



COMMENTS TO THE INTERNATIONAL FINANCE CORPORATION'S  
CONSULTATION DRAFT OF *INVESTING FOR IMPACT: OPERATING  
PRINCIPLES FOR IMPACT MANAGEMENT*<sup>1</sup>

December 2018

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<sup>1</sup> The [First Peoples Investment Engagement Program](#) (FPIEP) is the successor to First Peoples Worldwide. The FPIEP is based at the University of Colorado and works from a foundation of indigenous values to achieve a sustainable future for all. FPIEP facilitates collaboration between indigenous peoples and investors to address the unique social and environmental impacts of corporate development in indigenous communities, while also preparing students to address the pressing social responsibility challenges facing today's businesses.

## BACKGROUND

The [International Finance Corporation](#) (IFC) is a global financial institution focused on private-sector development in developing countries and is one of the five organizations that form the World Bank Group. The IFC is currently soliciting comments on its draft, [Investing for Impact: Operating Principles for Impact Management](#) (the Principles).

The IFC developed the Principles “to enhance discipline around impact investing, mobilize more funds for impact investments and increase the potential impact that such funds could achieve.”<sup>2</sup> The IFC drafted the Principles with a core group of [stakeholders](#) including impact asset managers, asset owners, asset allocators, development banks and financial institutions, and conducted in-person and webinar [consultations](#) to gather further feedback on the draft. The IFC is collecting feedback until the end of December 2018 with the goal to launch the Principles in April 2019.

The First Peoples Investment Engagement Program (FPIEP) is committed to increasing meaningful engagement between indigenous peoples and investors to address the unique social, cultural, and environmental impacts of development in indigenous communities. The FPIEP works from a foundation of indigenous values to achieve a sustainable future for all and sees the IFC’s request for feedback as an opportunity to ensure that the rights of indigenous peoples’ rights are properly considered in global impact investing principles.

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## STRENGTHS OF THE PRINCIPLES

The IFC uses the [Sustainable Development Goals](#) (SDGs) as the standard by which to measure strategic impact. By placing the SDGs in Principle 1, the IFC demonstrates its commitment to prioritizing international rights-based norms around development and human rights. The IFC furthers this priority by intentionally crafting the Principles to provide robust assessment for the life cycle of an investment, thereby creating a strong, meaningful and innovative set of guidelines.

The IFC’s commitment to the SDGs is also visible in its desire to ensure that the Principles scale for all sizes of investment portfolios, asset types, sectors, and geographies.<sup>3</sup> In fact, the SDGs provide an apt umbrella for the many types of investments managed by impact investors. It is clear that the Principles are drafted for wide adoption across portfolios; a laudable goal to create a broad platform for measuring the impact of investments around the world. Finally, the commitment to public disclosure and independent verification in Principle 9 underscores the IFC’s stated desire to ensure that signatories are, in fact, adhering to the Principles in all of their investments.

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<sup>2</sup> IFC, Guide to Investing for Impact: Operating Principles for Impact Management, Oct. 2018, 3.

<sup>3</sup> IFC, Guide to Investing for Impact: Operating Principles for Impact Management, Oct. 2018, 6.

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## RECOMMENDATIONS

The IFC consulted and partnered with a number of organizations that are committed to increasing the ability of impact investing to positively influence social and economic goals. Notably these include the Principles for Responsible Investing, the Global Impact Investing Network and the Impact Management Project, among others. However, none of the partners listed on the webpage are indigenous communities, indigenous leaders, or organizations with specific expertise on indigenous rights. The FPIEP's global recommendation is that the IFC increase its consultation with indigenous peoples.

Investments on and in near indigenous communities are increasing globally. The IFC must recognize that measured alignment to human rights through the SDGs will require additional attention to historically marginalized populations, such as indigenous peoples. The SDGs do not fully account for the rights and roles of indigenous peoples and so additional attention to indigenous rights in this context is warranted. Also, investment in and around indigenous communities is becoming increasingly contentious as businesses continue historical patterns that fail to respect the right of indigenous peoples to provide or withhold their free, prior and informed consent (FPIC) on projects that impact their land and resources. Impact investors, through partnerships like the Principles, have the opportunity to disrupt historical patterns of exclusion and create new pathways for rights-based, mutually beneficial development.

The FPIEP submits the following two recommendations to the IFC to strengthen impact investors' ability to properly respect indigenous peoples' rights through implementation of the Principles.

**1) The IFC must implement capacity building to assist Managers to understand the human and indigenous rights that are embedded within the SDGs. This furthers Managers' ability to understand the impact and applicability of the Principles.**

As previously mentioned, the IFC prioritized alignment with the SDGs for the purposes of the Principles. While the SDGs generally match impact investors' goals to do good and provide a target that aligns with many impact investment goals, there are aspects of SDGs that need to be elevated to ensure a commitment to indigenous rights is consistent throughout implementation.<sup>4</sup>

First, the SDGs were developed with strong adherence to human rights principles and standards.<sup>5</sup> While not a legal or political instrument that enumerates specific rights, the framework implicates human rights and indigenous rights in all of the 17 goals. To the extent that Managers are not already aware, capacity building should be developed around the human

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<sup>4</sup> See [Leaving No One Behind: Practical Guide for Indigenous Peoples](#), Asia Indigenous Peoples Pact (AIPP), accessible from Indigenous Peoples Major Group for Sustainable Development [website](#).

<sup>5</sup> Indigenous Peoples and the 2030 Agenda, <https://www.un.org/development/desa/indigenouspeoples/focus-areas/post-2015-agenda/the-sustainable-development-goals-sdgs-and-indigenous.html>.

rights instruments on which the SDGs depend. This should include explicit reference to the [United Nations Guiding Principles on Business and Human Rights](#).

Second, the SDGs, while broadly applicable to indigenous communities, do not fully account for indigenous peoples' rights. The political declaration calls generally for the empowerment of indigenous peoples and engagement of indigenous peoples in implementation but the SDGs only mention indigenous peoples six times in total.<sup>6</sup> The SDG Indicators and Targets mention indigenous peoples specifically in Target 2.3 on Zero Hunger and in Target 4.5 to ensure equal access to education and vocational training for all. Signatories to the Principles must be aware that there are several additional aspects to full alignment with the SDGs, such as integrating the Indicators and Targets into their processes.

In many cases, the SDGs can help Managers understand the positive and negative impact of their investments on indigenous peoples. This could be in positive metrics such as doubling the income of indigenous small-scale food producers. And, the SDGs can also assist impact investors to understand where their investments may do harm for indigenous peoples and, therein, measure negative impacts. For example, many indigenous peoples globally struggle to secure tenure to their traditional lands, and they struggle to maintain control over development on their legal or ancestral lands, which is referenced in Indicator 1.4.2 and 5.a.1. While these can assist Managers to measure impact, true assessment is dependent on an understanding of the rights that underline the Targets and Indicators.

The minimum standards for indigenous peoples' rights are enumerated in the [United Nations Declaration on the Rights of Indigenous Peoples](#) (UNDRIP).<sup>7</sup> While indigenous peoples are rights-bearers under all other applicable human rights instruments, the UNDRIP provides norms regarding how indigenous peoples' individual and collective rights must be upheld. For example, the UNDRIP enumerates the right of free, prior and informed consent (FPIC), which is of utmost importance in the investment context. FPIC, as a right, is one that impact investors must pay particular attention to as it is a safeguard for many other indigenous rights. In a [2013 Report to the Human Rights Council](#), the United Nations Special Rapporteur on the Rights of Indigenous Peoples S. James Anaya stated that a rights-based implementation of FPIC requires that entities receive indigenous peoples' free, prior and informed consent before engaging in any manner that impacts tribal resources.<sup>8</sup> The process of soliciting FPIC is meant to replace the processes that historically excluded indigenous peoples from decisions that impacted their land and their rights.<sup>9</sup> Current Special Rapporteur Victoria Tauli-Corpuz has noted the importance of consultation and FPIC as safeguards of the fundamental rights of indigenous peoples, including

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<sup>6</sup> Transforming our world: the 2030 Agenda for Sustainable Development, Resolution adopted by the General Assembly on 25 September 2015, ([A/RES/70/1](#)) para. 52.

<sup>7</sup> G.A. Res. 61/295, United Nations Declaration on the Rights of Indigenous Peoples (Sept. 13, 2007).

<sup>8</sup> See Special Rapporteur on the rights of indigenous peoples, James Anaya, *Extractive industries and indigenous peoples*, U.N. Doc. A/HRC/24/41 (2013), available at <http://unsr.jamesanaya.org/docs/annual/2013-hrc-annual-report-en.pdf>.

<sup>9</sup> Carla Fredericks, *Operationalizing Free, Prior, and Informed Consent*, 80 ALBANY L. REV. 429, 430 (2017).

their right to self-determination as to their lands, territories and resources.<sup>10</sup> The SDGs acknowledge this right generally by stating that indigenous peoples' engagement is necessary to their implementation, but FPIC is fundamentally a core right that must be respected and protected in individual investment decisions.

In the reverse, each time that an investment is allowed to proceed without securing proper FPIC, the precedent is created for another just like it. Impact investment managers who are trained to consider how FPIC should operate as to development have an opportunity to halt this historically detrimental cycle and thus, safeguard indigenous rights.

The IFC must implement capacity building to assist Managers to understand the human and indigenous rights that are embedded within the SDGs for several reasons: so that Managers can properly understand implementation of the Principles at each key stage identified in the Principles and so that Managers can accurately assess the positive and negative impacts of their investments as to indigenous peoples' rights.

## **2) The IFC must point to tools that accurately assess the “S” in ESG to best align investments with indigenous peoples' rights.**

Many of the signatories to the Principles will be familiar with the tools in the impact investment field that measure environmental, social and governance (ESG) factors within their portfolios. While there has been significant development of metrics to measure environmental and governance factors, relatively few have been developed to measure the “S” in ESG. As defined in the report [Costs of Company-Community Conflict in the Extractive Sector](#), social costs are those costs associated with community conflict; conflict that is generated when a business continues with development without consent from that community.

Specific to indigenous peoples, the FPIEP has developed an [FPIC Due Diligence Questionnaire](#) that enumerates the steps necessary to operationalize a commitment to FPIC and to indigenous peoples' rights to their lands, territories and resources throughout the life cycle of an investment. The use of this tool can assist Managers to understand where and how they can implement a rights-based approach to investments. This tool follows the FPIEP's case study, [Social Cost and Material Loss: The Dakota Access Pipeline](#), which shows that the failure of investors to properly assess the social risks attendant to the pipeline resulted in a failure to respect human and indigenous rights, and it significantly undermined financial returns. In short, at a minimum, investors have a fiduciary duty to understand the total risks attendant to a project, of which social risks that encompass human rights are a large part. Investors who wish to participate in the global impact investment goals to do good with their portfolios can implement due diligence and disclosure processes that actively seek to forward human rights and indigenous rights.

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<sup>10</sup> A/73/176 – Indigenous peoples and self-governance. Report of the Special Rapporteur on the rights of indigenous peoples to the General Assembly 2018, para. 10.

While retaining the need for flexibility in applying strategies that align with the Principles, the IFC must point to the existing tools available to accurately measure and assess positive and negative impacts in indigenous communities and tools that will assist investors to develop policies that are maximally aligned with international norms.<sup>11</sup>

## CONCLUSION

In sum, these two recommendations will assist Managers to more accurately understand the impact of their investments on indigenous communities and on indigenous peoples' rights. As development, including renewable energy, intersects more and more with indigenous communities, understanding the operationalization of indigenous rights from the earliest phases of investment will provide Managers with the information necessary to understand how their portfolios can forward human rights and indigenous rights in indigenous communities worldwide.

The FPIEP would like to extend the offer to discuss indigenous rights in the context of the SDGs and impact investments with the IFC. The FPIEP has expertise in operationalizing the rights enumerated in the United Nations Declaration on the Rights of Indigenous Peoples, articulating their intersection with the U.N. Guiding Principles, and providing capacity building to create meaningful engagement between indigenous peoples and investors.

For more information, please contact Faculty Director Carla F. Fredericks at [Carla.Fredericks@Colorado.edu](mailto:Carla.Fredericks@Colorado.edu) and view more information at the website: [www.colorado.edu/project/fpiep](http://www.colorado.edu/project/fpiep).

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<sup>11</sup> The recommendations in this report are not intended to be relied upon as, or to be a substitute for, specific professional advice. The FPIEP shall have no responsibility for loss occasioned to any persons and legal entities acting on or refraining from action as a result of any material in this report. With respect to any and all information contained in this report, the FPIEP makes no representation or warranty of any kind, either express or implied, with respect to such information, or the results to be obtained by the use thereof.