



RECHARGING COMMUNITY CONSENT

MINING COMPANIES, BATTERY MINERALS
AND THE BATTLE TO BREAK FROM THE PAST



OXFAM

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ABBREVIATIONS

EITI	Extractive Industries Transparency Initiative
EU	European Union
FPIC	Free, prior, and informed consent
HRIA	Human rights impact assessments
ICMM	International Council on Mining and Metals
IEA	International Energy Agency
IFC	International Finance Corporation
ILO	International Labor Organization
IRMA	Initiative for Responsible Mining Assurance
SLAPP	Strategic lawsuit against public participation
UNDRIP	United Nations Declaration on the Rights of Indigenous Peoples
UNGP	United Nations Guiding Principles on Business and Human Rights

EXECUTIVE SUMMARY

Decarbonizing our global economy and transitioning to renewable power is urgently needed if we are to avert climate catastrophe. Rechargeable batteries provide an essential technology that will unlock this transformation. Unsurprisingly, demand for minerals used in these batteries—including cobalt, copper, graphite, lithium, and nickel—is surging. And while large-scale mining has the potential to provide economic benefits in the form of taxes and jobs, the sector remains linked to major human rights abuses, gender-based violence, environmental harm, corruption, and political capture.

Recent global studies with large data sets of mining projects have found that an estimated 50 to 80 percent of transition minerals are located on or near the lands of Indigenous peoples—putting them at unique risks as the mining sector expands to meet decarbonization goals.² For Indigenous peoples, free, prior, and informed consent (FPIC) is a human right guaranteed under international law. It safeguards the protection and realization of their collective autonomies, resilience, and right to self-determination. FPIC is a collective decision-making process that ensures Indigenous peoples have a say in whether and how mining moves forward.³

The safeguard provided by the principles of FPIC is increasingly interpreted as a best practice standard for affected local communities who do not fit the international legal definitions of rights-holding Indigenous peoples. Many land-connected or frontline communities share similar socioeconomic and political characteristics and long-standing customary connections to land. This is especially the case across the African continent, where courts are finding that the right to give or withhold consent exists in many customary law systems.⁴ In this way, the principles of FPIC represent a best practice for a just transition and sustainable development, and a crucial project safeguard that can increase the legitimacy of a project in the eyes of all rights holders and reduce the risk of social conflict. For this reason, it is one of the most important legal rights and safeguards for protecting human rights and fighting inequality.

Oxfam defines FPIC as the principle that Indigenous peoples and local communities must be adequately informed about projects that affect their lands in a timely manner that is free of coercion and manipulation. As part of this, they should be given the opportunity to approve (or reject) a project prior to the commencement of all activities, using a collective decision-making process they themselves select. More and more communities are articulating their own decision-making protocols that should be respected by governments and companies alike.

With mining set to expand as part of the sweeping energy transition, it is imperative that future mining only proceed under these conditions. In doing so, mining will contribute to changing the underlying structural factors that contribute to gender and racial inequalities. In pursuing a more just energy transition, grounded in FPIC, mining companies can break free from a history of violence and abuse that has undermined Indigenous communities and companies' own bottom lines.

Methodology

This policy brief examines the publicly available policies of 43 companies engaged in the exploration and production of five minerals used in rechargeable lithium-ion batteries: cobalt, nickel, lithium, graphite, and copper. It is the first policy brief of its kind to focus on companies extracting these transition minerals.

“The volume of extraction is not a given but a result of political and economic choices.”¹

The primary focus in this research is on the corporate policies or public commitments of the selected mining companies in terms of community consultation and consent processes. Oxfam has developed a spectrum of community engagement, and we advocate for all companies to make deliberate progress towards FPIC.⁵ Each company is ranked in terms of the extent to which their individual policies are consistent with the normative basis of FPIC.

We examine several intersecting policy issues. First, policies are analyzed to understand how each company approaches human rights and environmental due diligence. Second, we evaluate policies to understand how each company addresses gender power relations in the design and implementation of their community engagement processes and how they design their operations to mitigate gender discrimination. Finally, we rank companies in terms of their policy commitments to protect human rights and environmental defenders.

Key findings

Our research concludes that the battery mineral sector's approach to FPIC is not sufficiently ready to support a just energy transition under current company policies. While many—though certainly not all—of the studied companies have policies recognizing a commitment to respect the rights of Indigenous peoples and human rights defenders, and to support gender equity, these policies frequently suffer from limitations.

We recognize how positive it is that more than half the companies surveyed have human rights policies that commit them to embed human rights due diligence in their governance and operations. Nevertheless, fewer companies have policy commitments specific to preventing and mitigating impacts on Indigenous peoples' rights. And those that do often qualify their commitment to respect FPIC—leaving open the possibility that if consent is ultimately not provided, the company will simply move forward if the government authorizes it.

A clear and unambiguous policy commitment to respect FPIC is the first step for a company to show it has an effective management system in place to prevent or mitigate potential impacts on the rights of Indigenous peoples affected by their operations. Far too few companies have internal operational guidance for how they implement their commitments at the mine site. Only a handful of companies that do have operational guidance disclose that guidance publicly. Even fewer companies disclose independent audits of their social and environmental performance, including on FPIC.

And while a surprising number of companies do have gender equity policies, these policy commitments focus almost entirely on tackling gender discrimination within the workforce and overlook the gendered impacts on affected communities

that can stem from companies' operations. Mainstreaming gender within community engagement and consent processes is urgently needed. While eight companies have explicit commitments regarding human rights defenders, public operational guidance is needed to ensure defenders are protected if retaliation occurs.

We identify several weak links to explain these conclusions. First, across all the minerals we assessed, the public commitments of smaller or junior companies are falling short of international norms and societal expectations, suggesting that FPIC is still not seen as a priority by boards, CEOs, or investors in these companies. Investment in community consent needs to start at the earliest stages of projects, and companies involved in exploration have a critical role to play in ensuring any mining for clean energy infrastructures is rights-respecting. Building trust with affected communities and implementing consultation, consent, and benefit-sharing processes take time. Yet, as projects move from exploration through project financing and construction phases, unless community consent has been prioritized and adequately resourced, the incentives for all actors to move quickly to completion and production often lead them to overlook or sideline trust-building and land rights concerns.⁶ The absence of consent at the earliest stage of project development creates material financial risks for companies and investors down the line.

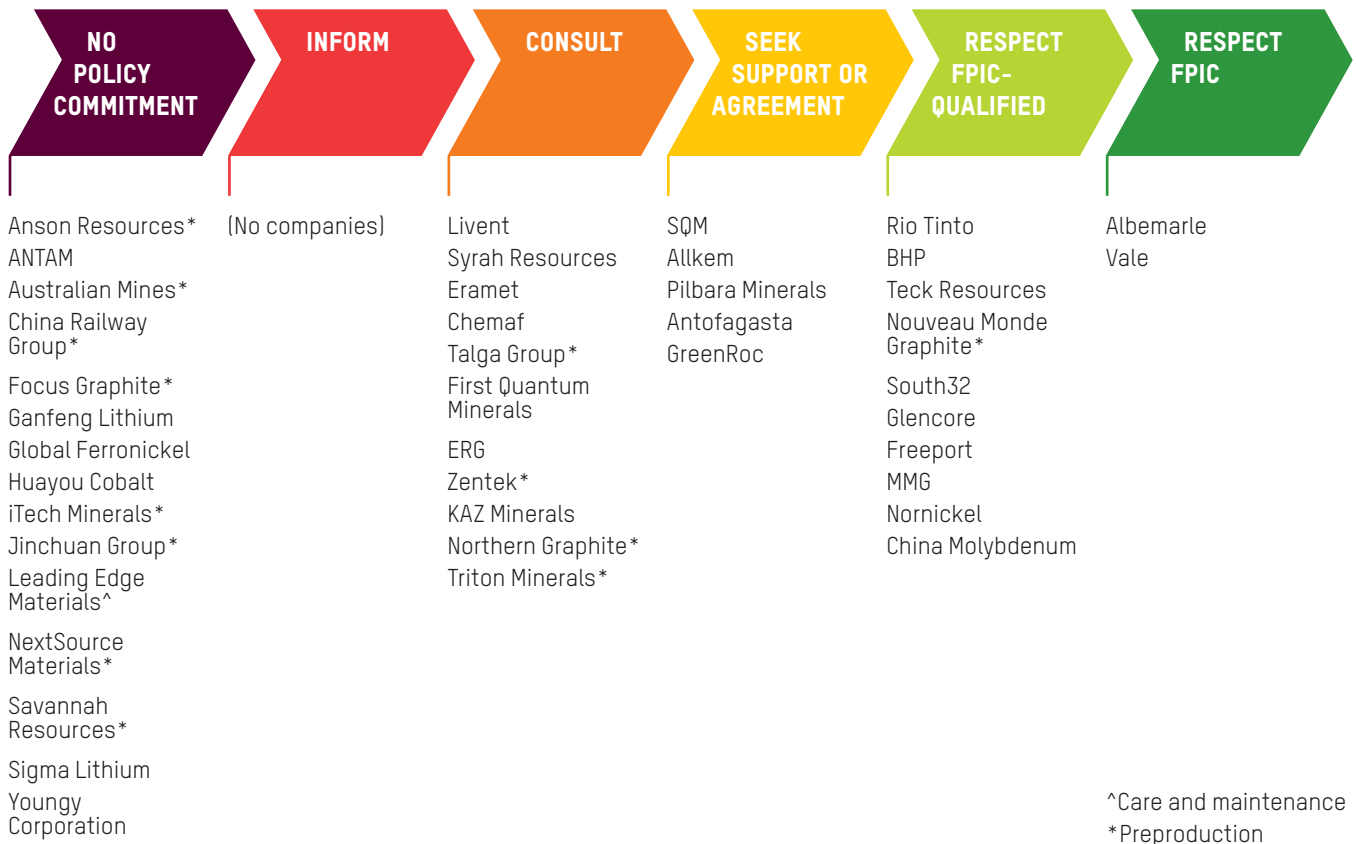
Second, companies operating in the cobalt and graphite sectors are lagging other sectors we surveyed, even though there are some companies producing these minerals with strong policy commitments. Across all the minerals assessed, company policies often seem most focused on ensuring alignment with the domestic laws in the countries where they operate and not necessarily with ensuring they meet or exceed international human rights norms and standards. Major lithium producers need to be recognized as being some of the first to undertake credible, third-party assurance of their social and environmental performance, including FPIC implementation, in accordance with the Initiative for Responsible Mining Assurance (IRMA). Finally, there is significant variation in the quality of policy commitments among nickel producers.

Taken all together, these findings indicate that end users looking to produce or use responsibly sourced batteries will struggle to do so. Greater focus is needed from investors and regulators to create the conditions for mining companies to go beyond minimum legal requirements in national laws.

Recommendations

Structural reform of the mining sector is needed. Specifically, Indigenous peoples must have the power to control if and how mining occurs on their lands. Our study highlights that there are still gaps in the public FPIC commitments of mining companies supplying clean energy technologies, with companies aligning

BATTERY MINING COMPANY PUBLIC POLICY COMMITMENTS REGARDING FPIC ARE FALLING SHORT OF GLOBAL NORMS.



their policies with domestic laws in the countries where they operate. More companies need to adopt strong FPIC policies that meet international human rights standards and unequivocally commit them to not proceed with a project if they do not receive community consent. Clear and unequivocal public commitments to FPIC help communicate expectations with all stakeholders, including governments, which have the primary duty to operationalize key international human rights instruments, including the UN Declaration on the Rights of Indigenous Peoples (UNDRIP). Projects have been suspended after courts have found governments failed to respect their human rights obligations—with massive financial cost to companies that blindly relied on the government approval.⁷

Companies also must make sure they have the appropriate operational guidance, internal systems, and resourcing in place to ensure human rights due diligence, accessible and effective grievance mechanisms, gender-responsive FPIC, and protection for human rights defenders. Mining companies should provide evidence of the quality and outcomes of the consultation and FPIC processes they undertake and commit

to participate in credible third-party assurance processes like IRMA. Governments and industry associations should also support these standards.

Companies that demonstrate that their operations and products are developed with the support and consent of the communities where they operate will have a huge competitive edge. Buyers and car manufacturers, along with technology, mass transit, and renewable energy companies, all want to be able to show that their supply chains fully respect the rights of those communities where the mines are located. And consumer countries want confidence that their supplies of raw minerals will not be interrupted because mines have failed to protect community rights. Global climate action cannot be used to justify further harm and human rights abuses of Indigenous and local communities across the globe. Policy priority must be given to finding and funding solutions to minimize the need to mine raw minerals—and then ensuring that what mining is still needed is conducted in a sustainable, just, equitable, and rights-respecting way.

1. INTRODUCTION

Decarbonizing our global economy and transitioning to renewable power are urgently needed if we are to avert climate catastrophe.⁸ Rechargeable batteries are a technology that will unlock this transformation, helping electrify trucks, cars, and trains and providing stationary storage for uninterrupted supplies of solar, wind, and other renewable energies.⁹ Although battery chemistry is constantly evolving, today's batteries require minerals like cobalt, nickel, lithium, graphite, and copper, among others (Figure 1).¹⁰

“The battery will be the defining technological and supply chain battleground for the industry in the next decade, and access to their constituent raw materials will be crucial.”¹¹

Demand for these battery minerals is surging as governments rush to implement their decarbonization goals amid fears of mineral supply shortages and ongoing geopolitical tensions. In the last two years alone, policymakers from major consumers, from the European Union¹² to the United Kingdom,¹³ Australia,¹⁴ and the United States,¹⁵ have all passed laws or policy reforms

aimed at increasing secure supplies of these battery minerals and other transition minerals. Producer countries like Mexico, Chile, Indonesia, Zimbabwe, Zambia, and Democratic Republic of the Congo (DRC) are all implementing reforms to increase the state share of potential future revenues from the anticipated boom.¹⁶ Although some emphasis is being placed on recycling and reuse of existing minerals, behind these clean energy security strategies is a clear working assumption of a dramatic expansion in new mining around the globe.

Indigenous communities are especially vulnerable to a mining sector expanding to meet decarbonization goals under these conditions. A recent global sample of over 5,000 transition mineral projects found that 54 percent were located on or near the lands of Indigenous peoples.¹⁷ A second study found 80 percent of the 700 mining projects for transition minerals in countries implementing the Extractive Industries Transparency Initiative (EITI) were located near or on the territories of Indigenous peoples.¹⁸ Within the United States alone, it is estimated that among energy transition metals, 97 percent of nickel, 89 percent of copper, 79 percent of lithium, and 68 percent of cobalt deposits are located within 35 miles of Native American lands, and many of the companies operating in these lands face severe community opposition because of poor regard for the rights of communities.¹⁹

The global scramble for mineral resources is not new. And while large-scale mining has the potential to provide economic benefits in the form of taxes and jobs, the sector remains linked to major human rights abuses,²⁰ gender-based violence, environmental harm, corruption, and political capture. As past commodity booms have shown, these risks are all magnified when governments rush to fast-track new mines and sidestep the basic human rights safeguards needed to prevent these harms or abuses from occurring.

And calls are growing for governments all over the world to do just this—ast-track mining, all in the name of climate action.

Global climate action cannot be used to justify further harm and human rights abuses of Indigenous and local communities across the globe. Policy priority must be given to finding and funding solutions to minimize the need to mine raw minerals—and then ensuring that what mining is still needed is conducted in a sustainable, just, equitable, and rights-respecting way.

For more than two decades, Oxfam has stood with Indigenous and local communities affected by mining, oil, and gas projects to hold governments, companies, and financial institutions accountable for protecting human rights and fighting inequality. The principle of free, prior, and informed consent (FPIC) represents one of the key safeguards for protecting rights and fighting inequality by ensuring Indigenous and frontline communities have a say in whether and how mining moves forward. With mining set to expand to meet decarbonization goals, it is imperative that future mining proceed only with the full support and consent of Indigenous and frontline communities. In pursuing a more just energy transition, grounded in FPIC, mining companies can break free from a history of violence and abuse that has undermined frontline communities and companies' own bottom lines.

For Indigenous peoples, FPIC is a human right guaranteed under international law that safeguards the protection and realization of their collective autonomy, resilience, and right to self-determination. The safeguard provided by the principles of FPIC is increasingly interpreted as a best practice standard for affected local communities who do not fit the international legal definitions of rights-holding Indigenous people, yet who share many similar socioeconomic and political characteristics that distinguish them from dominant populations and who share long-standing customary connections to land. This is especially the case across the African continent, where courts are finding that the right to give or withhold consent exists in many customary law systems.²¹ In this way, the principles of FPIC represent a best practice for sustainable development. It is a crucial project safeguard that can increase the legitimacy of a project in the eyes of all rights holders and reduce the risk of social conflict.

This is why Oxfam defines FPIC as the principle that Indigenous peoples and local communities must be adequately informed about projects that affect their lands in a timely manner that is free of coercion and manipulation, and they should be given the opportunity to approve (or reject) a project prior to the commencement of all activities, using a decision-making process they themselves select. More and more communities are articulating their own decision-making protocols that should be respected by governments and companies alike.

Companies spanning the extractive industries²² and agribusiness sectors,²³ as well as international financial institutions and global banks,²⁴ today recognize the business case for FPIC and have incorporated it into their corporate policies and lending conditions. Leading companies not only

“... for companies whose operations impact Indigenous Peoples' lands and legal rights, a failure to obtain, in advance and on an on-going basis, free, prior and informed consent (FPIC) from those Peoples may expose companies to increased legal, reputational or regulatory risks...”²⁷

recognize their international legal responsibilities to do so, but also recognize that when they do not respect the rights of Indigenous and local communities, they create material financial risks for their companies and their investors. These material financial risks can take the form of operational delays, increased production costs, indefinitely stalled projects, and reputational damage, as well as legal costs and reduced access to capital.²⁵ Leaders who prioritize getting community consent done right and avoiding social conflict have a competitive advantage over their peers.²⁶

Mining companies that adopt clear and unequivocal policy commitments to respect FPIC, within frameworks of safeguards that address broader human rights, gender, and Indigenous sovereignty issues, are more likely to maintain a social license to operate and contribute to positive outcomes in the countries where they operate.²⁸ This is particularly important when countries are in a race to attract foreign investment, where local laws fall short of international standards regarding FPIC or human rights generally, and when the sector remains characterized by entrenched gender discrimination. In this context, the performance of business matters more than ever. Will mining companies go beyond compliance with national laws and ensure the sector contributes to sustainable

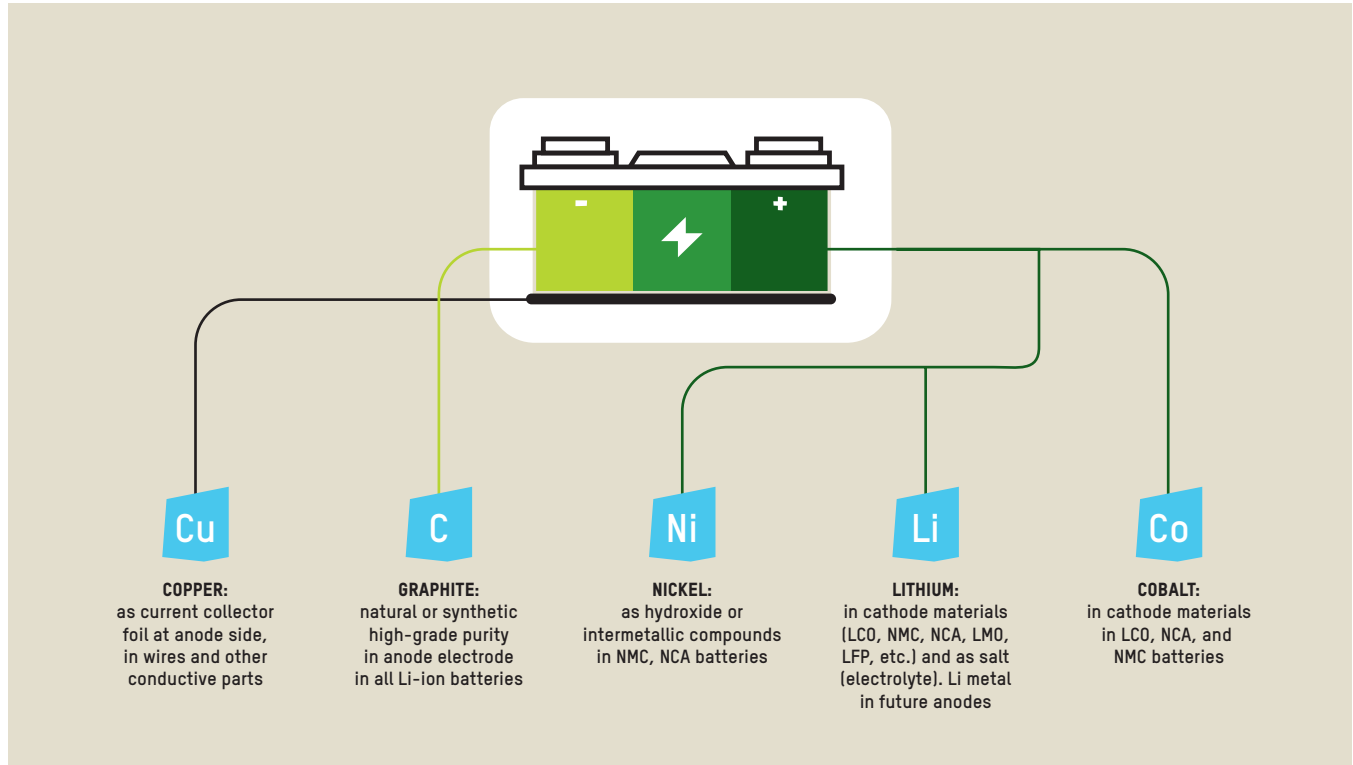
development? Or will they hide behind the lower standards in national laws, repeating the mistakes of the past, and further delaying the just energy transition? This policy brief explores these questions.

About this report

This policy brief examines the publicly available corporate policies of 43 mining companies engaged in the exploration and production of five minerals used in rechargeable lithium-ion batteries.²⁹ Those minerals are cobalt, nickel, lithium, graphite, and copper.³⁰ It is the first policy brief of its kind to focus on these companies. Increasing the supplies of these five minerals is seen as necessary to keep pace with demand for rechargeable batteries.³¹ Other materials like manganese, silicon, and aluminum, while also used in rechargeable batteries, were not considered in this brief as they are not expected to be in short supply.³²

A policy sets the expectations to which the company holds itself and is the first step in a company establishing an effective management system that aligns with human rights and environmental due diligence.

FIGURE 1. SELECTION OF RAW MATERIALS USED IN LI-ION BATTERIES AND THEIR FUNCTION.



S. Carrara et al., "Supply Chain Analysis and Material Demand Forecast in Strategic Technologies and Sectors in the EU – A Foresight Study" (Publications Office of the European Union, Luxembourg, 2023), <https://publications.jrc.ec.europa.eu/repository/handle/JRC132889>.

The focus in this brief is on the public company policies that support community consultation and consent, with a specific focus on the mutually reinforcing principles of FPIC. Oxfam views a comprehensive and publicly available policy framework as vital to promoting corporate accountability and respect for human rights. A policy sets the expectations to which the company holds itself and is the first step in a company establishing an effective management system that aligns with emerging norms around human rights and environmental due diligence.³³ Oxfam expects companies to fully implement their policies, including identifying salient human rights risks in their operations, taking concrete steps to mitigate those risks, providing effective remedy if impacts occur, and reporting publicly on progress.

Our focus on publicly available policy commitments should not be seen as more important than efforts to monitor the implementation of those commitments in practice. Oxfam recognizes that corporate policy commitments are often not translated into practice, especially when it comes to community consent. We include several case studies in this report to illustrate this implementation gap.

For each company selected, we sought to answer two questions: First, what corporate policies or public commitments are in place to support community consultation and consent processes? Second, to what extent is that policy or public commitment consistent with the standard of FPIC?

WHAT WE LOOKED FOR IN THE POLICIES

In assessing the extent to which a company’s policies or public commitments were consistent with the standard of FPIC, we looked for evidence of the following:

- Whether there was an explicit reference in the policy to obtain FPIC prior to the commencement of mining activities;
- Whether there was any qualifying language regarding the application of FPIC. For example, did the company only “seek to obtain FPIC, or apply it “where appropriate” or “if required by law”?
- Whether the policy was clear about what a company would do if consent was withheld, either through a government-led FPIC process or company-led FPIC process;
- Whether the company policy referred explicitly to the UN Declaration on the Rights of Indigenous Peoples (UNDRIP) and other relevant State-level or national laws;
- Whether the policy described how and when the company would apply the standard, including any restrictions. For example, whether the company would apply FPIC only in cases involving resettlement;

- Whether there was a clear commitment to transparency and disclosure of key project information, in recognition of the fact that strong transparency and disclosure regimes are the foundation of effective consultation and consent processes;
- Whether the policy was clear about how the company would document, monitor, and periodically revisit the outcomes of FPIC processes;
- Whether the policy makes reference to women, gender, or the rights of others facing systemic marginalization (e.g., LGBTQI+, youth, or elders);
- Whether the policy was clear as to roles, resourcing, and accountability, including evidence of board-level accountability and oversight;
- Whether the policy included references to any associated implementation guidance for mine sites.

Companies’ public corporate commitments were evaluated in terms of a spectrum of potential approaches to community engagement. Oxfam developed a spectrum of community engagement applicable to mining, oil, and gas projects in 2015.³⁴ Table 1 shows this spectrum, which progresses from one-way, time-bound, limited information sharing to ongoing, two-way processes of meaningful engagement with the goal of achieving support or agreement to FPIC, the highest standard, where communities can freely accept or reject a project prior to activities commencing. Oxfam encourages all companies to move deliberately towards FPIC.

Companies were also ranked in terms of whether they had publicly available operational (or implementation) guidance, whether they disclosed evidence of the agreements reached with Indigenous peoples, and whether they disclosed any independent, third-party audits of their social and environmental performance. Again, given the focus on public policy commitments, the findings in this policy brief should not be taken as endorsements of how the companies implement their commitments in practice.

In addition to understanding the extent to which selected company policies were consistent with current norms around community consent, we also looked at several intersecting issues. First, we looked for policy language describing the company’s approach to human rights and environmental due diligence. We included this in recognition of the growing global movement to legally require companies to undertake human rights and environmental due diligence across their supply chains. Mandatory due diligence schemes are being proposed in Mexico,³⁵ Canada,³⁶ and the European Union,³⁷ as well as in the legislatures of more than a dozen European countries. We specifically looked for evidence of a public commitment to assess potential human rights impacts at the mine site.

TABLE 1. COMMUNITY ENGAGEMENT SPECTRUM

POLICY COMMITMENT STATUS	DESCRIPTION	INTENT
NO POLICY COMMITMENT	No evidence of a policy at all	No evidence of commitment
POLICY COMMITMENT TO INFORM	One-way. Company-led or -owned.	Commitment to share information
POLICY COMMITMENT TO CONSULT	Two-way. Good faith. Time-limited dialogue	Commitment to engage. No explicit evidence that the purpose of engagement is to achieve agreements
POLICY COMMITMENT TO SEEK SUPPORT OR AGREEMENT	Two-way. Good faith. Ongoing. Responsive	Clear commitment that the outcome of the engagement process is to achieve negotiated agreements
POLICY COMMITMENT TO RESPECT FPIC—QUALIFIED	Two-way. Good faith. Ongoing. Ability to give or withhold consent is subject to qualification. Community elects own decision-making process.	Clear commitment that the intent is to try and achieve consent, but if consent is not provided, the company will move forward
POLICY COMMITMENT TO RESPECT FPIC	Two-way. Good faith. Ongoing. Ability to give or withhold consent. Community elects own decision-making process.	Explicit reference that the objective of engagement is to achieve consent, in alignment with UNDRIP

Second, we looked for policy language describing how each company addresses gender power relations in their engagement processes and how they design their operations to mitigate gender discrimination. Oxfam recognizes that gender-responsive decision-making is fundamental to good community engagement and consent processes.³⁸ When we refer to gender-responsive FPIC processes, we are describing engagement and decision-making processes that are designed based on a company’s own analysis of existing gender norms in each project site. Gender analysis involves understanding of the potential unequal social, economic, and political power dynamics between women, men, and gender-diverse people in a society.³⁹

Third, we looked for policy language referring to human rights and environmental defenders and any company commitments to respect or protect their rights. Extractive industries are notoriously linked to violation of the rights of defenders working on land, Indigenous peoples’ rights, and environmental issues.⁴⁰ Over 400 human rights defenders were killed in 2022, with Indigenous, land, and environmental defenders being the most targeted.⁴¹ There must be a safe enabling environment for all people to participate in consultation and consent processes or voice opinions about potential extractive industry projects without fear for their safety or the safety of their families or networks. Extractive industry companies wield significant political and economic power in the countries where they operate and should leverage this influence and power in ways that support an open civic space for public participation.

Following that initial desktop review, we contacted each of the companies and invited them to participate in an interview (or to provide written feedback on a series of questions). The purpose of the interviews was to ensure our understanding

of the company policies was correct. Fifteen companies responded to our request for interviews. Annex 1 includes a list of which companies participated in interviews and when, and which ones did not.

Prior to publication, we shared relevant draft findings with each company to verify the information. We received feedback from 15 companies.

Selection of companies

Oxfam commissioned the selection of companies from Profundo B.V.⁴² An initial list of 91 companies was identified based on the total volume (in tons) of their declared mineral reserves and annual production levels, according to data reported up to December 31, 2021.⁴³ Reserve estimates were included as a proxy to anticipate potential future demand.⁴⁴ Community consultation and consent processes have been most effective in delivering sustainable development outcomes when they are implemented at the earliest stages of project development.⁴⁵

Mineral reserves and production figures were taken from relevant annual reports and financial statements, industry reports, and commodity trade journals. Careful consideration was made to make the figures for reserve estimates and production volumes comparable. Such comparisons were made with caution because each company presents their production and mineral reserve figures based on internal policies, the mineral being exploited, and the country’s regulations in terms of reporting.

For inclusion in this corporate policy analysis, Oxfam narrowed the list of companies to the 10 companies with largest total volume per commodity. The final list of 43 companies reflected the fact that several companies are major producers of multiple relevant minerals (Table 2).

There are limitations in the data that were publicly available, and the list of companies should not be taken as exhaustive. Although efforts to screen and triangulate across numerous sources were made, there may be gaps in the selection of companies. Nevertheless, the findings in the following chapters provide evidence of trends characterizing the readiness of company approaches to FPIC across these key battery mineral supply chains.

Outline of this report

The report is structured as follows. Chapter 2 provides an update on the legal and policy status of FPIC. This chapter demonstrates not only the clear legal basis for FPIC, but also the broader business case recognition that FPIC is necessary to protect Indigenous rights, prevent conflict, generate broader benefits, and reduce the harmful impacts of development projects. Chapter 3 sets out the key findings from the evaluation of the selected companies' policies in terms of community consultation and consent. This chapter also contains the findings related to human rights and environmental due diligence, gender, and defenders. Given the focus on policy commitments only, the findings in this chapter should not be taken as endorsements of how the relevant companies implement their commitments in practice. Chapter 4 includes two case studies to illustrate some of the ongoing challenges Indigenous and land-connected communities face in ensuring their rights are respected in practice. Chapter 5 includes clear recommendations that companies, investors, and other stakeholders should adopt. Chapter 6 provides a conclusion to the report.

TABLE 2. LIST OF SELECTED COMPANIES

COMPANY NAME	COUNTRY OF COMPANY HQ	MINERAL	STATUS	MINE LOCATIONS
China Molybdenum (CMOC)	China	Co	Production	Democratic Republic of Congo (DRC), Australia, Brazil, China
Australian Mines	Australia	Co, Ni	Preproduction	Australia
iTech Minerals	Australia	Co, C	Preproduction	Australia, Canada
Talga Group	Australia	Co, C	Preproduction	Sweden
China Railway Group	China	Co	Production	China, DRC, Mongolia, Australia
Jinchuan Group	China	Co	Production	DRC, Zambia
Chemaf	United Arab Emirates (UAE)	Co, Cu	Production	DRC
Glencore	Switzerland	Co, Ni, Cu	Production	Australia, Canada, DRC, Peru
Huayou Cobalt	China	Co, Ni, Li	Production	DRC, New Caledonia, Zimbabwe, Indonesia, Argentina
ERG	Luxembourg	Co, Cu	Production	DRC, Zambia
BHP	Australia	Ni, Cu	Production	Australia, Chile
Freeport	United States	Cu	Production	Chile, Indonesia, Peru, United States
Antofagasta	United Kingdom	Cu	Production	Chile
Rio Tinto	United Kingdom	Cu	Production	Chile, Mongolia, United States, Australia
Teck Resources	Canada	Cu	Production	Canada, Chile, Peru
KAZ Minerals	Netherlands	Cu	Production	Kazakhstan, Russia
Vale	Brazil	Ni, Cu	Production	Brazil, Canada, Indonesia
MMG	Australia	Cu	Production	Canada, DRC, Peru
First Quantum Minerals	Canada	Ni, Cu	Production	Argentina, Australia, Finland, Mauritania, Panama, Peru, Spain, Turkey, Zambia
Syrah Resources	Australia	C	Production	Mozambique
NextSource Materials	Canada	C	Preproduction	Madagascar
Nouveau Monde Graphite	Canada	C	Preproduction	Canada
Triton Minerals	Australia	C	Preproduction	Mozambique
Northern Graphite	Canada	C	Preproduction	Canada, Namibia
Zentek	Canada	C	Preproduction	Canada
GreenRoc Mining	United Kingdom	C	Preproduction	Greenland
Leading Edge Materials ⁴⁶	Canada	C	Care & maintenance	Sweden
Focus Graphite	Canada	C	Preproduction	Canada
Allkem	Argentina (ASX listed)	Li	Production	Argentina, Australia, Canada
Livent	United States	Li	Production	Argentina
Anson Resources	Australia	Li	Exploration	United States
Pilbara Minerals	Australia	Li	Production	Australia
Sociedad Química y Minera de Chile (SQM)	Chile	Li	Production	Chile, Australia
Albemarle	United States	Li	Production	Australia, Chile, United States
Ganfeng Lithium	China	Li	Production	Argentina, Australia, China, Ireland, Mali, Mexico
Youngy Corporation	China	Li	Production	China
Savannah Resources	United Kingdom	Li	Preproduction	Portugal
Sigma Lithium	Canada	Li	Preproduction	Brazil
ANTAM	Indonesia	Ni	Production	Indonesia
Global Ferronickel	Philippines	Ni	Production	Philippines
Eramet	France	Ni, Li, Co	Production	Indonesia, New Caledonia, Argentina, France
Nornickel	Russia	Ni, Cu	Production	Finland, Russia
South32	Australia	Ni, Cu	Production	Colombia, Chile, United States

2. COMMUNITY CONSENT AND THE JUST ENERGY TRANSITION

Free, prior, and informed consent (FPIC) serves as a vital protection for communities seeking to control when and how mining proceeds on their lands. For this reason, it is one of the most important legal rights for Indigenous peoples for protecting human rights and fighting inequality.

“FPIC requires governments to cede power to Indigenous and Tribal peoples over key decisions that would affect their rights.”⁴⁷

For Indigenous peoples, FPIC is a right guaranteed under international law that safeguards the protection and realization of their collective autonomy, resilience, and right to self-determination.⁴⁸ Courts have repeatedly ruled against extractive and infrastructure projects due to a lack of FPIC.⁴⁹ For affected local communities who do not fit the international law definitions of rights-holding Indigenous entities, the principles of FPIC are being interpreted as a best practice for sustainable development generally. This is especially the case across the African continent, where courts are finding the right to give or withhold consent exists in many customary law systems.

While FPIC processes vary depending on the distinct collective decision-making customs of each Indigenous nation, there are common elements that are mutually reinforcing:

- Free—from coercion, manipulation, or duress;
- Prior—to each phase of project development, extending across the full life cycle of a project;
- Informed—meaning full and timely access to all relevant project information in formats that ensure understanding of project risks and impacts and promote engagement;
- Consent—requires that communities have the power to give or withhold their consent to a project. Consent is a collective decision made by the community or communities, based on their own decision-making processes.

In practice, FPIC ensures communities participate in development decisions around extractive industry projects and mitigates the negative impacts of extractive projects on the natural resources, livelihoods, and cultural heritage. It also helps to ensure that communities receive a fair share of the economic benefits generated by these projects.

FPIC is not the same as consultation. Adherence to FPIC means that a project with significant impacts on the rights of the relevant community cannot go forward without the prior approval of the community or communities impacted. Further, a project must maintain that consent over the life of the project. Documentation purporting that a community offered consent to a project is not sufficient if it was obtained through coercion, if the community had not received adequate information, or if the community was not allowed enough time to deliberate and seek independent advice on the information provided.

FIGURE 2.

WHAT IS FPIC?

Communities have a right to know and to make decisions when it comes to projects that affect them.

FREE



Free from manipulation
or coercion

PRIOR



Occurs in advance of any activity
associated with the decision being
made and allows adequate time for
traditional decision-making processes

INFORMED



Facilitates the sharing of objective,
accurate, and easily
understandable information

CONSENT



Allows communities to approve
or reject a project

FPIC PROCESSES SHOULD BE ONGOING THROUGHOUT THE LIFE OF THE PROJECT.

Consent enables “Indigenous peoples to negotiate the conditions under which a project would be designed, implemented, monitored and evaluated.”⁵⁰

Following decades of political negotiations, the UN General Assembly adopted the Declaration on the Rights of Indigenous Peoples (UNDRIP) in 2007. UNDRIP did not create new rights but restated existing international human rights obligations of States concerning Indigenous peoples, explicitly providing for their right to FPIC as a procedural safeguard for the protection and realization of their right to self-determination, among other rights. International Labor Organization (ILO) Convention 169 also provides a right to FPIC in some circumstances.⁵¹

UNDRIP has the force of statutory law in Bolivia, while Peru and Chile have adopted consultation requirements modeled after ILO Convention 169.⁵² The Philippines adopted FPIC into its national law, and Malaysia, South Africa, South Sudan, and Tanzania have all required Indigenous consent prior to land acquisitions in certain circumstances.⁵³ In 2019, the provincial government of British Columbia passed a law formally adopting UNDRIP.⁵⁴ A subsequent action plan released in 2022 describes how British Columbia will work over a five-year period to meet the objectives of the declaration.⁵⁵

Despite this, many governments continue to fail to provide for the protection under national laws for Indigenous peoples’ rights to self-determination or fail to ensure the effective implementation of these rights. This is especially the case involving decisions related to large-scale extractive industry projects like mining, oil, or gas extraction. National governments too often claim unlimited sovereign power over the subsoil and exercise that power to grant access to companies to extract these minerals or hydrocarbons without having first meaningfully consulted or obtained the consent of those Indigenous peoples in whose territories those natural resources are located.⁵⁶ Peru’s National Indigenous Peoples Consultation Law or Australia’s Native Title Act are examples that provide clear frameworks for governing consultations with Indigenous peoples, but they fall short of international standards because the respective governments retain the power to override the decisions of Indigenous peoples. Threat of compulsory land acquisition is a clear example of the denial of FPIC.

While FPIC is a legal and internationally recognized right for Indigenous peoples, the principle of consent can also extend to other communities, particularly customary land rights holders. For example, both the African Commission’s 2012 Resolution on a Human Rights-Based Approach to Natural Resource Governance and the Economic Community of West African States’ Directive on the Harmonization of Guiding Principles and Policies in the Mining Sector do not limit the application of FPIC to self-identified Indigenous communities.⁵⁷ Sierra Leone’s Customary Land Rights Act (2022) also extends FPIC to all customary land rights holders.⁵⁸ In the most recent version of its social and environmental safeguards, the World Bank attempted to address this issue by expanding the scope of its Environmental and Social Standards 7: Indigenous Peoples standard to apply both to Indigenous peoples and to “Sub-Saharan African Historically Underserved Traditional Local Communities.”⁵⁹

Even in jurisdictions where domestic law does not require FPIC, international human rights law still obligates businesses to respect FPIC. The UN Guiding Principles on Business and Human Rights (UNGPR) recognize the important role and responsibility that businesses play in supporting the realization of human rights. While States are the primary duty bearers, businesses also have responsibilities to respect human rights, including FPIC, especially when national laws fall short of the normative standards under international law.

In part due to the recognition of business responsibility to respect human rights obligations, companies spanning the extractive industries⁶⁰ and agribusiness sectors,⁶¹ as well as international financial institutions and global banks,⁶² today recognize FPIC and have incorporated it into their corporate policies and lending conditions. Both the International Finance Corporation (IFC) Performance Standards and the Equator Principles require FPIC in several circumstances.⁶³ The Initiative for Responsible Mining Assurance (IRMA) will not certify a new mine if it failed to obtain FPIC from Indigenous communities—representing the gold standard for responsible mining assurance.⁶⁴ And although they have yet to explicitly recognize the right of communities to withhold consent, the International Council on Mining and Metals (ICMM), the US National Mining Association, the Mining Association of Canada (MAC), and the Minerals Council of Australia (MCA) all require member companies to strive to obtain FPIC.⁶⁵ The China Chamber of Commerce of Metals, Minerals and Chemical Importers and Exporters (CCCME) also recommends its members “protect the rights for free, prior and informed consent of local communities including indigenous peoples.”⁶⁶

Even where FPIC is not legally required or the law is still developing, FPIC provides a leading standard for assessing community consent for projects affecting local peoples. Ensuring that project development complies with FPIC can help avoid the risks of future loss of social license and resulting protests or project stoppages.⁶⁷

BOX 1: IMPLEMENTATION OF FPIC COMMITMENTS CONTINUES TO LAG.

Despite the important global normative progress that has been made regarding private sector commitments to FPIC, translating these commitments into improved outcomes on the ground has not been easy.⁶⁸ Research into the gaps between policy and practice point to common implementation challenges, which include:⁶⁹

- Attempts by governments or companies to limit whose consent is being sought;
- Attempts by companies to influence government-led FPIC processes;
- Not allowing communities to influence the process, format, timeline, and content of the community engagement process;
- Governments and companies providing incomplete or piecemeal project descriptions;
- Use of overly technical project information that is often not available in local languages or in forms that can be easily understood;
- Not enabling affected communities to have early and ongoing access to independent technical and legal advisors;
- Mandating very short time periods for communities to interrogate project information, deliberate internally, and reach decisions;
- Starting consultations after key project decisions have already been made;
- Promoting the potential positive benefits while downplaying or not disclosing information about the likely negative direct, indirect, and cumulative impacts of projects;
- Not creating the conditions for women and other historically excluded groups to participate and influence deliberations;
- Companies falling back on government approvals and not respecting a decision to withhold consent;
- Reaching agreements with affected communities that either leave them worse off (by restricting their rights) or simply restating what a company was already required by law to do.

3. KEY FINDINGS

This chapter presents the key findings of the assessment of the publicly available policies related to community engagement and FPIC of the 43 mining companies selected. A summary of the findings is found in Annex 2.

While there is growing recognition of Indigenous peoples' rights, few companies publicly commit to respect FPIC unequivocally.

In response to the continuous demands of Indigenous peoples, mining companies and industry bodies have strengthened their approach to FPIC. Companies have come to recognize the business case for FPIC: projects developed with the consent of Indigenous people are less likely to face protests and potential project stoppages or shutdowns.⁷⁰

Still, as our findings show, many of the public policies of companies exploring and producing key battery minerals still fall short of what is required under international law to respect community consent and comply with best practices (Figure 3). Even among the companies that have announced a commitment to FPIC, this commitment is often qualified. The energy transition is as important a moment as any for mining companies to strengthen their FPIC policies and move projects ahead only with the full support and consent of affected communities.

- Almost half of the companies assessed have community engagement policies, recognizing the business case for engaging early and meaningfully with affected communities.
- While it is positive to see more than half of the companies assessed in this policy brief commit to respect Indigenous peoples' rights in general, only half of those companies refer specifically to FPIC in terms of how they engage with Indigenous peoples.
- Sixteen of the 43 companies in our analysis have no policy language at all that references Indigenous peoples' rights.⁷¹
- Only two companies, Albemarle and Vale, have clear public commitments to respect Indigenous communities' decision to give or withhold consent. Albemarle commits to respect FPIC whenever they expand their activities via land use.⁷² Although their Human Rights Policy is less clear, Vale has updated its public website and publicly states that "mining on Indigenous lands can only be carried out with the free, prior, and informed consent (FPIC) of the Indigenous people themselves..."⁷³
- For the remaining companies that do commit to respect Indigenous rights, almost all the associated commitments to FPIC include language qualifying the commitment. Ten companies say they will work to seek support, promote, or achieve FPIC from Indigenous communities.⁷⁴ Seven of these companies are members of ICMM (Glencore, Freeport, MMG, Rio Tinto, Teck, BMP, and South32). This qualified language leaves open the possibility that if consent is not provided, companies will simply move ahead with their projects. Although BHP states that its default position is that it will not proceed with a project without consent, if consent is not provided, BHP reserves the right to escalate the decision to senior management to determine if a new project will proceed.⁷⁵
- Five companies commit to seek agreements with affected communities, but do not commit to respect a community's decision to withhold consent.
- Companies that have commitments related to FPIC can do more to ensure their commitments are implemented adequately. Nine companies have operational or implementation guidance, although only BHP, Rio Tinto, Teck, and Vale publish this guidance, making it difficult to assess the quality of other companies' efforts to respect FPIC (Figure 4).

FIGURE 3: BATTERY MINING COMPANY PUBLIC POLICY COMMITMENTS REGARDING FPIC ARE FALLING SHORT OF GLOBAL NORMS

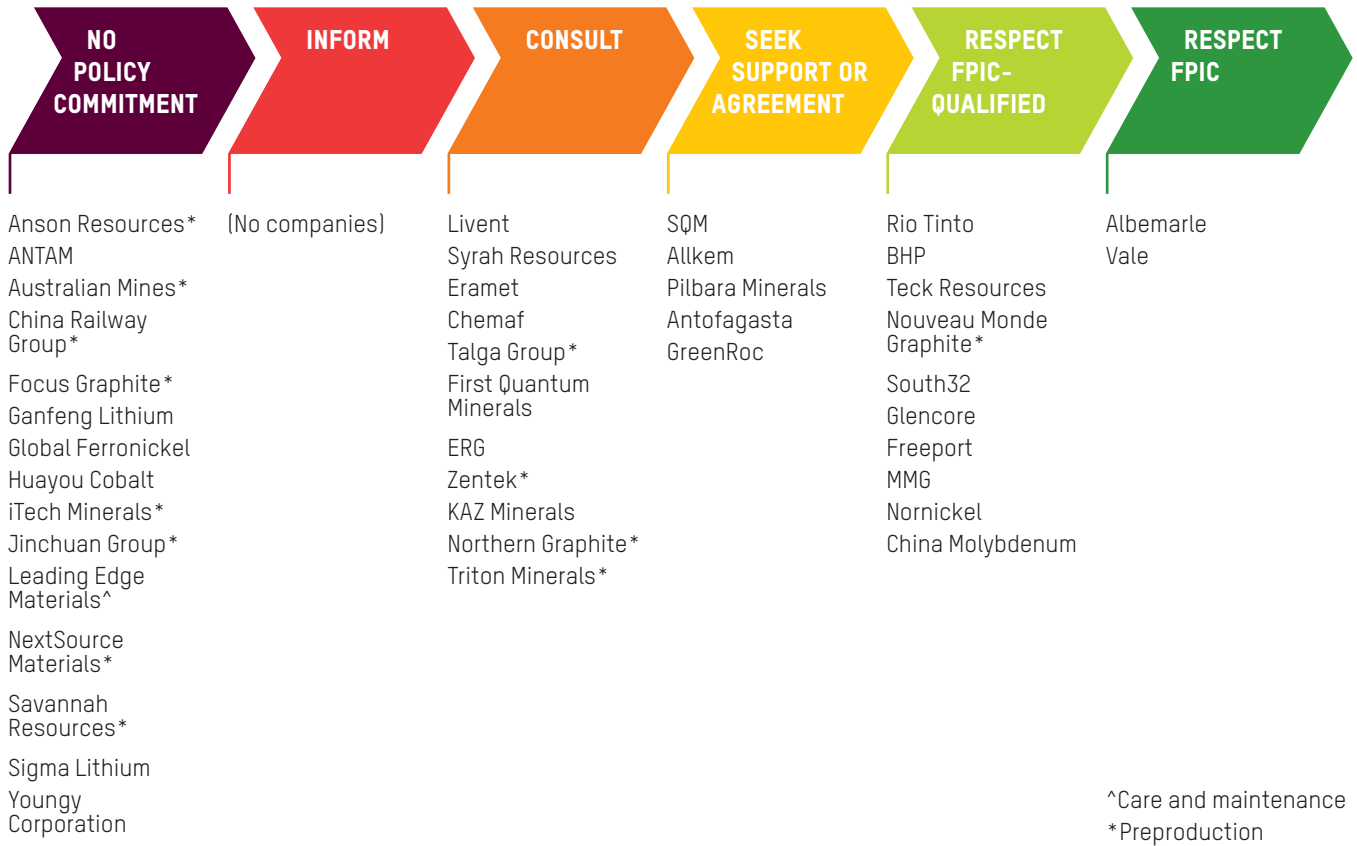
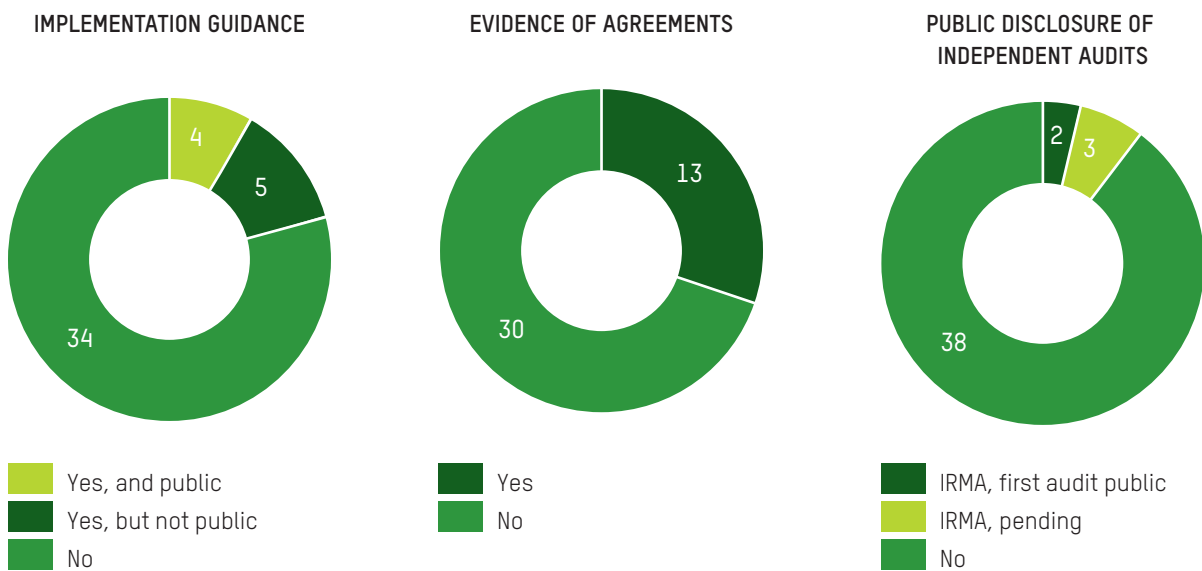


FIGURE 4. MORE COMPANIES NEED TO COMMIT TO DISCLOSE THEIR OPERATIONAL GUIDANCE AND COMMIT TO INDEPENDENT AUDITS OF THEIR FPIC PERFORMANCE



- Several companies expressed how difficult it was to translate the group-wide commitments across multiple mine sites, often in countries with different political and regulatory requirements. Operational guidance provides the common framework and set of performance outcomes that can address that challenge, without losing the flexibility necessary to account for individual contexts.
- Twelve companies disclose the numbers of agreements they have reached with Indigenous or traditional communities.
- Two companies disclose publicly the findings from an independent audit of their social and environmental performance. Albemarle's first IRMA audit was published in June 2023. That audit of Albemarle's Planta Salar project in the Antofagasta region of Chile concluded that Albemarle has documented agreements with all 18 Indigenous communities affected by the project.⁷⁶ Those agreements also set out the process for engagement and provide for ongoing monitoring via a permanent working group.⁷⁷
- SQM's first IRMA audit was published in September 2023.⁷⁸ Syrah Resources, Livent, and Eramet have all committed publicly to IRMA audits, although these are still pending.
- Graphite producers are lagging. Nouveau Monde Graphite is the only graphite company to publicly commit to respect FPIC for Indigenous peoples.⁷⁹ In 2018, Nouveau Monde Graphite disclosed it had signed a framework agreement setting out the terms of negotiations between the company and the Atikamekw First Nation.⁸⁰
- While four graphite miners do have general commitments to respect the rights of local and Indigenous communities, none of the policies include language committing the companies to consult with or obtain the consent of affected peoples at each stage of the project life cycle and before major changes are made to project design. Although Talga's social performance policy⁸¹ indicates a commitment to "engage with host communities transparently and in a culturally appropriate way," they did note in their interview that "Our consultation [with Sami reindeer herders through their cooperatives] has been with the ambition of achieving informed consent."⁸² When asked if they would respect a decision to withhold consent, they said, "If we obtain the legal permits from the government, we will proceed with the project."⁸³
- In practice, Syrah Resources points to a community development agreement reached in 2017 as evidence it obtained consent from the affected customary land rights holders.⁸⁴ However, as the case study in chapter 4 explains, it is unclear whether affected communities were provided the opportunity to accept or reject the resource concession prior to its approval by the Mozambican government. Syrah Resources stands out as the only graphite producer with a clear policy commitment to conduct human rights due diligence and integrate gender analysis within that process. It is the only graphite producer in our survey to commit to an independent assessment of its social and environmental performance against the IRMA standard.
- No cobalt producers publicly commit to respect FPIC unequivocally. Glencore and China Molybdenum are the only two producers committing to work to achieve consent. As we have previously discussed, this qualified language leaves open the possibility for these companies to move ahead with a project if consent is withheld. In practice, China Molybdenum explained that they have assessed all their sites for whether Indigenous peoples, as defined under international law, are likely to be impacted and concluded that the requirement of FPIC would apply only at their Northparkes project in Australia. Nevertheless, they said that they encourage all their sites to apply the principle of FPIC—the only company to say so.⁸⁵
- In a 2022 update to their human rights policy, Chemaf included a general commitment to respect Indigenous peoples' culture, heritage, and traditional rights. This new policy is not explicit about whether the company will consult with or obtain consent from those relevant communities. In response to Oxfam's written questions, Chemaf noted they comply with "all components of the IFC Performance Standards."⁸⁶
- The lithium sector is also lagging in terms of company commitments to respect FPIC. Only one company publicly commits to respect the principle of FPIC in its engagements with Indigenous peoples. Albemarle's policy states that they apply this commitment whenever they "need to expand our activities via land use." Albemarle does not have publicly available implementation guidance and did not accept our request to be interviewed.
- Allkem (which recently announced a merger with Livent), SQM, and Pilbara Minerals each recognize in their policies the importance of ensuring the effective representation and participation of Indigenous peoples affected by their operations. However, none of these companies' current policies explicitly commit them to respect a communities' decision to withhold consent. SQM did state in a written response that "their current standard is to seek consent from communities regarding monitoring, baseline characterization and new infrastructure or projects in claimed territories."
- Despite this lack of public commitments, major lithium producers are committing to credible, third-party assurance of their social and environmental performance, including FPIC implementation, in accordance with the Initiative for Responsible Mining Assurance (IRMA). First IRMA audits of Albemarle and SQM projects are now public. An IRMA audit of Livent's Fenix mine is ongoing.

- In its annual report, Pilbara notes it entered into agreements in 2016 with the Nyamal and Kariyarra peoples respectively.⁸⁷ It reports that it maintains regular monitoring and reporting of those agreements, including consulting on proposed expansion activities like the Lynas Find project.⁸⁸ Pilbara operates solely within Australia, where Indigenous land rights issues are governed by the Native Title Act, a law that requires consultation but does not give Indigenous peoples the power to withhold consent to a resource development project.
- There is significant variation in the quality of the nickel mining company commitments regarding community consent. Only Vale has clear policy language regarding respect for FPIC. Other ICMM members—BHP, Glencore, and South32—recognize the rights of Indigenous peoples but leave open the possibility of moving forward if consent is withheld. South32 only applies its commitment in situations where impacts on cultural heritage are unavoidable. South32 recognized this limitation in our interview and explained they were in a process of developing an updated policy that aligns with international standards.⁸⁹ Nor Nickel adopts similar qualified language. Eramet and First Quantum Minerals include general commitments that do not actually commit those companies to consult or obtain community consent. In May 2023, Eramet committed to audit each of its sites against the IRMA standard by 2027.
- Companies in preproduction are yet to have formal policies on FPIC. Of the 15 companies in preproduction or exploration phases only, none of the companies have publicly available policies that committed them to respect FPIC or to seek to obtain it. Talga acknowledged that they will continue to seek to obtain consent from the Sami peoples involving their Vittangi graphite project, but that the final decision will ultimately rest with the Swedish government.⁹⁰ Similarly, Savannah Resources, noting there was ongoing opposition from some local community members to their Barasso lithium project in Portugal, indicated in a written response that they will continue to engage directly with all stakeholders in a transparent way and will seek to complete the formal licensing process with the Portuguese government.⁹¹
- In comparison to other minerals in our study, copper companies tend to better align their policies regarding community engagement and consent with international human rights standards. For instance, all copper companies we assessed recognize the importance of respecting and protecting the human rights of local communities, including the unique rights of Indigenous peoples. They all, however, use qualified language that leaves open the possibility of moving ahead even if consent is withheld.
- South32 is the only company that has public language noting they will work to obtain FPIC from Indigenous, Traditional, and Tribal peoples.⁹² None of the other companies surveyed have policy language committing them to apply the standard of FPIC to non-Indigenous peoples.⁹³
- Despite the importance of communities having access to information as a necessary precondition for any engagement process, less than half of the companies surveyed have transparency or access-to-information policies. For example, eight companies have some policy commitment related to disclosing project-level payments to governments, and three companies have a policy commitment concerning disclosure of environmental and social impact assessments and management plans. However, no company committed to disclose project-level payment information on a gender-disaggregated basis, which would allow for an evaluation of whether project benefits are fairly distributed by gender.

More companies need to embed human rights and environmental due diligence in their internal management systems.

There is a growing global movement to legally require companies to undertake human rights and environmental due diligence. Mandatory due diligence schemes are being proposed in Mexico,⁹⁴ Canada,⁹⁵ and the European Union,⁹⁶ as well as in the legislatures of more than a dozen European countries.

The UNGPs and Organisation for Economic Co-operation and Development (OECD) due diligence guidelines and supporting guidance establish an ongoing obligation of companies to implement robust human rights due diligence. While it is often regarded as a responsibility of upstream companies over their supply chains, all companies, regardless of where they are positioned in the mineral supply chain, have this responsibility.

Human rights due diligence involves companies assessing actual or potential adverse impacts on rights holders, including Indigenous peoples; integrating those findings into management systems to prevent or mitigate those impacts from occurring; taking action; providing remedy and gender-responsive grievance mechanisms when violations occur; and tracking and communicating externally on this performance. It is an ongoing process, requiring periodic review and revisions as project operations and operating contexts change. It should be done in due consultation with affected rights holders. Company directors should have oversight and responsibility for performing due diligence and report to their boards on performance.

Adherence to FPIC should fall within a company's approach to human rights due diligence, one that is recognized as preventing and mitigating potential impacts on the rights of

Indigenous peoples. Figure five describes the policy language we identified that describes how the selected mining companies approach this due diligence.

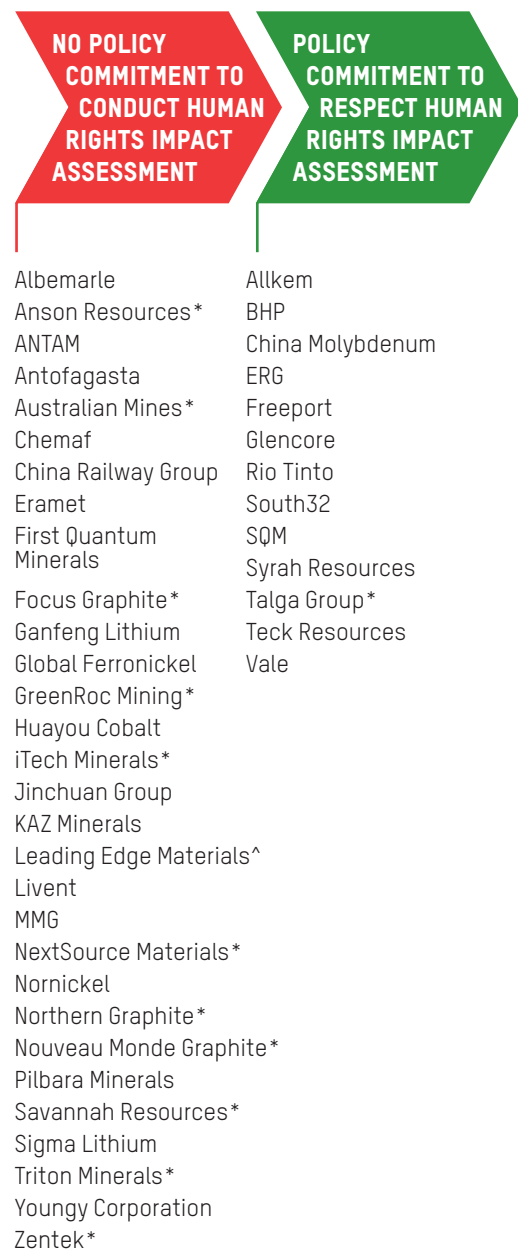
- Of the 43 companies surveyed, 29 companies have an approved public policy commitment to respect human rights. This positive finding indicates a growing acceptance by the mining sector of its responsibilities to identify, prevent, and mitigate likely impacts, and publicly disclose their performance.

FIGURE 5. MINING COMPANIES ARE INCREASINGLY RECOGNIZING IN THEIR PUBLIC POLICIES THEIR RESPONSIBILITIES TO CONDUCT HUMAN RIGHTS DUE DILIGENCE



*Preproduction
^Care and maintenance

FIGURE 6. FAR FEWER COMPANIES HAVE PUBLIC POLICY COMMITMENTS TO CONDUCT MINE SITE-LEVEL HUMAN RIGHTS IMPACT ASSESSMENTS



- Despite these broad public commitments to respect human rights, only 17 of those companies provide any detail of how they embed their human rights commitments into their operational policies, procedures, or management systems—actions that are required under emerging norms on responsible business conduct.
- Commitments to conduct human rights and environmental due diligence in alignment with the UNGPs are also very low within the cobalt miners we assessed, with only three companies committing to do so (Glencore, China Molybdenum, and ERG).
- Copper major Freeport publicly commits to conduct human rights impact assessments (HRIAs) for each of its mines and revisit those assessments regularly (Figure 6). Findings from these HRIAs are published in their annual sustainability report and as case studies on their website.⁹⁷
- Syrah Resources is the only graphite producer with a clear policy commitment to conduct human rights due diligence and integrate gender analysis within that process.
- As with community consent policies of the nickel companies, similar variation is seen in terms of human rights policies. Of the nickel producers, only BHP and South32 are conducting site-specific human rights impact assessments as part of their overall human rights and environmental due diligence responsibilities.
- Of the lithium producers, only Allkem, Albemarle, and SQM commit to conduct human rights and environmental due diligence as required by the UNGPs. Ganfeng includes a general policy commitment to respect human rights across their operations but does not provide any public details on how they do that.

Companies are still not taking meaningful action to address gender-based violence and discrimination in their operations.

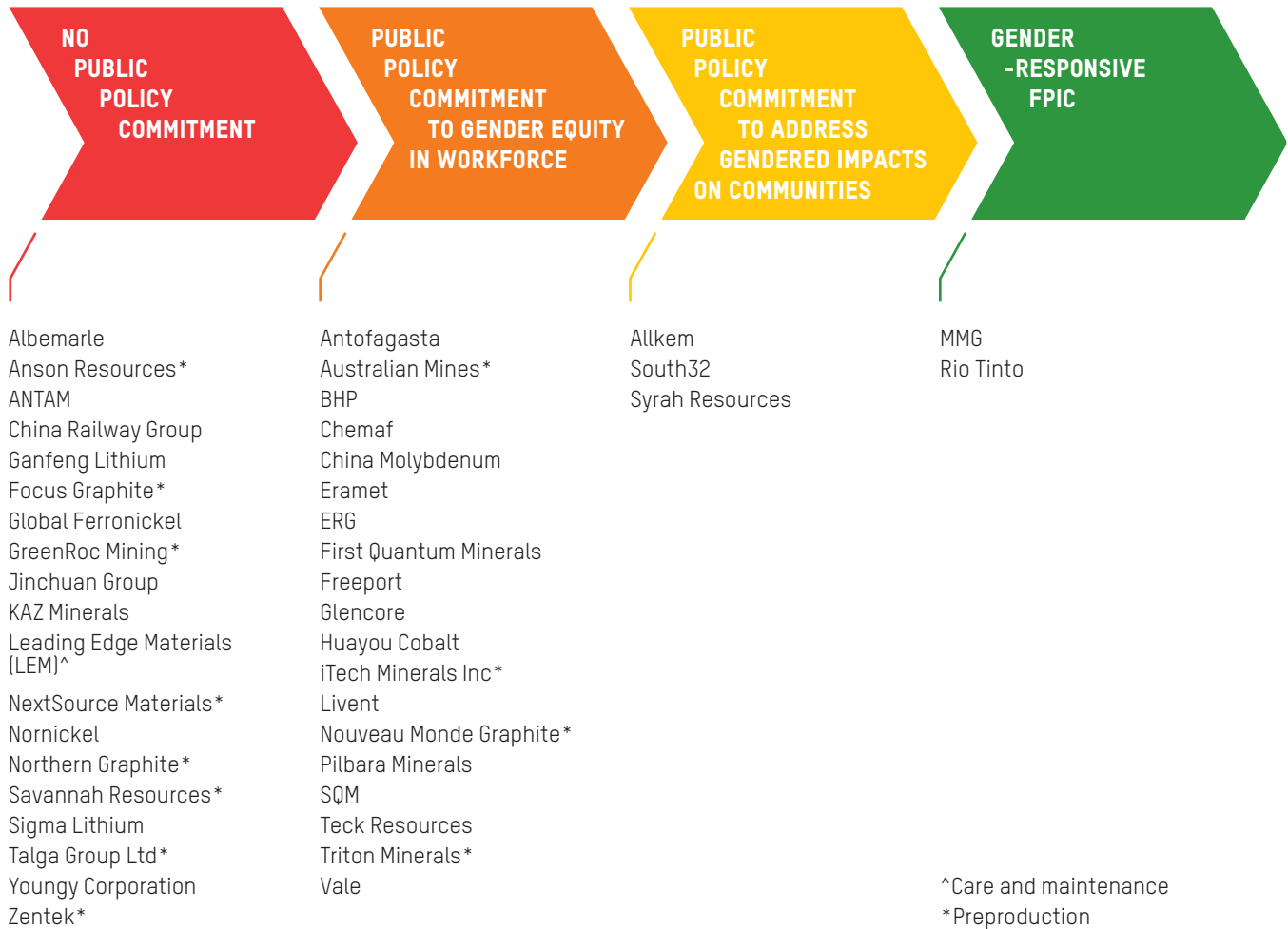
Existing research tells us that gender inequality within extractive industry projects continues to undermine women's rights and the development potential of the sector, with projects too often shifting gender power relations in ways that can tip the balance of power further away from women, girls, and other non-binary groups in society. Entrenched gender discrimination often prevents these individuals from engaging with companies and accessing the economic benefits of mining, oil, and gas projects. For companies and governments, this gender discrimination hampers community engagement at all stages of project activities, including with FPIC processes.⁹⁸

Gender-responsive decision-making then is fundamental to good community engagement and consent processes and is necessary to transform the entrenched gender discrimination that continues to characterize the mining sector.⁹⁹ Despite this, very few mining companies have taken meaningful action to address the gender-differentiated impacts of their operations. In 2020, an assessment of the policies and practices of 38 large-scale mining companies found “huge gaps in how mining companies address gender equality,” including “very weak” overall results on gender and “very limited actions to address gender in mining-affected communities and within their governance bodies, leadership and workforce.”¹⁰⁰ Our assessment supports this conclusion.

In assessing the policies of the selected companies, we looked for whether policies referred to gender equality in the workplace and if they were extended to assessing the gendered impacts of projects on communities. We sought to understand how a company sought to design their community engagement and consent processes to take account of existing gender norms and ensure women, men, and non-binary people were able to participate and influence decision-making equally.

- Companies across all commodities are generally falling short on committing to ensure community engagement and FPIC processes are gender responsive (Figure 7).
- Only five companies included specific commitments relating to assessing and addressing the gendered impacts of their operations on communities. Rio Tinto and MMG are the only companies whose policies note the importance of adapting community engagement and FPIC processes to take account of gender and other differences (age and ability). Allkem was explicit about promoting respect for the human rights of women within the company and in the communities where they operate as part of their policy on sustainable development. Although South32 and Syrah Resources did not include explicit policy language that extended their gender equality commitment beyond the workplace, both companies explained in their written responses to our interview questions how they integrate gender analysis as part of their approach to human rights. These five companies all operate producing mines. No companies yet to start production had comparable commitments.
- Sixteen companies have public commitments related to ensuring nondiscrimination based on gender or other identities in terms of their workforces. Talga noted that they have an internal gender diversity commitment that they intend to make public in their next annual report.¹⁰¹
- There were notable gaps in references to the standards against which companies were holding themselves. For example, no company referred explicitly to international legal instruments like ILO Convention 190: Violence and

FIGURE 7. MOST COMPANY POLICIES STILL OVERLOOK THE GENDERED IMPACTS OF THEIR OPERATIONS ON COMMUNITIES.



Harassment or the Convention on the Elimination of All Forms of Discrimination Against Women, two key global instruments aimed at ending gender-based violence.

- Regardless of whether the policy applies to external or internal operations, no assessed company had commitments to ensure women’s safety and security, including against sexual and gender-based violence. All assessed companies failed to have stated commitments or noted policies to protect women in project-affected communities from sexual and gender-based violence. There is a well-evidenced and established direct link between mining projects and increased incidents of sexual and gender-based violence against women; measures to protect women are fundamental and should be considered up front as instinctual, embedded, and required mitigation measures in all company plans, policies, and practices throughout the project life cycle.

While internally facing initiatives, commitments, and targets to increase gender diversity and balance in the workforce are important considering the World Bank’s estimate that women represent a mere 8 to 17 percent of the mining sector’s workforce globally,¹⁰² these efforts need to go further, and these companies need to extend these commitments to secure the rights and protection of women and non-binary people affected by their mining site operations. Companies need to commit to developing stronger gender equality policies that address the gender-differentiated impacts of their operations on the communities where their operations are based, and not only on tackling the entrenched gender discrimination in their workplaces.

BOX 2: STEPS BUSINESS CAN TAKE TO IMPROVE FPIC IMPLEMENTATION

- Engage communities early and continuously, and in good faith.
- If a government is leading an FPIC process, avoid any activity or activities that influence, or have been seen to influence, individual community members' decision-making.
- If a government agency has issued a mining license, conduct due diligence and reach a conclusion about whether the FPIC process aligns with international standards and the company's own internal policies, and confirm that FPIC has been obtained. If FPIC has not been obtained, the company should not move forward with the project.
- Dedicate time, staff resources, and budget to getting the pre-consultation right, including allowing affected communities to influence the definition of project impact and the nature of the interests in land and water.
- Ensure women and non-binary individuals can meaningfully participate and influence key decision-making moments.
- Establish an accessible and responsive grievance mechanism to ensure that communities' concerns are addressed in a timely fashion.
- Ensure affected communities have access to their own independent technical and legal advisors who can support them during negotiations.
- Ensure agreements are negotiated fairly and without duress with communities fully informed about their rights, the company, and all the likely project impacts.
- Ensure affected communities are given the opportunity to freely accept or reject negotiated agreements before they are ratified. Threat of compulsory land acquisition is a clear example of the denial of FPIC.
- Ensure agreements are documented and address all key project phases across the entire mine life cycle and include periodic review.
- Facilitate independent community monitoring of commitments.
- Ensure agreements are enforceable and do not leave people worse off.

Only eight companies include respect for the rights of human rights and environmental defenders in their policies.

Mining is notoriously linked to the violation of the rights of human rights defenders working on land, Indigenous peoples' rights, and environmental issues.¹⁰³ Without safeguards like FPIC, a mining sector expanding to meet decarbonization goals is likely to become a major source of conflict, especially for those who are advocating peacefully for Indigenous and frontline communities where those mineral resources are located.¹⁰⁴

FPIC requires giving Indigenous communities the opportunity to freely accept or reject a project before it is approved to move forward. One precondition for putting this into practice is that there must be a safe enabling environment for all people to participate in consultation and consent processes or voice

opinions about potential extractive industry projects without fear for their safety or the safety of their families or networks. This includes those individuals or groups who voice opposition to projects, as well as the individuals and organizations that support them.

Protections for defenders have been articulated in the UN Declaration on Human Rights Defenders, in numerous UN Human Rights Council and General Assembly resolutions, and through the work of the UN Special Rapporteur on the Situation of Human Rights Defenders.¹⁰⁵ The UNGPs also recognize the role defenders play in helping businesses understand the concerns facing rights holders.¹⁰⁶

In this section, we present the key findings from the analysis of policy language regarding commitments to respect the rights of human rights and environmental defenders.

FIGURE 8. MORE COMPANIES NEED TO INCLUDE RESPECT FOR THE RIGHTS OF HUMAN RIGHTS AND ENVIRONMENTAL DEFENDERS IN THEIR POLICIES



- Eight of the 43 companies surveyed included language in their human rights policies that were clear statements recognizing the legitimate role that human rights defenders play (Figure 8). All of the companies with this policy language are ICMM members.
- Glencore and BHP were the only two companies whose policies were explicit about the unique vulnerability to abuse that defenders face.¹⁰⁷
- Six of these companies (BHP, Freeport, Rio Tinto, Teck, Vale, South32) included explicit policy language regarding zero tolerance for any forms of retaliation by employees, suppliers, or business partners against defenders for the work they do. All are major producers of nickel, cobalt, and copper. Glencore and MMG did not have explicit policy language on nonretaliation.
- None of the lithium or graphite companies assessed had clear policy language on defenders.
- ERG, Nouveau Monde Graphite, Nornickel, and Pilbara Minerals were the only non-ICMM companies to include clear language regarding nonretaliation, although their policies did not expressly refer to defenders.¹⁰⁸ ERG's nonretaliation policy applies to anyone raising concerns about potential breaches of their Code of Conduct or others applicable laws.¹⁰⁹ Nornickel's commitment was interpreted as applying more narrowly to nonretaliation against internal whistleblowers or anyone assisting with investigating misconduct only. Pilbara's nonretaliation language related to their employees' rights to freedom of association and to collective bargaining.
- Copper producer Antofagasta was the only ICMM member that did not have any public policy language related to this issue.
- All policy commitments regarding defenders were gender blind. There is a growing body of evidence showing how the violence perpetrated against women human rights defenders is unique, as are the ways these individuals (and collectives) navigate these risks and organize to defend their communities.¹¹⁰ Company policies should recognize these differences and ensure their implementation or operational guidance applies the findings from the company's relevant project-level gender analysis.
- No company surveyed provided details of the steps they would take when allegations of threats or harassment of human rights or environmental defenders by employees, contractors, security forces, or other actors are brought to their attention. Again, companies need to develop and publish detailed operational guidance to support the policy commitments they make and report publicly on their performance.
- No company provided evidence of when they would use their leverage with business partners or host governments if civic space was under threat generally. This is surprising, given that threats to freedom of assembly, expression, and association can jeopardize the overall stability of investment environments.
- Lastly, no companies surveyed committed not to use or support strategic lawsuits against public participation (SLAPPs). SLAPPs are harmful criminal or civil actions taken to silence, intimidate, and drain the financial resources of those who speak out in the public interest. They are frivolous and vexatious tactics used to target civil society advocates, journalists, community leaders, whistleblowers, and others who speak out against corporate practices, with negative impacts on local communities and the environment.

While it is encouraging to see eight mining companies recognize the growing threats defenders face, more decisive action is needed. Taking action to protect human rights defenders makes good business sense and can help companies manage operational and reputational risks, especially in contexts where the rule of law is weak.

4. CASE STUDIES; MEANINGFUL IMPLEMENTATION OF FPIC POLICY COMMITMENTS CONTINUE TO LAG BEHIND

This report, “Recharging Community Consent,” focuses on the publicly available company policies that support community consultation and FPIC. This focus on policy commitments, however, should not be seen as more important than efforts to monitor the implementation of those commitments in practice. Oxfam recognizes that corporate policy commitments are often not translated into practice, especially when it comes to community consent.¹¹¹ We include the following two case studies to illustrate some of the ongoing challenges Indigenous and land-connected communities face in ensuring their rights are respected in practice.

Undermining community consent in Coroccohuayco, Peru

Like other mining giants, Glencore¹¹² commits publicly to respect human rights and work to obtain the FPIC of Indigenous communities impacted by their mining activities.¹¹³ According to the company’s own corporate governance documents, they commit to implement negotiation processes with affected communities, based on transparency, good faith, and maintaining an open attitude through dialogue.¹¹⁴

CooperAcción, a long-term Oxfam partner in Peru, undertook an evaluation of Glencore’s practices related to the proposed major expansion of its Antapaccay-Tintaya copper mine, located in the province of Espinar, Cusco.¹¹⁵ Copper concentrate from the mine is transported by land to the Matarani port, Arequipa, and then exported. In operation since the 1980s, the mine is alleged to have affected the quality and quantity of available water and led to major public health issues in the nearby communities.¹¹⁶

Glencore has pursued the Coroccohuayco expansion since 2018. Relying on primary and secondary sources, including interviews with leaders from Pacopata and Huini—two of the three communities located in the proposed Coroccohuayco

project area¹¹⁷—CooperAcción’s findings show important gaps between what Glencore commits to do on paper and how those FPIC commitments are implemented in practice.

PROVISION OF INCOMPLETE OR PIECEMEAL PROJECT INFORMATION

In their engagements with communities, Glencore has consistently failed to provide relevant information in a timely manner or in a format that is accessible to the communities. During the process prior to the approval of the amended environmental impact assessment (EIA) for the Coroccohuayco expansion, Glencore did not provide a full description of the potential environmental and social impacts or describe the full extent of communal lands to be acquired.¹¹⁸

Incomplete, imprecise, and delayed information disclosures from Glencore continued once the EIA was approved.¹¹⁹ In Pacopata, interviewees described that despite the timeline established for the baseline study, population census, cadaster, and inventory of individual and collective assets completed months ago, the company has not yet informed the community of the results.¹²⁰ This has not stopped Glencore from pushing ahead with negotiations.¹²¹ Community negotiators describe going into these sessions “blind,” with no clarity on how the lands they own individually, or that are managed collectively or for community use, are valued.¹²² The lack of full information impedes the negotiation process and undermines the transparency and good faith that should govern negotiation processes of this nature.

PRESSURING INDIVIDUAL COMMUNITY MEMBERS TO NEGOTIATE DEALS OUTSIDE OF COMMUNAL ASSEMBLIES

Since 2019, Glencore has deployed a two-pronged strategy to secure access to the communal lands they need for this project. On one hand, they have pursued a collective negotiation process through the communities' own institutional channels—via the boards of directors and the communal assemblies.¹²³ In parallel, they have also actively promoted individual negotiations with land-owning families by persuading them with job offers and other types of economic support.¹²⁴ Leaders in Pacopata and Huini who were interviewed for this project describe how the pressure to sell their lands to Glencore has increased as a result, with some community members expressing feelings of being pressured to support the project. Interviewees produced copies of letters Glencore had recently sent to individuals in Huini offering them a voluntary economic contribution, a “tinka,” if they agreed to formalize—once and for all—the protocol for the negotiation of the sale of their lands.¹²⁵

Glencore claims that Antapaccay has a community dialogue process underway to discuss the framework for land acquisition and states that “to date Antapaccay has not signed land acquisition agreements with communities.”¹²⁶ However, testimonies like these raise questions about Glencore's good faith efforts to respect FPIC according to their company policy. Practices like this can be seen as generating tension and divisions among the members of these communities, especially between those who are more inclined to negotiate with the company and others who question the strategies that the company has been deploying to secure individual support.¹²⁷

In its human rights policy, Glencore commits to seek, through good faith negotiations, to obtain FPIC of Indigenous peoples for new projects or changes to existing projects. In practice, CooperAcción has documented company engagement strategies in Pacopata and Huini that have achieved the opposite. Not only has the lack of timely and complete project information hampered negotiations, but the tactic of promoting one-off agreements with individual community members has undermined collective decision-making processes and promoted division and breakdown in social fabric.

Conflicting stories of promises made in Mozambique's graphite belt

Mozambique has one of the most progressive land laws in Africa, that explicitly recognizes customary law as a source of land rights. While some argue consent is required before customary lands can be leased to an investor,¹²⁸ in

practice the land laws are interpreted as requiring robust consultations with affected communities. Past research shows that customary or communal lands are regularly awarded to investors without proper consultation, informed participation, or fair compensation.¹²⁹ Although this is not the case in Mozambique's graphite belt, resettlement processes in other parts of the country have been rushed, leaving those who lost land, especially women, worse off and with few livelihood options.¹³⁰

Australian-listed Syrah Resources operates the Balama graphite mine in northern Mozambique through its wholly owned subsidiary Twigg Exploration and Mining Ltd. (hereinafter, “Syrah”).¹³¹ Located approximately 260 km west of the provincial capital, Pemba, the Balama mine is estimated to hold reserves of around 107 million tons of graphite, with a mine life of approximately 50 years. Raw graphite is transported by road to the port in Pemba, where it is exported. In 2022, the US Department of Energy awarded a loan of \$102 million to a separate Syrah subsidiary, Syrah Technologies LLC, for the expansion of its Louisiana processing facility. Over time, up to 70 percent of the raw graphite from Balama will be shipped to the United States and processed at the Louisiana facility.¹³²

Following almost a decade of preliminary work, including an environmental and social impact assessment and resettlement action plan, the Mozambican government approved Syrah's mining permit in 2018. Production commenced shortly thereafter. Approximately 6,000 ha of land that was previously held under customary land tenure was acquired by the mine. Between 2014 and 2021, 811 farms were acquired, with affected farmers entitled to new land and resettlement assistance.¹³³

Syrah has some of the strongest public commitments of the graphite companies surveyed in this report. It commits to align its policies and operational systems with the IFC Performance Standards and the ICMM's Mining Principles, although it is not a formal member.¹³⁴ According to its human rights policy, Syrah commits to “identify, mitigate and prevent where possible, adverse human rights impacts on its people and communities.” The company does not, however, have a public policy commitment to respect FPIC for Indigenous or other communities.¹³⁵ The first mine site-level human rights risk assessment is under development,¹³⁶ and Syrah is supporting an external audit of its social and environmental performance against the IRMA standard.¹³⁷

Oxfam commissioned local organization SEKELEKANI to examine the effectiveness of Syrah's community consultation and consent process. SEKELEKANI adopted a qualitative case study approach that included reviewing existing documentation about the mine as well as conducting individual and focus group interviews with community members who lost land. Oxfam representatives traveled to Balama and conducted supplementary interviews and focus group discussions with

29 community members in Ntete as well as with Syrah staff and members of the District Administration.¹³⁸ The purpose of these interviews was to understand people's different perceptions regarding the quality of Syrah's community engagement process. Community members did raise other issues related to labor conditions and local employment opportunities that are not reflected below.

UNFINISHED RESTITUTION FOR LOST LANDS

The initial company-led community consultations took place between July 2013 and May 2014, and were structured to meet the legal requirements of the resettlement action plan. This initial phase of negotiations around land was contentious, according to testimonies we documented. Interviewees describe how their lack of knowledge on their legal rights, coupled with the company trying to move as quickly as possible, made negotiations difficult.¹³⁹

One community member described how the initial resettlement planning relied too heavily on just two individual community leaders from each of the affected communities.¹⁴¹ From his perspective, these leaders did not have adequate time to brief their respective communities as a whole or to ensure there was collective agreement around what the project impacts would be and what was being offered in exchange. He argued that this has contributed to ongoing issues around compensation and challenges identifying suitable replacement land. Syrah explained that the notes from the resettlement committee meetings are checked and verified with community members for accuracy.¹⁴²

Syrah acknowledged their approach to community engagement around land and resettlement has evolved and improved.¹⁴³ Since the initial phase of the project in 2013 and 2014, consultations held with the resettlement committees serve as updates and are carried out prior to any resettlement taking place.¹⁴⁴ Syrah reported zero complaints for the first time following the conclusion of the most recent resettlement negotiations in 2021.¹⁴⁵

They also explained that their process of community consent is continued through community participation in the local development committees. According to public information, these local development committees were set up to operationalize an agreement Syrah reached with the Mozambican government in 2017.¹⁴⁶ These committees operate more as a forum through which community members can influence how voluntary corporate social responsibility investments should be allocated. Best practice would see such committees having the power to influence the design, operation, and monitoring of mine activities and the monitoring of agreements reached during land access negotiations.

“I was in the first group to be resettled. They [Syrah] had done the work of mapping and had documents but we didn't understand the purpose of the documents or the mapping.”¹⁴⁰

LACK OF DOCUMENTATION AROUND SCOPE AND OUTCOMES OF NEGOTIATIONS

Despite the improvements in Syrah's approach to community engagement, none of the people interviewed as part of this research were able to produce any written minutes or documentation of what had been agreed to in the various phases of negotiations. Interviewees pointed to different promises made, but they could not produce anything to verify their claims. Several community members interviewed for this study noted that there were still some outstanding compensation and land restitution claims, although Syrah explained that from their perspective all outstanding compensation and land claims have in fact been resolved.¹⁴⁷

Transparency over process and outcomes, as well as accountability for agreements reached, are key tenets that underpin community consultation and FPIC processes. They are also key to the IFC Performance Standards.¹⁴⁸ Agreements need to be readily accessible to all community members. Otherwise, the lack of documentation managed and held at the community level makes monitoring of the agreements reached extremely difficult and can raise questions about how a company is performing in practice.

OPPORTUNITY FOR GREATER TRANSPARENCY OF PROJECT INFORMATION

Overall, research for this case study illustrates opportunities to improve community access to basic information about the project, including access to environmental monitoring data, as well as progress towards agreements reached during the resettlement and livelihood restoration processes.

5. RECOMMENDATIONS

In this section we provide clear recommendations that governments, companies, and other stakeholders should adopt.

GOVERNMENTS

1. All governments, especially those in producer countries, need to operationalize UNDRIP, including upholding Indigenous peoples' right to FPIC for all mining projects. Where communities have developed their own FPIC protocols, these should be respected and followed.
2. Pass national laws requiring all companies, especially mining companies, to implement robust human rights and environmental due diligence and facilitate access to justice for any community adversely affected by company activities, whether domestic or offshore.
3. In the absence of binding legislation, any mining sector investments from governments should prioritize funding to companies that have been independently assessed against responsible mining assurance initiatives like IRMA.
4. When sourcing battery minerals from other countries, articulate clear support for the highest social and environmental protections—including FPIC—circular economy solutions, and the need to reduce demand for new mining, and invest financial, technical, and diplomatic resources to achieve these ends.

MINING COMPANIES

1. Mining companies must increase their ambitions and commit to operate only with the full support and consent of the communities they impact. This means:
 - Committing publicly to respect the individual and collective rights of Indigenous peoples through aligning their public policies with UNDRIP. Corporate

policy commitments should be clear that the company will not move forward with a project without the consent of the communities impacted. Companies yet to do so should develop accompanying implementation guidelines to support their policy commitments and make these publicly available.

- Prioritizing and investing resources in engaging communities at the earliest stage, which is especially important for smaller companies whose projects are still in the preproduction phase. Communities should be consulted and determine the process to be followed for respecting FPIC. Where communities have developed their own FPIC protocols, these should be respected and followed.
- Ensuring communities have access to their own independent third-party advisors, including legal advisors, who can help them understand key issues, provide advice on legal rights, and support them during consultations and negotiations.
- Documenting and disclosing the results of their community engagement processes, as well as evidence of any negotiated agreements that are reached. Evidence must allow for independent verification that consent has been achieved at each project site or concession and allow for and independent assessment of the quality of any agreements reached.
- Commit to implement and publish third-party audits of their social and environmental performance, including FPIC performance, against robust standards like IRMA.
- Encouraging all their sites to apply the standard of consent as a best practice, not only when projects are likely to impact the rights of Indigenous peoples.

2. Mining companies must strengthen their policies and internal systems to ensure community consultation and consent processes are inclusive and gender responsive, and to ensure projects are adequately assessing and mitigating the gendered impacts of their operations on affected communities. This means:

- Publicly committing to ensure gender equality in project planning and operations. At a minimum, policies and commitments should align with the Guidance on Gender Dimensions of the United Nations Guiding Principles on Business and Human Rights and include full resourcing to provide gender-responsive grievance mechanisms when violations occur during operations.¹⁴⁹
- Investing in intersectional human rights impact assessments at all mine sites when assessing project risks. Traditional environmental and social impact assessments do not typically adequately assess the human rights risks, and as a result management plans often fail to anticipate and mitigate these risks. Standalone gender impact assessments or human rights impact assessments that integrate gender power analysis are key tools that companies should implement at each project site.
- Ensuring they have a safeguarding plan at the project level to prevent and mitigate potential coercion, exploitation, abuse, harassment, sexual and gender-based violence, bullying, fraud, improper conduct, and child exploitation. Communities should also know their safeguarding rights and how to make safeguarding complaints, and companies should be accountable for not violating these rights.

3. Mining companies need to do more to positively influence civic space and ensure human rights defenders can freely operate without fear of retaliation or reprisals.¹⁵⁰

- Companies that have not already done so should publicly commit to protecting the rights and legitimacy of human rights defenders by adopting and disclosing a policy to protect their rights, one that recognizes and commits them to address the specific forms of harms that women defenders face.
- Companies should commit to use their leverage and speak out in defense of human rights defenders as well as against legal reforms that are aimed at restricting civil society space.
- Companies should commit not to use or support SLAPPs or other legal strategies that diminish established legal protections for defenders.

- Companies should establish (or support) an effective grievance mechanism accessible to human rights defenders, recognizing that defenders may distrust company-led mechanisms.

INDUSTRY ASSOCIATIONS

1. Industry associations should update their member performance expectations regarding Indigenous peoples and require members to obtain and respect FPIC, develop publicly available implementation guidance, and commit to publish third-party audits of their members' social and environmental performance, including FPIC performance.

INVESTORS

1. Invest only in mining companies that demonstrate a public commitment to Indigenous peoples' rights, including FPIC, and that have the internal management systems (including board-level oversight), detailed and public implementation guidance, and third-party monitoring systems in place that can ensure that consent is ongoing and that quality agreements are reached with Indigenous peoples and maintained across the life of projects. This means asking questions about:
 - Executive- or board-level support for and oversight of social performance issues, including community engagement and consent;
 - Key findings from a company's human rights due diligence process, including the role that Indigenous communities played in the baseline studies, how their feedback was considered in the project design, and level of agreement or disagreement within communities;
 - How the differential impacts of the project on women and other vulnerable groups have been identified and addressed in project design. This is usually done as part of a human rights impact assessment, or as part of a specific gender impact assessment;
 - Effectiveness of feedback loops or grievance mechanisms, especially regarding environmental and cultural heritage protection issues;
 - Company's commitment to not proceed with a project if community consent is withdrawn at any stage.

6. CONCLUSION

Our research underscores that the battery mineral sector's approach to FPIC is not sufficiently ready to support a just energy transition under current mining company policies.

While we recognize how positive it is that more than half the companies surveyed have human rights policies that commit them to embed human rights due diligence in their governance and operations, fewer companies have policy commitments specific to preventing and mitigating impacts on Indigenous peoples' rights. And those companies that do often qualify their commitment to respect FPIC—leaving open the possibility that if consent is ultimately not provided, the company will simply move forward if the government authorizes it.

Across all the minerals we assessed, smaller companies' commitments are falling short of international norms and societal expectations, suggesting that human rights and community consent are still not seen as priorities for these companies or their investors. Community consent starts at the earliest stage of project activities, and companies involved in exploration have a critical role to play in ensuring any mining for clean energy infrastructures is rights-respecting. Building trust with affected communities and implementing consultation, consent, and benefit-sharing processes takes time. Yet, as projects move from exploration to financing and construction phases, unless community consent has been prioritized and adequately resourced, the incentives for all actors to move quickly to completion and production often lead them to overlook or sideline trust-building and land rights issues.¹⁵¹ Project financing logics can work against respect for human rights.

The cobalt and graphite sectors are lagging international norms and standards, even though that there are some companies producing these minerals with strong policy commitments. Across all the minerals assessed, company policies often seem most focused on ensuring alignment with the domestic laws in the countries where they operate and not

necessarily with ensuring they meet or exceed international human rights norms and standards. It is positive to see the lithium companies leading in terms of IRMA audits. Finally, there is significant variation in the quality of policy commitments among nickel producers.

Taken all together, the gap between producers of different commodities is concerning. These findings indicate that end users looking to produce or use responsibly sourced batteries will struggle to do so unless structural change is achieved that allows Indigenous peoples and frontline communities the power to control whether and how mining occurs on their land.

It is vital that mining companies extracting minerals used in rechargeable batteries strengthen their policy commitments, report publicly on their implementation of those commitments, and open themselves to independent evaluations of their performance. A surge in extraction of transition minerals without adequate safeguards to ensure FPIC is respected is certain to produce enormous harms to communities, particularly Indigenous communities. The fact that nearly half of the companies in this analysis have no policies concerning FPIC and Indigenous peoples inspires little confidence that the energy transition the industry is promoting and society is demanding will avoid the mistakes of the past.

A just energy transition calls for deep reforms to the extractive sector's culture, policies, and practices towards safeguarding the human rights of women, girls, and gender-diverse people. When the policies and practices of extractive industries companies are gender unaware and do not account for nor mitigate the specific risks these community members face, mine projects can increase violence against them while locking these groups out of potential project benefits and exacerbating or creating new gender inequalities. Companies need to commit to developing stronger gender equality policies that address the gender-differentiated impacts of their operations on the communities where their operations

are based, and not only on tackling the entrenched gender discrimination in their workplaces. While it is encouraging to see eight mining companies recognize the growing threats defenders face, more decisive action is needed. Taking action to protect human rights defenders makes good business sense and can help companies manage operational and reputational risks, especially in contexts where the rule of law is weak.

Our study underlines the importance of mining companies adopting strong FPIC policies and unequivocally committing not to proceed with mining projects if they do not receive consent. To make sure they are fulfilling all components of FPIC, companies also must make sure they have the appropriate policies and internal systems in place to ensure human rights due diligence, gender-responsive FPIC, and protection for human rights defenders. Governments and industry associations should also require these standards.

Policy priority must be given to finding and funding solutions to minimize the need to mine raw minerals—and then ensuring that what mining is still needed is conducted in a sustainable, just, equitable, and rights-respecting way. In pursuing a more just energy transition, grounded in FPIC, mining companies can break free from a history of violence and abuse that has undermined frontline communities and companies' own bottom lines.

ANNEXES

ANNEX 1. LIST OF INTERVIEWS

COMPANY NAME	DATE OF INTERVIEW
China Molybdenum (CMOC)	November 29, 2022
Australian Mines	Did not respond to request
iTech Minerals	Did not respond to request
Talga Group	November 22, 2022
China Railway Group (CREC)	Did not respond to request
Jinchuan Group	Did not respond to request
Chemaf	March 3, 2023, written only
Glencore	December 12, 2022
Huayou Cobalt	Did not respond to request
Eurasian Resources Group (ERG)	Responded to consultation draft
BHP	Responded to consultation draft
Freeport	February 28, 2023
Antofagasta	Did not respond to request
Rio Tinto	March 31, 2023, written only
Teck Resources	February 15, 2023, written only
KAZ Minerals	Did not respond to request
Vale	February 16, 2023
MMG	Did not respond to request
First Quantum Minerals	Did not respond to request
Syrah Resources	March 13, 2023, written only
NextSource Materials	Did not respond to request
Nouveau Monde Graphite	Responded to consultation draft
Triton Minerals	Did not respond to request
Northern Graphite	Did not respond to request
Zentek	Did not respond to request
GreenRoc Mining plc	January 23, 2023
Leading Edge Materials (LEM)	Responded to consultation draft
Focus Graphite	Declined
Allkem	December 6, 2022
Livent	Did not respond to request
Anson Resources	Did not respond to request
Pilbara Minerals	February 21, 2023, written only
Sociedad Química y Minera de Chile (SQM)	December 21, 2022
Albemarle	Did not respond to request
Ganfeng Lithium Co.	Did not respond to request
Youngy Corporation	Did not respond to request
Savannah Resources	December 1, 2022
Sigma Lithium	Did not respond to request
ANTAM	Did not respond to request
Global Ferronickel	Did not respond to request
Eramet	Did not respond to request
Norilsk Nickel	Did not respond to request
South32	February 16, 2023

ANNEX 2. SUMMARY OF COMPANY FPIC COMMITMENTS

COMPANY NAME	COMPANY HQ	ICMM	MINERAL	STATUS	SPECTRUM	STANDARD	GUIDANCE	EVIDENCE	AUDIT DISCLOSURE
Albemarle	United States	No	Li	PROD	RESPECT	UNDRIP, ICMM	No	Yes	IRMA, 1st audit public
Vale	Brazil	Yes	Ni, Cu	PROD	RESPECT	UNDRIP, IFC, ILO169, ICMM	Yes, public	Yes	No
Rio Tinto	United Kingdom	Yes	Cu	PROD	RESPECT-Q	UNDRIP, ICMM	Yes, public	Yes	No
BHP	Australia	Yes	Ni, Cu	PROD	RESPECT-Q	UNDRIP, ICMM	Yes, public	No	No
Teck Resources	Canada	Yes	Cu	PROD	RESPECT-Q	UNDRIP, ILO169, ICMM	Yes, public	Yes	No
Nouveau Monde Graphite	Canada	No	C	PRE	RESPECT-Q	UNDRIP	Yes	Yes	No
South32	Australia	Yes	Ni	PROD	RESPECT-Q	UNDRIP, IFC, ILO169, ICMM	Yes, not public	Yes	No
Glencore	Switzerland	Yes	Co, Ni, Cu	PROD	RESPECT-Q	ICMM	Yes, not public	Yes	No
Freeport	United States	Yes	Cu	PROD	RESPECT-Q	ICMM	Yes, not public	No	No
MMG	Australia	Yes	Cu	PROD	RESPECT-Q	ICMM	No	Yes	No
Nornickel	Russia	No	Ni, Cu	PROD	RESPECT-Q	UNDRIP, IFC, ILO169, ICMM	No	No	No
China Molybdenum	China	No	Co	PROD	RESPECT-Q	IFC, ICMM	No	No	No
SQM	Chile	No	Li	PROD	SEEK	UNDRIP, ILO169	No	Yes	IRMA, 1st audit public
Allkem	Argentina (ASX listed)	No	Li	PROD	SEEK	UNDRIP, ILO169	No	Yes	No
Pilbara Minerals	Australia	No	Li	PROD	SEEK	No	No	Yes	No
Antofagasta	United Kingdom	Yes	Cu	PROD	SEEK	ICMM	Yes, not public	No	No
GreenRoc	United Kingdom	No	C	PRE	SEEK	No	No	No	No
Livent	United States	No	Li	PROD	ENGAGE	UNDRIP	No	No	IRMA, pending
Syrah Resources	Australia	No	C	PROD	ENGAGE	IFC, ICMM	No	No	IRMA, pending
Eramet	France	No	Ni	PROD	ENGAGE	IFC	No	No	IRMA, pending
Chemaf	UAE	No	Cu, Co	PROD	ENGAGE	IFC	Yes, not public	No	No
Talga Group	Australia	No	Co, C	PRE	ENGAGE	IFC	No	No	No
First Quantum Minerals	Canada	No	Ni, Cu	PROD	ENGAGE	ILO169, IFC	No	Yes	No
ERG	Luxembourg	No	Co	PROD	ENGAGE	IFC, OECD	No	Yes	No
Zentek	Canada	No	C	PRE	ENGAGE	No	No	Yes	No
KAZ Minerals	Netherlands	No	Cu	PROD	ENGAGE	UNGP	No	No	No
Northern Graphite	Canada	No	C	PRE	ENGAGE	No	No	No	No
Triton Minerals	Australia	No	C	PRE	ENGAGE	No	No	No	No
Anson Resources	Australia	No	Li	PRE	NON	No	No	No	No
ANTAM	Indonesia	No	Ni	PROD	NON	No	No	No	No
Australian Mines	Australia	No	Co, Ni	PRE	NON	No	No	No	No
China Railway Group	China	No	Co	PROD	NON	No	No	No	No
Focus Graphite	Canada	No	C	PRE	NON	No	No	No	No
Ganfeng Lithium	China	No	Li	PROD	NON	No	No	No	No
Global Ferronickel	Philippines	No	Ni	PROD	NON	No	No	No	No
Huayou Cobalt	China	No	Co	PROD	NON	UNGP, OECD	No	No	No
iTech Minerals	Australia	No	Co	PRE	NON	No	No	No	No
Jinchuan Group	China	No	Co	PROD	NON	No	No	No	No
Leading Edge Materials	Canada	No	C	PRE	NON	No	No	No	No
NextSource Materials	Canada	No	C	PRE	NON	No	No	No	No
Savannah Resources	United Kingdom	No	Li	PRE	NON	No	No	No	No
Sigma Lithium	Canada	No	Lithium	PROD	NON	No	No	No	No
Youngy Corporation	China	No	Lithium	PROD	NON	No	No	No	No

LEGEND FOR ANNEX 2

OXFAM SPECTRUM—POLICY COMMITMENT	SPECTRUM	MINERALS		STATUS	
Respect FPIC	RESPECT	Lithium	Li	Production	PROD
Respect FPIC-qualified	RESPECT-Q	Copper	Cu	Preproduction	PRE
Seek to achieve/agreement	SEEK	Nickel	Ni		
Engage	ENGAGE	Cobalt	Co		
No commitment	NON	Graphite	C		

9. NOTES

- 1 T. Riofrancos, “The Security-Sustainability Nexus: Lithium Onshoring in the Global North,” *Global Environmental Politics* 23, no. 1 (2023): 20–41.
- 2 A global sample of over 5,000 transition minerals projects found 54 percent were located on or near the lands of Indigenous peoples. See J. R. Owen, D. Kemp, A. M. Lechner, J. Harris, R. Zhang, and E. Lebre, “Energy Transition Minerals and Their Intersection with Land-Connected Peoples,” *Nature Sustainability* 6 (February 2023): 203–211, <https://www.nature.com/articles/s41893-022-00994-6>. A second study found 80 percent of the 700 mining projects for transition minerals in countries implementing the Extractive Industries Transparency Initiative (EITI) were located near or on the territories of Indigenous peoples. See K. Sturman, J. Loginova, S. Worden, J. Matanzima, and A. Arratia-Solar, “Mission Critical: Strengthening Governance of Mineral Value Chains for the Energy Transition” (Sustainable Minerals Institute report, EITI, Brisbane, 2022), <https://eiti.org/documents/mission-critical>.
- 3 See United Nations Declaration on the Rights of Indigenous Peoples, article 32(2).
- 4 Legal Resources Centre, “Free, Prior and Informed Consent in the Extractive Industries in Southern Africa: An Analysis of Legislation and Their Implementation in Malawi, Mozambique, South Africa, Zambia and Zimbabwe” (Oxfam, Washington, D.C., 2018), <https://www.oxfamamerica.org/explore/research-publications/free-prior-and-informed-consent-in-the-extractive-industries-in-southern-africa/>.
- 5 This spectrum was adapted from the International Association for Public Participation (IAP2), Spectrum of Public Participation, <https://www.iap2.org/page/pillars>.
- 6 K. L. Bhatt, *Concessionaires, Financiers and Communities: Implementing Indigenous Peoples’ Rights to Land in Transnational Development Projects* (Cambridge: Cambridge University Press, 2020).
- 7 The suspension of Guatemala’s Escobal mine is emblematic of the risk a company faces when it relies on government approval without doing its own assessment of whether consent had been provided. See S. Imai and S. Colgrove, “Investors Are Increasingly Shunning Mining Companies That Violate Human Rights,” *The Conversation*, January 24, 2022, <https://theconversation.com/investors-are-increasingly-shunning-mining-companies-that-violate-human-rights-154702> and “Pan American Silver Completes \$1b-Buyout of Tahoe Resources,” MINING.COM, February 22, 2019, <https://www.mining.com/pan-american-silver-completes-1b-buyout-tahoe-resources/>.
- 8 D. Welsby, J. Price, S. Pye and P. Ekins, “Unextractable Fossil Fuels in a 1.5 Degree C World,” *Nature* 597 (2021): 230–234, <https://doi.org/10.1038/s41586-021-03821-8>.
- 9 G. Bridge and E. Faigen, “Towards the Lithium-Ion Battery Production Network: Thinking Beyond Mineral Supply Chains,” *Energy Research Social Science* 89 (2022): 102659, <https://doi.org/10.1016/j.erss.2022.102659>.
- 10 E. Dominish, N. Florin, and S. Teske, “Responsible Minerals Sourcing for Renewable Energy” (Institute for Sustainable Futures report, University of Technology Sydney, 2019), <https://earthworks.org/wp-content/uploads/2019/04/>

[Responsible-minerals-sourcing-for-renewable-energy-MCEC-UTS-Earthworks-Report.pdf](#) and D. La Porta, K. Hund, M. McCormick, J. Ning Thou Jam, and J. Drexhage, “The Growing Role of Minerals and Metals for a Low Carbon Future” (International Bank for Reconstruction and Development, Washington, D.C., 2019), <https://documents.worldbank.org/en/publication/documents-reports/document-detail/207371500386458722/the-growing-role-of-minerals-and-metals-for-a-low-carbon-future>.

- 11 G. Evans, “A Reckoning for EV Battery Raw Materials,” *S&P Global Mobility* (blog), October 31, 2022, https://ihsmarkit.com/research-analysis/a-reckoning-for-ev-battery-raw-materials.html?utm_source=Sailthru&utm_medium=newsletter&utm_campaign=auto-file&utm_term=10-31-2022.
- 12 In March 2022, the European Union (EU) passed a new Battery Directive that introduced new rules related to the supply of rechargeable batteries coming into the EU. In 2023, the European Parliament will vote on the Critical Raw Materials Act (CRMA), which will seek to regulate the sourcing of raw materials to meet European decarbonization goals.
- 13 In July 2022, the United Kingdom published its “Resilience for the Future: Critical Minerals Strategy,” which set out its plans for strengthening supply chain security for key minerals.
- 14 Australia’s newly elected Labor government is currently developing a new Critical Minerals Strategy, after seeking public comment in early 2023 on a discussion paper. Australia has existing initiatives like the \$2 billion Critical Minerals Facility, administered by Export Finance Australia and the \$100 million Critical Minerals Development Program.
- 15 In the United States, the Infrastructure Investment and Jobs Act (“Bipartisan Infrastructure Law”) included \$2.8 billion in grants to US battery manufacturing and processing facilities. The Inflation Reduction Act (“IRA”) included almost \$400 billion in economic incentives for US processing, refining, and manufacturing of electric vehicle infrastructure, including rechargeable batteries.
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- 118 For example, in the case of Pacopata, CooperAcción estimated that Glencore was seeking to acquire over 80 percent of the communal lands according to information that was shared with community members, despite the amended EIA noting that only 6 percent of the lands would be required.
- 119 In a letter dated September 8, 2023, Glencore informed Oxfam that this project has returned to a pre-feasibility phase and the modified EIA approved in 2019 will no longer be applied; rather the company will present a new EIA.
- 120 List of nine interviews carried out in Espinar, May 10-11, 2023. Names have been withheld at request of the individuals.
- 121 Interview, May 10, 2023. Name withheld at request of the individual.
- 122 Interview, May 10, 2023. Name withheld at request of the individual.
- 123 Interview, May 10, 2023. Name withheld at request of the individual.
- 124 Interview, May 11, 2023. Name withheld at request of the individual.
- 125 Interview, May 11, 2023. Name withheld at request of the individual.
- 126 Written response from Glencore to Oxfam, September 8, 2023.
- 127 Interview, May 10, 2023. Name withheld at request of the individual.
- 128 Legal Resources Centre, “Free, Prior and Informed Consent in the Extractive Industries.”
- 129 N. Matavel, S. Dolores, and V. Cabanelas, “Lords of the Land: Preliminary Analysis of the Phenomenon of Land Grabbing in Mozambique” (Justicia Ambiental and União Nacional de Camponeses, Maputo, 2011).
- 130 S. Lillywhite, D. Kemp, and K. Sturman, “Mining, Resettlement and Lost Livelihoods: Listening to the Voices of Resettled Communities in Mualadzi, Mozambique” (Oxfam, Melbourne, 2015), https://www.oxfam.org.au/wp-content/uploads/2015/10/Mining-resettlement-and-lost-livelihoodsV5_FA_web.pdf.
- 131 A 5 percent minority quota is held by the Mozambican government.
- 132 The target is for 100,000 tons of raw graphite to be processed annually at the facility. Interview, June 1, 2023.
- 133 Email dated June 18, 2023.
- 134 Syrah noted that it also seeks to apply other sustainability frameworks like the Sustainable Development Goals (SDGs) as well as to disclose according to the Global Reporting Initiative (GRI).

- 135 In an assessment of the 2014 community consultation process, the fundamental principle of the consultation process was “to ensure free, prior and informed consultation with ISAs (interested and affected parties).” See Coastal and Environmental Services (CES), “Public Participation Process Report for the Balama Graphite Mine” (Grahamstown, September 2014, 2), http://www.cesnet.co.za/pubdocs/Syrah%20Balama%20Graphite%20Mine%20Eng%20CB290814/Public%20Consultation%20Document_Part1.pdf.
- 136 Written response to interview questions dated March 13, 2023.
- 137 Written response to interview questions dated March 13, 2023.
- 138 Oxfam America staff traveled to Mozambique between May 25 and June 8, 2023.
- 139 Focus group interview, Ntete, June 1, 2023.
- 140 Interview, Ntete, June 1, 2023. Name withheld at request of the individual.
- 141 A technical working group was established on July 10, 2013, and included two representatives from each of the four directly affected communities: Ntete, Pirira, Maputo, and Nquide. See CES, “Public Participation Process Report for the Balama Graphite Mine.”
- 142 Written response, September 9, 2023.
- 143 Interview, June 8, 2023.
- 144 Interview, June 8, 2023.
- 145 Interview, June 8, 2023.
- 146 According to information reported publicly by Syrah, this agreement set out several areas for local community support, including education; training and jobs; youth leadership; health promotion; agriculture; cultural heritage; and support for vulnerable individuals. Access to the full agreement was not granted.
- 147 Interview, June 8, 2023.
- 148 See, D. Mullins and J. Wambayi, “Testing Community Consent: Tullow Oil Project in Kenya” (Oxfam, Washington, D.C., 2017), <https://www.oxfamamerica.org/explore/research-publications/testing-community-consent/>.
- 149 United Nations Development Programme and UN Working Group on Business and Human Rights, “Gender Dimensions of the Guiding Principles on Business and Human Rights” (Office of the United Nations High Commissioner for Human Rights, Geneva, 2019), <https://www.ohchr.org/sites/default/files/Documents/Issues/Business/BookletGenderDimensionsGuidingPrinciples.pdf>.
- 150 There is a growing body of evidence describing the steps business can take to respect, protect, and defend civic space. See, for example, B. Freeman et al., “Shared Space Under Pressure: Business Support for Civic Freedoms and Human Rights Defenders—Guidance for Business” (BHRRC and International Service for Human Rights, London, 2018), <https://media.business-humanrights.org/media/documents/ed628efe9bd-9cb15e834c62b7a9b189d7d0ea6b9.pdf> and A. Bogrand et al., “Threats to Human Rights Defenders: Six Ways Companies Should Respond” (Oxfam, Washington, D.C., 2023), <https://policy-practice.oxfam.org/resources/threats-to-human-rights-defenders-six-ways-companies-should-respond-621490/>.
- 151 K. L. Bhatt, *Concessionaires, Financiers and Communities*.

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