

# **FREE, PRIOR AND INFORMED CONSENT DUE DILIGENCE FOR INSURANCE COMPANIES**



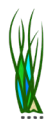
**TALLGRASS  
INSTITUTE**

# Executive Summary

This guide provides insurance companies with a framework to operationalize due diligence to respect the rights of Indigenous Peoples, grounded in the right to free, prior and informed consent (FPIC). By adhering to FPIC principles and relevant international standards, insurance providers can mitigate risks as they uphold human rights. Failing to recognize Indigenous Peoples' rights and FPIC exposes insurers to reputational damage, legal disputes, and financial losses.

The guide discusses the insurer's business case for FPIC due diligence (pg. 3), FPIC case studies (pg. 5), and questions specific to insurance underwriting (pgs. 6-9), concluding with additional tools and resources (pg. 10).

This guide is an addendum to Tallgrass Institute's *Free, Prior and Informed Consent Due Diligence Questionnaire*<sup>1</sup> to delineate applications specific to insurance underwriting; both guides can be used to integrate respect for Indigenous Peoples into business operations.



TALLGRASS  
INSTITUTE

CENTER FOR INDIGENOUS  
ECONOMIC STEWARDSHIP

*The information in this guide is not intended to be relied upon as, or to be a substitute for, specific professional advice. Tallgrass Institute shall have no responsibility for loss occasioned to any persons or 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, Tallgrass Institute 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.*

# An Insurer's Business Case for FPIC Due Diligence

Indigenous Peoples account for 6.2% of the global population with 476 million people living in 90 countries across the world.<sup>2</sup> **Within the insurance industry, there are multiple touchpoints with Indigenous Peoples, both to provide insurance to entrepreneurial ventures and economic development, and to ensure that customer businesses are engaging in rights-respecting relationships with those Indigenous Peoples affected by their enterprise.**

Insurance companies with policies that explicitly respect Indigenous Peoples' right to self-determination and to FPIC may have more opportunity to find business partners in an expanding marketplace. North America is home to approximately 325,000 Indigenous-owned businesses.<sup>3</sup> In Canada, Indigenous Peoples contributed roughly \$39 billion (USD) to the national GDP in 2019.<sup>4</sup> In the United States, tribal governments and enterprises collectively provide \$40 billion annually in wages and benefits.<sup>5</sup>

There is also a growing recognition among financial actors of the risks associated with failing to respect Indigenous Peoples' rights. Insurers, as underwriters of large-scale projects, are particularly vulnerable to environmental and social risks. Projects that do not have consent from Indigenous Peoples and negatively impact their rights, cultures, or territories often face public opposition. Investors are placing greater importance on the rights of Indigenous Peoples and expecting companies to uphold FPIC when making decisions that affect Indigenous communities.<sup>6</sup>

Neglecting to identify and assess risks related to Indigenous Peoples' rights can lead to inaccurate risk assessments, insufficient coverage, and unexpected expenses. This can expose companies to social unrest, legal actions, government inquiries, reputational harm, project delays, budget overruns, and potential civil or criminal penalties. Thus, implementing strong policies that uphold Indigenous Peoples' rights is essential for mitigating significant risks and minimizing disruptions, uncertainties, and conflicts. Further, when companies put forward comprehensive policies, it not only reflects ethical business practices but also promotes long-term sustainability and may protect shareholder interests.

Under the UN Guiding Principles on Business and Human Rights (UNGPs), companies are expected to respect human rights across their operations, including underwriting and investment decisions.<sup>7</sup> Global industry leaders assess environmental and social risk as part of their business practices and have come together with governments, multilateral institutions, and civil society leaders to establish shared standards. In the insurance industry, the Principles for Sustainable Insurance (PSI), signed by 172 insurers, serves as a framework to address risks and opportunities.<sup>8</sup>

The leading international standard enumerating the rights of Indigenous Peoples is the United Nations Declaration on the Rights of Indigenous Peoples (Declaration).<sup>9</sup> The Declaration sets forth the individual and collective rights of Indigenous Peoples to self-determination; to their lands, territories, and resources; and to their cultural practices and describes FPIC as a fundamental principle for engaging with Indigenous Peoples.

While some countries have laws and policies regarding Indigenous Peoples, very few recognize the full rights accorded Indigenous Peoples in the Declaration, including the right to FPIC. This leads to a practical gap for companies: fulfilling the minimum legal and regulatory compliance in that jurisdiction may not allow comprehensive identification of Indigenous Peoples and impacts on their rights and wellbeing. The questions in this guide provide a mechanism for enhanced due diligence that aligns with the UNGPs and the Declaration so that insurance companies can integrate consistent consideration across jurisdictions at the highest levels into underwriting.

Several international financial institutions and multilateral organizations incorporate FPIC into their guidelines for governments and the private sector, including International Finance Corporation (IFC) Performance Standard 7, the World Bank Environmental and Social Framework (ESF), the Asian Development Bank (ADB) Safeguard Policy Statements (SPS), the Organization for Economic Co-operation and Development (OECD) Guidelines for Multinational Enterprises, and the International Labour Organization's (ILO) Convention No. 169. Some leading insurers have already incorporated FPIC into their underwriting frameworks, setting a benchmark for the industry. By following best practices, insurance companies can align with global sustainability goals and enhance their long-term resilience.

**By adopting strong due diligence and FPIC policies, insurers will benefit from key advantages, including a more comprehensive understanding of risk, risk mitigation, legal compliance, and reduced liability.** These practices help prevent costly disputes and claims related to Indigenous Peoples' land rights violations, environmental damage, and business interruptions. They also demonstrate an insurer's commitment to responsible business conduct and respect for human rights. These operational policies and procedures also foster stronger relationships with Indigenous Peoples, align with international human rights standards, and support long-term sustainability, providing an advantage in a competitive market. Further, as investors, insurance companies are encouraged to integrate these considerations in their investment decisions as well as underwriting to demonstrate total respect for the rights of Indigenous Peoples.

## FPIC Case Studies

Lack of FPIC due diligence exposes companies to significant financial and reputational risks. For example, the Dakota Access Pipeline faced mass protests and costly delays due to inadequate consultation with the Standing Rock Sioux Tribe and a lack of FPIC from impacted tribes.<sup>10</sup> Concerns over water contamination and the destruction of sacred sites sparked social unrest, legal battles, and significant project delays, resulting in the \$3.8 billion project costing at least \$12 billion. This case demonstrates the importance of transparent engagement with Indigenous communities to mitigate risks and maintain public trust.

Similarly, the Fosen Vind project—Europe’s largest onshore windfarm—experienced operational delays and material loss when it moved forward without the consent of affected Saami peoples. The project became operational in 2020 despite Saami opposition for nearly two decades.<sup>11</sup> However, in 2021 the Supreme Court of Norway found that the windfarm violated the Saami peoples’ protected rights to enjoy their culture including to practice traditional reindeer herding and ruled that the licenses for the windfarm were invalid.<sup>12</sup> The court ruling was clear as to the violations and referenced the lack of consultation as a factor in the case but did not speak to next steps, including whether the wind turbines would need to be removed at the expense of the company, therefore introducing significant operational uncertainty. Saami peoples continued to protest against the turbines and no agreement between the parties was reached until December 2023. Given the known lack of consent to the project, the operational delays and uncertainty introduced after the site was built is emblematic of the types of risks that can be identified and mitigated prior to underwriting and capitalization with a more fulsome integration of FPIC due diligence early in the project.

**When operationalized in a rights-based manner, FPIC forms the basis of meaningful engagements.** In the Philippines, the Malampaya Deep Water Gas-to-Power project was a joint venture between Shell Philippines Exploration (SPEX) and the Philippine National Oil Company (PNOC). The project had a community consent process as part of its Environmental Impact Study (EIS). Engagement with stakeholders began two years before construction. The project owners reported that the costs of securing consent produced significant benefits, including allowing the company to complete the project ahead of schedule, saving \$36 million in construction costs, and avoiding \$4-6 million in estimated delay costs.<sup>13</sup> From 2002-2004 the project spent \$1 million annually for ongoing community engagement, while bringing in revenue totaling \$685.7 million.<sup>14</sup>

These cases illustrate the business case for respect for Indigenous Peoples’ rights, emphasizing the need for tailored and robust due diligence processes.

# FPIC Due Diligence for Insurance Underwriting

## **Distinct levels of due diligence may be necessary when considering two broad types of insurance.**

First, for all insurance products, including those that cover multiple project locations and multiple risks, insurers should consider integrating FPIC due diligence in addition to usual due diligence measures. Examples include treaty insurance, reinsurance, coverage of multiple risks, and when bundling multiple risks together into one insurance product. When insuring a wide range of risks with a large client operating in many separate locations, a company's impact on specific Indigenous Peoples may be more difficult to identify. In this broad category of insurance, FPIC due diligence could focus on the client's policies. Just as an insurance company may ask a construction company for details regarding jobsite safety programs, insurance companies can ask clients for details regarding their engagement protocols with Indigenous Peoples and the company's policies, practices, and procedures regarding the rights of Indigenous Peoples, including the right to FPIC. An example of this category might be treaty reinsurance covering a broad class of business for a large, multinational company that operates in dozens of locations around the world.

Second, for project insurance and insurance risks involving a single project, insurers should conduct due diligence specific to assessing risk as to Indigenous Peoples' rights. When insuring a single project, the specific location of a project is known and the specific Indigenous Peoples impacted by the project can be identified. An example of this category might be an insurance policy for a mining company covering a single mining project.

**Indigenous Peoples' right to FPIC applies broadly across sectors and applies when either or both positive or negative impacts are contemplated.** Often, FPIC risk is heightened in industries that involve land, water, and natural resources. Insurance companies may seek to apply additional due diligence to projects and companies involved in construction, infrastructure development, natural resource extraction (oil and gas, mining, forest products and timber, etc.), fisheries (including projects and industries that impact fisheries), agriculture, and energy (including hydropower, solar, wind, geothermal, tidal power, and other forms of renewable energy). For example, a study showed that in the United States, 97% of nickel, 89% of copper, 79% of lithium, and 68% of cobalt reserves and resources are located within 35 miles of Native American reservations.<sup>15</sup> As the demand for minerals rises to supply electric vehicles and battery storage, insurers should apply FPIC due diligence to new and ongoing mining projects and companies in the transition minerals supply chain.

## Key Principles of FPIC

Free, prior and informed consent contains four principles:<sup>16</sup>

- ♦ **Free:** consent must be given voluntarily and without coercion, intimidation, manipulation, threat, violence, or bribery.
- ♦ **Prior:** information must be given in advance with sufficient time for the Indigenous community to arrive at a decision through their own processes.
- ♦ **Informed:** information must be provided in a language and format that is accurate, clear, and understandable to all community members.
- ♦ **Consent:** consent means an Indigenous community's right to freely say "yes", "no", or "yes with conditions" to any project or initiative that will impact their lands, territories, resources, and livelihoods.

Integrating FPIC into underwriting and investment practices helps insurers manage risks effectively and ensure that companies have built trust with rightsholders. **Many Indigenous Peoples have developed their own FPIC protocols for engaging with governments, companies, and outside entities.** Insurance companies and their business customers should integrate local FPIC protocols when engaging with Indigenous Peoples.

The following section delineates steps to operationalize due diligence in these two categories. The first applies to all business customers with projects that may impact Indigenous Peoples. The second is an added category for insurance products covering a single project.

## **FPIC Due Diligence for All Insurance Products**

When applying for any insurance product—including single project insurance and insurance across an entire business such as treaty insurance, reinsurance, coverage of multiple risks, etc.—insurance companies should ask clients to report on the following:

1. List and provide existing policy commitments related to human rights.
2. Is the company a member of an initiative within their industry that prioritizes human rights during development initiatives, such as the Initiative for Responsible Mining Assurance or the Equator Principles Association?
3. List and provide existing policy commitments regarding Indigenous Peoples.
  - a. Specify whether the policy:
    - i. acknowledges and integrates affected Indigenous Peoples' protocols related to business engagement;
    - ii. is separate from but inclusive of the company's general human rights policy;
    - iii. includes a commitment to FPIC;
    - iv. reflects the standards in the United Nations Declaration on the Rights of Indigenous Peoples and International Labour Organization Convention 169;
    - v. includes a grievance mechanism aligned with the effectiveness criteria outlined in the UN Guiding Principles on Business and Human Rights; and
    - vi. applies to every stage of project development including planning, implementation, closure, and risk-management.

## **FPIC Due Diligence for Project-level Insurance**

When applying for insurance for a specific project—for example, a single mining project—insurance companies should ask clients to report on the following:

1. List the impacted Indigenous Peoples and communities.
  - a. Provide information on how Indigenous Peoples' own protocols were identified and incorporated into the consultation process.
  - b. Provide current maps of impacted Indigenous Peoples' land, including unresolved land disputes in the project area, ensuring that maps include land uses such as hunting and fishing uses, cultural and spiritual uses, and ancestral and historical sites.
  - c. Provide information regarding impacted Indigenous Peoples' governance structures.



2. Evaluate how the project may impact the rights and territory of the impacted Indigenous Peoples and communities. Provide the environmental and social impact assessment for this specific project, including the portions that assess environmental, social, and cultural impacts to Indigenous Peoples.
3. Identify whether there are Indigenous Peoples in Voluntary Isolation or Initial Contact affected by the project.
  - a. If so, describe the measures taken to ensure that Indigenous Peoples in Voluntary Isolation or Initial Contact are not affected by the project, protocols for avoiding contact, and protecting these groups from direct or indirect exposure to the project.
4. Provide information about the legal regime regarding Indigenous Peoples in the country where the project is located.
  - a. Specify whether the host country:
    - i. is a signatory to International Labour Organization Convention 169 or the United Nations Declaration on the Rights of Indigenous Peoples;
    - ii. provides Indigenous Peoples' representatives with a formal seat or status within the host country's government; and/or,
    - iii. has guidelines for the protection of Indigenous Peoples in Voluntary Isolation and Initial Contact, if applicable.
5. Document the process of engagement with Indigenous Peoples' representatives, including the attempts to reach Indigenous leaders and communities.
6. Disclose any financial or nonfinancial compensation provided to community members as part of the engagement process.
  - a. Disclose any conflicts of interest that have arisen or may arise.
7. Disclose a summary of feedback from impacted Indigenous Peoples in response to the process of engagement.
8. Disclose whether the company gained the consent of impacted Indigenous Peoples.
  - a. If so, provide evidence of the agreement with impacted Indigenous Peoples.
9. Disclose whether there is a project-level grievance mechanism, or by what means grievances are managed.
  - a. Disclose whether grievances have been filed and, if so, disclose the quantity, reason, and outcomes of grievances filed.
  - b. If there is no project-level grievance mechanism, describe any other feedback loops that have been implemented to ensure that the project maintains broad community support.
10. Provide plans for continuous engagement throughout the project's lifecycle to include monitoring, adapting to evolving community needs, and maintaining open channels for feedback.

## Tools & Resources

Several resources are available to assist insurance companies with enhanced due diligence regarding the rights of Indigenous Peoples, including FPIC. Some insurance companies contract with external data providers to identify and monitor risks related to Indigenous Peoples' rights. When external data indicates a potential violation of the rights of Indigenous Peoples, some insurance companies will conduct an enhanced due diligence process.

Currently, there is no comprehensive global database of projects or companies that have violated Indigenous Peoples' right to FPIC and no database of projects that have received consent from impacted Indigenous Peoples. However, other resources exist for use by analysts and underwriters. Several nonprofit and multilateral organizations monitor impacts on human rights, the environment, and Indigenous Peoples. These resources can be helpful to identify the Indigenous Peoples' rights impacts stemming from specific projects, companies, and industries. Some examples include:

- » **The United Nations Special Rapporteur on the rights of Indigenous Peoples** publishes reports on country visits to monitor Indigenous Peoples' rights around the world.<sup>17</sup>
- » **The United Nations Committee on the Elimination of Racial Discrimination** monitors the rights of Indigenous Peoples and issues statements, letters, and an annual report after receiving complaints and inquiries regarding potential violations of rights.<sup>18</sup>
- » **Urgewald's Global Oil & Gas Exit List (GOGEL)** tracks various indicators including oil and gas projects flagged for "social harm," which includes monitoring of potential violations of FPIC.<sup>19</sup>
- » The **Transition Minerals Tracker from Business & Human Rights Resource Centre (BHRRC)** analyzes human rights risks associated with 160 mining companies, including the rights of Indigenous Peoples.<sup>20</sup> BHRRC also tracks human rights information for more than 20,000 companies across all sectors.<sup>21</sup>
- » **OECD Watch** maintains a database of alleged violations of the OECD Guidelines for Multinational Enterprises on Responsible Business Conduct, including reports regarding impacts on Indigenous Peoples.<sup>22</sup>

Several resources are available for guidance on FPIC processes, such as Accountability Framework's *Operational Guidance on Free, Prior and Informed Consent*<sup>23</sup> and the Food and Agriculture Organization of the United Nations' (FAO) guide for project managers *Free Prior and Informed Consent: An Indigenous Peoples' right and a good practice for local communities*.<sup>24</sup> Additionally, Tallgrass Institute offers training to companies interested in learning more about Indigenous Peoples, the rights of Indigenous Peoples, and FPIC. Contact Tallgrass Institute for more information and to schedule a training or consultation.

## Endnotes

- 1 <https://www.tallgrassinstitute.org/s/FPIC-DDQ.pdf>
- 2 <https://www.un.org/en/fight-racism/vulnerable-groups/indigenous-peoples>
- 3 <https://www.tallgrassinstitute.org/s/23-017-ICC-Report-p3k6.pdf>
- 4 <https://www150.statcan.gc.ca/n1/en/pub/13-604-m/13-604-m2022001-eng.pdf?st=ZroyECcX>
- 5 <https://www.epi.org/publication/the-power-of-self-determination-in-building-sustainable-economies-in-indian-country>
- 6 <https://www.blackrock.com/corporate/literature/publication/blk-commentary-engagement-on-human-rights.pdf>
- 7 [https://www.ohchr.org/sites/default/files/Documents/Publications/GuidingPrinciplesBusinessHR\\_EN.pdf](https://www.ohchr.org/sites/default/files/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf)
- 8 <https://www.unepfi.org/insurance/insurance/>
- 9 <https://www.un.org/development/desa/indigenouspeoples/declaration-on-the-rights-of-indigenous-peoples.html>
- 10 [https://www.tallgrassinstitute.org/s/social\\_cost\\_and\\_material\\_loss\\_0.pdf](https://www.tallgrassinstitute.org/s/social_cost_and_material_loss_0.pdf)
- 11 <https://www.earthisland.org/journal/index.php/articles/entry/indigenous-sami-win-landmark-case-against-wind-power>
- 12 <https://www.saamicouncil.net/documentarchive/report-just-transition-or-green-colonialism>
- 13 [http://pdf.wri.org/development\\_without\\_conflict\\_fpic.pdf](http://pdf.wri.org/development_without_conflict_fpic.pdf)
- 14 *ibid.*
- 15 <https://www.msci.com/www/blog-posts/mining-energy-transition-metals/02531033947>
- 16 [https://www.sirgecoalition.org/s/FPIC-guide-sm\\_compressed.pdf](https://www.sirgecoalition.org/s/FPIC-guide-sm_compressed.pdf)
- 17 <https://www.ohchr.org/en/special-procedures/sr-indigenous-peoples/country-visits>
- 18 <https://www.ohchr.org/en/treaty-bodies/cerd>
- 19 <https://gogel.org/social-harm>
- 20 <https://www.business-humanrights.org/en/from-us/transition-minerals-tracker/>
- 21 <https://www.business-humanrights.org/en/companies/>
- 22 <https://www.oecdwatch.org/complaints-database/>
- 23 [https://accountability-framework.org/fileadmin/uploads/afi/Documents/Operational\\_Guidance/OG\\_FPIC-2020-5.pdf](https://accountability-framework.org/fileadmin/uploads/afi/Documents/Operational_Guidance/OG_FPIC-2020-5.pdf)
- 24 <https://openknowledge.fao.org/server/api/core/bitstreams/8a4bc655-3cf6-44b5-b6bb-ad2aeede5863/content>



# TALLGRASS INSTITUTE

---

CENTER FOR INDIGENOUS  
ECONOMIC STEWARDSHIP

Through targeted research, training, investor networks, and corporate and international engagement, Tallgrass Institute forwards Indigenous solutions to market challenges and macro-economic issues by leading with Indigenous Peoples' self-determination and fostering equitable partnerships and practices. We aim to redefine the private sector's role as one that respects Indigenous Peoples' rights, lands, and economic priorities.