



December 2, 2024

Via E-mail

Global Battery Alliance

secretariat@globalbattery.org

Dear GBA Secretariat:

RE: Global Battery Alliance – Indigenous Peoples Rulebook

We thank you for the opportunity to make comments on the Global Battery Alliance’s (“**GBA**”) draft Indigenous Peoples Rulebook (the “**IP Rulebook**”). The First Nations Financial Management Board (the “**FMB**”) is a Canadian organization, with offices and clients spread across Canada. The FMB is an Indigenous-led organization established under the *First Nations Fiscal Management Act*.¹

We congratulate you on the issuance of the draft IP Rulebook. It is essential that Indigenous rights are considered at the various stages along the battery value chain. Canada has significant reserves of critical minerals that will be essential to the green transition. Significant amounts of Canada’s critical minerals are found on or near Indigenous lands and territories.² With appropriate uptake, the GBA Passport will be a good tool to assist consumers, investors and other users in choosing batteries and electric options that are best in class.

Consultation

We attended the consultation the GBA hosted on October 23, 2024, for the Americas. The GBA staff and working group were well prepared. However, there were very few Indigenous rightsholders in attendance. You may consider continuing to socialize the IP Rulebook and setting further dates for consultations that are specific to countries or regions.

Many Indigenous Peoples in Canada will be impacted by the battery value chain, at all stages of mining and beyond.³ It would be worthwhile to consider how to gather more attention and feedback from impacted Indigenous Canadians. Inviting more First Nations, Metis and Inuit to a consultation that is tailored to Canada may increase participation.

¹ S.C. 2005, c. 9. The FMB works with clients to develop fiscal capacity and responsible fiscal governance, and further serves Indigenous people by advocating for the necessary inclusion of Indigenous interests in financial and economic policy matters throughout Canada and internationally.

² For one estimate, please see RBC Economics & Thought Leadership’s Report “[92 to Zero: How economic reconciliation can power Canada’s climate goals](#)”: “At least 56% of the \$60 billion in new critical mineral advanced projects involve Indigenous lands, including 26% within 20 kilometres of Indigenous reserves, settlement lands, and other title-like areas, and another 30% on unceded territories where Indigenous rights are asserted” (at page 5).

³ For example, there will be direct and immediate impacts on Indigenous communities, including socioeconomic and environmental, during all stages of impact assessment and the life cycle of the mines. There will be downstream effects in the financing of these mines. There will be difficult-to-ascertain, long-term effects on, e.g., culture and population, as well as with respect to the mining of a resource for which necessary technology does not exist to implement the transition solution in-community (e.g. electric vehicle charging stations in arctic and sub-arctic climates).



We recommend planning consultations with suitable times in mind for all time zones. The October 23, 2024, consultation started at 7:30am Pacific time (e.g. during the busy morning time when parents are taking children to school and before work has commenced for the day). This is the time zone which British Columbia is in. British Columbia is home to many First Nations and a speculated 16 critical mineral mines.⁴

Designing effective consultations for this work will also be a signal to entities that effective consultations can be done. The GBA should demonstrate how compliance with the IP Rulebook is possible.

Implications of the GBA Passport

As we understand it, where an entity satisfies the GBA that it meets the criteria at the different levels and receives the GBA Passport, the entity will effectively communicate to the world that it meets certain thresholds. With respect to the IP Rulebook, the entity will send a message that it has respected Indigenous Peoples' rights to certain required levels. It is thus essential that Indigenous Peoples understand the message that the Passport will send to the world. Do Indigenous Peoples support the criteria for sending this message? Are the criteria in the "Best Practices" level adequate, or would an Indigenous community in Canada more likely assess those criteria as "Foundations" or "Intermediate"? After an entity has reported against the IP Rulebook, who verifies that the information reported is accurate? Unlike some other reporting metrics that can be more easily audited or assured (e.g. financial data; physical units of GHGs emitted; etc.), reporting on the free, prior and informed consent and other metrics in the IP Rulebook is difficult to assess for truthfulness and accuracy.

Indigenous Peoples in Canada expect to be active participants in all stages of impact assessment projects that take place on their traditional lands and adjacent areas. Some Indigenous groups have or share approval authorities. Others have substantive roles in the ongoing management of the project impacts (e.g. impacts on wildlife). Indigenous Peoples expect to receive economic benefits for economic development that takes place on their traditional lands and territories. This may be through ownership options, benefit sharing, contributions to communities, employment opportunities, or Indigenous procurement. In addition, Indigenous Peoples are demanding respect of their customs, traditions, and spiritual practices. Any designation that an entity can get that says the entity has met certain thresholds for respecting Indigenous rights has to be able to reflect these elements.

In brief, the implications of the Passport on Indigenous Peoples are significant, and it is incumbent on the GBA to effectively communicate to Indigenous Peoples what those implications are: a sign to the world that an entity has satisfied the GBA that impacted Indigenous Peoples' rights have been adequately respected. This essential messaging should be taken into consideration when the GBA considers the next phases of its consultations.

⁴ "Sixteen proposed critical mineral mines, representing \$36 billion in near-term investment, 300,000 person-years of employment and \$11 billion in tax revenues, are at a key juncture, based on findings of a [new independent economic impact analysis](#) conducted for the Mining Association of British Columbia (MABC)." See: [\\$36 billion in critical minerals investment at stake in BC - Mining Association of BC](#).

Local References

We appreciate that the IP Rulebook must be jurisdiction-neutral, and that the examples of regulations are from major regions (e.g. the EU) or large countries (e.g. the US). We recommend including country-specific appendices that point entities to essential country-specific legislation, regulations, guidelines, case law and binding and non-binding documents. For example, a Canadian appendix might include:

- The British Columbia⁵ and federal UNDRIP legislation⁶;
- The Truth and Reconciliation Reports⁷ and Calls to Action⁸;
- Court decisions including:
 - Aboriginal title (*Delgamuukw v. British Columbia*, [1997] 3 SCR 1010);⁹
 - Duty to Consult (*Haida Nation v. British Columbia (Minister of Forests)*, 2004 SCC 73);¹⁰
 - Duty to consult and cumulative effects (*Yahey v. British Columbia*, 2021 BCSC 1287¹¹).

The above, non-exhaustive list showcases that Canada's legal framework for Indigenous rights includes nonbinding but policy-informing instruments (the Truth and Reconciliation Reports and Calls to Action); primary law; and case law. These appendices do not need to be exhaustive, but they should enable entities to have a basic understanding of the legal framework in place from jurisdiction to jurisdiction.

These appendices could also be regional, and divided by nations, to avoid having such a large number of individual documents.

Closing Comments

During the consultation, there was discussion regarding incorporating cumulative effects on Indigenous communities into the IP Rulebook. We recommend the GBA consider the above-noted decision of *Yahey*, which sets out a good understanding of how cumulative effects may impact Indigenous communities.

With respect to impacts, we recommend the GBA consider the impact an operating mine will have on the services available in the closest Indigenous communities (e.g. health care centres; drinking water systems; cell phone reception; etc.). The GBA should further consider 'downstream' impacts, such as the financing of mines and other elements along the battery value chain.

⁵ [Declaration on the Rights of Indigenous Peoples Act](#)

⁶ [United Nations Declaration on the Rights of Indigenous Peoples Act.](#)

⁷ [Reports - NCTR](#)

⁸ [Calls_to_Action_English2.pdf](#)

⁹ [Delgamuukw v. British Columbia - SCC Cases](#)

¹⁰ [Haida Nation v. British Columbia \(Minister of Forests\) - SCC Cases](#)

¹¹ [2021 BCSC 1287 \(CanLII\) | Yahey v British Columbia | CanLII](#)



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During the consultation, the GBA staff asked how they can best ensure continued engagement. We strongly recommend that, in the Canadian context, the GBA connect with Canada's national Indigenous organizations¹² to advise that this work is ongoing. It is imperative that Indigenous Peoples in Canada understand that the GBA Passport is effectively a message to the world that their rights have been respected. Given that implication, GBA must socialize this project.

Please do not hesitate to contact us should you have questions.

FIRST NATIONS FINANCIAL MANAGEMENT BOARD

Per:  _____

Scott Munro, FCPA, FCA, CAFM
Chief Executive Officer

¹² [Assembly of First Nations: Representing First Nation citizens in Canada](#); [Métis National Council](#); [National Representational Organization for Inuit in Canada](#).