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Submission to the United Nations Working Group on Business and Human Rights on the implementation by States and businesses of FPIC requirements in the context of business activities with Indigenous Peoples.

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To: Members of the Working Group on Business and Human Rights

We extend our gratitude for the opportunity to provide input on the implementation of the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) and, in particular, the principle of Free, Prior, and Informed Consent (FPIC) within State relations as well as business practices. Our submission will be addressing the inadequate implementation of UNDRIP and FPIC within Canada and the province of Ontario.

Executive Summary

FPIC is consistently undermined in State and business contexts. Dominant legal, policy, and corporate frameworks rooted in historically colonial policies treat Indigenous Nations as stakeholders to be consulted, rather than as self-determining Peoples and rights-holders entitled to withhold or give consent. This colonial framing is embedded in laws, regulatory practices, corporate risk-management cultures, and financial/investment incentives. Even where international instruments such as UNDRIP have been recognized, domestic adoption of FPIC is often partial, siloed, or subordinated to other laws. To close the implementation gap, FPIC must be operationalized as a rights-based, Nation-to-Nation process embedded in law, in human rights due diligence (HRDD), in corporate governance and finance. FPIC must be supported by robust, culturally-grounded monitoring, evaluation, grievance, and remedy mechanisms.

Core Issues

Two interconnected systemic issues sit at the foundation of the persistent failure to implement FPIC in state and business contexts.

First: Indigenous Peoples are rights-holders with inherent jurisdiction and governance authority to make binding decisions in relation to the responsibilities they hold for lands, waters, and knowledge systems. Yet, there remains a profound and enduring lack of recognition — embedded in legislation, regulatory frameworks, and corporate practice — that sustains the belief that "consent" is optional, negotiable, or subordinate to State or commercial interests.

Second, even where rights are nominally acknowledged in law or policy, there is a near-total absence of accountability mechanisms to uphold those rights. Current "consultation" models

should include clear definitions, standards, and enforcement; however, they function only as procedural checkboxes rather than rights-based processes. Without meaningful accountability, consultation becomes a tool that merely simulates engagement while allowing States and businesses to proceed regardless of Indigenous decisions. These two tiers, a) the ongoing refusal to recognize Indigenous authority and b) the failure to hold duty-bearers accountable, frame every barrier, violation, and implementation gap that follows in this submission.

State of Implementation within Canada and Ontario

The implementation of FPIC in business contexts must be consistent and meaningful, rather than irregular and superficial. Across jurisdictions, many State and businesses activities continue to treat FPIC as synonymous with "consultation," which limits it to information-sharing or one-way engagement rather than recognizing it as an authoritative decision-making process grounded in Indigenous jurisdiction.

Even where domestic law in Canada nominally acknowledges Indigenous rights, FPIC is routinely subordinated to competing statutory priorities—particularly resource development, land access, and provincial authority. Canada's nominal acknowledgement of Indigenous rights permits projects to proceed with limited or conditional accommodation rather than consent. In Ontario, this structural gap is especially visible: provincial legislation does not include consent requirements, only undefined "consultation" obligations, resulting in practices that do not recognize Indigenous Peoples as equals or rights-holders with inherent authority. Recent examples include the rushed implementation of legislation such as the ***Protect Ontario by Unleashing our Economy Act, 2025 (Bill 5)*****,** in which the provincial government considered dropping large information binders off in First Nation communities to constitute adequate consultation—demonstrating a process more concerned with procedural defensibility than with meaningful engagement or respect for Indigenous decision-making.

The same dynamic appears in research and data governance contexts. Although institutions frequently claim alignment with the First Nations Information Governance Centre's Principles of OCAP® (Ownership, Control, Access and Possession) **many Nations remain unaware of how many of these institutions have extracted their community data from systems of harm and used this data to publish research that profits outsiders while reinforcing colonial narratives**. These harms occur alongside occasional pockets of good practice—co-developed agreements, co-management arrangements, or benefit-sharing tied to Nation laws—but such examples remain the exception rather than the norm, underscoring the systemic failure to recognize and uphold FPIC as a fundamental right rather than a procedural formality.

Barriers to Effective FPIC Processes

The most persistent barriers to effective FPIC implementation that we have observed stem from deeply rooted structural and relational inequities. Colonial legal frameworks continue to fragment Indigenous rights across competing statutes, including environmental, mining, land tenure, and resource laws, none of which are read or applied alongside Indigenous rights instruments, creating predictable loopholes that undermine FPIC. A broader denial of Indigenous sovereignty further undermines FPIC, treating Nations as consultees rather than rights-holders with jurisdiction over lands, knowledge systems, and decision-making processes.

Within this landscape, corporate incentives are shaped by risk mitigation—legal, financial, and reputational—rather than by any commitment to empowering Indigenous authority.

Procurement and investment structures prioritize timelines and return on investment over relational, rights-based processes. **Meaningful engagement is further constrained by chronic under-resourcing: States and businesses frequently fail to provide the time, translation, legal support, or technical capacity necessary for Nations to assess proposals or exercise their decision-making rights fully.** For engagement with Indigenous peoples to be meaningful, information distribution must be balanced. The Indigenous Nation, rather than the project proponent, must control the timeline, and the Nation must have hands-on accessible access and contribution to technical assessments. Impact framing must be culturally grounded.

Project proponents routinely use tokenistic practices, such as brief meetings, document drops, or signature-gathering exercises, to create the appearance of legitimacy without obtaining informed consent. These failures exacerbate the widespread disregard for Indigenous laws, governance structures, and internal consent protocols, which are rarely recognized as binding by States or corporations. When harms occur, enforcement and remedy mechanisms remain weak, slow, or inaccessible. In many regions, Indigenous human rights defenders face intimidation, criminalization, or violence, creating a chilling effect that further suppresses the meaningful exercise of FPIC and the assertion of inherent rights.

Alongside these systemic barriers, barriers to access also limit participation. Consultation materials are often overly technical and rarely translated or adapted to local knowledge systems. Without material support to attend meetings or clear follow-through, trust erodes, and Nations struggle to engage fully, even when consultation is formally offered.

FPIC Violations and Abuses Within Specific Sector

Across sectors, **FPIC violations are most common where high capital intensity, long project timelines, and strong State–Corporate interests converge**. Extractive industries, including mining, oil, and gas, remain the most consistent sites of failure. In Canada and Ontario, legislative regimes such as the provincial ***Protect Ontario by Unleashing Our Economy Act, 2025*** **(Bill 5)** and the federal ***One Canadian Economy Act, 2025*** **(Bill C-5)** enable resource development without requiring FPIC, relying instead on regulatory exemptions framed as serving the 'national best interest' to authorize projects in the absence of Indigenous agreement. This illustrates how, despite UNDRIP's adoption, both Canadian and Ontario legal systems continue to prioritize state and industry interests through discretionary powers that routinely bypass FPIC and sideline Indigenous decision-making authority.

Recent events illustrate these violations clearly: at a major critical minerals conference organized by Energy and Mines in Ontario in November 2025, senior government officials and mining executives convened to discuss "Indigenous-led infrastructure," "opportunities for Indigenous leadership," and "shared benefits," and yet almost all directly affected First Nations

were excluded from the room entirely.[1] These discussions were framed as forward-looking and collaborative while systematically omitting the very Nations whose lands, rights, and well-being are at stake. Additionally, some of the businesses involved in these projects use one arm to advance non-consensual development on Indigenous lands while the other promotes commitments to supporting Indigenous Nations with asserting their rights. This contradictory behaviour from corporate entities prompts unavoidable questions about whether profit is valued over principle.

Large-scale infrastructure projects such as dams, roads, transmission lines, and pipelines replicate these patterns by invoking national or regional "public interest" to compress engagement timelines or override Indigenous decision-making. They also go hand in hand with extractive businesses as means of accessing remote areas for extraction. These **patterns extend beyond land-based industries into sectors rarely named in FPIC discussions, such as health and child and family services, where the extraction of Indigenous children's data by provincial governments, research bodies, and child welfare systems occurs without FPIC, transparency, or shared governance**. In these contexts, State actors routinely rely on statutory authority to justify taking, analyzing, and publishing data about Indigenous children and families, which treats legal power as more legitimate than Indigenous Peoples' inherent right to steward the stories and information of their own Nations.

Across all of these sectors, the **common denominator remains the same: concentrated capital, political pressure, and powerful institutional interests create strong incentives to sideline Indigenous jurisdiction, resulting in systematic FPIC violations masked as engagement, consultation, or compliance**.

Positive Examples of FPIC Processes Implementation

Across Canada, there are emerging positive examples of Indigenous Peoples not merely being consulted but meaningfully integrated as decision-makers and partners, fundamentally shifting relationships from extractive to collaborative. These approaches demonstrate that **when Indigenous Nations have a genuine seat at the table—shaping project design, governance structures, and long-term benefit arrangements—the outcome is not only greater rights alignment, but also greater shared prosperity.** In several regions, community-driven models in the health and social services sectors illustrate how co-governance improves outcomes for both Indigenous and non-Indigenous partners.

Locally, the partnership between Moose Cree First Nation and Agnico Eagle, the operator of the Detour Lake Mine on Moose Cree homelands, stands out as a positive example. Rather than approaching the Nation as a stakeholder to be informed, Agnico Eagle has built a long-term relationship rooted in partnership, ongoing dialogue, and mutual accountability. This has generated tangible benefits through employment, investment, and sustained support for community wellbeing, including initiatives like post-majority housing for youth aging out of care.[2]

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[1] Marten Falls First Nation's Chief Bruce Achnneepineskum. (2025, November 19). *Good morning, I am not at critical minerals conference this morning.* [Post]. Facebook. https://www.facebook.com/photo?fbid=1222299250702633 50&set=a.122105947442263350

[2] Chubak, L. (2025, November 14). Moose Cree First Nation and Agnico Eagle partner to support young adults. *CTV News Northern Ontario*. Retrieved from https://www.ctvnews.ca/northern-ontario/article/moose-cree-first-nation-and-agnico-eagle-partner-to-support-young-adults/

While not perfect, these examples demonstrate that FPIC-aligned practices—grounded in partnership rather than procedure—can produce outcomes that honour Indigenous jurisdiction, strengthen community health, and create stability and legitimacy for business operations.

The Role of Civil Society, Multilateral Institutions,Financial Institutions, the UN, Human Rights Institutions, or Other Oversight Bodies in Strengthening FPIC Safeguards

A meaningful shift toward rights-respecting, relational approaches requires coordinated action across multiple fronts. **Indigenous Peoples must be supported through sustained capacity-building and access to independent, community-grounded, and culturally aligned expertise**. The corporate consultant model, in which one arm profits from "supporting" Indigenous Peoples while another simultaneously advances projects, undermines Indigenous rights. True expertise must come from those who understand the community's laws, values, governance, and lived realities, and who are accountable to the people rather than to corporate interests.

Equally important is the development of practical standards and guidance that operationalise consent, not consultation. Accountability must be strengthened through independent monitoring initiatives, public reporting platforms, and domestic or regional peer-review mechanisms that track whether commitments are being upheld. This work is reinforced by advocacy and strategic litigation support that enables Indigenous Peoples to pursue remedies and set precedents when rights are ignored.

The practical standards include: model contractual language, clear checklist frameworks, and sector-specific templates that translate principles into everyday practice.

Funding bodies also have a critical role: donor and development finance mechanisms should require FPIC-compliant processes as a condition of investment. Underlying all of this is the **need to return to values-based decision making, choices grounded in relational responsibility, reciprocity, and long-term accountability,** rather than narrow calculations of legal liability, financial gain, or risk mitigation. Ultimately, this is about addressing not only structural gaps, but the deeper social norms that allowed extractive behaviour to become acceptable. **We must replace these extractive norms with practices that honour Indigenous stewardship and shared wellbeing**.

Processes to Better Incorporate FPIC in Human Rights Due Diligence

Human rights due diligence (HRDD) must recognize FPIC as a fundamental procedural right, not a stakeholder-management exercise or item to be checked off. This requires integrating Indigenous laws, governance systems, and decision-making protocols as binding inputs into project scoping, risk assessment, and final decisions.

- ➔ Government and corporate partners must treat Indigenous Peoples' authority as equally legitimate to state or corporate systems.

- ➔ HRDD must begin before project design, well before the close of financial plans.
- ➔ HRDD must operate as an iterative, transparent process conducted jointly with Indigenous Peoples rather than imposed on them.
- ➔ HRDD should include independent technical reviews and guaranteed funding for Indigenous-led assessments, ensuring communities can evaluate impacts on their own terms. Decision points tied directly to consent outcomes must be built into the process—advance, pause, rescope, or stop—and these must be backed by enforceable contracts and finance covenants.
- ➔ Finally, HRDD disclosures must be meaningful and public, including engagement records, Indigenous-defined expectations, mitigation plans, and the actual status of consent, so that transparency becomes a tool for accountability rather than a performative gesture.

Risks of Tokenism, Manipulation, or Misrepresentation in FPIC Processes

FPIC processes face significant risks. These risks include short, procedural consultations, the use of paid “community liaisons” who do not reflect legitimate Indigenous Peoples’ decision-making, information asymmetry, manipulation through divide-and-conquer tactics, and pseudo-consent obtained via conditional offers.

Several measures to mitigate risks in FPIC:

- ➔ **recognizing and requiring adherence to Indigenous Peoples’ protocols, including clear identification of who has authority to speak, decision-making bodies, and consensus processes;**
- ➔ **implementing independent verification and third-party monitoring of FPIC processes, selected cooperatively by Indigenous People.**

Establish transparency obligations through documentation of meetings, shared materials, decision timelines, and independent oversight. Sufficient resourcing and realistic timelines are essential for meaningful engagement and decision-making. The party seeking consent should hold the financial responsibility to create the conditions in which “free, prior, and informed” can be meaningfully met as defined by the Indigenous People from whom consent is sought. Finally, sanctions and contract triggers should be embedded to respond to misrepresentation, coercion, or procedural abuse. Employed together, these measures will help ensure FPIC is conducted in good faith, respects Indigenous authority, and results in accountable, rights-based outcomes.

Community-led FPIC committees that include Elders, youth, and advisors will mitigate tokenism. These groups can help ensure that information is shared in ways that reflect local values and learning styles, and that consent is ongoing.

Conclusion

Until the colonial assumption that States and businesses have the default right to decide about Indigenous lands, knowledge, and resources is challenged and removed from legal, regulatory, corporate, and financial practice, FPIC will remain an underused formality. Meaningful

implementation requires legal recognition of Indigenous jurisdiction, adequate resource provision to enable Indigenous People to exercise consent, binding Human Rights Due Diligence (HRDD), and finance covenants that respect Indigenous Peoples' decisions, independent verification, and real, enforceable remedies. **The UN and its Member States are positioned to catalyze that structural shift by insisting that Free, Prior, and Informed Consent (FPIC) be treated as a binding rights-based standard, and by providing operational support for Indigenous-led processes.**

We thank you for your time, and we remain available for further dialogue or collaboration.

Sincerely,

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