Recharging Community Consent: mapping battery mineral company public commitments to FPIC

A critical moment for FPIC in the battery mineral supply chain

Decarbonizing our global energy and transport systems and transitioning to 100 percent renewable power is urgently needed if we are to avert climate catastrophe. Rechargeable batteries provide an essential technology that will unlock this transformation, and demand for minerals used in these batteries—including cobalt, copper, graphite, lithium, and nickel—is surging.

Indigenous and frontline communities are especially vulnerable to a mining sector expanding to meet decarbonization goals. 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. 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.

The principle of free, prior, and informed consent (FPIC)—a human right for Indigenous peoples guaranteed by international law—represents the most important safeguard for protecting rights and fighting inequality by ensuring Indigenous and land-connected 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 only proceed with the full support and consent of Indigenous and frontline communities. Only then will climate action be just.

Oxfam’s study

Oxfam is finalizing a policy brief examining 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 these companies.

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; and second, to what extent is that policy or public commitment consistent with the standard of FPIC. 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 how each company addresses gender power relations in their engagement processes, and how they design their operations to mitigate gender discrimination. Second, we looked for policy language describing the company’s approach to human rights and environmental due diligence. Third, we looked for policy language committing a company to respect the rights of human rights and environmental defenders. 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), and we are sharing relevant draft findings with each company to verify the information.
Preliminary findings

While noting that this research is yet to go through peer review and is subject to change before publication, several key trends have started to emerge in our research. We are encouraged that many—though certainly not all—of the studied companies have policies recognizing a commitment to Indigenous peoples, human rights, and/or gender equity, but unfortunately these policies frequently suffer from major limitations.

Commitments to Indigenous peoples’ rights and human rights due diligence are often highly qualified and lack clear guidance of how companies implement the commitments. The gender equity policies that exist typically focus on diversity and inclusion within the company’s workforce but overlook the gendered impacts on host communities that can stem from companies’ operations. While eight companies have explicit commitments regarding human rights defenders, these commitments lag far behind what is needed to ensure defenders do not face retaliation. Across all issues studied, exploration and pre-production companies tend to be among the companies with weaker policy commitments.

Our research underscores that the battery mining sector is not sufficiently ready to support a just energy transition under current policies. There are several weak links. First, across all the minerals we assessed, exploration companies’ commitments all fall short of international norms and societal expectations, suggesting that human rights and community consent are still not seen as priorities for the Boards of these companies. Community consent starts at the earliest stage of project activities and companies involved in exploration have a critical role to play. Second, lithium, cobalt, and graphite sectors are lagging, notwithstanding there are some companies producing these minerals with strong policy commitments. 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 unless structural change is achieved that allows Indigenous peoples’ and frontline communities the power to control if and how mining occurs on their lands.

Respecting community consent

Our study underlines the importance of companies adopting strong FPIC policies and unequivocally committing not to proceed with mining projects if they do not receive community consent. In order 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. There should be no trade-offs between respecting community consent and acting urgently to tackling the climate emergency.