start here quick sheet
Indigenous Peoples and Mining

Network for Business Sustainability
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Prepared by
Lindsay McIvor
Stephanie Bertels
Indigenous Peoples and Mining

This guide was prepared by Lindsay McIvor, MBA, and Dr. Stephanie Bertels, PEng., Beedie School of Business, Simon Fraser University

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This document provides a tailored overview of good industry practice for working with Indigenous Peoples around a project site. It has been created out of the 110-page advisory document released by the International Council of Mining and Metals, “Good Practice Guide: Indigenous Peoples and Mining”, and only represents a portion of the information contained in the full document. This is not an official International Council of Mining and Metals document, nor has it been endorsed by ICMM, and the entire contents of this Quick Sheet are credited to ICMM. If you begin to do work in this area, we suggest referring back to the original document, which can be found here:


*At the time this document was published, the IFC did not have a guide or advisory note on Indigenous Peoples and Mining. This document was selected as the best guide available.
Start Here: Indigenous Peoples and Mining
1. introduction to indigenous peoples and mining

IP’s often have cultural characteristics, governance structures and traditional ways of interacting and decision making that set them apart from the non-indigenous population and require companies to utilize forms of engagement that are sensitive to these characteristics.

The following general characteristics are widely considered as partly and/or fully indicative of Indigenous Peoples:

- Self-identification as indigenous
- Historical continuity with pre-colonial and/or pre-settler societies
- A common experience of colonialism and oppression
- Occupation of or a strong link to specific territories
- Distinct social, economic and political systems
- Distinct language, culture and beliefs from non-dominant sectors of society
- Resolved to maintain and reproduce their ancestral environments and distinctive identities.

See Appendix 1 at end of this Quick Sheet for the main international regulatory instruments relating to Indigenous Peoples. Key rights articulated in these instruments include the rights of Indigenous Peoples to:

- Self-determination
- Their lands, territories and resources
- Maintenance of their cultures, including their cultural heritage, and recognition of their distinct identities
- To be asked for their free, prior and informed consent (FPIC) in decisions that may affect them

Free, prior and informed consent (FPIC), in relation to mining activities taking place on indigenous lands, refers to a process whereby affected Indigenous Peoples freely have the choice, based on sufficient information concerning the benefits and disadvantages of the project, of whether and how these activities occur, according to their systems of customary decision making. FPIC has been mandated or recommended in a number of international and national legal and policy documents, including the UN Declaration on the Rights of Indigenous Peoples. FPIC is both controversial and evolving – a more complete discussion is available on page 24 of the full document.
1.1 KEY CONSIDERATIONS

1. Your company’s strategies and actions should be underpinned and informed by knowledge of the communities and groups within those communities that may be affected by, or benefit, from the project. Social maps, baseline studies, cultural heritage surveys and impact assessments are all valuable tools for building this knowledge, as is ongoing engagement.

2. There needs to be input, support for and participation of Indigenous Peoples in identifying issues and framing and implementing responses. Taking account of Indigenous Peoples’ perspectives on development is essential.
2. relevance to exploration, development and small producing mining companies

Negative impacts on local Indigenous populations are likely to be greater during the construction and operational phases of a mine, but can be significant even at the early stage of exploration. For example, construction of a road for exploration purposes may open up an area to illegal loggers or artisanal miners from another region and increase in-migration and informal settlements; drilling crews may introduce diseases into a previously unexposed area; watercourses may be contaminated; or, significant cultural heritage sites may be damaged or destroyed.

Some key motivators for building positive relations with indigenous populations include:

- Companies that are respectful of and proficient at working with Indigenous Peoples’ groups will likely find it easier to secure agreements with both Indigenous Peoples’ groups and government.
- In a growing number of countries, there is now legal recognition of the rights of Indigenous Peoples to negotiate the terms and conditions under which minerals development will take place on their land.

- As has been shown on numerous occasions, companies that fail to respect Indigenous Peoples’ rights and interests are also more likely to become embroiled in local and regional disputes and conflicts. Apart from jeopardizing the future of individual projects, this can lead to substantial reputational damage for a company nationally and internationally.

2.1 UNDERSTAND THE LEGAL CONTEXT

There are significant differences between countries – and sometimes within countries – in the extent to which the rights of Indigenous Peoples are formally recognized and afforded legal protection and the ways in which customary title and land/resource use are dealt with.

Ascertain Customary Land Ownership and Use:

In many instances there will not be a readily accessible source of information about who has, or who has claimed, title or usage rights over the land. It will be important, therefore, to carry out an appropriate due diligence process that would include a review of recent court decisions in order to fully understand the status of land ownership and claims. For this purpose, companies are likely to find that they will need to obtain local expert advice.
After initial engagement with local community representatives, guidance should be sought as to which national, regional and local representative organizations may assist in collecting relevant information. Other suggested actions are to:

- Consult with representatives of government agencies, international organizations and NGOs and local or international researchers that are working or have worked in the area
- Undertake desktop research to ascertain if any historical, anthropological or archaeological studies of the area have been undertaken
- Seek the advice of any other companies or organizations that already have a presence in or near the area.

The bottom line is that companies need to know and comply with relevant national and local laws and be aware of any state commitments to international conventions and instruments.

2.2 MANAGE WORKFORCE AND CONTRACTOR BEHAVIOUR FROM THE OUTSET

A key risk for mining companies working in or near indigenous communities is that their employees or contractors may behave inappropriately towards the indigenous community.

Racist language or behaviour, showing a lack of respect for local customs or destroying or damaging cultural heritage sites (even if inadvertently) can cause long-term harm to company/community relations and, in some instances, trigger events that may lead to a project not progressing or being shut down. Actions that companies can take to ensure that employees and contractors behave appropriately include:

1. Making clear to employees and contractors what is expected of them (e.g. by communicating policies that define acceptable behaviour). Communication regarding what is expected must be unequivocal and must originate from the CEO, who must demonstrate leading by example from the beginning. The success or failure of the company and IP community relationship will depend upon the relationship that their respective “chiefs” create and sustain.
2. Taking disciplinary action where there are significant breaches of these standards up to and including dismissal and termination of contracts
3. Ensuring that contracts with employees, subcontractors, agents and joint venture partners contain appropriate provisions to govern these parties’ behaviour.
3. getting started: initial contact

If mining staff and contractors are well prepared, sensitive to Indigenous Peoples’ culture and respectful and open in their approach, this can provide the foundation for a solid and productive relationship. Cultural sensitivity training should be required of all key personnel in the absence of a demonstrated successful track record working with indigenous peoples.

An essential element of respectful relationships is for company managers to be present at initial meetings wherever possible and to meet with the traditional heads of communities, as this demonstrates respect and sets the scene for building long-term trust and relationships with communities.

To the extent possible, “pre-consult” with indigenous communities through their representative institutions to determine the issues for consultation in advance of the consultation process itself.

- Identify appropriate representatives.
- Identify priority issues.
- Give special care to cultural appropriateness.

The quality of initial contact between mining company personnel and local community members in a prospective mining area can set the tone for the whole project.

Different parties may not always have the requisite skills and capacities to implement agreements and provisions, address risks when they arise or manage the impact of an event when it occurs. A large investment in training and education may be required to enable genuine participation of Indigenous Peoples in impact mitigation, the implementation of agreements and the development of benefit programs.
Companies can avoid many of these problems if they:

1. Confer with the community at the outset on how they wish to be engaged.
2. Seek to understand and respect local entry protocols as they relate to permission to enter a community and access traditional lands.
3. Commit to open and transparent communication and engagement from the beginning and have a considered approach in place.
4. Conduct an initial risk analysis prior to entering the area and implement controls to mitigate key risks.
5. Ensure that all representatives of the company (including third party subcontractors and agents of the company) are well briefed on local customs, history and legal status and understand the need for cultural sensitivity.
7. So far as possible, strive for consistency of approach and employment longevity of representatives of the company so that relationships can be built and trust maintained.
8. Enlist the services of reputable advisers with good local knowledge.

Difficulties are likely to arise if companies:

1. Enter into an area without first seeking permission to do so.
2. Engage with the wrong groups or with persons who do not have authority to speak on behalf of the relevant group or community.
3. Fail to adequately explain what they are doing and why.
4. Do not allow sufficient time for the community to consider a request/proposal or make a decision.
5. Disregard, or are ignorant of, local customs.

A successful long-term relationship requires more than tolerance. It requires a genuine desire to achieve a win-win outcome to leave communities better off than they were before mining activity occurred.
4. engagement

It is in everyone’s best interest to collaboratively develop an effective means to ensure that Indigenous Peoples have an informed understanding of the proposed project and what its potential impact might be on their community, as well as any benefits it may offer across the full project cycle.

Companies need to understand the perspectives of relevant stakeholders on proceeding with the project (both positive and negative). Terminology used by the mining industry might not have any meaningful translation in the language used in the indigenous community. In these circumstances, companies could consider developing a dictionary of terminology with the community. It is also good practice for local stakeholders to hear the views of others about the project (e.g. from NGOs, government bodies, academics, industry experts, other communities that have dealt with the company) where they may be able to usefully contribute additional information or perspectives. If requested, companies should also consider providing Indigenous Peoples with the means to engage independent information gathering experts of their own choice.

4.1 ENSURING INCLUSIVITY OF ENGAGEMENT

While it is important to acknowledge the role of elders and other traditional community leaders, it should not automatically be assumed that those who occupy formal leadership positions, whether they be traditional or government appointed, represent all interests in the community. In particular, companies need to be sensitive to those sections of the community who are frequently excluded from the decision-making process, such as women and young people.

Companies will need to spend time in gaining an understanding of the complexities and dynamics of local decision-making processes and structures as well as any differences or divisions that may exist within communities, in order to achieve the most representative outcomes.
4.2 THE PRACTICALITIES OF ENGAGING WITH INDIGENOUS PEOPLES

1. **Listening**
Information may need to be repeated and presented in different forms. Careful listening to community questions and feedback will help community relations officers to plan follow-up information sessions. It is a good idea to have information that can be left with the community to read or view at a later time, e.g. booklets, leaflets, posters and DVDs.

2. **Allowing for time**
Be aware of the respective relevance of time to the community and the company. The time requirement to build consensus within an indigenous community may exceed the timeframe desired by the company. Failure to respect this reality could well result in a negative outcome for the project.

3. **Respect and understanding**

4. **Openness and communication**
Company information needs to be presented in an honest and open manner and in a format that is readily accessible. The emphasis should not just be on sharing technical information about the operations of a mine throughout its lifecycle, but any potentially negative socio-economic or environmental impacts and how these will be managed, plus the potential benefits for Indigenous Peoples and how these may be enhanced.

5. **Using Local Languages**
Working with or through local language shows respect for the affected community, as does the attempt of company staff to learn some functional local language.

Technical communication needs to be simplified to allow better understanding of concepts and mitigate against misunderstanding. However, it is often through translation that communication problems arise due to misinterpretation and misunderstanding. This risk can be reduced through repeating and testing understanding and information.

6. **Building engagement capacity in companies**

7. **Committed management**
Commitment from the top sets the scene for positive relationship building

**Use Qualified and Experienced Community Staff**

The selection of local community appointees must be done with an awareness of local politics, customs and hierarchy.

**Indigenous Advisors:** Leading companies routinely appoint individuals from indigenous communities to act as liaison points with the local community. If Indigenous Peoples with the requisite skills are not available for these types of positions, then identifying and training people for these roles should be a priority.

**Gender sensitivity:** Where customary approaches to engagement or decision making prevent the meaningful involvement of women, mining companies should endeavour to find other ways of facilitating this involvement through mutual agreement with the relevant communities.
4.3 SOME ENGAGEMENT CHALLENGES

Dealing with Negative Legacies and Perceptions

Indigenous communities that have had past negative experiences with mining are likely to view new proposals to mine with suspicion or possibly outright hostility. A further complicating factor for a large mining company is that initial exploration and development may have been undertaken by a company that may not have operated to the standards expected today. **Positive actions that exploration and mining companies can take to deal with these legacies include:**

1. Acknowledging that the industry may have performed badly in the past (rather than attempting to defend poor practices).
2. Seeking out opportunities to remedy any legacy of past socio-cultural and environmental damage (e.g. by restoring damaged cultural sites, filling in abandoned drill holes, re-vegetating disturbed areas).
3. Establishing what historical commitments may have been made (e.g. by an exploration company or joint venture partner) and, wherever practical, honouring those commitments.

Managing Expectations

Unrealistic expectations by local communities can lead to misunderstanding and conflict when anticipated benefits do not materialize. Company representatives should be aware that expectations can be created simply through the process of having a meeting.

- Communicate clearly and in a transparent manner, and continue to have a consistent message about the project life cycle and what its various stages may realistically mean, in terms of jobs and other economic opportunities, including reasons why the project may not actually develop
- Formalize commitments and agreements in writing and document progress towards achieving such commitments.

Maintaining Focus

A common problem, not restricted to indigenous communities, is that the initial effort that is put into community engagement is not maintained over time. Some actions that companies can take to remain actively engaged with the community are to:

1. Formalize a comprehensive engagement plan, which is reviewed and updated regularly and which is linked to both the operation’s broader management and planning processes and the community’s own plan for its future
2. Establish systems for recording compliance with and following up on commitments
3. Embed engagement mechanisms and processes into agreements (see Section 4: Agreements)
4. Implement strategies to reduce the impact that loss of key staff might otherwise have on company/community relationships (e.g. through succession planning and by diversifying the network of relationships in the community)
5. Set up effective arrangements for resolving disputes and grievances.
5. overview

In the context of building solid, mutually beneficial relationships, it is important that:

1. Indigenous Peoples have an understanding of their rights and are informed about and comprehend the full range (short, medium and long-term) of social and environmental impacts – positive and negative – that can result from mining.
2. Any concerns that communities have about potentially negative impacts are understood and addressed by the company.
3. Traditional knowledge informs the design and implementation of mitigation strategies and is treated respectfully.
4. Indigenous aspirations are taken into account in project planning so that people have ownership of, and participate fully in decisions about, community development programs and initiatives.
5. The project has the broad, ongoing support of the community.
6. Agreements are implemented according to a governance structure that is understandable and appropriate. A dispute resolution protocol is included which enables unresolved disputes to be elevated to a higher level of company and community authority when necessary for their resolution. Periodic review of the agreement should be considered with the mutual agreement of the parties.

Additional Notes

Dealing with Competing, Overlapping and Adjoining Claims – Refer to page 44 of full guide for complete discussion.

Dealing with Disconnection – Refer to page 55 of full guide for complete discussion.

Agreements – Refer to page 52 of full guide for complete discussion.
appendix 1: international instruments relating to indigenous peoples’ rights

The main international instruments relating to Indigenous Peoples’ rights at the international level are listed below, with links to guidance documents on the practical implications of these different instruments:

The 2007 United Nations Declaration on the Rights of Indigenous Peoples:

International Labour Organization’s Convention No. 169 on Indigenous and Tribal Peoples:


The International Covenant on Civil and Political Rights:

The International Convention on the Elimination of All Forms of Racial Discrimination:
http://www.ohchr.org/EN/ProfessionalInterest/Pages/CERD.aspx

The Convention on Biological Diversity Akwé: Kon Guidelines:

The American Convention on Human Rights:
http://www.hrrc.org/docs/American_Convention/oashr.html

Inter-American Commission on Human Rights:
http://www.oas.org/en/iachr/
To improve the practical relevance of this guide, we have enlisted a review panel composed of industry, academic and social sector professionals. We thank each of these individuals for their contributions and guidance. Any errors or omissions remain our own.

Christie Stephenson, Manager, Environmental, Social and Governance Evaluations and Research, NEI Investments
Rick Killam, Independent Mining and Metals Professional (former Director, Environment and Social Responsibility, New Gold Inc.)
David Barrett, Manager, Climate Change and Sustainability Services, Ernst & Young LLP

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about NBS

A Canadian non-profit established in 2005, the Network for Business Sustainability produces authoritative resources on important sustainability issues – with the goal of changing management practice. We unite thousands of researchers and professionals worldwide who believe passionately in research-based practice and practice-based research.

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about SFU Beedie

Since the creation of Canada’s first Executive MBA in 1968, the Beedie School of Business has championed lifelong learning, productive change and the need to be innovative as it delivers research and teaching that make an impact. In particular, it has been recognized for its contributions to knowledge creation in the areas of globalization and emerging markets; innovation and technology; sustainability and governance; and capital and risk management. The school’s goal is to produce broadly educated, enterprising and socially responsible managers capable of making lasting contributions to their communities.

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