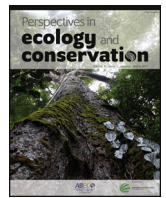




## Perspectives in ecology and conservation

Supported by Boticário Group Foundation for Nature Protection

<https://www.journals.elsevier.com/perspectives-in-ecology-and-conservation/>



Essays and Perspectives

# Free, prior and informed consent: how to rectify the devastating consequences of harmful mining for indigenous peoples'

Angus MacInnes\*, Marcus Colchester, Andrew Whitmore

Forest Peoples Programme, Moreton-in-Marsh, United Kingdom

### ARTICLE INFO

#### Article history:

Received 6 January 2017

Accepted 29 May 2017

Available online xxx

#### Keywords:

Extractive industry

Indigenous peoples

Human rights

Free, Prior Informed Consent (FPIC)

Multi-stakeholder initiatives

Mining

### ABSTRACT

The paper focuses on one of the topics of key concern for both indigenous peoples and the mining sector, namely the corporate responsibility to respect indigenous peoples' right to give or withhold their consent to extractive industry projects in their lands and the fundamental role of this principle in altering the predominant and all too frequently devastating model of mining that is imposed in indigenous peoples' territories. The paper traces the emergence of extractive industry standards and initiatives showing how continuing mining disasters and associated human rights abuse have obliged the industry to recognize indigenous peoples' right to give or withhold their Free, Prior and Informed Consent to operations that may affect their customary lands. It examines the development of industry good practice since the World Bank's Extractive Industries Review, the subsequent formation of the International Council on Minerals and Metals while considering the contribution its members have played in recent mining catastrophes involving indigenous peoples. It distills good practice on indigenous consultation and the principle of native title from evolving national and international law and tracks how these have led to the inclusion of Free, Prior and Informed Consent in the recent Initiative for Responsible Mining Assurance and Aluminium Stewardship Initiative standards. The focus on the two most recent multi-stakeholder standard initiatives in the mining sector offers a sense for where further developments may occur while also noting their potential limitations. The paper concludes with recommendations to the extractive industry to recognize and protect indigenous peoples' rights as a preeminent principle of responsible mining good practices.

© 2017 Associação Brasileira de Ciência Ecológica e Conservação. Published by Elsevier Editora Ltda. This is an open access article under the CC BY-NC-ND license (<http://creativecommons.org/licenses/by-nc-nd/4.0/>).

### Introduction

Ever since Cristobal Colon's first visit to the Americas he quest for gold has been a major driver of colonial and post-colonial States' take-over of indigenous peoples' lands (Columbus, 1969). It was the lure of gold that led to the decimation of the Arawaks of Hispaniola (Rouse, 1992), to Cortes' destruction of the Aztec Empire (Diaz, 1963; Thomas, 2003), and Pizarro's subjugation of the Inca (Hemming, 1970). The gold mines of Ashanti led Portuguese explorers to sail round the west coast of Africa (Ley, 2000) and later brought British imperial rule to the area (Robinson et al., 1965). Gold brought speculators onto indigenous lands in California leading to the near elimination of the indigenous peoples there (Kroeber, 1961) and later to shatter the Tlingit during the Klondyke gold rush (Wilkinson, 2005). Famously too it was gold mining that led to the annexation of the Black Hills, sacred to the Lakota (Sioux

(Debo, 1970). These are but some of the most well-known examples of early mining disasters from indigenous peoples' point of view (Moody, 1988; Cocker, 1999).

All these invasions of indigenous peoples' lands occurred contrary to early agreed principles of international law; that native peoples' are endowed with the same rights as other humans (Doyle, 2015a) and their lands should not be taken without their consent (Colchester and MacKay, 2004; Doyle, 2015a). Nascent international law, while ostensibly recognizing that native peoples had inherent rights over their land and to govern themselves, nevertheless provided a series of justifications for infringements on those rights, which when combined with deceit, subterfuge and the legally sanctioned (or otherwise) use of force, served to deprive indigenous peoples of those basic rights.

Since the 1970s, indigenous peoples have been active as a global movement insisting on their rights – equal to other peoples – to self-determination, to ownership and control of their lands, territories and resources and to 'Free, Prior and Informed Consent' (FPIC). Of all industrial sectors, it has been the extractive industries, those involved in natural resource extraction (such as oil, metals,

\* Corresponding author.

E-mail address: [angus@forestpeoples.org](mailto:angus@forestpeoples.org) (A. MacInnes).

<http://dx.doi.org/10.1016/j.pecon.2017.05.007>

1679-0073/© 2017 Associação Brasileira de Ciência Ecológica e Conservação. Published by Elsevier Editora Ltda. This is an open access article under the CC BY-NC-ND license (<http://creativecommons.org/licenses/by-nc-nd/4.0/>).

minerals and aggregates) and its related processes (ranging from exploration to selling to end consumers) that have been most resistant to acknowledging these rights. Although within the logging, palm oil, and to a lesser extent the sugar sector a subset of actors, since the 1990s, recognized these rights in good practice standards (Colchester and Chao, 2014), even though the effectiveness of these standards remains questionable, the extractive industries has only reluctantly and belatedly accepted this consensus. This despite the fact that United Nations agencies, including the International Fund for Agricultural Development – the first international financial institution to adopt FPIC as an operational standard (IFAD, 2009) – the United Nations Development Programme and the Food and Agriculture Organization of the United Nations, all require or encourage adherence to FPIC in activities that they plan, finance or implement (World Bank, 2003a).

While the focus of the paper is on the emergence of FPIC as the standard with which companies must comply, it does not attempt to engage with the content of FPIC or with the diversity of community perspectives that must inform its implementation. It should also be noted though this paper addresses extractive industries in the broader sense, the primary focus of this paper shall be on the mining sector as this has been to date the most proactive of the extractive sector arms in acknowledging indigenous peoples' rights.<sup>1</sup>

### Early initiatives, including Extractive Industries Review

Extractive industry led initiatives have tended to generate more suspicion than harmony. The first notable initiative was the Mining, Minerals and Sustainable Development Project (MMSD), a research initiative promoted by the industry's Global Mining Initiative (GMI) from 2000 to 2002 to review how the sector could contribute to a global transition to sustainable development, tied into the World Summit on Sustainable Development (MMSD, 2002). While the MMSD clearly had limitations from the perspective of indigenous peoples – and of course constituted an attempt by the industry to rebrand itself as “sustainable” – its “Breaking New Ground” report was relatively progressive, when compared to the establishment of the International Council on Mining and Metals (ICMM) and its initial position statements. The MMSD +10 report summarized the original MMSD position as “Government should recognize and uphold the rights of indigenous people and companies should act ‘as in to gain consent’. Indigenous people need an international body to establish and uphold good practice, and evidence of good practice engagement between mining companies and indigenous people” (Buxton, 2012). One could argue that the MMSD report was the initial step towards acknowledging the relevance of FPIC and the need to ensure respect for indigenous peoples' rights.

Nevertheless, the project was widely criticized for being nothing more than a public relations exercise directed at improving the poor image of mining, rather than offering improvements in on site practice. The lack of meaningful participation from any indigenous representation perpetuated the industry's history of unilateral initiatives and its self-declared and “self-regulated” codes of conduct (Tauli-Corpuz and Kennedy, 2002). Furthermore, the major source of all funding for the project was unsurprisingly the industry, which provided \$7 million (Caruso et al., 2003).

Whilst most civil society groups and indigenous organizations rejected the MMSD and its commitments, the World Bank uncritically accepted its legitimacy, acting as one of the few non-industry

sponsors of the project (Caruso et al., 2003). Strong societal criticism however forced the Bank to commission its own Extractive Industries Review (EIR) in 2003 to examine what role, if any, the World Bank Group should have in the oil, gas and mining sectors. The EIR's Final Report presented a year later to the World Bank, found indigenous peoples warrant additional requirements, including, but not limited to, effective guarantees for territorial rights, the right to self-determination (World Bank, 2003b) and crucially the right to give or withhold their FPIC (MacKay, 2004).

The World Bank rejected many of the EIR's findings, including that FPIC should be the principal determinant of whether there is community acceptance, and failed to incorporate sufficient safeguards to the subsequent revision to its policy on indigenous peoples' (OP 4.10) in 2005. Instead it created a standard of ‘Free, Prior Informed Consultation’ resulting in ‘Broad Community Support’ (BCS), a standard widely rejected by indigenous peoples as inconsistent with their human rights. A similar standard previously used by the World Bank's private sector lending arm, the International Finance Corporation (IFC), of ‘good faith negotiation’ leading to BCS, was removed following a review of BCS which clearly demonstrated the standard is almost impossible to use effectively as a tool to establish certainty of support for a given project (Leake, 2008). Subsequently, the new IFC Performance Standard 7 adopted in 2012 required FPIC for certain categories of projects reflecting the reality that FPIC applies irrespective of national legislation and should be triggered by any project which may effectively impact indigenous peoples' rights (UN General Assembly, 2010). The IFC FPIC standard is now adopted by a number of lending institutions as a condition of loans to the private sector and has played an important role in establishing FPIC as the requirement to be met by the industry and financial actors although effective implementation and verification of compliance with this IFC FPIC standard remain lacking 5 years after its adoption by the IFC. It is essential, however, that its implementation be consistent with indigenous peoples' rights and be flexible enough to cater to local realities and the indigenous conception of FPIC.

The public sector arms of the World Bank (IBRD and IDA) continue to apply standards and guidance which have largely failed to result in the sort of effective participation that the Bank itself seeks to ensure (OPCS, 2011), isolating and undermining traditional authorities, damaging indigenous peoples' cohesiveness and alienating them from decision-making. New standards coming into force from January 2018 will require FPIC under certain project conditions, a welcome step, but have removed key planning requirements, which may serve to undermine the new inclusion of FPIC. A further development of serious concern is the World Bank's recent approvals for a series of projects in East Africa, including two in Tanzania (Chavkin and Ulman, 2016) where the Bank has approved government requests to waive the indigenous peoples' policy. This has sparked real fears that the development lender is setting an unfortunate precedent for future practices, reducing protections for indigenous peoples' rights, particularly in Africa. Responsibility is therefore increasingly passing to the extractive industry to apply industry-focused standards emerging from multi-stakeholder initiatives that safeguard indigenous peoples' rights.

### The International Council on Mining and Metals: policy and practice

In May 2001, building on the work of the MMSD, the GMI created the ICMM, to focus on industry implementation of sustainable development. One of the main objectives of the ICMM was to develop a policy for its members, which became operative in May 2003. The ten principles in the code are phrased in aspirational terms, with heavy emphasis on “intent” on the part of the

<sup>1</sup> The oil and gas sector currently lag behind the mining sector in terms of rights recognition, advocating meaningful consultation with communities over the need for concrete community consent before proceeding with a development project (IPIECA, 2012).

Download English Version:

<https://daneshyari.com/en/article/8920073>

Download Persian Version:

<https://daneshyari.com/article/8920073>

[Daneshyari.com](https://daneshyari.com)