

Mining and Indigenous Peoples

POSITION STATEMENT

May 2008

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

OVERVIEW

ICMM's vision is for constructive relationships between the mining and metals industry and Indigenous Peoples which are based on respect, meaningful engagement and mutual benefit, and which have particular regard for the specific and historical situation of Indigenous Peoples. With this statement, ICMM members are making explicit number of their commitments in this area including to:

- respect the rights and interests of Indigenous Peoples as defined within applicable national and international laws
- clearly identify and fully understand the interests and perspectives of Indigenous Peoples when seeking to develop or operate mining/metals projects
- engage with potentially affected Indigenous Peoples during all stages of new development projects/mining activities
- seek agreement with Indigenous Peoples, based on the principle of mutual benefit, on programs to generate net benefits (social, economic, environmental and cultural) for affected indigenous communities
- develop good practice guidance to support members in implementing the position statement
- participate in national and international forums on Indigenous Peoples issues, including those dealing with the concept of free, prior and informed consent.

BACKGROUND ON ICMM PRINCIPLES AND POSITION STATEMENTS

All ICMM member companies are required to implement the ICMM Sustainable Development Framework. This includes commitments to implement 10 principles throughout their businesses, to report in line with the Global Reporting Initiative's (GRI) Sustainability Reporting Guidelines and Mining and Metals Sector Supplement, and to obtain independent external assurance that the ICMM commitments are being met (this framework is described in detail on www.icmm.com).

ICMM principles of particular relevance to Indigenous Peoples 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.

This position statement sets out ICMM members' approach regarding relations with Indigenous Peoples. It has been developed based on feedback received from a range of stakeholder groups to an earlier draft of the position statement.

RECOGNITION STATEMENTS

ICMM members recognize:

- 1 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. Some governments in the past, and sometimes still today, have not recognized their distinct identity, legitimate interests and, perhaps, their rights as articulated in relevant international conventions. Conversely, governments sometimes may have concerns that rights or autonomy demanded by Indigenous Peoples should not conflict with national development priorities or the integrity of the state and any possible inconsistencies need to be properly considered. A range of international instruments exist in this area including ILO Convention 169 on Indigenous and Tribal Peoples and the UN Declaration on the Rights of Indigenous Peoples. By 2006, 17 states had ratified ILO Convention 169. In September 2007, the non-binding UN Declaration on the Rights of Indigenous Peoples was adopted at the United Nations General Assembly¹
- 2 mining can have significant impacts on local communities. While these impacts can be both positive and negative, many Indigenous Peoples view their historical experiences of mining negatively. In some cases, mining operations – even though abiding by relevant national laws – have contributed to the erosion of Indigenous Peoples' culture, to restricted access to some parts of their territory, to environmental and health concerns, and to adverse impacts on traditional livelihoods. The development aspirations of Indigenous communities have also not always been met. Equally, mining has also brought some positive impacts to indigenous communities, particularly in recent years. These include income generation, opportunities for equity participation, support for cultural heritage and assistance for community development through education, training, employment and business enterprises

- 3 Indigenous Peoples often have profound and special connections to, and identification with, land and environment and these are tied to their physical, spiritual, cultural and economic well-being. They can also have valuable traditional knowledge and experience in managing the environment in a sustainable manner
- 4 the interests of Indigenous Peoples in mining and metals projects are generally recognized to be one or more of the following: owners of formal title to land or recognised legal interests in land or resources; claimants for ownership of land or resources; customary owners of land or resources but without formal legal recognition of customary ownership; occupants or users of land either as customary owners or as people whose customary land are elsewhere; 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
- 5 ICMM members believe that successful mining and metals projects require the broad support of the communities in which they operate, including of Indigenous Peoples, from exploration through to closure. Interactions between mining and metals industry representatives and Indigenous Peoples should occur in the context of broader community engagement but at the same time, giving special attention to the particular capacities, priorities and interests of Indigenous Peoples
- 6 governments play vital roles in shaping and determining the enabling environment within which mining and metals projects can make a valuable contribution to the sustainable development of communities, including Indigenous Peoples. Legal frameworks should preferably be developed in consultation with Indigenous Peoples and allow for processes which allow them to participate effectively. Where existing national or provincial law deals with Indigenous Peoples issues, the provisions of such laws will prevail over the content of this Position Statement to the extent of any inconsistencies. Where no relevant law exists the Position Statement will guide member practices. ICMM members are not political decision-makers and cannot disregard national laws or national government policy. Equally, some national legal frameworks may be no more than a minimum requirement for companies seeking to build relationships of respect and trust with Indigenous Peoples. Companies may also sometimes legitimately point out in discussions with governments any gaps in implementation of international conventions which they have agreed to and ratified.

¹ In September 2007, the non-binding UN Declaration on the Rights of Indigenous Peoples was adopted at the United Nations General Assembly, with 143 member states voting in favour (but with a significant number of these countries heavily qualifying their support on the basis of, for example, concerns about potential impacts on their ability to govern effectively), 11 abstaining, and 4 voting against it."

COMMITMENTS

In addition to existing commitments under the ICMM Sustainable Development Framework, ICMM company members commit to:

- 1 acknowledge and respect the social, economic, environmental and cultural interests of Indigenous Peoples and their rights as articulated and defined within provincial, national and international laws
- 2 clearly identify and fully understand the interests and perspectives of Indigenous Peoples regarding a project and its potential impacts. Social impact assessments or other social baseline analyses for projects which may impact on Indigenous Peoples will examine their particular perspectives and be based on consultation with them
- 3 engage and consult with Indigenous Peoples in a fair, timely and culturally appropriate way throughout the project cycle. Engagement will be based on honest and open provision of information, and in a form that is accessible to Indigenous Peoples. Engagement will begin at the earliest possible stage of potential mining activities, prior to substantive on-the-ground exploration. Engagement, wherever possible, will be undertaken through traditional authorities within communities and with respect for traditional decision-making structures and processes
- 4 build cross-cultural understanding: for company personnel to understand Indigenous Peoples' culture, values and aspirations, and for Indigenous Peoples to understand a company's principles, objectives, operations and practices
- 5 encourage governments where appropriate to participate in alleviating and resolving any problems or issues faced by Indigenous Peoples near mining operations
- 6 design projects to avoid potentially significant adverse impacts of mining and related activities and where this is not practicable, minimizing, managing and/or compensating fairly for impacts. Among other things, for example, special arrangements may need to be made to protect cultural property or sites of religious significance for Indigenous People
- 7 seek agreement with Indigenous Peoples and other affected communities on programs to generate net benefits (social, economic, environmental and cultural), that is benefits and opportunities which outweigh negative impacts from mining activities. Specific consideration will be given to customary land and resource use in situations where formal title may be unclear or where claims are unresolved. ICMM members will measure progress to ascertain that specified social benefits are being achieved and if programs are not achieving stated goals, seek agreed modifications to improve program effectiveness. In general, ICMM members will seek to build long-term partnerships with Indigenous Peoples, to find ways to increase their participation as employees and suppliers, and to support self-empowered regional and community development such as through education, training, healthcare, and business enterprise support
- 8 support appropriate frameworks for facilitation, mediation and dispute resolution. ICMM members may assist with or facilitate basic capacity building for Indigenous Peoples organizations near their operations. In general, Indigenous Peoples as well as communities as a whole will be provided with a clear channel of communication with company managers if they have complaints about a mining operation and transparent processes through which to pursue concerns
- 9 through implementation of all of the preceding actions, seek broad community support for new projects or activities. ICMM members recognize that, following consultation with local people and relevant authorities, a decision may sometimes be made not to proceed with developments or exploration even if this is legally permitted.

Future ICMM work

ICMM commits to moving forward in continued consultation 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:

- the development of good practice guidance to support members in implementing this position statement, ideally developed in consultation with Indigenous Peoples
- the promotion of good practice more broadly across the mining and metals sector
- continued dialogue with Indigenous Peoples' organizations and governments at the local, national and international levels.

ICMM

The International Council on Mining and Metals (ICMM) was established in 2001 to act as a catalyst for performance improvement in the mining and metals industry. Today, the organization brings together 19 mining and metals companies as well as 30 national and regional mining associations and global commodity associations to address the core sustainable development challenges faced by the industry. Our vision is one of member companies working together and with others to strengthen the contribution of mining, minerals and metals to sustainable development.

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