

Through some or all of these actions, companies should be able to demonstrate that they are engaging in good faith and acting with respect for the interests and perspectives of Indigenous Peoples regarding the project and its potential impacts and benefits, and with sensitivity towards cultural differences. Further guidance on negotiating in good faith is provided in **TOOL 10**.

Even if companies follow all the above steps, there may still be some instances where the project fails to secure broad community support and generates significant ongoing opposition, notwithstanding that there may be government approval for the project. In circumstances where consent is not forthcoming, despite the best efforts of all parties, companies will determine whether they ought to remain involved with a project. The issue of FPIC for projects is discussed in some detail in Section 2.5, with specific guidance on how companies can work towards obtaining consent from Indigenous Peoples for projects on their land provided in **TOOL 11**.

RELEVANT CASE STUDY

Early engagement and agreements with native title owners in New South Wales (Barrick), see page 101.

2.5 Free, prior and informed consent (FPIC)

This section of the Guide outlines ICMM members' approach to FPIC, which seeks to respect the rights and interests of Indigenous Peoples and recognize the rights of states to make decisions in relation to the development of resources within their jurisdictions. As well as outlining ICMM's approach, this section discusses the perspectives of Indigenous Peoples and governments (including intergovernmental bodies) regarding the need to consult with, and obtain consent from, Indigenous Peoples for resource development on their lands. Though various perspectives are presented here, it should be acknowledged that there are varying perceptions within stakeholder groups and not all companies, indigenous communities and governments will have the same view of the issues. ICMM members' approach to FPIC is to acknowledge, rather than endorse, these perspectives while seeking to balance the legitimate interests of all stakeholders, including Indigenous Peoples, governments and industry.

Indigenous Peoples have individual and collective rights and interests, and it is internationally recognized that their rights should be protected by governments and respected by companies. As discussed in Chapter 1, two of the key international instruments in this area are ILO Convention 169 and the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP). In addition, the IFC's Performance Standard 7 from 2012 requires client companies to obtain the consent of Indigenous Peoples for project "design, implementation, and expected outcomes related to impacts affecting the communities of Indigenous Peoples". For example, in situations involving relocation of Indigenous Peoples or where critical cultural heritage may be significantly impacted.¹² This requirement is also applicable to companies seeking project finance from Equator Principles Financial Institutions.¹³

FPIC is of particular importance to Indigenous Peoples involved with mining for a number of reasons, including:

- Historically, Indigenous Peoples have commonly been excluded from decision-making processes, and the result has often been detrimental to their well-being.
- FPIC has been mandated or recommended in a number of international and national legal and policy documents.¹⁴
- Calls for the right to FPIC are closely linked to Indigenous Peoples' pursuit of the right to self-determination and the rights to lands and territories.
- The issue of FPIC is linked to the broader debate around ensuring a fair distribution of the costs, benefits, risks and responsibilities associated with mining activities.
- FPIC is also linked to an ethical principle that those who could be exposed to harm or risk of harm should be properly informed about these risks and have an opportunity to express a willingness to accept such risks or not.

¹² For details see IFC, Guidance Note 7 Indigenous Peoples, in *International Finance Corporation's Guidance Notes: Performance Standards on Environmental and Social Sustainability*, Washington, DC, IFC, 2012, GN28.

¹³ For details see www.equator-principles.com

¹⁴ These include the UN Declaration on the Rights of Indigenous Peoples (2007), the ILO Indigenous and Tribal Peoples Convention, 1989 (No 169), the European Bank for Reconstruction and Development's Environmental and Social Policy (2008) Performance Requirement 7 on Indigenous Peoples, the Philippines' Indigenous Peoples Rights Act (1997) and the Australian Aboriginal Land Rights (Northern Territory) Act 1976.

