

# TOOL 3

## Dealing with challenges in the identification and recognition of indigenous land rights

Some steps that operational staff of companies or others (eg consultants) can take to identify whether indigenous groups have land rights in a particular area, and to deal with various challenges, are as follows:

### STEP 1

#### Undertake preliminary research

The first step is to undertake some preliminary research that might involve the following activities:

- consulting with representatives of government agencies; local, national and international organizations and NGOs; relevant Indigenous Peoples' organizations; and local, national or international researchers that are working, or have worked, in the area
- undertaking desktop research to ascertain if any historical, anthropological or archaeological studies of the area have been undertaken
- seeking the advice of any other companies or organizations that already have a presence in or near the area.

### STEP 2

#### Understand the legal context

The next step is to understand the legal context, including whether or not Indigenous Peoples and their traditional and/or customary rights to land and resources are recognized in domestic law. The many complex legal issues pertaining to Indigenous Peoples and mining have to be understood and addressed on a country-by-country basis, and companies will need to seek expert legal and anthropological advice for this purpose.

### STEP 3

#### Ascertain whether there are indigenous land rights that are not recognized in law

Where there is a legal regime that recognizes traditional ownership or customary use rights, it may be possible to ascertain relatively quickly which indigenous groups, if any, have rights to land on which exploration or mining is proposed, as the claims of these groups may have already been recorded and recognized.

In many instances, there may be indigenous groups who have customary rights to land that are not recognized in law. To ascertain whether such rights exist in the project area, companies should consider undertaking a due diligence process that could involve:

- reviewing recent court decisions in order to fully understand the status of land ownership and claims – for this purpose, companies are likely to find they will need to obtain local expert advice
- undertaking some initial engagement with local community representatives – the focus of such engagement might be guided by the following kinds of questions:
  - Do Indigenous Peoples currently inhabit the land?
  - Is the land used by Indigenous Peoples to support traditional livelihoods (eg shifting cultivation, nomadic grazing, harvesting, fishing, hunting, utilization of forest resources)?