

The outcome is that Indigenous Peoples can give or withhold their consent to a project, through a process that strives to be consistent with their traditional decision-making processes and host government policies, while respecting internationally recognized human rights laws and standards, and is based on good faith negotiation.

The commitments in the position statement relating to FPIC apply to new projects, and changes to existing projects, that are likely to have significant impacts on indigenous communities. The position statement recognizes that where consent is not forthcoming despite the best efforts of all parties, in balancing the rights and interests of Indigenous Peoples with the wider population, government might determine that a project should proceed and specify the conditions that should apply. In such circumstances, ICM members will determine whether they ought to remain involved with a project.

It is important to note that governments have a critical role to play in the process of engaging with Indigenous Peoples, particularly since it is governments who are a party to instruments such as the UNDRIP and ILO Convention 169, not companies. Their role can include determining which communities are considered to be indigenous, and shaping the processes to be followed for achieving FPIC, negotiating agreements and/or obtaining community input into decision-making processes relating to resource projects. However, Indigenous Peoples and their rights exist irrespective of recognition by the state, which is not always forthcoming. One factor that defines people as being indigenous is their self-identification as such.²¹

Negotiated agreements between companies and indigenous groups, as discussed in Chapter 4, provide a means through which a community's consent for a project, and the terms and conditions of projects negotiated through the process of FPIC, can be formalized and documented.

TOOL 11 suggests one process that companies may choose to follow in the event that FPIC is relevant and the process is permissible under national law. This tool also provides guidance for companies in the event that indigenous groups withhold their consent for activities on their land.

2.6 Some engagement challenges

Companies and their operational staff will almost certainly encounter challenges when engaging with Indigenous Peoples. Some of the most common include:

- dealing with negative legacies and perceptions
- managing community expectations about projects
- language and other communication challenges
- maintaining focus on engagement over time.

Good practice guidance on dealing with each of these common challenges can be found in **TOOL 5**.

“NOBODY OWNS
THE LAND. WE SAID
WE’D WATCH OVER
IT, BECAUSE THAT’S
OUR RESPONSIBILITY.
YOU TAKE CARE OF
THE LAND, AND IT
TAKES CARE OF YOU.”

Virginia Poole
Seminole/Miccosukee

21 See ILO Convention 169, Article 1[2].