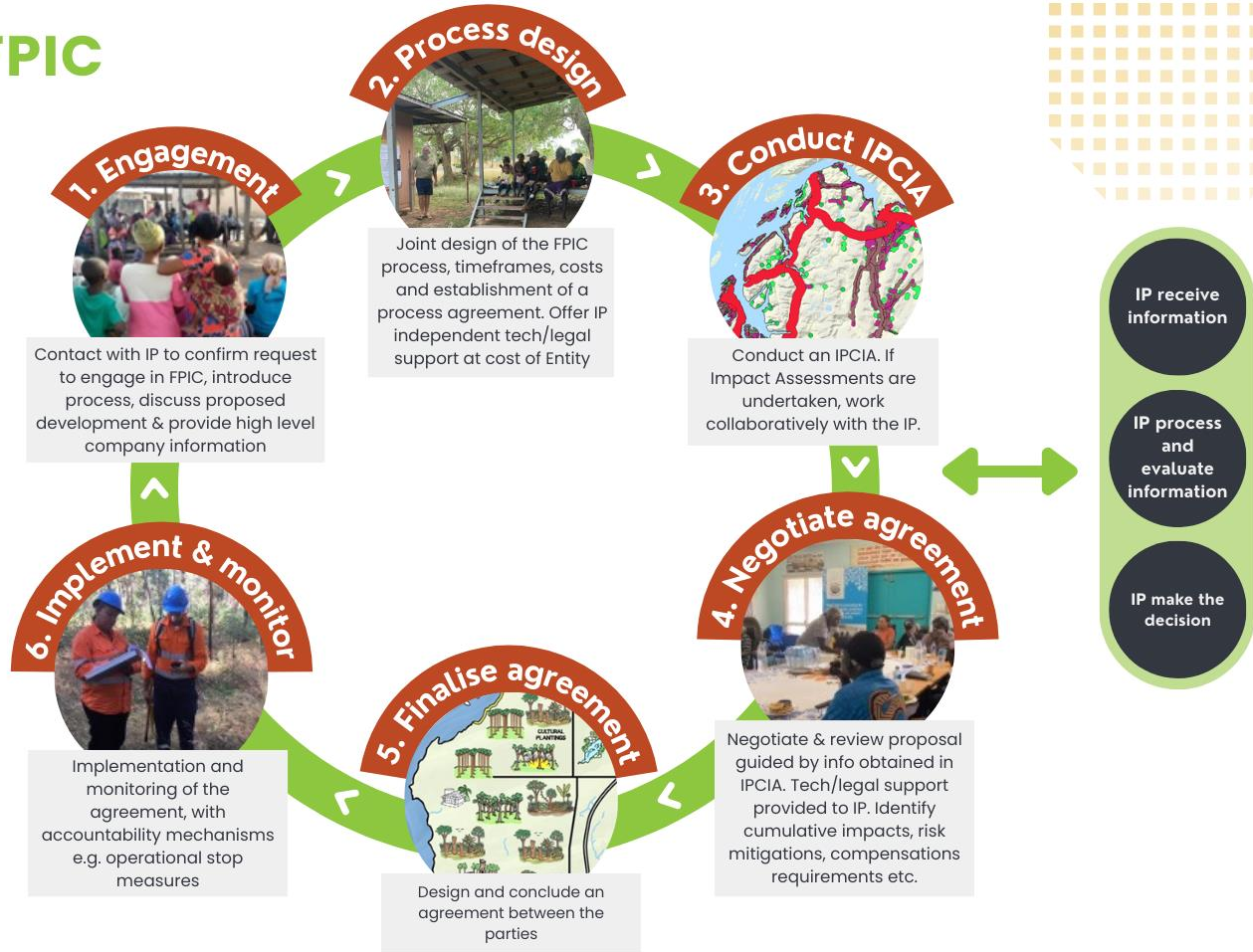
Cultural competence required of Entity operational staff who engage directly with or make decisions that impact upon IP's

### Step 2

IP and affected populations self-identify and/or are identified by the Entity within its Area of Influence

### Step 3

Conduct Human Rights Due Diligence concerning IP's, and affected populations in line with ASI Performance Standards. Document in a policy document



# Implementing FPIC

step-by-step

## Step 1 – Contact with affected IP Community

Initiate engagement in a culturally appropriate way, adapting to the relevant IPLC protocols and context.

### Recommendations

Contact the IPLC's leaders (identified in prep phase) to arrange an initial engagement. They will confirm permission to visit the land and/or community and arrange for the engagement, they will identify their representatives according to the community's decision-making processes.

IPLCs protocol reflects a deeply held ethical system. Acknowledging thanks to the community for allowing the visit and sharing personal information about yourself can begin to establish trust.



If at any stage in the FPIC process, the decision to proceed is negative, the Entity should understand on which basis the decision was made. If the decision was made on an informed basis, it must be respected. Only with explicit consent, should the the Entity proceed to next steps.

# Implementing FPIC

step-by-step

## Step 2 – Joint design of process and agreement

Establish a mutual understanding and agreement on the need for a Process Agreement, to support the FPIC process.

### Recommendations

Consider the previous historical perspective, that may include negative experiences the IPLC community may have faced. If there is any hesitation on the part of the rights holder to enter into a process agreement, the rights holders should be offered to use their own advisers who are chosen by the rights holders, and financed by the Entity.

An alternative could be the use of an independent verifier or observer to the FPIC process, financed by the Entity. Such an independent observer could be identified/recommended by ASI and/or IPAF.



If at any stage in the FPIC process, the decision to proceed is negative, the Entity should understand on which basis the decision was made. If the decision was made on an informed basis, it must be respected. Only with explicit consent, should the the Entity proceed to next steps.

# Implementing FPIC

step-by-step

## Step 3 – Conduct a comprehensive **Impact Assessment**

A comprehensive methodology, the Indigenous Peoples Cumulative Impact Assessment (IPCIA), is detailed at the ASI web site.

### Recommendations

For an informed FPIC process, a thorough **Impact Assessment** is crucial. However, assessments affecting IPLC's are often conducted by international firms lacking in-depth understanding of Indigenous communities. As a result, these assessments may overlook cumulative and extensive impacts on IPLC's. The IPCIA seeks to address this. The IPCIA guidance document has been developed by an Indigenous organization with more than 10 years of experience in carrying out the IPCIA methodology. The methodology has been sanctioned by ASI/IPAF and there is increasing interest in several countries for this methodology.



If at any stage in the FPIC process, the decision to proceed is negative, the Entity should understand on which basis the decision was made. If the decision was made on an informed basis, it must be respected. Only with explicit consent, should the the Entity proceed to next steps.

# Implementing FPIC

step-by-step

## Step 4 – Negotiation phase

Negotiate an agreement guided by information in the IPCIA

### Recommendations

A negotiation may contain many components where 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



If at any stage in the FPIC process, the decision to proceed is negative, the Entity should understand on which basis the decision was made. If the decision was made on an informed basis, it must be respected. Only with explicit consent, should the the Entity proceed to next steps.

# Implementing FPIC

step-by-step

## Step 5 – Formalize an agreement between parties

Formalize the negotiated results in a binding agreement using a mutually agreed form of consent

### Recommendations

Once an FPIC agreement is reached, all parties are bound, and consent cannot be arbitrarily withdrawn. It's crucial to establish a mutually recognized form of consent, which could be written, oral, through a traditional ceremony, or a combination. A forward-looking FPIC agreement should outline the terms of consent and the grounds for withdrawal. Withdrawal might occur if the Entity withholds crucial industrial activity information, violates the agreement, or disrespects Indigenous Peoples' rights. Such situations should trigger the agreed conflict management mechanism.



If at any stage in the FPIC process, the decision to proceed is negative, the Entity should understand on which basis the decision was made. If the decision was made on an informed basis, it must be respected. Only with explicit consent, should the the Entity proceed to next steps.

# Implementing FPIC

step-by-step

## Step 6 – Implementation and monitoring

Includes setting up processes for monitoring and evaluation, as well as protocols for complaints

### Recommendations

A comprehensive process for ensuring implementation in a desirable and predictable manner consists of Monitoring, Evaluation, and Learning (MEL). This involves tailored frameworks, best practices, and tools specifically designed for the unique FPIC process with IPLC's. To facilitate this, a separate organization comprising representatives from both the Entity and the concerned IPLC's is necessary.

MEL assists the parties in clarifying intent, gathering essential data to assess effectiveness against impact goals, and monitoring avenues for change. Ideally, MEL processes should also incorporate a realistic assessment of internal and external capabilities to respond and adapt promptly.

# Additional notes

Good to remember

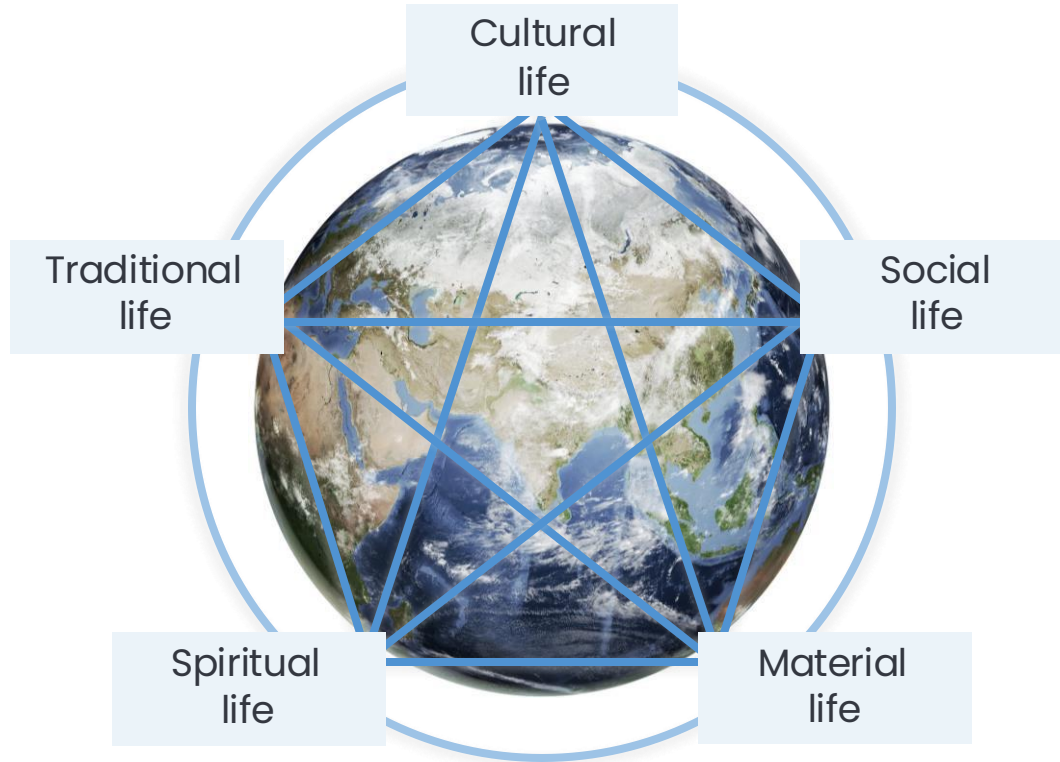
- Documentation is key at each stage in the FPIC process
- Clear and consistent communication is essential for a transparent process
- Building trust takes time, and seconds to break. It is beneficial to have the same company representative through-out
- Negotiations take time, ensure proper time is allowed for the entire process
- FPIC is not a one-off activity but an on-going process. Community engagement should continue regularly to address any concerns, and to maintain relationships. The FPIC process must be done again for any major changes to agreed upon plans



Loading trains, Kindia, Guinea



# Appendix 1: Cosmovision of Indigenous Peoples



# Giitu / Thank you!

For all glossary terms and supporting documents you can check out our online document centre:

<https://aluminium-stewardship.org/knowledge-hub/document-centre>

