

Future Mine & Mineral Conference  
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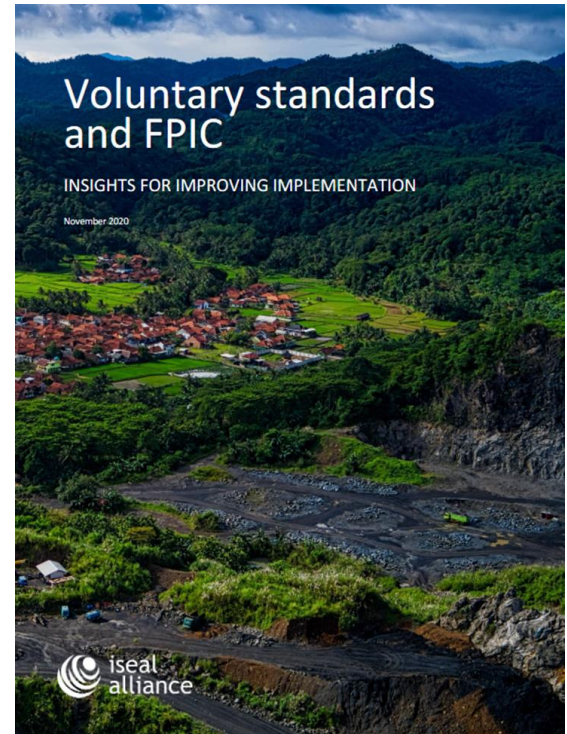
# Vulnerability or self-determination? Indigenous peoples' consultation and consent in mining projects



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# 2020 ISEAL report

- FPIC established as a norm but not as a practice
- Vulnerability and indigenous rights (including to participation and self-determination) are both entry points for targeted policies and FPIC
- Major challenge – governments not respecting rights, clarifying land issues, consulting locally, etc. before companies go in
- Timely, good faith engagement and consultation is as important as FPIC (and applies to more situations, including in planning stages)



# The role of the UN Special Rapporteur on the rights of indigenous peoples

“Indigenous peoples’ proposals, priorities and concerns [should be] incorporated in State development planning before ... granting concessions, licences and other authorizations for ... activities that could later lead to social conflicts due to lack of consultation.”

Tauli-Corpuz 2020, para 69

“[T]he UNGPs specify that business enterprises have a responsibility to respect internationally recognized human rights ... independent of State obligations.”

Anaya 2013, para 52

A “preferred model” for extractive industries is “resource extraction and development through indigenous peoples’ own initiatives and enterprises ”

Anaya 2013, Part II

*“It is necessary to move beyond the debate over the existence of a veto ... and instead focus on the international human rights obligations [of] States ...”*

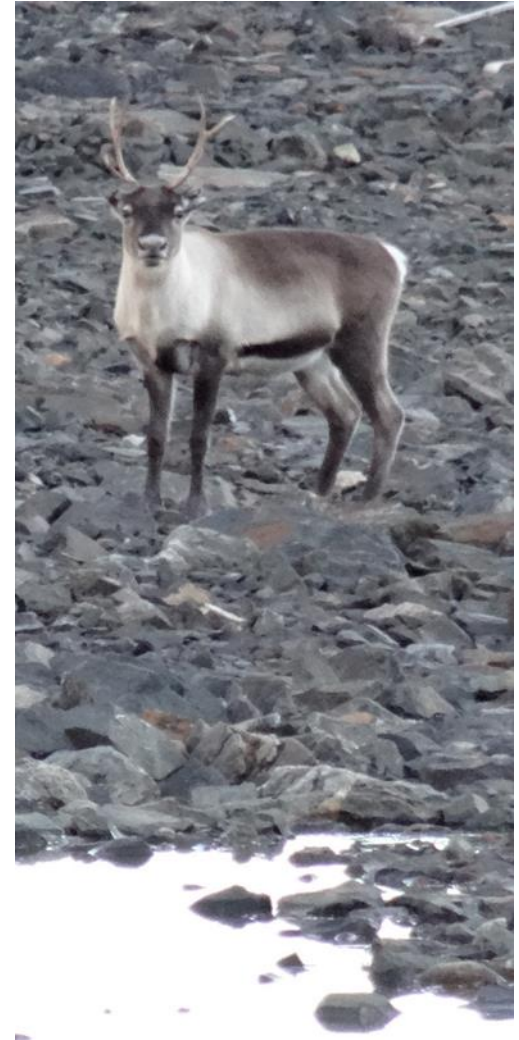
Tauli-Corpuz 2020, para 61

“[O]btaining free, prior and informed consent should be understood as the objective of consultations and as an obligation in cases of significant impacts on the rights of indigenous peoples.”

Tauli-Corpuz 2020, para 60

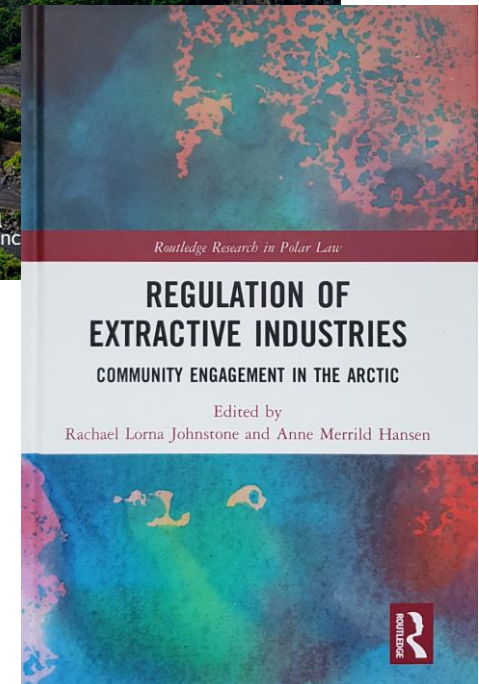
# Exploration

- Who decides what is a significant impact and how? (And the significance of what? The planned exploration activity or what might follow?)
- At what point do exploration activities become something that needs FPIC? What kind of engagement/consultation is required before then?
- How much information can and should be shared with the community in the very early stages?



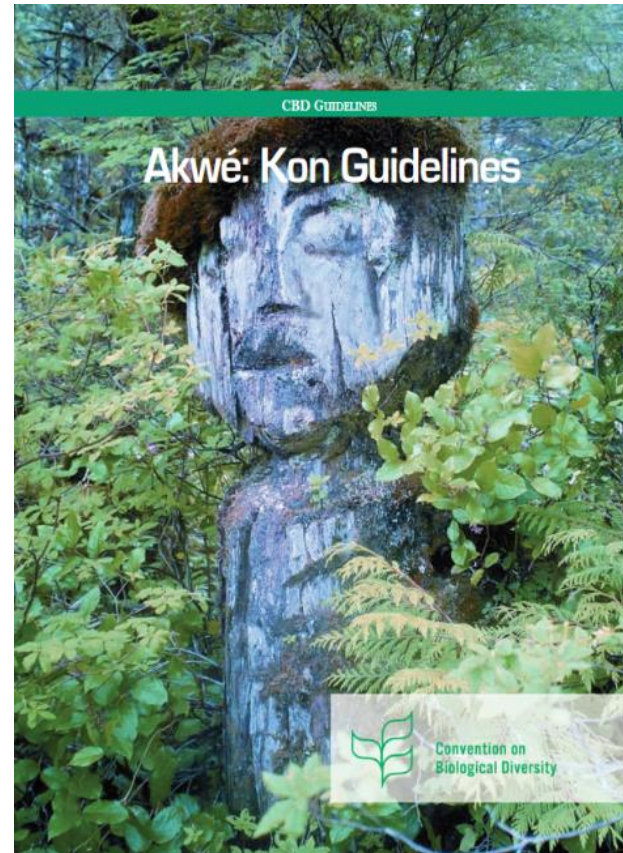
# Practical challenges

- Who is indigenous? ('screening')
- Who should take part in negotiations? What format should they take?
- Lack of clarity with standards and lack of detailed, context-specific guidance
- FPIC/meaningful consultation poorly understood by implementers and auditors – need for better knowledge, experience and good judgement
- FPIC and good faith consultation are difficult to verify and monitor



# Key tools for a consultation/FPIC process

- Community protocols
- Environmental, social and cultural impact assessment
- Community-company agreements – can these be a 'proxy' for FPIC?
- Grievance and redress mechanisms



# Norway - Kautokeino



- Decision to say no to EIA for gold mine made by elected representatives of indigenous community through decentralised democratic process (not FPIC)
- Question of power over decision-making (municipality vs Oslo)
- Representation (reindeer-herding Sami vs non-reindeer-herding Sami)
- Early engagement and consultation as a risk mitigation measure prior to large-scale investment



# Greenland

- Greater autonomy/independence associated with the need to exploit mineral resources
- Government of Greenland – the ‘representative institution’ for the people of Greenland in policy decisions (UNDRIP)?
- How should the interests of the directly affected communities be represented and at what stages in the development process?
- Policy decisions made without due consultation have led to public protest (e.g. uranium)



# Russia – the Komi Republic



- Komi people not recognised as indigenous by the Russian government
- FPIC carried out in southern forestry developments (FSC) but not in relation to oil and gas developments in the North
- Northern Komi people not against oil development per se but object to environmental damage and lack of prior consultation
- Lack of adequate consultation has led to protracted local protests
- Corporate social responsibility = respect

# Concluding thoughts

- Government role is essential to protect indigenous rights, ensure clarity (e.g. regarding land) and reduce business risk
- Companies: due diligence to assess the 'governance gap'
- Good faith engagement and consultation are as important as consent, and are a key risk mitigation strategy (from earliest stages)
- Capacities: decision-making and relationship-building require understanding and good judgement based on knowledge, experience and the ability to listen, learn quickly and show respect
- Planning for the future needs to be done collaboratively to reduce risks and make better, more sustainable decisions

# References

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Thank you for your attention!

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Photo: Tim Wilson