

Indigenous Peoples and Mining

POSITION STATEMENT

May 2013

All ICMM member companies commit to implement and measure their performance against a set of 10 sustainable development principles. Where members seek greater clarity on some of the key challenges facing the industry, ICMM develops supporting position statements.

OVERVIEW

This position statement sets out ICMM members' approach to engaging with Indigenous Peoples¹ and to free, prior and informed consent (FPIC) and replaces ICMM's 2008 *Mining and Indigenous Peoples Position Statement*. ICMM's vision is for constructive relationships between mining and metals companies and Indigenous Peoples that are based on mutual respect, meaningful engagement, trust and mutual benefit. Recognizing the potential vulnerability of Indigenous Peoples, the commitments in this position statement may be summarized as requiring members to:

- respect the rights, interests, special connections to lands and waters, and perspectives of Indigenous Peoples, where mining projects are to be located on lands traditionally owned by or under customary use of Indigenous Peoples
- adopt and apply engagement and consultation processes that ensure the meaningful participation of indigenous communities in decision making, through a process that is consistent with their traditional decision-making processes and is based on good faith negotiation
- work to obtain the consent of Indigenous Peoples where required by this position statement.

In ICMM's view, FPIC comprises a process, and an outcome. Through this process Indigenous Peoples are: (i) able to freely make decisions without coercion, intimidation or manipulation; (ii) given sufficient time to be involved in project decision making before key decisions are made and impacts occur; and (iii) fully informed about the project and its potential impacts and benefits. The outcome is that Indigenous Peoples can give or withhold their consent to a project, through a process that strives to be consistent with their traditional decision-making processes while respecting internationally recognized human rights² and is based on good faith negotiation³. The commitments in this position statement relating to consent apply to new projects and changes to existing projects that are likely to have significant impacts on indigenous communities. The position statement will not apply retrospectively⁴. Where both indigenous and non-indigenous peoples are likely to be significantly impacted, members may choose to extend the commitments embodied in this position statement to non-indigenous people.

BACKGROUND ON ICMM PRINCIPLES AND POSITION STATEMENTS

All ICMM member companies implement the ICMM Sustainable Development Framework as a condition of membership. This includes commitments to implement 10 principles and any related position statements throughout their businesses, to report in line with the Global Reporting Initiative's (GRI) Sustainability Reporting Framework and to obtain independent external assurance that the ICMM commitments are being met (this framework is described in detail at www.icmm.com).

ICMM principles of particular relevance to Indigenous Peoples and project decision making are:

Principle 3: Uphold fundamental human rights and respect cultures, customs and values in dealings with employees and others who are affected by our activities.

Principle 6: Seek continual improvement of our environmental performance.

Principle 9: Contribute to the social, economic and institutional development of the communities in which we operate.

In accordance with the principles, ICMM has also developed a number of position statements that further elaborate member commitments to particular issues. Company members are obliged to comply with these statements by incorporating them into their operational practices.

¹ As defined in article 1 of the International Labour Organization's Indigenous and Tribal Peoples Convention (ILO 169).

² The UN Guiding Principles on Business and Human Rights outlines the responsibility of business to "avoid infringing on the rights of others and to address adverse impacts with which they are involved".

³ This involves all parties being willing to: (i) engage in negotiation and to meet at reasonable times and frequency; (ii) provide information needed for informed negotiation and explore key issues of importance; (iii) agree mutually acceptable procedures for negotiation that include sufficient time for decision making; and (iv) compromise in pursuit of reaching a formal and documented agreement. This is consistent with the attributes of good faith negotiation outlined in IFC's Guidance Note 7 on Indigenous Peoples (paragraph GN 25).

⁴ Members are expected to implement the commitments in this position statement by May 2015. The commitments will not apply to projects that have started the approvals and permitting processes at the time of the adoption of the position statement.

RECOGNITION STATEMENTS

ICMM members recognize that:

- 1 Indigenous Peoples often have profound and special connections to, and identification with, lands and waters and these are tied to their physical, spiritual, cultural and economic well-being. They may also have valuable traditional knowledge and experience in managing the environment in a sustainable manner. Indigenous Peoples in many regions of the world have been historically disadvantaged and may often still experience discrimination, high levels of poverty and other forms of political and social disadvantage. Mining and metals projects can have significant impacts on local communities, both positive and negative.
 - 2 The interests of Indigenous Peoples in mining and metals projects are generally recognized as one or more of the following: owners of formal title to land or recognized legal interests in land or resources; claimants for ownership of land or resources; customary owners or occupants of land or resources; users of land or resources for purposes such as hunting, fishing, gathering of seeds/fruits and medicines, or for spiritual or ritual purposes; in material objects or resources of cultural significance; in landscapes which have special significance because of association, tradition or beliefs; members of host communities whose social, economic and physical environment may be affected by mining and associated activities.
 - 3 Indigenous Peoples have individual and collective rights and interests and it is internationally recognized that their rights should be protected by governments and respected by companies. Two of the key international instruments in this area are International Labour Organization (ILO) Convention No. 169 on Indigenous and Tribal Peoples (1989), and the UN Declaration on the Rights of Indigenous Peoples (UNDRIP) adopted by the UN General Assembly in September 2007⁵. “UNDRIP sets out rights that countries should aspire to recognize, guarantee and implement” and “establishes a framework for discussion and dialogue between Indigenous Peoples and States”.⁶
 - 4 Successful mining and metals projects require the support of a range of interested and affected parties. This includes both the formal legal and regulatory approvals granted by governments and the broad support of a company’s host communities. Indigenous Peoples often have cultural characteristics,
- governance structures and ways of interacting and decision making that sets them apart from the non-indigenous population. This requires companies to engage in ways that are culturally appropriate and to pay special attention to the capacities, rights and interests of Indigenous Peoples, within the context of broader community engagement. States have the right to make decisions on the development of resources according to applicable national laws, including those laws implementing host country obligations under international law. Some countries have made an explicit consent provision under national or sub-national laws. In most countries however, “neither Indigenous Peoples nor any other population group have the right to veto development projects that affect them”, so FPIC should be regarded as a “principle to be respected to the greatest degree possible in development planning and implementation”⁷.
- 5 States also have an important role to play in the process of engaging with Indigenous Peoples. They may be involved in determining which communities should be considered indigenous, in shaping the process for achieving FPIC and in determining how this relates to regulated processes for ensuring community participation in decision making. Given their role in balancing the rights and interests of Indigenous Peoples with the wider population, states may also play an important role in supporting the resolution of disagreements that may arise between Indigenous Peoples and companies in the pursuit of FPIC.
 - 6 In some countries, the term indigenous may be controversial and local terms may be in use that are broadly equivalent (such as tribal peoples, first peoples, native people, aboriginal people). In other situations, there may be no recognition of indigeneity by states, or the term may have negative associations that discourage people from acknowledging indigenous identity. Irrespective of the local context, ICMM members reject any discrimination or disadvantage that may be related to culture, identity or vulnerability and will seek to apply the principles embodied in this position statement to groups that exhibit the commonly accepted characteristics of Indigenous Peoples⁸.

⁵ As of October 2012, 22 countries had ratified ILO 169 which is legally binding in those states.

⁶ As stated in the UN Development Group’s *Guidelines on Indigenous Peoples’ Issues* (2008).

⁷ As expressed in the UN’s Department of Economic and Social Affairs *Resource Kit on Indigenous Peoples’ Issues* (2008).

⁸ As defined in ILO 169 and outlined in section 1.3 of ICMM’s *Good Practice Guide: Indigenous Peoples and Mining* (2010).

COMMITMENTS

In addition to existing commitments under the ICMM Sustainable Development Framework, ICMM member companies commit to:

- 1 Engage with potentially impacted Indigenous Peoples with the objectives of: (i) ensuring that the development of mining and metals projects fosters respect for the rights, interests, aspirations, culture and natural resource-based livelihoods of Indigenous Peoples; (ii) designing projects to avoid adverse impacts and minimizing, managing or compensating for unavoidable residual impacts; and (iii) ensuring sustainable benefits and opportunities for Indigenous Peoples through the development of mining and metals projects.
- 2 Understand and respect the rights, interests and perspectives of Indigenous Peoples regarding a project and its potential impacts. Social and environmental impact assessments or other social baseline analyses will be undertaken to identify those who may be impacted by a project as well as the nature and extent of potential impacts on Indigenous Peoples and any other potentially impacted communities. The conduct of such studies should be participatory and inclusive to help build broad cross-cultural understanding between companies and communities and in support of the objectives described in commitment 1 above.
- 3 Agree on appropriate engagement and consultation processes with potentially impacted Indigenous Peoples and relevant government authorities as early as possible during project planning, to ensure the meaningful participation of Indigenous Peoples in decision making. Where required, support should be provided to build community capacity for good faith negotiation on an equitable basis. These processes should strive to be consistent with Indigenous Peoples' decision-making processes and reflect internationally accepted human rights, and be commensurate with the scale of the potential impacts and vulnerability of impacted communities. The processes should embody the attributes of good faith negotiation and be documented in a plan that identifies representatives of potentially impacted indigenous communities and government, agreed consultation processes and protocols, reciprocal responsibilities of parties to the engagement process and agreed avenues of recourse in the event of disagreements or impasses occurring (see commitment 6 below). The plan should also define what would constitute consent from indigenous communities that may be significantly impacted. Agreed engagement and consultation processes should be applied in collaboration with potentially impacted indigenous communities, in a manner that ensures their meaningful participation in decision making.
- 4 Work to obtain the consent of indigenous communities for new projects (and changes to existing projects) that are located on lands traditionally owned by or under customary use of Indigenous Peoples and are likely to have significant adverse impacts on Indigenous Peoples, including where relocation of Indigenous Peoples and/or significant adverse impacts on critical cultural heritage⁹ are likely to occur¹⁰. Consent processes should focus on reaching agreement on the basis for which a project (or changes to existing projects) should proceed. These processes should neither confer veto rights to individuals or sub-groups nor require unanimous support from potentially impacted Indigenous Peoples (unless legally mandated). Consent processes should not require companies to agree to aspects not under their control.
- 5 Collaborate with the responsible authorities to achieve outcomes consistent with the commitments in this position statement, in situations where government is responsible for managing Indigenous Peoples' interests in a way that limits company involvement. Where a host government requires members to follow processes that have been designed to achieve the outcomes sought through this position statement, ICMM members will not be expected to establish parallel processes.
- 6 Address the likelihood that differences of opinion will arise, which in some cases may lead to setbacks or delays in reaching a negotiated agreement in good faith. Companies and potentially impacted indigenous communities should agree on reasonable tests or avenues of recourse at the outset, to be applied where differences of opinion arise. This might include seeking mediation or advice from mutually acceptable parties. Where commitment 4 applies and consent is not forthcoming despite the best efforts of all parties, in balancing the rights and interests of Indigenous Peoples with the wider population, government might determine that a project should proceed and specify the conditions that should apply. In such circumstances, ICMM members will determine whether they ought to remain involved with a project.

⁹ Includes natural areas with cultural and/or spiritual values such as sacred groves or water bodies.

¹⁰ Relocation of Indigenous Peoples and impacts on critical cultural heritage should be avoided to the extent possible.



FUTURE ICMM WORK

ICMM commits to continued engagement with Indigenous Peoples and their representatives and will continue to develop approaches relating to the interests and concerns of Indigenous Peoples. Among the elements of work currently planned or anticipated for the next few years are:

- updating ICMM's good practice guidance on Indigenous Peoples and Mining to support members in implementing this position statement
- the promotion of good practice more broadly across the mining and metals sector
- continued dialogue with Indigenous Peoples' organizations, development institutions and/or governments at the national and international levels.

ICMM

The International Council on Mining and Metals (ICMM) was established in 2001 to improve sustainable development performance in the mining and metals industry. Today, it brings together many of the world's largest mining and metals companies as well as national and regional mining associations and global commodity associations. Our vision is one of leading companies working together and with others to strengthen the contribution of mining, minerals and metals to sustainable development.

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