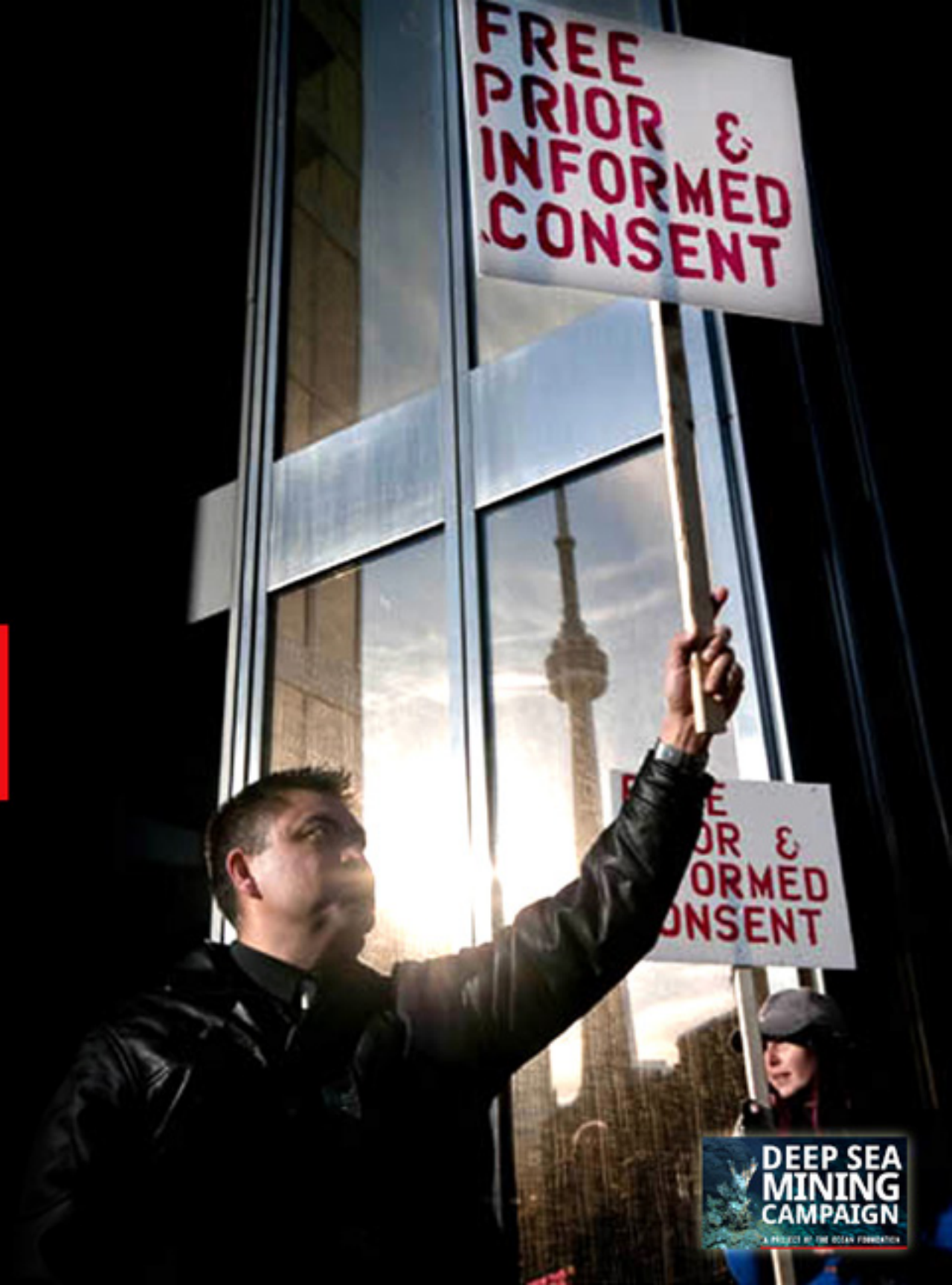


# Making Free, Prior & Informed Consent a Reality



# What is Free, Prior, and Informed Consent





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**Free, Prior, and Informed Consent** is based on principles of self-determination and is an exercise of the right of Indigenous Peoples to self determination; and the right to land, territories and resources.



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**Free, Prior, and Informed Consent** is the collective right of Indigenous Peoples to negotiate the terms of externally imposed policies, programs, and projects that directly affect their livelihoods and well-being, and to decide whether or not these policies, programs, and projects are in fact wanted .



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**Free, Prior, and Informed Consent** serves as a mechanism for Indigenous Peoples to exercise their own decision making processes; and to set their terms and conditions for partnership with other entities



# Understanding Free, Prior, and Informed Consent





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**INFORMED** means the indigenous peoples must be given all relevant information relating to the project and that the information is objective, accurate and presented in a manner and form understandable to the community to be able to make its decision about whether to agree to the project or not.



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**CONSENT** requires that the people involved in the project must allow Indigenous communities:

- to say 'Yes' or 'No' to a project
- to withhold consent and establish the terms and conditions for consent if it is given
- to say 'Yes' or 'No' to a project in accordance with community decision-making processes



# Understanding Free, Prior, and Informed Consent

## **FREE, PRIOR, AND INFORMED CONSENT**

is about a process and an outcome

## **FREE, PRIOR, AND INFORMED**

ensures that the process is a fair one

## **CONSENT**

decision/outcome of the process



# What Free, Prior, and Informed Consent is NOT





# What Free, Prior, and Informed Consent is NOT

**What is the difference between Free, Prior, and Informed Consent and stakeholder consultation and negotiation?**

Free, Prior and Informed Consent is not:

- participatory engagement
- consultations
- negotiations

These are just means and tools through which Free, Prior and Informed Consent can be achieved.





**CONSULTATION  $\neq$**



**CONSENT**





# THE RIGHT TO VETO

A self-determined right to give or withhold Free, Prior, and Informed Consent implies that where a community does not wish to enter into consultations with a third party, or the State, such an obligation should not be imposed on them.

## CONSULTATION $\neq$



## CONSENT





# Legal Basis in International Law





# Legal Basis in International Law

## International Standards

- Free, Prior, and Informed Consent is derived from the rights of Indigenous Peoples which are recognised under international and regional human rights treaties and declaration
- This rights framework give rise to a duty on States to obtain Free, Prior, and Informed Consent to the issuance of concessions, and before commencement of a project on or near Indigenous territories



# Legal Basis in International Law

## Free, Prior, and Informed Consent is recognised in:

- United Nations Declaration on Rights of Indigenous Peoples, 2007 (UNDRIP)
- The International Labour Organisation: Indigenous and Tribal Peoples Convention, 1989 (No. 169)
- The United Nations Declaration on the Right to Development states that communities must be able to participate in projects that affect them and is consistent with Free, Prior, and Informed Consent principles
- Other international standards, eg Universal Declaration on Human Rights, the International Covenant on Economic, Social and Cultural Rights, and the International Covenant on Civil and Political Rights, are consistent with the right Free, Prior, and Informed Consent



# Duty of States





# Duty of States

Article 32 (2) mining and other large projects

States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free and informed consent prior to the approval of any project affecting their lands or territories and other resources, particularly in connection with the development, utilisation or exploitation of mineral, water or other resources.



# Responsibility of Companies





# Responsibility of Companies

**... 'In order to achieve a climate of confidence and mutual respect for the consultations, the consultation procedure itself should be the product of consensus', and that 'mining companies should ... defer to indigenous decision-making processes without attempting to influence or manipulate the consultation process.'**

- Special Rapporteur on the Rights of Indigenous Peoples



## CASE STUDY: Jabiluka – Rio Tinto / ERA and the Mirrar People





## **CASE STUDY: Jabiluka – Rio Tinto / ERA and the Mirrar People**

**Project name:** Jabiluka

**Company:** Rio Tinto (majority shareholder in local operator Energy Resources of Australia (ERA))

**Location:** Northern Territory, Australia

**Indigenous People:** Mirrar

**Minerals:** Uranium

**Current Status:** ERA maintains Jabiluka lease. No mining operations being conducted there and a contractual agreement in place requiring Mirrar consent for their conduct.









STOP  
JABILUKA  
MINE

URANIUM  
LEAVE IT  
IN THE  
GROUND

SYDNEY  
SAYS  
NO

SOME SAY  
NO TO  
MINE

Stop  
Jabiluka







# Free, Prior & Informed Consent and Deep Sea Mining





# Free, Prior & Informed Consent and Deep Sea Mining

The growing acceptance of the requirement for Indigenous Peoples Free, Prior and Informed Consent by the extractive industries and other international institutions should encourage the Governments and the Deep Sea Mining industry to strengthen their commitment to the rights of indigenous peoples, in particular indigenous peoples rights to give or deny Free, Prior and Informed Consent for mining projects in or near their land and seas.



# Free, Prior & Informed Consent and Deep Sea Mining

**Deep sea mining should only proceed with the consent of Pacific Island people**



# Free, Prior & Informed Consent and Deep Sea Mining

Deep sea mining should only proceed with the consent of Pacific Island people. If there is no consent this should be respected.



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- This legislation must clearly define obligations upon governments and companies regarding the application of Free, Prior, and Informed Consent, Precautionary Principle and best environmental practices throughout the mining cycle



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- Pacific Island Governments should develop national legislation prior to any further approvals of exploration or operation licences
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- Free, Prior, and Informed Consent is retrospectively applied to all existing exploration and operation licences – this along with application of the precautionary approach will help address gaps in the environmental and social risk assessments of existing projects



The word cloud features several prominent terms in large fonts, including "Seabed Mining", "Free prior and informed consent", "Precautionary principle", "Experimental", "Pacific", "Vanuatu", "Solwara 1", "Minerals", "Corporations", "Livelihoods", "Communities", "Impact", "Unustainable", "Campaign", "New Zealand", "Papua New Guinea", "Tonga", "Fiji", "Cook Islands", "Marine life", "Environment", "Oceans", "Seas", "Justice", "Economic", "Not", "Stop", "Nautilus", "Sovereignty", "Principle", "Consent", "Prior", "And", "Informed", "Free", "Prior", "And", "Informed", "Consent", "Precautionary", "Principle", "Environmental", "Social", "Cultural", "Livelihoods", "Communities", "Impacts", "Unustainable", "Development", "Activities", "Mining", "Operations", "Projects", "Plans", "Proposals", "Applications", "Requests", "Permits", "Licenses", "Approvals", "Clearances", "Authorizations", "Permissions", "Consents", "Agreements", "Arrangements", "Understandings", "Memorandums", "Letters of Intent", "MoUs", "Joint Ventures", "Partnerships", "Alliances", "Coalitions", "Networks", "Forums", "Conferences", "Meetings", "Discussions", "Consultations", "Engagements", "Interactions", "Relationships", "Connections", "Links", "Ties", "Bonds", "Attachments", "Additions", "Inclusions", "Exclusions", "Exemptions", "Waivers", "Dispensations", "Reliefs", "Remissions", "Remittances", "Reimbursements", "Refunds", "Restitutions", "Repairs", "Reparations", "Compensations", "Indemnifications", "Insurances", "Guarantees", "Warranties", "Assurances", "Certainties", "Confidences", "Faiths", "Beliefs", "Trusts", "Hopes", "Dreams", "Visions", "Ideals", "Values", "Ethics", "Morals", "Principles", "Standards", "Norms", "Rules", "Regulations", "Laws", "Policies", "Procedures", "Processes", "Systems", "Mechanisms", "Frameworks", "Structures", "Models", "Templates", "Patterns", "Formats", "Styles", "Methods", "Techniques", "Tools", "Resources", "Materials", "Supplies", "Services", "Facilities", "Equipment", "Infrastructure", "Assets", "Liabilities", "Debts", "Obligations", "Responsibilities", "Accountabilities", "Transparency", "Integrity", "Honesty", "Fairness", "Equity", "Justice", "Equality", "Inclusion", "Participation", "Empowerment", "Capacity Building", "Knowledge Sharing", "Information Exchange", "Communication", "Collaboration", "Cooperation", "Coordination", "Harmonization", "Alignment", "Integration", "Synergy", "Complementarity", "Complementarity", "Complementarity", "Complementarity", "Complementarity". The words are arranged in a dense, overlapping manner, with colors ranging from red and orange to green and blue, creating a vibrant and complex visual representation of the campaign's themes.