

Submission to UN Working Group on Business and Human Rights, Call for Inputs, Indigenous Peoples Free, Prior and Informed Consent, Business and Human Rights

Jubilee Australia Research Centre

30 November 2025

1. Jubilee Australia Research Centre welcomes the opportunity to provide a submission to the UN Working Group on Business and Human Rights regarding its Call for Inputs.
2. Jubilee Australia Research Centre works in partnership with civil society organisations in Papua New Guinea, Fiji, the Solomon Islands and Australia. We share our answers to the questions based on our experience working with civil society across mining and logging.

What are the most common barriers to effective FPIC processes that you have observed in your work?

3. In our work we have often observed processes that use the terminology of Free, Prior and Informed Consent – or which present as more generally seeking the consent of Indigenous Peoples – but which do not adhere to international human rights law related to FPIC under Indigenous Peoples’ rights to self-determination. This includes, for example, failing:
 - a. To respect Indigenous Peoples’ existing decision-making processes;
 - b. To have reiterative consent process throughout major stages of projects;
 - c. To have meaningful FPIC processes from the initial conceptual process of project – instead waiting until fundamental decisions are made, and failing to accept where Indigenous Peoples’ do not give their consent or ignoring any conditions they may require for consent.
4. A common barrier to effective FPIC processes that we have observed in examining extractive industry processes in Papua New Guinea, is that companies often view engagement with Indigenous Peoples as a ‘tick the box’ required for regulatory approval to go ahead, rather than using actual processes necessary for achieving Free, Prior and Informed Consent or respecting where FPIC is not given. Engagement with Indigenous peoples is often a one-way conversation, where the company presents its material, framed in a way of ‘this is what is coming’. There does not appear to be a genuine desire to engage in listening and learning from the communities’ intergenerational knowledge, including surrounding risk, their lack of desire for the project, or to genuinely discern and document consent. The priority of a company appears to be to engage with communities for the requisite amount to meet approvals, and once a project plan has been developed, that is the course that they are on.
5. In many contexts that we have observed, there is can be a conflict of interest in who is responsible for largely directing a process related to Free, Prior and Informed Consent. For example, a company that may stand to profit in millions, if not billions, of dollars from a multi-year or multi-decade extractive project – but gain nothing if FPIC is refused – may be heavily involved in driving FPIC processes. For example, this may include key responsibility for sharing information about the project with Indigenous Peoples, holding consultations, documenting consultations and submitting information to regulators.
6. Indigenous Peoples rarely, if ever, have access to financial or other resources to commission their own scientific analysis, additional research or company due diligence. Company consultations occur in villages, but there is no independent party present to document or

record the conversations, and in our experience, no written material regarding the consultations and what is documented by the company appears to be released by the mining company to civil society, or even a mutually agreed record of what occurred at the consultation being released to the community.

7. Consultations in the Pacific sometimes occur with local police presence as security for the company's team. This may discourage people from speaking freely. Such a move fails to acknowledge the challenge of local law enforcement sometimes being involved in corruption, including with illegal logging companies, and that their attendance at such a consultation, armed with guns, can be perceived as extremely intimidating to villagers, and that they feel pressured to agree and concede to whatever the company is saying to them due to this perceived threat. Similarly, there are instances of companies gifting resources to local law enforcement.
8. We are also aware of companies providing Indigenous peoples:
 - a. Extremely complex information that is not accessible, culturally appropriate or easily understood by communities;
 - b. Basic summaries in plain language or in relevant dialect but that do not provide adequate information to indicate potential risks, impacts or alternative options;
 - c. Complex information that uses science to justify a company's position, but which is based on poor scientific methodology that does not meet requisite best practice standards. However, communities are not provided resources to engage expertise and resources to independently examine, and challenge, these scientific claims;
 - d. Information that inappropriately glosses over essential details in a project plan that will affect communities, such as the route of a pipeline;
 - e. No requirement for a new FPIC process if a project plan changes. This can mean that communities may have inaccurate or incomplete information. For example, this can include communities who will be grievously affected being excluded from discussions regarding compensation and remuneration being unaware that they will be affected by the project;
 - f. Misrepresentations or fraudulent claims that suggest that an Indigenous community provides consent, when they do not, or which seeks to minimise or invalidate their concerns.
9. In the case of the proposed Papua LNG project in Papua New Guinea, we have been unable to find any community information materials that clearly explain to communities the project, its risks, impacts or community rights under international law or standards. This also leaves Indigenous Peoples themselves without a copy of the claims that have been made to them about a project, its risks or benefits, its impacts, their options or their rights. (The project first submitted its Upstream Environmental Impact Statement over half a decade ago). It is impossible for independent experts to assess what information has been provided, and if it is accurate or not. This is a project that will involve hazardous chemicals and will take place in a project area with 100 new-to-external science or undescribed by external science species and 27 IUCN threatened terrestrial species. It takes place in an area with an estimated 12,700 Indigenous Peoples. As the project is led by a French company, communities may have rights under the French Duty of Vigilance law and the EU Corporate Sustainability Due Diligence Directive – but these have never been explained (including any relationship with FPIC). Nor have their rights under applicable standards such as the OECD Guidelines on Multinational Enterprises or the Equator Principles. Additionally, the project

proponents collectively face over 200 allegations in the Business and Human Rights Resource Centre database – but these risks are not communicated to communities, despite being vital to how they assess the reliability of information provided by companies. Additionally, the project has communicated to communities that it is a “landmark” project in terms of climate and biodiversity – yet it is not disclosed that the company has had findings by courts or advertising regulators in France, Germany, the UK and South Africa that it has made misleading climate or sustainability claims. It is a profoundly concerning case study highlighting why strong vigilance is needed on the “informed” aspects that underlying FPIC.

10. Some projects are also proceeding while failing to even document FPIC processes. In the case of a complaint made to the Australian National Contact Point for Responsible Business Conduct, asserting a lack of FPIC for a project in Papua New Guinea and multiple breaches of the OECD Guidelines for Multinational Enterprises. The Final Statement issued by an AusNCP Independent Examiner found multiple inconsistencies with the Guidelines, and further recommended that as per the IFC standard, that consent should be documented in writing. Prior to this, the companies were asserting that consent was provided verbally, but provided no evidence to substantiate this claim.
11. Jubilee are also aware of rumours where an attendance sheet at a community meeting in Papua New Guinea has subsequently been misappropriated by companies to claim that it is a document asserting consent.
12. We also wish to highlight that companies can engage in strategies that undermine FPIC, by engaging with communities by offering a ‘carrot’ in the form of inducements. These may be minor improvements to communities for which they are desperate, such as lights, funding a school or church, educational assistance, medical equipment or training, free food, or developing a new venture such as cocoa farming. These carrots can act as inducements to encourage false trust, and encourage communities to sign away their land believing that their needs will be looked after. A common tactic can also be to ‘divide and conquer’ – provide ‘carrots’ to communities or even to individuals who support a project going ahead, and refusing to or omitting to provide these incentives to communities or individuals who do not provide support to the project. This speaks to several systemic issues. Firstly, without independent oversight, there may be confusion as to whether companies are offering “gifts” to communities or whether they are obligated to meet any conditions required by Indigenous Peoples in order to ascertain their Free, Prior and Informed Consent. Secondly, Indigenous Peoples rarely have access to information about a company’s actions and activities elsewhere. This makes it difficult to discern if there is a pattern of behaviour in how companies operate. For example, if they may provide various donations or gifts while trying to seek community support for projects – yet fail to meet agreed commitments once a project is underway.
13. Another challenge in securing FPIC is corruption. For example, we are aware in some Pacific nations, the head of an area may be bribed, and then they may issue a claim of consent over a swathe of territory, despite a large number of community members not having consented to the project. Although it is readily apparent that a legitimate process of Free, Prior and Informed Consent has not occurred, corrupt claims may be treated as legitimate.
14. We believe that we have heard of experiences where communities have said that they do not consent, but then it has been represented by companies that communities did in fact consent. This may constitute misleading and deceptive conduct.

Are there specific sectors where FPIC violations and abuses are particularly common?

15. Extractive sectors, such as mining, fossil gas and logging, are particularly common for FPIC violations and abuses. In these sectors, companies stand to gain millions, if not billions, in revenue; a necessary precondition to this is obtaining Indigenous peoples land and resources.

What role can civil society and multilateral institutions play in strengthening FPIC safeguards in business operations?

16. Further investment is needed in supporting, and resourcing, Indigenous-led approaches to development, particularly economic development. This should support Indigenous Peoples to design, and enact, their own priorities for economic development. Genuine Free, Prior and Informed Consent is more likely to occur when Indigenous Peoples are themselves leading development processes and themselves engaging business partnerships, rather than processes which are led by corporations.
17. Further support and resourcing is needed to support Indigenous Peoples – particularly in areas that may be targeted for the extractive industries – to develop their own FPIC protocols or similar. Where Indigenous Peoples requirements for meaningful company engagement and processes necessary for FPIC are clearly articulated, it will be harder for FPIC violations to occur. Too often, corporations require Indigenous Peoples to meet their timelines, processes and protocols rather than working within pre-existing community-level processes which are mutually understood by community members, including the most marginalised peoples.
Where Indigenous Peoples already have public statements that say which industries they will not support – and potentially which they may welcome – this will also make it harder for companies in industries that Indigenous Peoples may not support, to further projects that do not have genuine FPIC.
18. At present, Australian parent companies are not held adequately liable for the actions of their company group subsidiaries overseas. This includes in cases where parent companies are often the direct managers of these projects and have control over major decisions. Jubilee has been involved in two complaints to the Australian National Contact Point for Responsible Business Conduct, asserting concerns regarding a lack of FPIC in both complaints. However, we have found that these National Contact Point complaints are not binding, and are reluctant to make findings on issues that are perceived as being issues best brought before the PNG Courts. We have found that using the National Contact Point process has limitations when it comes to FPIC. As a result, we have serious concerns that Australian company groups are able to gain, and retain, proceeds arising from human rights violations of Indigenous Peoples rights – as some projects would not proceed, or not proceed in their current format, if FPIC was respected.
19. One of the Final Statements reiterated that documentation of FPIC must be in writing as per the IFC Standard. (Although noting, that the IFC Performance Standard uses the language of FPIC but does not accord with the international human rights law related to FPIC). We believe that any claim of Free, Prior and Informed Consent – that is not documented in writing or via technology such as video – should be treated as illegitimate.

20. Frequently, we see companies claim to consult with communities, but without producing an mutually agreed record (either written or otherwise) of what was discussed at the consultation to the community.

How effective are existing grievance and remedy mechanisms in addressing FPIC violations and abuses?

21. We have found a reluctance on the part of the Australian National Contact Point to make strong findings regarding FPIC. We believe that all National Contact Points should be mandated to disclose their Final Statements to the market or relevant stock exchange for consideration, and that disclosure of NCP Statements should be more readily fused within domestic disclosure laws as well as the disclosure laws of countries in which parent companies are domiciled.
22. In corporations law and others, there are few, if any, available legal remedies to hold companies to account for FPIC violations or other human rights violations more broadly. Without clear legal requirements, corporations often view themselves as the ultimate assessors of whether FPIC is met or not. Even mechanisms such as the OECD Guidelines have no enforcement mechanisms. Further, even where there are legal mechanisms that may partially allow Indigenous Peoples to defend their rights – there are often barriers to this. To date, there is only one case – anywhere in the world – where a commercial bank has provided the gross profits it made from a problematic loan back to affected peoples. So long as financial institutions can keep the profits they may make linked to FPIC violations, with no viable prospect of legal or financial penalty, they are likely to continue financing corporations linked to concerning human rights allegations.

How can multi-stakeholder initiatives, financial institutions, or trade bodies contribute to ensuring meaningful implementation of FPIC?

23. There needs to be additional mechanisms for communities to be able to raise their voice regarding the lack of FPIC to financial institutions who fund projects, and enforceable actions that can be taken.
24. At present, a company can seek to develop a project and secure finance, and communities are unaware as to who the financiers may be, or who they may be able to complain to. It should be a requirement that there be earlier publication of the financiers for a project, even when it has not yet been approved for an Environmental Permit. Financial institutions may have human rights policies, or similar, which state that they require or support Free, Prior and Informed Consent or the UN Guiding Principles on Business and Human Rights. Yet they continually deny Indigenous Peoples the means to access their rights under those policies, by denying them information about if they are financing a company operating in, or intending to operate in, their local area. Many commercial financial institutions refuse to write basic disclosures into their standard loan agreements and client onboarding. This would enable them to publicly disclose their large high-risk clients in high-risk sectors. Similarly, even in enacting project-name disclosures – a standard adopted by the Equator Principles since 2013 – many banks may still finance a project that does not agree to have its associated with the financial institution publicly recognised. This means that Indigenous Peoples are unable to alert a financial institution to rights violations, and financial institutions effectively prevent Indigenous Peoples from asserting their rights under the UNGPs where a financial institution has caused, contributed or been linked via its business relationships to human rights violations of Indigenous Peoples' rights.

25. We would also welcome initiatives taking action on financial institutions that face repeated and persistent claims of failing to respect human rights, including Indigenous Peoples rights. For example, Japanese bank MUFG faces at least three formal human rights complaints – including two complaints alleging FPIC violations – that it has failed to substantially respond to. It is also reported to be the financial advisor for the Papua LNG project – which holds very serious human rights, climate and biodiversity concerns. Yet initiatives such as the Equator Principles continue to allow MUFG to hold leadership roles on its Steering Committee and as its “Capacity Building and Training” lead. A financial institution that is facing multiple campaigns, and even formal complaints, should not be entrusted to leadership roles. Additionally, it would be welcome for multilateral institutions that partner with the Equator Principles – such as the International Finance Corporations – to also raise this point with the Equator Principles.
26. We would also welcome financial institutions themselves adopting meaningful measures to meet their own human rights obligations under the UNGPs. This should include: 1) Publishing a grievance list. While a small, but growing, number of financial institutions are adopting grievance mechanisms – a key lesson learned from other initiatives is that it is important for the specific grievances themselves to be listed. This could take the form adopted by institutions such as the World Bank. 2) Adopt meaningful company-name or project-name disclosure. So long as Indigenous Peoples are denied information about a financial institutions’ links to companies or projects in their area, a financial institutions’ policy on FPIC or human rights more broadly will have limited efficacy. 3) Advocate for meaningful human rights law obligations for companies, including financial institutions. We would particularly welcome this in Australia and the Pacific, but also note that an end to carve outs for financial institutions in legislation such as the EU Corporate Sustainability Due Diligence Directive would also set a welcome precedent.

What do you consider as important roles and contributions of UN agencies and civil society-- academia, NGOs NHRI, etc in the promotion and proper implementation of FPIC for Indigenous Peoples?

27. Essentially, we believe that these agents can play a role in the great need for significantly increased promotion of the importance of FPIC, and what it genuinely looks like. These agents can also be seeking that FPIC to be made more enforceable, including within international mechanisms such as finance for large scale projects, and this including reference to export credit agencies.
28. An important and practical aspect is ensuring that communities and civil society are equipped with the tools (including technical knowledge or equipment) to know how to document and monitor consultations that occur in their community. Civil society can act as an important monitor of consultations and the lack of consent, but further action is required in this area so that communities are adequately equipped and also confident of their right to monitor such consultations, to demand that copies of the consultation be required in writing, and to also emphasise in incidents that they do not give consent, and for that to be respected.
29. We would welcome greater due diligence from UN agencies in their own private sector initiatives. For example, the UN Environment Programme Finance Initiative has repeatedly featured MUFG as a speaker at its global and regional events. This inadvertently undermines the efforts of Indigenous Peoples, and others, to urge MUFG to act on complaints that relate

to Free, Prior and Informed Consent. Similarly, UN co-founded initiatives have appointed financial institutions that have been subject to UN Special Procedures communications related to human rights and environmental issues to leadership positions in co-founded initiatives. Many actors would naturally assume that a UN initiative or event would undertake due diligence – and this can create further confusion as to whether a financial institution is, or is not, respecting human rights. For example, we note that UBS serves on the UNEP and UNDP co-founded Taskforce on Nature-related Financial Disclosures – yet it has failed to rule out financing to the Papua LNG project, despite it taking place in a project area with 100 new-to-external science or undescribed by external science species and 27 IUCN threatened terrestrial species – in an area where many Indigenous Peoples rely on land and water-based livelihoods, and have important cultural connections to nature. The UN can, and should, play an important role in modelling and promoting best practice. For Indigenous Peoples impacted by fossil fuels in particular, greater UN policy coherence would also help to reinforce, rather than undermine, statements by the UN Secretary General and Special Rapporteurs on the fossil fuel industry, including financing.

30. As an Australian organisation, we would also encourage the UN to take a more active role in promoting and articulating international Indigenous Peoples rights frameworks and international human rights law within Australia. This would help to promote greater awareness of the shortcomings on Indigenous Peoples rights within Australian law, and the practices of Australian company groups at home and overseas, and help to build greater support for incorporating international human rights law norms in Australian law and practices. This could also be an opportunity for Australia to learn from best practice overseas.