

Indigenous Peoples' Rights, including Free, Prior and Informed Consent

The following talking points from the **Securing Indigenous Peoples' Rights in the Green Economy (SIRGE) Coalition** serve to support Indigenous leaders, human rights defenders, and allies to safeguard Indigenous Peoples' rights as resource extraction escalates in the transition to a low carbon economy.



The **United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP)**, forwarded by Indigenous leaders and adopted by the United Nations in 2007, is the global consensus on minimum standards to respect the rights of Indigenous Peoples.

Articles 9 and 33 of the UNDRIP state that Indigenous Peoples and individuals have the right to belong to an Indigenous community or nation, in accordance with the traditions and customs of the community or nation concerned, and that they have the right to determine their own identity.

According to the Office of the United Nations High Commissioner for Human Rights (OHCHR), Indigenous Peoples' situations and contexts are highly variable, and any single definition does not fully capture the full diversity of Indigenous Peoples around the world.

Free, Prior and Informed Consent

- Free, Prior and Informed Consent flows from Indigenous self-determination as articulated in the UNDRIP. It is a right that safeguards all of the rights of Indigenous Peoples.
- Free, Prior and Informed Consent (FPIC) encompasses Indigenous Peoples' right to:
 - Enter into conversations and negotiations without coercion or manipulation (**FREE**).
 - Be involved well before any decision is made about lands, resources, or people (**PRIOR**).
 - Have full information that is easily accessible and readily available (**INFORMED**).
 - Say "yes" or "no" to a project and to be involved and heard throughout a project lifecycle wherever it impacts peoples and resources (**CONSENT**).
- International human rights standards, such as the UNDRIP, enshrine Indigenous Peoples' right to FPIC on projects affecting their lands, resources, cultural heritage, and more.
- Free, Prior and Informed Consent includes the right to meaningful dialogue, in addition to the right to give or withhold consent to a project.
- Consent-based protocols provide Indigenous leaders the opportunity to have decision-making authority and participatory rights in all decisions that affect their people and territories, and to understand the full impacts of projects affecting their lands and communities.
- Consent is a higher standard than consultation. Consultation is a process to reach consensus, whereas consent encompasses Indigenous Peoples' right to have their perspectives meaningfully integrated into planning. While consultation can be an important step towards understanding or agreement, consultation alone does not guarantee Indigenous Peoples' full participatory and decision-making rights.

Business Considerations for FPIC

- Corporations have a responsibility to respect the rights of Indigenous Peoples during project development and after project completion under the United Nations Guiding Principles on Business and Human Rights (UNGPs).
- Many Indigenous communities have established their own Free, Prior and Informed Consent protocols, which must be respected by businesses.
- Implementing comprehensive Indigenous Rights Risk due diligence that encompasses Free, Prior and Informed Consent will expose project risks that could materially affect a company's success and will expose potential harms to Indigenous Peoples, their lands, or their resources.
- Many Indigenous Peoples have ancestral, cultural, and spiritual ties to their land and resources that go beyond economic uses and that are vital to their cultural heritage and the modern practices that bind them as a community. Sacred places, formations, and objects may be located outside of the recognized boundaries of their communities.
- The process of securing the Free, Prior and Informed Consent of Indigenous Peoples must be completed in alignment with international human rights standards in an independent investigation separate from other governmental procedures and approvals.
- Many countries do not have a framework that ensures full access to remedy or redress for Indigenous Peoples for rights violations perpetrated on their lands or in their communities. A state's failure to enforce relevant domestic laws, or to implement international standards, does not diminish the expectation that enterprises abide by these standards.

Free, Prior and Informed Consent Defined

Free - Consent is given voluntarily and without coercion, intimidation, or manipulation. The process is self-directed by the community from whom consent is being sought and unencumbered by externally imposed expectations or timelines.

Prior - Consent is sought sufficiently in advance of any authorization or commencement of activities, and allows the time necessary for Indigenous Peoples to undertake their own decision-making processes

Informed - Consent is properly solicited when Indigenous Peoples are given objective and accurate information related to the proposed activity in an accessible manner and form.

Consent - The collective decision made by Indigenous Peoples to give or withhold consent, which is reached through customary decision-making processes. Consent may be subject to conditions set forth by Indigenous Peoples and withdrawn at any point in the project.