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Good Practice Guide on Indigenous Peoples and Mining

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Item Type	Book
Authors	International Council on Mining & Metals (ICMM)
Publisher	International Council on Mining & Metals (ICMM)
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Download date	2026-06-22 17:01:42
Link to Item	http://hdl.handle.net/20.500.12424/188176

GOOD PRACTICE GUIDE

INDIGENOUS PEOPLES AND MINING





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FOREWORD

ICMM

This Guide represents a key milestone on a journey that began for ICMM in 2004, when we started working to support more constructive relationships between Indigenous Peoples and mining companies. Since then we convened two international roundtables, published a *Mining and Indigenous Peoples' Review* and undertook external consultations before publishing an *ICMM Position Statement on Mining and Indigenous Peoples* in 2008.

That position statement was approved by ICMM's Council of CEOs in 2008, and signalled a desire for more constructive relationships between the mining and metals industry and Indigenous Peoples based on respect, meaningful engagement and mutual benefit. Developing implementation guidance was then set as our next task. This Guide is the outcome.

We recognize that each community has unique attributes and that various complexities may arise in areas where ICMM members are present. In this regard, the Guide is not intended to outline a one-size-fits-all approach but to be adaptable by companies and communities to their own circumstances.

The Guide is a milestone rather than an end point. We intend to support dissemination and uptake of the guide to help ensure that it makes a difference for communities on the ground. ICMM will also continue to engage on Indigenous Peoples issues. We look forward to working collaboratively with our members and Indigenous Peoples to support its uptake.

Lastly, a work such as this takes tremendous effort. Thanks are due to all those who have contributed – the Advisory Group, Aidan Davy and Claire White within the Secretariat and the many others who have shared their thoughts along the way.



Tony Hodge
President, ICMM

Indigenous Peoples Advisory Group

In producing this Guide, ICMM has built on the vision embodied in its Position Statement for constructive relationships between Indigenous Peoples and the mining and metals industry which are based on respect, meaningful engagement and mutual benefit and which have particular regard for the specific and historical situation of Indigenous Peoples. We welcome ICMM member companies commitment to establishing these relationships and believe that the Guide provides a useful resource for an ongoing positive dialogue.

As individuals with varied and deep personal relationships and professional experience with Indigenous Peoples, we recognize the necessity for mining companies to develop and maintain respectful relationships with the communities that may be affected by their activities.

Drawn from our experiences in Africa, Australasia, Oceania, Latin America and North America, we have contributed our knowledge, advice and counsel on both process and substance throughout the development of this document over the last two years.

From the outset, we have remained independent of the process. We have always retained the right to take exception to the way in which the Guide developed or the final content. On balance, however, we feel that it offers sound guidance that – if implemented effectively – has the potential to establish constructive and mutually respectful relationships between Indigenous Peoples and mining companies.

We understand that this Guide is part of a wider process and will be a 'living document' to be reviewed based on experience with its implementation. We encourage Indigenous Peoples and all mining companies – whether or not they are ICMM members – to utilise the guidance in good faith, and to learn from the experience.

Mike Rae, Canada; **Cássio Inglez de Sousa**, Brazil;
Meg Taylor, Papua New Guinea; **Mick Dodson**, Australia;
Lucy Mulenkei, Africa

MESSAGE FROM ICMM TO COMMUNITIES WHO MAY BE AFFECTED BY MINING

The International Council on Mining and Metals (ICMM) is pleased to present our *Good Practice Guide: Indigenous Peoples and Mining* (the Guide). ICMM is an organization representing 19 of the world's leading mining and metals companies, as well as 30 other regional, national and commodity associations. ICMM and its members collectively seek to improve global mining industry practices by balancing the various social, cultural, environmental and economic needs of all parties affected by mining operations.

The Guide stems from a commitment by our members to ensure the responsible extraction/production of minerals and metals. At its heart is a commitment to establishing positive engagements and relationships with Indigenous Peoples. This is reflected in ICMM's Position Statement on Mining and Indigenous Peoples, May 2008 (see Appendix A). We are now building upon the foundation of the commitments set out in the Position Statement with the development of this Guide. Our intention is to provide information and practical direction to staff and employees of responsible mining companies, to guide appropriate and respectful engagement with Indigenous Peoples. Our hope is that the Guide will stimulate discussion and promote cross-cultural understanding between indigenous communities and mining companies.

We would respectfully encourage you to respond in the spirit of good faith, which was the foundation for the development of this Guide, when entering into discussions with responsible mining companies. The Guide may not be perfect and you may, upon reflection, think "some aspects of this will not work for us". We would hope that you would then use this Guide to assist in developing a process to engage with mining companies that works for your community. This, in turn, will assist responsible mining companies in their efforts to establish positive dialogue with you, as a beginning for mutually beneficial and enduring relationships.

The mining and metals industry

The mining and metals industry engages in the extraction and processing of mineral resources when the size and quality of a mineral deposit provide for an economically feasible project. The extracted minerals are then refined into materials used for the production of a variety of goods for the global market.

Mineral extraction and refinement is nearly as old as human civilization. Mining can take place on the surface or underground. Depending upon where in the world mining takes place, mining can range from small groups of people using traditional methods to a large and sophisticated operation with modern infrastructure, technology and equipment, employing many workers. ICMM's members include many of the world's largest mining companies and all apply modern industrial practices.



MESSAGE FROM ICMM TO COMMUNITIES WHO MAY BE AFFECTED BY MINING

Although not all ICMM members engage in the first two stages, the broad sequence of activities in the life cycle is usually as follows (see diagram opposite):

- **Stage 1 – Prospecting:** This usually involves a small number of people (prospectors or exploration companies) coming into an area and looking for specific signs of the presence of certain minerals they are searching for. Normally, if they find something of interest they will stake a legal claim whereby they express a specific interest in an area with a view to seeking a permit to explore for mineral deposits.
- **Stage 2 – Exploration:** Mining exploration companies are typically smaller than the mining companies themselves and explore the potential mineral deposits identified by the prospectors. Exploration may involve various activities including airborne surveys and drilling. The purpose of exploration is to determine the size and value of a mineral deposit. This is a high-risk operation as only a few exploration efforts ever identify sufficient mineral deposits to warrant full mining operations. This will be the stage when you first experience a significant mining presence inside your territory. If the exploration company provides evidence of enough mineral potential to develop a mine, then a major mining company may become interested at this stage.
- **Stage 3 – Feasibility studies and construction:** This is when major mining companies may come into your territory. They usually already successfully operate mines in other places. The company will first study the long-term economic viability of building and operating a mine in the region. If the outcome of that study is that mining would bring positive economic benefits to the company and can be achieved while meeting other responsibilities, then operating permits are sought and construction of the mine begins.
- **Stage 4 – Mine operation:** This is the active phase of the mining sequence that usually lasts for the lifetime of the resource that is being extracted. It is at this stage that the minerals are mined (or extracted) using either surface (open pit), or underground (tunnel) methods.

- **Stage 5 – Closure and reclamation:** Once the relevant resource has been extracted or in the event that extracting the resource becomes no longer economically viable, the mining project, will be phased out with a closure and reclamation plan. ICMM member companies develop their closure and reclamation plan early during the planning, development and construction stage so that it is ready for implementation long before the closure stage approaches and can be updated as the operation changes over time. This operation will involve the ongoing presence of the mining company to ensure post-closure impacts are properly managed.

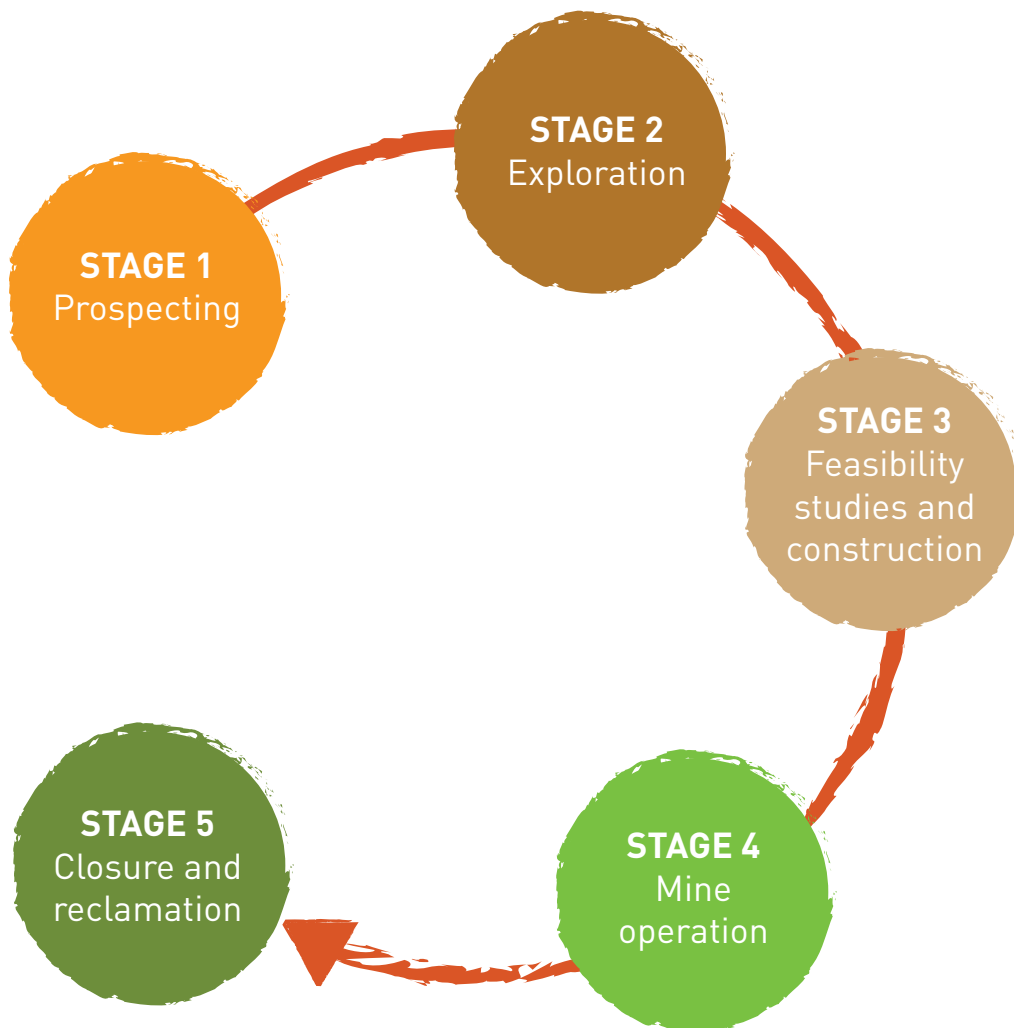
Throughout the process it is important that all companies involved engage with the local community in such a way that a respectful long-term relationship is established.

Understanding indigenous cultural, social and environmental issues

Over time, mining companies have developed their understanding of and sensitivity to how best to manage and balance their economic needs with environmental considerations and the cultural traditions of people in the areas in which they operate. ICMM members recognize that mining activity has and will continue to affect the land, territories, resources and way of life of Indigenous Peoples. ICMM members also understand the importance of maintaining a healthy and stable natural environment to support local communities and particularly those wishing to retain a traditional lifestyle. A healthy natural environment is a benefit to all people. These are important lessons learned.

In order to achieve this kind of stability, we must first establish relationships with communities in which we work so that we may discuss these matters on the basis of sound knowledge of the area and its people in a respectful fashion. Only then may we begin to balance the needs and perspectives of culture, environment and economy. This Guide provides us with a starting point as part of a longer process, for moving ahead with these important, long-term goals.

Typical sequence of activities in the life of a mine



THE GUIDE IS DESIGNED TO BE A PRACTICAL AND USER-FRIENDLY TOOL TO ASSIST MINING COMPANIES

MESSAGE FROM ICMM TO COMMUNITIES WHO MAY BE AFFECTED BY MINING

Benefits of applying the Guide

The Guide is designed to be a practical and user-friendly tool to assist mining companies in understanding the need to be aware and respectful of cultural, social, economic and political complexities associated with developing projects in close proximity to indigenous communities. Our aim for this Guide is to provide mining companies with positive, practical and comprehensive approaches to develop successful relationships with Indigenous Peoples.

However, we realize there cannot be a single approach when building relationships with Indigenous Peoples, given the rich diversity of Indigenous Peoples. The Guide is not simply about establishing good relationships between a mining company and an indigenous community, but rather a means to help the mining company initiate or improve the process of relationship building in a respectful and positive way. The Guide references a number of case studies that highlight both successful relationships and the consequences of not enjoying such success, which we can all draw lessons from.

It is our wish that this Guide be considered a living document. We welcome constructive feedback based on the practical experiences of its application between indigenous groups and mining companies.

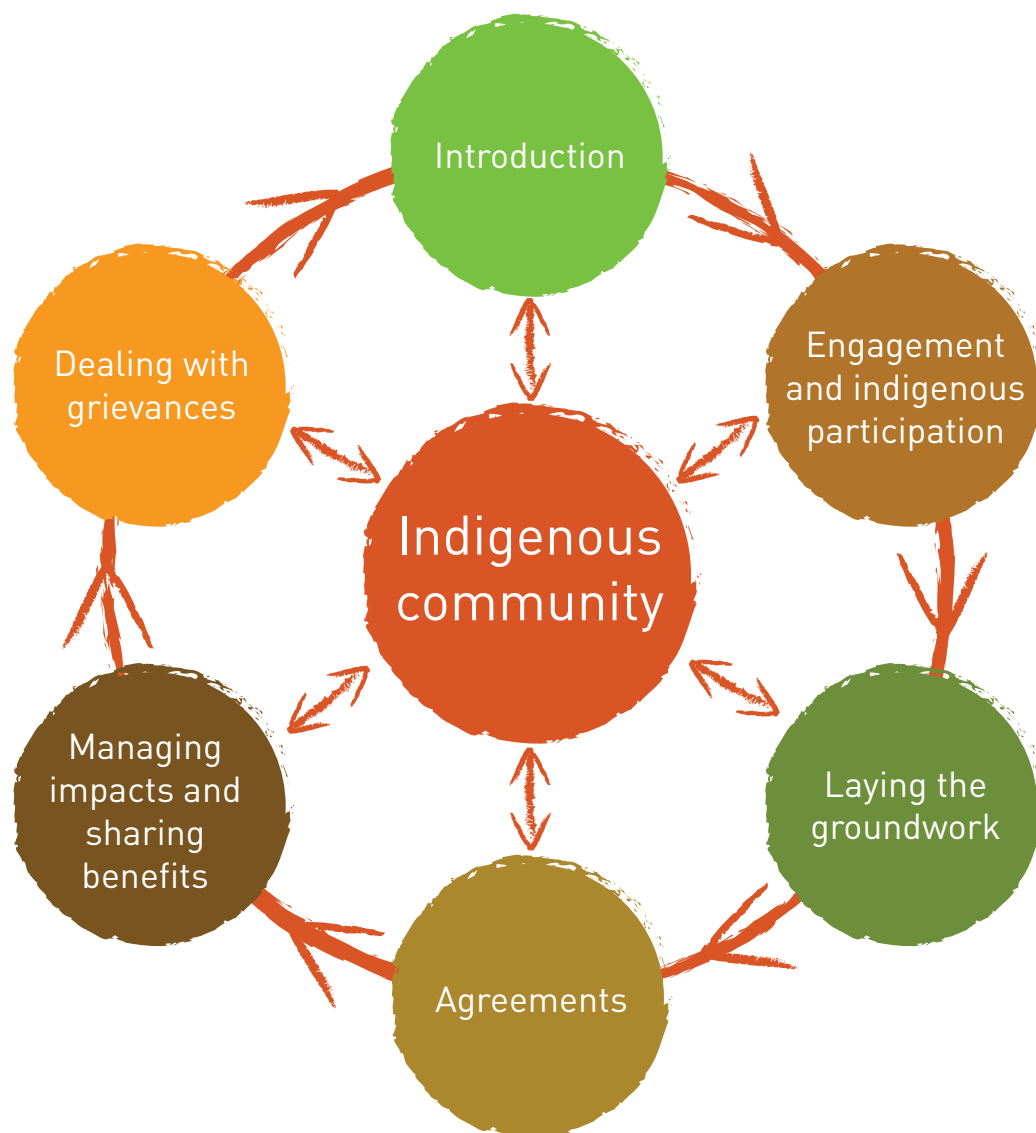
The Guide is structured into the following sections:

1 Introduction: Presents the reasoning for the Guide, ICMM's engagement with Indigenous Peoples and its Position Statement and related commitments.

- 2 Engagement and indigenous participation:** Relates to the engagement between Indigenous Peoples and mining, addressing topics including the participation of Indigenous Peoples in the decision-making processes (including FPIC), and makes specific recommendations for effective and practical engagement with Indigenous Peoples, highlighting some of the key challenges to effective engagement.
- 3 Laying the groundwork:** Focuses on the early stages of relationship building and on the information needed for companies to facilitate initial engagement and develop appropriate approaches to deal with actual and anticipated impact of a project and how any potentially negative impact can be mitigated.
- 4 Agreements:** Discusses how companies and indigenous communities might look to put formal agreements in place to govern their relationship, including preliminary agreements that can serve as "stepping stones" to putting in place a long-term agreement that may encompass all of a mining project sequence.
- 5 Managing impacts and sharing benefits:** Addresses some practical aspects of managing the impact of a mining project including, for example, the preservation of local culture sites and traditions, sharing the benefits arising from a mining project and creating opportunities for the economic development of the local community.
- 6 Dealing with grievances:** Outlines strategies and mechanisms for dealing with community issues and concerns about the relationship or mining projects.

The Guide therefore seeks to assist companies to develop their relationships with Indigenous Peoples and their communities by outlining the means by which effective engagement can be established throughout the project life cycle.

Mining company engagement sequence



Final thoughts

We hope this introduction has helped to explain the purpose of the Guide. It is our intent that the Guide be used to help responsible companies to improve relationships with Indigenous Peoples.

We invite you to explore the Guide, consider our approach and assist us in our efforts to “get it right”.

THANK YOU

R. Anthony Hodge
ICMM President



INTRODUCTION



Alla, a Nenets girl, kisses one of her family's pet reindeer calves. Nadym Tundra, Yamal, Western Siberia, Russia



This Good Practice Guide (the Guide) seeks to assist companies develop their relationships with indigenous peoples and their communities by outlining the means by which effective engagement can be established throughout the project life cycle.

Responsible mining companies have recognized the need for more respectful and constructive relationships to ensure that when mining is undertaken on or near indigenous lands, the rights and interests of Indigenous Peoples are respected and affected communities benefit from having a mining operation in their area.

In May 2008, ICMM approved a Position Statement on Mining and Indigenous Peoples. The Position Statement stressed the need for constructive relationships between the mining and metals industry and Indigenous Peoples based on respect, meaningful engagement and mutual benefit, with particular regard for the specific and historical situation of Indigenous Peoples.

The Guide has been prepared to support ICMM members in implementing the underlying vision and the specific commitments set out in the Position Statement. It is designed to assist mining and metals companies navigate the cultural, social, economic and political complexities associated with developing, operating and closing projects that are on or near indigenous land, or which otherwise impact on indigenous communities. It highlights good practice principles, discusses the challenges in applying these principles at the operational level and provides real-world examples of how mining projects have addressed these challenges.

Although the primary audience for the Guide is ICMM member companies, it has relevance to other companies operating in the sector, as well as to related industries such as oil and gas and construction. It should also be a useful resource for Indigenous Peoples' groups, governments, civil society organizations and consultants that engage with the sector.

Beyond ethical responsibility to the business case

While acknowledging and respecting Indigenous Peoples' rights and interests should be seen as first and foremost an ethical responsibility, there are also strong business reasons for mining companies to strive for good practice in this area.

- In the ongoing drive to identify and develop new resources, mining companies are increasingly active in remote parts of the world where there may be indigenous populations. Companies that have a track record of being respectful to Indigenous Peoples and their rights and delivering positive development outcomes will likely find it easier to secure the agreement of Indigenous Peoples' groups and government approvals for access to natural resources.
- In a growing number of countries, there is now legal recognition of the rights of Indigenous Peoples to negotiate the terms and conditions under which minerals development will take place on their land. In some cases, this extends to a legally recognized right to grant or withhold consent. Companies that have a poor reputation for dealing with Indigenous Peoples, or lack experience in this area, are more likely to encounter delays and difficulties in negotiating and finalizing agreements.
- As has been shown on numerous occasions, companies that fail to respect Indigenous Peoples' rights and interests are also more likely to become embroiled in local and regional disputes and conflicts. Apart from jeopardizing the future of individual projects, this can lead to substantial reputational damage for a company nationally and internationally.
- Conversely, there are significant reputational benefits for individual companies and the industry as a whole from demonstrating leadership in this area. These benefits include improved relations with governments and international organizations, and more constructive engagement with civil society groups.

1.1 Why produce a Good Practice Guide focusing specifically on Indigenous Peoples?

In many respects, what constitutes good practice in relation to Indigenous Peoples is the same as for non-Indigenous Peoples. Regardless of where they operate, responsible companies aim to avoid impacting negatively on communities and leave a positive legacy. The basic principles of good engagement¹ are the same across the board (see section 2.2), and many of the methodologies for identifying and realizing development opportunities will apply in the context of dealings with both Indigenous and non-Indigenous Peoples. Notwithstanding these common elements, there are some compelling reasons for producing a guide that focuses specifically on Indigenous Peoples and mining.

First, there is now widespread recognition at the international level that Indigenous Peoples have distinct rights and interests, and a growing expectation that these will be respected by responsible companies. Second, through law, custom or a combination of both, Indigenous Peoples often have a special relationship to land, territories and resources on which companies want to explore and mine. This can create specific obligations for companies, as well as presenting a range of unique challenges (and sometimes opportunities) that need to be understood and addressed.

Third, Indigenous Peoples often have cultural characteristics, governance structures and traditional ways of interacting and decision making that sets them apart from the non-indigenous population and which require companies to utilize forms of engagement that are sensitive to these characteristics.

Fourth, Indigenous Peoples have historically been disadvantaged, discriminated against and dispossessed of their land, and continue to be disadvantaged relative to most other sections of society. They are also likely to be more vulnerable to negative impacts from developments, particularly those that adversely impact culture and natural resources. Addressing these issues requires special attention to the interests and rights of indigenous groups across all stages of the mining project life cycle.

1.2 The ICMM Position Statement

The ICMM Position Statement on Mining and Indigenous Peoples (see Appendix A) evolved out of extensive stakeholder consultation and preparatory work over several years. This included:

- roundtable meetings on mining and Indigenous Peoples' issues (2005, 2008)
- publication of a *Mining and Indigenous Peoples' Review* (2005)
- structured consultations around the draft Position Statement (2006, 2007)
- reviews of the legal status of Free, Prior and Informed Consent (FPIC).

The Position Statement contains several key Recognition Statements that acknowledge the ethical imperative for having special regard for Indigenous Peoples' needs and interests. These Recognition Statements have been given practical effect through nine Commitments. The Position Statement commits ICMM members to abide by these commitments, to the extent that they do not conflict with national or provincial laws.

¹ For further information on good practice engagement, see for example: Zandvliet, L. and Anderson, M.B. 2009 *Getting It Right: Making Corporate-Community Relations Work*. Sheffield: Greenleaf Publishing.

ICMM Commitments

- 1 Acknowledging and respecting 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 identifying and fully understanding 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 Engaging and consulting 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 Building 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 Encouraging governments where appropriate to participate in alleviating and resolving any problems or issues faced by Indigenous Peoples near mining operations.
- 6 Designing 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 Peoples.
- 7 Seeking 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 Supporting 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.

1.3 Who are Indigenous Peoples?

The designation of “Indigenous Peoples” has come to be recognized over the last few decades as a distinct societal category under international law and in some countries’ national law.

The term “Indigenous Peoples” has principally been applied to peoples who are considered to be the descendants of the precolonial peoples of the Americas, Australia and New Zealand, such as Native Americans, Inuit of the Arctic, forest people of the Amazon, Aboriginal Australians and the New Zealand Maoris. In various Asian and African countries, marginalized minority ethnic groups (often described as “tribal populations”), with a culture distinct from the national model and who have historically occupied certain regions, are often also referred to, or self-identify themselves, as “Indigenous Peoples” (e.g. Pygmy peoples in central Africa, San peoples in southern Africa, the Karen hill tribes in Thailand) .

Some countries recognize Indigenous Peoples and use this or related terms officially. For example, Latin American countries such as Venezuela, Peru, Colombia or Bolivia use the Spanish equivalent of *Pueblos Indígenas*, meaning “First Peoples”. “First Nations” is an official term used in the USA and Canada, and “Aboriginal peoples” is a term used in Australia and Canada. Other countries, by contrast, do not formally recognize the existence of Indigenous Peoples within their borders (e.g. Malaysia, China, Botswana), or only recognize some groups as “Indigenous” despite others also claiming that label (e.g. Russia).

The issue of setting a single definition for “Indigenous Peoples” has been extensively debated in United Nations working group sessions over the years and it has come to be officially accepted that no single definition can fully capture the diversity of Indigenous Peoples. However, the UN and other regional intergovernmental organizations have outlined various defining characteristics of Indigenous Peoples (see box opposite), emphasizing the particular importance of self-identification.

Characteristics defining “Indigenous Peoples”

The two most commonly cited international documents on the definition of Indigenous Peoples are the study on the discrimination against Indigenous Peoples (Jose Martínez Cobo, UN Special Rapporteur) and the ILO Convention 169. These documents highlight the following general characteristics as partly and/or fully indicative of Indigenous Peoples:

- self-identification as indigenous
- historical continuity with precolonial and/or pre-settler societies
- a common experience of colonialism and oppression
- occupation of or a strong link to specific territories
- distinct social, economic and political systems
- distinct language, culture and beliefs
- from non-dominant sectors of society
- resolved to maintain and reproduce their ancestral environments and distinctive identities.

These general criteria of Indigenous Peoples are purposely inclusive and are thus meant to encompass the diversity of worldwide Indigenous Peoples’ experiences, while still separating “Indigenous Peoples” from other national minorities and providing a basis for the kinds of rights that they claim.



Bushman hunter in the Kalahari Desert, Namibia. Bushman are the Indigenous People of southern Africa and their traditional way of living is under threat.

Challenges in applying a single definition of indigenous

Indonesia is an archipelago of 17,508 islands and has hundreds of distinct native ethnicities, languages and dialects across the country. For these reasons it is usually problematic to use the word “indigenous” in an Indonesian context.

The communities around BHP Billiton’s Maruwai Coal Project in Central Kalimantan reflect the country’s demographic diversity. The area remains widely populated by Dayaks, who are the indigenous inhabitants of Borneo. Company personnel generally use the word “local” or refer specifically to people in terms of their Dayak and Bakumpai ethnicity as appropriate in reference to surrounding communities.

1.4 International rights for Indigenous Peoples

Commitment 1 of the ICMM Position Statement requires members to **acknowledge and respect** Indigenous Peoples’ rights and interests as **expressed in provincial, national and international law**. As noted, the extent to which Indigenous Peoples are legally recognized and their rights protected varies widely between countries. ICMM member companies commit to acknowledge and respect the rights of Indigenous Peoples even if there is no formal recognition of these rights by a host country, or if there is a divergence between a country’s international commitments and its domestic law.

At the international level there has been a strong drive to define a body of rights that specifically addresses the situation of Indigenous Peoples. These rights have developed in response to the growing recognition within the international community that Indigenous Peoples have suffered protracted and ongoing marginalization, discrimination and human rights abuses. This body of rights is primarily concerned with protecting collective rights, whereas the focus of most international human rights instruments is on the individual.

The legal status of different human rights instruments, their interpretation, how they interact with national law and their applicability to corporations are all complex topics that fall outside the scope of this Guide. For current purposes, it is sufficient to note that internationally there is now broad recognition of the special status and rights of Indigenous Peoples. Further, the trend is unmistakably towards strengthening the rights of Indigenous Peoples and their capacity to have these rights enforced, upheld and respected by governments and third parties. The Guide is not intended to be a substitute for a full due diligence process, which should include seeking advice from local and international legal experts.



The main international instruments relating to Indigenous Peoples' rights at the international level are listed below, with links to guidance documents on the practical implications of these different instruments:

- the 2007 United Nations Declaration on the Rights of Indigenous Peoples:

www.un.org/esa/socdev/unpfii/en/declaration.html

- International Labour Organization's Convention No. 169 on Indigenous and Tribal Peoples:

<http://www.ilo.org/public/english/region/ampro/mdtsanjose/indigenous/derecho.htm>

- the Office of the United Nation's High Commissioner for Human Rights International Covenant on Economic, Social and Cultural Rights (1976):

<http://www2.ohchr.org/english/law/cescr.htm>

- the International Covenant on Civil and Political Rights:

<http://www2.ohchr.org/english/law/ccpr.htm>

- the International Convention on the Elimination of All Forms of Racial Discrimination:

<http://www2.ohchr.org/english/law/cerd.htm>

- the Convention on Biological Diversity Akwé: Kon Guidelines:

www.cbd.int

- UN Guidelines on the Protection of the Cultural Heritage of Indigenous Peoples:

<http://www2.ohchr.org/english/issues/indigenous/docs/guidelines.pdf>

- the American Convention on Human Rights:

www.oas.org/juridico/English/treaties/b-32.html

- Inter-American Court on Human Rights:

www.worldlii.org/int/cases/IACHR

Key rights articulated in these instruments include the rights of Indigenous Peoples to:

- self-determination
- their lands, territories and resources
- maintenance of their cultures, including their cultural heritage, and recognition of their distinct identities
- to be asked for their free, prior and informed consent in decisions that may affect them.

International indigenous rights groups

There are many international bodies that endorse and promote Indigenous Peoples' rights and provide standards and guides on understanding Indigenous Peoples' issues and how to approach working within the Indigenous Peoples' environment. The UN has a premier body specifically dedicated to the rights of Indigenous Peoples (UN Permanent Forum on Indigenous Issues: www.un.org/esa/socdev/unpfii).

The World Bank group has guidelines and standards on development and indigenous communities such as the IFC's Performance Standards (Performance Standard 7: Indigenous Peoples), as does the Asian Development Bank (The Bank's Policy on Indigenous Peoples) and the Inter-American Development Bank (Operational Policy on Indigenous Peoples). The third generation of the Global Reporting Initiative likewise sets reporting standards in relation to Indigenous Peoples' rights (www.globalreporting.org/Home).

There are also numerous international support and resource groups such as the International Work Group for Indigenous Affairs (www.iwgia.org), the Indigenous Peoples' Center for Documentation, Research and Information (www.docip.org), Global Response (www.globalresponse.org), Cultural Survival (www.culturalsurvival.org) and the Forest Peoples Programme (www.forestpeoples.org). In addition, many countries have government ministries dedicated to the affairs of Indigenous Peoples.

Further information sources on indigenous rights can be found in Further resources, Appendix C.

1.5 Indigenous Peoples and mining

Mining-related activities (exploration, development, resource extraction, processing and waste disposal, and closure) often take place on, or near, indigenous land. In Australia, for example, it has been estimated by the Minerals Council of Australia that 60% of mining operations neighbour Aboriginal communities. A World Resources Institute study in 2003 reported that many of the world's active mines and exploration activities are now located in environmentally and socially vulnerable areas, many of which are occupied by, or are important to, Indigenous Peoples. As documented in the Position Statement, Indigenous Peoples may be affected by, or have an interest in, mining and metals projects in several different capacities:

- they may have – or claim – some form of legally recognized ownership or control over the land, territories and resources that mining companies want to access, explore, mine or otherwise use
- they may be customary owners of land, territories and resources but without formal legal recognition of this ownership
- they may be occupants or users of land, territories and resources either as customary owners or as people whose customary lands are elsewhere
- the land may contain sites, objects or resources of cultural significance; and/or the landscapes have special significance because of association, tradition or beliefs
- they may be residents of an affected community whose social, economic and physical environment are or will be affected by mining and associated activities.



The impact of mining development on Indigenous Peoples may be positive, negative or a mix of both depending on factors such as geographical location, community characteristics, past experiences with mining, the nature of the mining activities and, critically, how the company approaches the management of the impact of these factors. Any impacts are rarely self-contained and tend to generate complicated socio-economic interactions introducing unexpected secondary impacts, which can be of a negative nature. The scale and nature of impacts will also vary over the life of the mining projects.

Table 1, below, highlights some of the ways in which mining projects may potentially impact Indigenous Peoples. Those on the left-hand side are clearly negative; those on the right are more positive, but not uniformly so, because of the way in which events can have a secondary, as well as a primary impact on Indigenous People (e.g., the increased income associated with mining activity may cause a shift to a cash economy that may be contrary to certain traditional cultures).

Table 1: Examples of potential impacts of mining projects on Indigenous Peoples

<ul style="list-style-type: none"> • physical or economic displacement and resettlement • reduced ability to carry on traditional livelihoods due to loss of access to land and/or damage or destruction of key resources (forests, water, fisheries) • displacement of artisanal miners • destruction of, or damage to, culturally significant sites and landscapes – both tangible and intangible • social dislocation and erosion of cultural values as a result of rapid economic and social change (e.g. the shift from a subsistence to a cash economy) • social conflicts over the distribution and value of mining-related benefits (e.g. royalties, jobs) • increased risk of exposure to diseases such as AIDS, tuberculosis and other communicable diseases • increased exposure to alcohol, gambling and other “social vices” • further marginalization of some groups (e.g. women) • “outsiders” (e.g. artisanal miners) moving on to traditional lands due to areas being opened up by the construction of roads • large-scale uncontrolled in-migration contributing to increased competition for resources and social tensions. 	<ul style="list-style-type: none"> • improved infrastructure and services (e.g. access to clean water, power, roads) • better health outcomes, due to improved services and delivery, better preventive measures (e.g. spraying for malaria) • improved support for education and better resources and facilities • enhanced employment and business opportunities, both in mining and ancillary industries • increased income flows through royalty streams and compensation payments • improved living standards due to increased wealth • company and government assistance for community development initiatives and livelihood support programs • company support for identification, protection and promotion of cultural heritage • environmental restoration and protection (e.g. through reforestation initiatives, improved fire management) • special measures for the improvement of marginal groups (e.g. through education, small business development programs).
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1.6 How the Guide was prepared

The information and advice presented in this Guide has been drawn from a broad range of sources: publications and websites of government agencies, international organizations, civil society groups and industry associations; company reports and other corporate publications; company policies and standards; case studies provided by companies via the ICMM; the research literature; and, consultations with industry personnel and external stakeholders. The sources used in preparing the Guide (along with other useful literature) are listed in Appendix B, grouped by theme.

The Guide was developed by a consulting team comprising specialists from the Centre for Social Responsibility in Mining (CSRMI) of Queensland University, Australia, and Synergy Global Consulting. They responded to a Terms of Reference developed by ICMM designed to stimulate the development of practical guidance in support of ICMM's Position Statement on Mining and Indigenous Peoples. From the outset, an Indigenous Peoples' Advisory Group (see foreword and acknowledgements section) was convened to:

- provide suggestions and perspectives on the development of the Guide to ICMM and a Working Group comprising representatives of ICMM member companies
- play a "quality assurance" role, by constructively challenging ICMM and the Working Group (see acknowledgements section) on the development of the guidance.

The Advisory Group was made up of five individuals with international expertise in mining and Indigenous Peoples' issues from a diverse range of geographies and backgrounds. The group provided constructive critical comments on two iterative drafts of the documents, in writing and via teleconferences.

The second draft of the Guide was circulated to a wide range of representative and advocacy organizations working on indigenous issues for comment, on the understanding that providing comments in no way implied endorsement of the content (see acknowledgements section).

A compilation of the comments arising from this consultative process provided the basis for a two-day in-person meeting between the Advisory Group, Working Group, ICMM and consultants.

A third and final draft was also reviewed by the Advisory Group and ICMM Working Group, and final changes made to address any residual concerns.

Process for gathering case studies

In order to illustrate particular points in the text, this report features good practice case studies as well as examples of poor or problematic practice. In the case of the latter, the operations have not been identified. The good practice case studies were selected from a combination of public sources (notably business association and company websites) and email and telephone correspondence with ICMM members. The aim was to showcase a broad range of issues as well as geographical spread, though it is acknowledged that there was more information available on good practice from some regions than others.

Each case study was reviewed by the featured company, plus, where appropriate, by an indigenous community representative. Several of the short case studies that appear throughout this document are taken from longer versions that will be made available on the ICMM website (www.icmm.com).

The examples of "The costs of getting it wrong" have been included on the basis that challenges can provide as many useful lessons as success stories. The selection was made, once again, with the aim of highlighting a broad range of issues plus a wide geographical spread. Information for these examples has been taken from publicly available sources only. These sources include the International Finance Corporation's Compliance Advisor Ombudsman's website, the Bank Information Center, Oxfam Australia's Mining Ombudsman website and the Mines and Communities website. Their inclusion does not imply agreement with either the specific allegations or conclusions outlined in the source material, but is indicative of the adversarial relationships and outcomes that can result from negative interactions between mining companies and Indigenous Peoples.



Maasai women dancing and singing in traditional dress. Maasai Mara, Kenya

“TREAT THE EARTH WELL: IT WAS NOT GIVEN TO YOU BY YOUR PARENTS, IT WAS LOANED TO YOU BY YOUR CHILDREN. WE DO NOT INHERIT THE EARTH FROM OUR ANCESTORS, WE BORROW IT FROM OUR CHILDREN. WE ARE MORE THAN THE SUM OF OUR KNOWLEDGE, WE ARE THE PRODUCTS OF OUR IMAGINATION.”

Ancient proverb

1.7 Scope of the Guide

A broad distinction can be drawn between those situations where:

- 1 Indigenous Peoples are connected in some way to land, territory² and resources on which mining-related activity is occurring or proposed. This connection may be legally recognized, established by custom, be based on use rather than ownership and/or have a predominantly traditional, cultural or spiritual basis
- 2 Indigenous Peoples are, or could be, affected by mining-related activity, but have no traditionally recognised connection to the land on which the activity has or will occur. An example of this is where indigenous groups have been dispossessed of their land, or have voluntarily migrated from other areas, and live in a town near a mining development.

The Guide deals with both types of situations, but is primarily aimed at providing guidance to companies on good practice where mining-related activities occur on or near traditional indigenous land. This recognizes that particular rights, legal requirements and interests come into play in such cases and, also, that these situations tend to present the greatest challenges for mining companies.

The primary focus of the Guide is on mining-related activities that take place in relatively remote locations, but it is recognized that some mines are located close to large urban centres that contain substantial indigenous populations.

1.8 Structure of the Guide

This introductory section has set the context for the development of the Guide. **Section 2** is concerned with engagement across the project life cycle. The first part of this section sets out the broad principles and aims that should inform engagement with Indigenous Peoples and then examines in more detail issues relating to indigenous involvement in decision making (including the principle of FPIC).

The following subsections focus on effective engagement, building engagement capacity in companies and managing workforce and contractor behaviour. The section concludes with a discussion of some key engagement challenges including: dealing with negative legacies and perceptions, managing expectations and maintaining focus.

Section 3 focuses on the early stages of the project and on the information that companies require to: (a) facilitate initial engagement; and (b) ensure that they have appropriate strategies in place from the outset to deal with the definite and anticipated impact of the project on Indigenous Peoples.

Section 4 deals with agreements: both the making of them (which usually occurs relatively early in the life of a project) and their ongoing implementation across the project life cycle. Topics addressed in this section include components of agreements, key factors in making agreements and agreement governance, including implementation and participatory monitoring.

²The terms indigenous land and territory are sometimes used interchangeably. While there is no firm distinction, “land” is often used to refer to land over which Indigenous Peoples have formal or customary title, whereas territory in most cases refers to the broader area that Indigenous Peoples use and move throughout. The broader concept of territoriality embraces historical, cultural and other dimensions that are not tangible, such as spiritual connections. “Land” may also include rivers and lakes or areas beneath the waterline, such as reefs.

Section 5 focuses on the practical aspects of managing the impact of a project and sharing benefits, dealing with issues such as mitigation and avoidance of negative impacts, compensation, employment and human capital development, creation of business opportunities, provision of infrastructure and services, cultural preservation, and addressing discrimination and historical advantage.

Section 6 is concerned with complaints, disputes and grievances. The section focuses both on pre-emptive strategies and on mechanisms for dealing with community issues and concerns when they do arise.



Twine bags produced by Ayoreo villagers, Department of Santa Cruz, Bolivia. The designs are inspired by clan insignia.

ENGAGEMENT AND INDIGENOUS PARTICIPATION



Dogon men sitting in the shade of the men's house or Toguna wearing indigo dyed clothing, Tirelli, Mali

2.1 Introduction

The term “engagement” refers to the interactions that take place between a company, communities and other stakeholders. It covers a broad set of activities, ranging from the simple provision of information through to active dialogue and partnering. It is a core activity that needs to take place in a sustained manner across the project life cycle – from initial contact prior to exploration through to closure. Commitment 3 of the ICMM Position Statement sets out the key principles that the ICMM expects its members to adhere to in relation to their engagement with Indigenous Peoples:

**ICMM Position Statement, Commitment 3:
Engaging and consulting 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.

The first part of this section outlines the principles of good engagement as they apply to Indigenous Peoples. Next is a short discussion of how companies should approach initial contact, followed by more detailed analysis of the issue of Indigenous Peoples’ involvement in decision-making, including consideration of the application of the principle of free, prior and informed consent (FPIC). The balance of the section addresses:

- the practicalities of engaging and communicating with Indigenous Peoples
- building engagement capacity within mining companies
- managing workforce and contractor behaviour dealing with challenges arising from engagement.

2.2 The principles of good engagement

Good practice community engagement, in the context of Indigenous Peoples and mining, aims to ensure that:

- Indigenous Peoples have an understanding of their rights
- indigenous communities are informed about, and comprehend the full range (short, medium and long-term) of social and environmental impacts – positive and negative – that can result from mining
- any concerns that communities have about potentially negative impacts are understood and addressed by the company
- traditional knowledge informs the design and implementation of mitigation strategies and is treated respectfully
- there is mutual understanding and respect between the company and the indigenous community as well as other stakeholders
- indigenous aspirations are taken into account in project planning so that people have ownership of, and participate fully in decisions about, community development programs and initiatives³
- the project has the broad, ongoing support of the community
- the voices of all in the community are heard; that is, engagement processes are inclusive.

³ One approach that has been applied to ensure Indigenous Peoples’ perspective is taken into account is ethno-development. According to a World Bank study, this approach “builds on the positive qualities of indigenous culture and societies to promote local employment and growth”. <http://go.worldbank.org/DA5R0QTX20>.

Ensuring inclusivity of engagement

While it is important to acknowledge the role of elders and other traditional community leaders, it should not automatically be assumed that those who occupy formal leadership positions, whether they be traditional or government appointed, represent all interests in the community. In particular, companies need to be sensitive to those sections of the community who are frequently excluded from the decision-making process, such as women and young people.

Where traditional decision-making structures exclude women and younger people, it may be necessary to obtain input from these groups by less direct means (for example, and where possible, via community needs surveys and baseline studies, or through informal discussions with small groups). Also, company representatives should endeavour to explain to traditional decision makers that, while they respect existing structures and will work through them wherever possible, it is important for the company to understand how its activities might affect all sectors of the community.

To a large extent, these principles of engagement apply regardless of a community's racial or ethnic composition. However, there are some distinctive issues and challenges that arise in relation to engaging with Indigenous Peoples:

- issues relating to FPIC are more likely to arise in relation to Indigenous Peoples than other groups (see below)
- in many situations, Indigenous Peoples may hold special and distinct rights through their connection with the land – whether these rights are formally recognized or not – puts them in a different position to most other potentially affected groups, with many Indigenous Peoples advocating that they should be regarded as rights-holders rather than simply as another group of stakeholders
- indigenous groups may not have had any exposure to mining and therefore particular care needs to be taken in the communication of technical information and mining-related concepts
- when engaging with Indigenous Peoples, traditional decision-making structures should be used as much as possible, recognizing the limitation these structures sometimes pose for some groups, such as women and young people.

The costs of getting it wrong

Perceptions of inadequate consultation leading to sustained protests

A small rural community near to a proposed gold mine felt that they had been inadequately consulted on the project. The company ignored the complaints. Protests followed, including an extended blockade of a highway that detained a fleet of trucks carrying mine equipment. The community lodged a complaint to one of the financiers of the project and an independent report was commissioned to investigate the situation. The report focused on why an apparently thorough set of consultations had been perceived by the community as inadequate. In the meantime more protests took place, including a protest by a group of local women who interfered with the mine's power supply and caused power shortages.

The costs of getting it wrong

Proposed mine expansion halted by community concerns

One company decided to voluntarily suspend its exploration activities near to its existing mine site, in response to strong community opposition. Opponents were concerned about potential environmental impacts, in particular, possible water contamination that might be caused by the operation of a new mine. As part of the suspension of activities, the mine had to reclassify a large mineral deposit in “proved and probable” reserves to “non-reserve mineralization”.

2.3 Making initial contact

The quality of initial contact between mining company personnel and local community members in a prospective mining area can set the tone for the whole project. If mining staff and contractors are well prepared, sensitive to Indigenous Peoples’ culture, and respectful and open in their approach, this can provide the foundation for a solid and productive relationship.

Difficulties are likely to arise if companies:

- enter into an area without first seeking permission to do so
- engage with the wrong groups or with persons who do not have authority to speak on behalf of the relevant group or community
- fail to adequately explain what they are doing and why
- do not allow sufficient time for the community to consider a request/proposal or make a decision
- disregard, or are ignorant of, local customs.

Companies can avoid many of these problems if they:

- confer with the community at the outset on how they wish to be engaged
- understand and respect local entry protocols as they relate to permission to enter a community and access traditional lands
- commit to open and transparent communication and engagement from the beginning and have a considered approach in place
- conduct an initial risk analysis prior to entering the area and implement controls to mitigate key risks
- ensure that all representatives of the company (including third party subcontractors and agents of the company) are well briefed on local customs, history and legal status, and understand the need for cultural sensitivity
- regularly monitor performance in engagement
- so far as possible, strive for consistency of approach and employment longevity of representatives of the company so that relationships can be built and trust maintained
- enlist the services of reputable advisers with good local knowledge.

It is a good idea for company managers to be present at initial meetings wherever possible and to meet with the traditional heads of communities, as this demonstrates respect and sets the scene for building long-term trust and relationships with communities.



Working with mining exploration companies

Exploration of a prospective area will often be undertaken by a smaller mining exploration company, with larger companies only becoming involved at the point where the resource has been proved up, or has otherwise been shown to be promising.

Some exploration companies have a very good track record of engaging with indigenous communities and understand that this adds to the value of the asset. However, there are also well-documented examples of junior companies creating a legacy of poor relations, whether through disregard, lack of awareness or under-resourcing in respect of their relations with indigenous communities.

Good practice for companies that are considering acquiring exploration and development rights from, or entering into a joint venture with, a junior explorer is to undertake a “due diligence” review to ascertain whether interactions with Indigenous Peoples have been managed appropriately to date and if there are any unresolved issues. In some cases, this may result in a decision not to proceed with the acquisition; in other instances, the review will highlight issues that the company will need to factor into its future planning and engagement strategies.

ICMM member companies can also help build capacity and awareness in the exploration sector by sharing information and know-how, and by assisting industry organizations that represent exploration companies to develop and deliver training resources.

2.4 Indigenous Peoples' involvement in decision-making

ICMM recognizes that the broad support of communities is essential for mining projects to be successfully developed, and is in the mutual interest of Indigenous Peoples, host governments and companies and their shareholders, and avoids mining activities having a potentially adverse impact on the community. Key steps that companies can and, so far as possible, should take to ensure that broad community support has been sought and that Indigenous Peoples have meaningful involvement in project decision-making processes are as follows:

- **Develop a shared understanding of affected indigenous groups** in terms of their culture, organizational and decision-making structures, claims and rights to lands, values, concerns and history, including previous experiences with state-led decision-making processes and with mining or other development projects (see Section 3: Laying the groundwork).

- **Collaboratively develop an effective means to ensure that Indigenous Peoples have an informed understanding** of the proposed project and what its potential impact might be on their community as well as any benefits it may offer across the full project cycle, and the perspectives of relevant stakeholders on proceeding with the project (both positive and negative).⁴ For example, terminology used by the mining industry might not have any meaningful translation in the language used in the indigenous community. In these circumstances, companies could consider developing a dictionary of terminology with the community. It is also good practice for local stakeholders to hear the views of other people about the project (e.g. from NGOs, government bodies, academics, industry experts, other communities that have dealt with the company) where they may be able to usefully contribute additional information or perspectives. If requested, companies should also consider providing Indigenous Peoples with the means to engage independent information-gathering experts of their own choice.
- **Build cross-cultural understanding**, for company staff to understand the culture, values and aspirations of the community (see Section 2.6: Building engagement capacity in companies), and for Indigenous Peoples to understand the company's principles and practices.
- **Agree on appropriate decision-making processes** for the ongoing involvement of Indigenous Peoples, which are based on a respect for customary decision-making processes and structures. As discussed in Section 3, companies will need to spend time in gaining an understanding of the complexities and dynamics of local decision-making processes and structures as well as any differences or divisions that may exist within communities, in order to achieve the most representative outcomes. Decision-making processes should be designed so as to be commensurate with, and suitable for, the type of decisions that have to be made. For instance, customary decision-making processes may need to be strengthened to address the impact of a project across a large number of indigenous communities.
- **Ensure that the involvement of Indigenous Peoples is inclusive and captures the diversity of views** within and between communities, and constructively engage with affected Indigenous Peoples to address any concerns they may have that the principle of inclusivity might undermine customary decision-making processes. Companies should also ensure that their engagement is characterized by openness and honesty, and could not be construed as involving coercion, intimidation or manipulation.



⁴Examples of information that could be provided by a company include exploration and mining plans; impact assessments; mitigation and management plans; closure plans; emergency response plans; and records of health, safety, community and environmental incidents of existing operations.

2 ENGAGEMENT AND INDIGENOUS PARTICIPATION

- **Agree acceptable time frames to make decisions** throughout the lifetime of the project, taking into consideration logistics, local customs, commercial requirements and time needed to build trusting relationships. Ensure that it is clear how the timetable for involvement links into when project decisions are made. Ideally, Indigenous Peoples' initial involvement should be sought well in advance of commencement or authorization of activities, taking into account Indigenous Peoples' own decision-making processes and structures.
- **Agree on a mechanism to resolve disputes or grievances** in order to proactively address the likelihood that differences of opinion will arise (see Section 6: Dealing with grievances).
- **Agree on the terms and conditions for the provision of any ongoing community support** with affected indigenous stakeholders and any associated reciprocal obligations.
- **Record the process and decisions reached** where Indigenous Peoples are involved, including the results of any monitoring or reviews, to provide a record for current or future generations who may be affected by the decisions, and to ensure transparency in the decision-making process.
- **Support the communities' capacity to engage in decision making:** for example, by providing access to independent expert advice, capacity building, facilitation and mediation, or involving external observers.

Through all of these actions, companies should be able to demonstrate that they are engaging in good faith and acting with respect for the interests and perspectives of Indigenous Peoples regarding the project and its potential impacts and benefits, and with sensitivity towards cultural differences.

Even if companies follow all the above steps, there may still be some instances where the project fails to secure broad community support and generates significant ongoing opposition, notwithstanding that there may be government approval for the project. In these circumstances, it is generally accepted good practice that the project not proceed until outstanding community concerns have been addressed and resolved.





Engagement with the San Cristobal community near the Quellaveco copper project, Department of Moquegua, Peru

Source: Anglo American

“OF THE LAND WE COME. OF THE MOTHER WE ARE FORMED. OF THE EARTH WE ARE BORN. BEFORE LIGHT EXISTED, THE SEED WAS ALREADY SOWED IN THE DARK WOMB OF THE EARTH, IN THE MOIST AND WARM HEART OF OUR PEOPLES.”

Don Juan Chávez Alonso
Indigenous Purépecha Representative of the National Indigenous Congress
Michoacán, Mexico

2.4.1 Decision making and the issue of Free, Prior and Informed Consent (FPIC)

Free, prior and informed consent (FPIC), in relation to mining activities taking place on indigenous lands, refers to a process whereby affected Indigenous Peoples freely have the choice, based on sufficient information concerning the benefits and disadvantages of the project, of whether and how these activities occur, according to their systems of customary decision making.

The Elements of Free, Prior and Informed Consent

- **Free** – people are able to freely make decisions without coercion, intimidation or manipulation
- **Prior** – sufficient time is allocated for people to be involved in the decision-making process before key project decisions are made and impacts occur
- **Informed** – people are fully informed about the project and its potential impacts and benefits, and the various perspectives regarding the project (both positive and negative)
- **Consent** – there are effective processes for affected Indigenous Peoples to approve or withhold their consent, consistent with their decision-making processes, and that their decisions are respected and upheld.

Adapted from UN Permanent Forum on Indigenous Interests (UNPFII), the Tebtebba Foundation, the International Indian Treaty Council and others.

FPIC is of particular concern to Indigenous Peoples involved with mining for a number of reasons including:

- historically, Indigenous Peoples have commonly been excluded from decision-making processes and the result has often been detrimental to their well-being
- FPIC has been mandated or recommended in a number of international and national legal and policy documents, including the UN Declaration on the Rights of Indigenous Peoples⁵
- calls for the right to FPIC are closely linked to Indigenous Peoples' pursuit of the right to self-determination and the rights to lands and territories
- the issue of FPIC is linked to the broader debate around ensuring a fairer distribution of the costs, benefits, risks and responsibilities associated with mining activities
- FPIC is also linked to an ethical principle that those who could be exposed to harm or risk of harm should be properly informed about these risks and have an opportunity to express a willingness to accept such risks or not.

WHILE THERE IS WIDE CONSENSUS ON THE NEED FOR THE INVOLVEMENT OF INDIGENOUS PEOPLES IN THE DECISION-MAKING PROCESS TO BE FREE, PRIOR AND INFORMED, THE ISSUE OF CONSENT IS THE MOST CONTESTED ELEMENT OF FPIC.

⁵ These include the non-binding UN Declaration on the Rights of Indigenous Peoples (2007); the International Labour Organization (ILO) Indigenous and Tribal Peoples Convention 169; the European Bank for Reconstruction and Development (EBRD) Environmental and Social Policy (2008) Performance Requirement 7 on Indigenous Peoples; the Philippines' Indigenous Peoples Rights Act (1997); and the Australian Aboriginal Land Rights (Northern Territory) Act, 1976.

However, FPIC is both controversial and evolving. While there is wide consensus on the need for the involvement of Indigenous Peoples in the decision-making process to be free, prior and informed, the issue of *consent* is the most contested element of FPIC.

Proponents of FPIC argue that full recognition of rights to self-determination and to lands and territories involves Indigenous Peoples having decision-making authority over activities on their lands, with an ultimate right of refusal. Governments, however, are often reluctant to apply the principle of FPIC, seeing it as undermining the sovereign right of states to make decisions regarding the development of natural resources.

There are also practical difficulties in applying the concept of consent where it is not legally mandated. For instance, the term FPIC is used in different contexts; in some cases it is used in terms of being a *right* to approve or veto activities, and in others in terms of being a *principle* that decision-making processes should aim to achieve. There are also difficulties where the application of consent involves customary decision-making processes (for instance, if these require unanimity or exclude a significant proportion of the community, such as women). In customary societies, consent can involve anything from consensus through to autocratic and theocratic directive. The pursuit of “consensus” can also result in coercive practices if poorly handled by either traditional authorities or companies.

2.4.2 ICMM’s position on FPIC and Indigenous Peoples’ involvement in decision making

Through ICMM’s Position Statement on Mining and Indigenous Peoples, member companies commit to “engaging and consulting with Indigenous Peoples in a fair, timely and culturally appropriate way throughout the project cycle...based on honest and open provision of information” in accessible forms (Commitment 3). This is consistent with the “Free, Prior and Informed” elements of FPIC. Members recognize the importance of engaging affected Indigenous Peoples in project decision-making processes, with the objective of achieving mutually beneficial project outcomes (Commitments 6 and 7). Furthermore, members commit to seeking “broad community support for new projects or activities”, and 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” (Commitment 9).

Where FPIC for Indigenous Peoples has been legally provided for by national governments, ICMM members are expected to always comply with the law. At the same time, it is the view of ICMM’s members that a blanket endorsement of the right to FPIC is not currently possible, particularly given the difficulties entailed in applying the concept in practice (see 2.4.1 above). ICMM’s members, however, are committed to participating in national and international forums on FPIC, and welcome opportunities to further explore engagement with Indigenous Peoples and consent processes in relation to mining projects.



2.5 The practicalities of engaging with Indigenous Peoples

2.5.1 Listening

An attitude of respectful listening and willingness to learn from Indigenous Peoples goes a long way to building confidence between the different parties. Sometimes, the process of listening to Indigenous Peoples may involve sitting through long meetings, stories or side-talk. It may also require extensive talking around an issue in order to gauge the right moment before getting to the point of business. In many cases, it may be culturally inappropriate to go straight into business talk without following cultural protocols and “affirming the relationship”.

2.5.2 Allowing for time

Companies are often under time constraints to achieve objectives according to project milestones. However, indigenous groups need time to consider the consequences of project propositions, particularly if they have not previously had any experience of mining developments. It is generally better for a company to err on the side of caution and try not to rush any process with indigenous communities, as this could be counter productive. To avoid this being an open-ended process, companies should endeavour to negotiate an agreement with community representatives regarding key dates and deadlines, recognizing the need for some flexibility to be built in to accommodate unforeseen events or delays. It is important to remember that respect and mutual understanding develop over time, and are unlikely to emerge from discussions that are solely focused on issues of interest to the company. As one seasoned observer of mining company and indigenous relationships has remarked, “take time to have tea with one another and have conversations that may be unrelated to decisions”.

Companies should also bear in mind that many Indigenous Peoples view time as cyclical, in contrast to the western view of time as progressing in a linear way without stopping (i.e. past-present-future). This means that the same events can happen over and over again, and so time is not a force that passes by inexorably. These differing perspectives of time need to be recognized and accommodated in companies’ engagement with local communities.

2.5.3 Respect and understanding

Learning about and respecting local customs is important for building good relationships between a company and an indigenous community. Indigenous Peoples, like all people, desire respect and to be taken seriously. Many projects encounter problems simply because the affected indigenous community feels that it is not well understood or respected by a company.

Learning a “courtesy level” of local language is a tremendous advantage. Accepting invitations to join in local celebrations, activities and meals with members of the community will also be well regarded by local communities. Refusing such hospitality without a genuine and good excuse may cause great offence. Reciprocating hospitality is also important in a number of cultures.

Leading companies recognize that it is important to provide Indigenous Peoples with the means to learn about and understand the mining industry and the cultures of certain people working in a particular mining operation, as well as the practicalities of the industry (see Argyle case study, below). This can be done, for example, by inviting community representatives to visit the company’s offices and by arranging informal get-togethers with personnel from different parts of the operation. Companies also need to consider addressing the capacity gap in indigenous communities to understand and deal with the demands of the engagement process. This should be an ongoing commitment as an integral part of engagement work.

Cultivating mutual learning and understanding

Rio Tinto's 20-year-old Argyle Diamond Mine in Western Australia is located in an area of major spiritual significance for traditional landowners of the region. In 2001, it was recognized by both sides that a more formal relationship was needed, and a wider set of indigenous communities engaged by the company.

Many of the early meetings between Rio Tinto's representatives and the Traditional Owners had no formal agenda and, according to meeting participants, Argyle Diamonds personnel made a point of listening to the Traditional Owners and apologizing for mistakes of the past. The power imbalance between the company and the communities was compensated for by undertaking communication in terms that were clearly understood by the Traditional Owners.

Members of the communities were taken on site tours, including the underground mine. A number of visual aids were used to explain the impact of the mining activity on the surrounding area, and translators were used to ensure that everyone could follow and participate in the negotiations. In a reciprocal process, the Traditional Owners provided the company with information about their customs, and performed ceremonies to ensure that the mining operation could be conducted safely and free from interruption by ancestral spirits.

2.5.4 Openness and communication

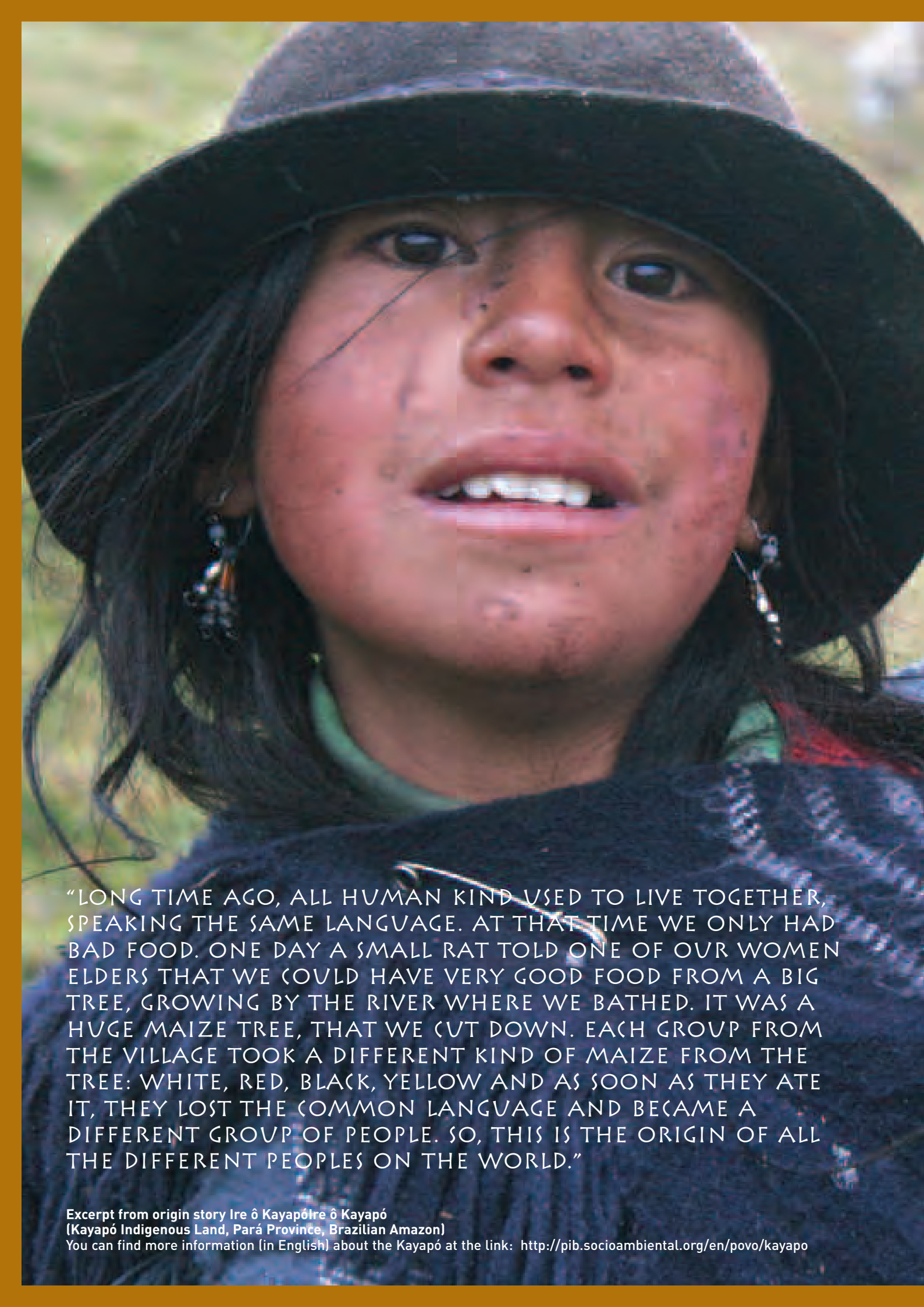
Company information needs to be presented in an honest and open manner and in a format that is readily accessible. The emphasis should not just be on sharing technical information about the operations of a mine throughout its lifecycle, but any potentially negative socio-economic or environmental impacts and how these will be managed, plus the potential benefits for Indigenous Peoples and how these may be enhanced.

The costs of getting it wrong

Failure to explain negative environmental impacts prompts government-imposed moratorium on mining

At a proposed gold mining project, the indigenous community claimed that the company had put little effort into trying to engage in constructive dialogue about the extent of environmental impacts. Concerns related to the use of cyanide and waste disposal methods, and the potential for toxic waste to seep into the groundwater. Community discontent escalated into protests, and anti-mining graffiti appeared across the city. In response the company launched a public relations campaign promoting the benefits of mining. The community held a referendum, and nearly all residents voted against the mine proposal. As a consequence, the government imposed a three-year moratorium on mining activities in the region.

COMPANY INFORMATION NEEDS TO BE PRESENTED IN AN HONEST AND OPEN MANNER AND IN A FORMAT THAT IS READILY ACCESSIBLE.



“LONG TIME AGO, ALL HUMAN KIND USED TO LIVE TOGETHER, SPEAKING THE SAME LANGUAGE. AT THAT TIME WE ONLY HAD BAD FOOD. ONE DAY A SMALL RAT TOLD ONE OF OUR WOMEN ELDERS THAT WE COULD HAVE VERY GOOD FOOD FROM A BIG TREE, GROWING BY THE RIVER WHERE WE BATHED. IT WAS A HUGE MAIZE TREE, THAT WE CUT DOWN. EACH GROUP FROM THE VILLAGE TOOK A DIFFERENT KIND OF MAIZE FROM THE TREE: WHITE, RED, BLACK, YELLOW AND AS SOON AS THEY ATE IT, THEY LOST THE COMMON LANGUAGE AND BECAME A DIFFERENT GROUP OF PEOPLE. SO, THIS IS THE ORIGIN OF ALL THE DIFFERENT PEOPLES ON THE WORLD.”

Excerpt from origin story Ire ô Kayapótre ô Kayapó
(Kayapó Indigenous Land, Pará Province, Brazilian Amazon)

You can find more information (in English) about the Kayapó at the link: <http://pib.socioambiental.org/en/povo/kayapo>



Indigenous girl wearing traditional clothing carries a small child on her back, Ecuador

In communities where literacy and access to technology are limited, company newsletters or reports may not be appropriate for communicating. Instead, information will often need to be transmitted orally using visual materials such as pictures, slides, animations, DVDs and models. Visits to other mining operations can be very helpful, although to ensure independence these preferably should be organized through the indigenous communities associated with these operations rather than by the companies.

Information may need to be repeated and presented in different forms. Careful listening to community questions and feedback will help community relations officers to plan follow-up information sessions. It is a good idea to have information that can be left with the community to read or view at a later time, e.g. booklets, leaflets, posters and DVDs.

Community consultation programs

In 2005, the Maruwai Coal Project (MCP) in Indonesia commissioned a series of community-based participatory rural appraisals (PRA), which were undertaken by anthropologists and development NGOs. Their brief included obtaining feedback from key communities in the Maruwai Basin on a model for future community consultation that MCP had drawn up. The communities accepted the company's suggestion of regular, inclusive and primarily village-based community consultation forums. The consultation process was named HAPAKAT, an acronym, which in the Darak Murung language means "agreement" or "consensus" as well as "brotherhood/sisterhood relationship".

2.5.5 Using local language

Where the majority of the community are not proficient in the national language, it is generally best to communicate in the local language. Working with or through local language shows respect for the affected community, as does the attempt of company staff to learn some functional local language. Technical communication needs to be simplified to allow better understanding of concepts and mitigate against misunderstanding. However, it is often through translation that communication problems arise due to misinterpretation and misunderstanding. This risk can be reduced through repeating and testing understanding and information.

Building trust through communicating in the local language and ensuring a consistency of approach

Anglo American began exploration in northern Fennoscandia in 1999, in a region traditionally inhabited by the Sámi people, the Indigenous Peoples of Norway, Finland, Russia and Sweden. In every territory they inhabit, the Sámi have a distinct affiliation with the land. Because of the unique cultures of the Sámi people, and the varying contextual factors, Anglo sought to tailor its engagement approach for each group within the Sámi community.

Despite different contexts, Anglo has applied engagement principles of treating indigenous communities respectfully and honestly, building relationships slowly, and responding to the diversity of communities. A number of good practice procedures have been identified on this basis. For example, where company personnel do not speak the national language (Swedish, Norwegian, Finnish) they carry with them cards with the contact details of a company contact person who can speak the language to ensure local people can contact someone who can respond to any questions from the communities immediately.

The company has also tried to ensure that the same representatives visit communities each time, in order to help build a long-term relationship.

2.6 Building engagement capacity in companies

Leading companies recognize the importance of having the right team in place at the corporate and operational levels, underpinned by strong management systems.

2.6.1 Committed management

Commitment from the top sets the scene for positive relationship building. Management interface with Indigenous Peoples should go beyond good public relations work, which is more about image, reputation and brand risk. The senior operational management need to understand the rights, interests and perspectives of Indigenous Peoples and be able to commit and lead a company team to respect, understand and work with indigenous communities. This team should also help the organization adapt and change its approach as necessary. Leading companies now have internal policies that reflect and reinforce this commitment.

2.6.2 Qualified and experienced community staff

Company staff are likely to benefit from having specific skills, including an awareness and understanding of how to interact with Indigenous Peoples and experience or familiarization with the context in which they will need to work. They also require skills to support specific tasks associated with the employment of Indigenous Peoples, business development support and community development.



2.6.2.1 Indigenous advisors

Leading companies routinely appoint individuals from indigenous communities to act as liaison points with the local community. If Indigenous Peoples with the requisite skills are not available for these types of positions, then identifying and training people for these roles should be a priority. In some cases it may be necessary to utilize the services of external representatives of the indigenous community (e.g. a civil society group) until such time as local people are fully prepared for a community relations role. Mentoring and supportive supervision of indigenous advisers to the indigenous community is very important, given the pressures of the role and the difficulties associated with working for the company while living in the community.

Employing local people in community engagement and relations roles may not always be a good idea in the initial stages of contact. Rather, it may be better to establish a relationship with the community and then facilitate a community hiring committee to help choose suitable staff. In that way, there can be some confidence that any appointments have reasonable community backing. In some cases (for example, where there is significant inter group conflict within a community) it may be preferable to look outside the community to fill key community relations roles.

2.6.2.2 Gender sensitivity

Particularly in traditional indigenous communities, men will generally be more comfortable engaging with male representatives of a company, and women with female representatives. Ensuring that women's voices are heard is very important, given the principle of inclusiveness and the fact that the negative impacts of mining projects often fall disproportionately on women (see Section 3.3.3.1: Gender impact analysis). Where customary approaches to engagement or decision making prevent the meaningful involvement of women, mining companies should endeavour to find other ways of facilitating this involvement through mutual agreement with the relevant communities.



Asmat traditional dance performed in front of international and governmental guests to open the Asmat Cultural Festival, Papua, Indonesia

Source: *PT Freeport Indonesia*



2.7 Managing workforce and contractor behaviour

A key risk for mining companies working in or near indigenous communities is that their employees or contractors may behave inappropriately towards the indigenous community. Racist language or behaviour, showing a lack of respect for local customs or destroying or damaging cultural heritage sites (even if inadvertently) can cause long-term harm to company/community relations and, in some instances, trigger events that may lead to a project not going ahead, or being shut down. Actions that companies can take to ensure that employees and contractors behave appropriately include:

- implementing programs of cross-cultural training for all employees and contractors (see below)
- making clear to employees and contractors what is expected of them (e.g. by communicating policies that define acceptable behaviour)
- taking disciplinary action where there are significant breaches of these standards up to and including dismissal and termination of contracts
- ensuring that contracts with employees, subcontractors, agents and joint venture partners contain appropriate provisions to govern these parties' behaviour.

2.7.1 Cross-cultural training

It is now relatively common for companies conducting mining-related activities in areas with significant indigenous populations to mandate some form of cross-cultural training for company and contractor personnel. The more innovative programs:

- focus not only on giving a historical understanding of the relevant community, but on providing practical advice that can enhance cross-cultural communication and understanding (e.g. advice on body language, initiating and ending conversations, culturally disrespectful actions, etc.)
- involve local indigenous men and women in delivery and teaching of the program (e.g. in conducting welcoming ceremonies and sharing their experiences)
- are differentiated according to the target audience (e.g. more intensive tailored programs for company personnel who supervise indigenous employees)
- differentiate between cultural awareness and cultural competence
- include follow-up and refresher sessions, rather than just being delivered as a one-off
- where Indigenous Peoples use a different language, develop the capacity of project supervisors to communicate in that language.

Addressing the gender gap

Freeport-McMoRan Copper & Gold's PT Freeport Indonesian affiliate formed partnerships to create the Nemangkawi Mining Institute in 2003 with a view towards long-term development of indigenous Papuans in its workforce.

Starting in 2007, Nemangkawi initiated special programs to provide opportunities for indigenous women in the industrial workplace. Women from these traditional communities have not historically participated in non-domestic employment. Several dozen female Nemangkawi graduates are now operating heavy equipment in the company's Grasberg mine and associated infrastructure.

Three examples of cross-cultural training programs

In the Guajira region of Colombia, where Cerrejon Coal is based, approximately 40% of the 656,000 inhabitants are Wayuu. The company has developed a cross-cultural awareness program for its employees about Wayuu culture, so that employees can understand and respect its history and traditions. Training includes geographic location, resources, limitations, relationship with nature, language, ethnic and cultural identity, rituals, traditions, economy and origins of the Wayuu.

At BHP Billiton's Newman mine in Australia the company has developed a series of adult education modules for Aboriginal communities. These workshops are attended by indigenous employees and supervisors of indigenous employees. The presenters are indigenous people (consultants) and the focus is on employee and employer obligations, standards and commitments, financial planning, cultural obligations, differing values and priorities, etc. The general workforce induction also includes a component on Aboriginal heritage, covering the traditional rights of Indigenous Peoples and valuing cultural heritage through protection and management of heritage sites. Additionally, since 2000, all new employees and contractors have been required to complete one-day cultural awareness workshops, delivered by the Wangka Maya Pilbara Aboriginal Language Centre.

The flagship operation for Lihir Gold Limited (LGL) is based on a small group of islands in north-east Papua New Guinea with a local population of approximately 14,000 people. In 2009, LGL developed a social awareness training program for all mine employees. The program aims to create awareness on key stakeholder groups, LGL's sustainable development agenda and community development programs conducted under the community benefits package called the Lihir Sustainable Development Plan (LSDP). The training program includes community and sustainable development workshops and visits to landowner villages and sacred sites. The key information from this training program has been captured in a new LGL publication, *LIHIR: Luksave long komuniti* – which is being given to all employees.

2.8 Some engagement challenges

2.8.1 Dealing with negative legacies and perceptions

Indigenous communities that have had past negative experiences with mining are likely to view new proposals to mine with suspicion or possibly outright hostility. Indigenous Peoples who live in geographically marginalized areas where large-scale resource extraction is still possible (forests, potential farmland, rivers for hydropower, mineralized mountains, plains, tundra, etc.) also have good reason to be suspicious of "outsiders" coming onto their land or territory. A further complicating factor for a large mining company is that initial exploration and development may have been undertaken by a company that may not have operated to the standards expected today. Similar issues may arise where a project is acquired from another company that does not operate to the standards expected of an ICMM member. Previous negative experiences in the relationships between government and Indigenous Peoples may also contribute to an understandable initial hostility to mining companies.



Positive actions that mining companies can take to deal with these legacies include:

- being careful to show respect for the culture and customs of local people
- using a trusted intermediary, such as an indigenous community organization, a religious group, civil society or NGO to facilitate initial meetings and the exchange of information
- providing people from the community with the opportunity to meet and interact with senior management, and the CEO in particular
- acknowledging that the industry may have performed badly in the past (rather than attempting to defend poor practices)
- seeking out opportunities to remedy any legacy of past socio-cultural and environmental damage (e.g. by restoring damaged cultural sites, filling in abandoned drillholes, revegetating disturbed areas)
- being open and honest about the risks and benefits associated with the project
- highlighting that the company has standards, processes and practices that make it accountable for its social and environmental performance and informing communities about how they may be involved in these processes
- establishing what historical commitments may have been made (e.g. by an exploration company or joint venture partner) and, wherever practical, honouring those commitments.

INDIGENOUS COMMUNITIES THAT HAVE HAD PAST NEGATIVE EXPERIENCES WITH MINING ARE LIKELY TO VIEW NEW PROPOSALS TO MINE WITH SUSPICION OR POSSIBLY OVERTIGHT HOSTILITY.

2 ENGAGEMENT AND INDIGENOUS PARTICIPATION



Indigenous woman in traditional dress carrying wood on her back, Peru



2.8.2 Managing expectations

Unrealistic expectations by local communities can lead to misunderstanding and conflict when anticipated benefits do not materialize. Company representatives should be aware that expectations can be created simply through the process of having a meeting. They will also be better placed to manage expectations if they:

- communicate clearly and in a transparent manner, and continue to have a consistent message about the project life cycle and what its various stages may realistically mean, in terms of jobs and other economic opportunities, including reasons why the project may not actually develop
- move quickly to clarify, so far as possible and to the extent legally practicable, rumours about the project, its timing and the impact it is having (both positive and negative)
- listen carefully to how communities respond to information provided to them and to the questions they ask – this will help to highlight areas of potential misunderstanding
- formalize commitments and agreements in writing, or at least keep a record of promises made, and document progress towards achieving such commitments.

2.8.3 Maintaining focus

A common problem, not restricted to indigenous communities, is that the initial effort that is put into community engagement is not maintained over time. This can occur for a variety of reasons, such as management taking its “eye off the ball” once project approvals have been secured, turnover of key company staff, generational change in the community and “consultation fatigue” among community members and representatives.

Where there is a loss of focus and momentum, there is a real risk that a company will lose touch with what is happening locally and may not be attuned to – or be slow to detect – changes in the mood of community. Moreover, relationships that were initially built up between the company and key decision makers in the community may erode. Some actions that companies can take to remain actively engaged with the community are to:

- formalize a comprehensive engagement plan, which is reviewed and updated regularly and which is linked to both the operation’s broader management and planning processes and the community’s own plan for its future
- establish systems for recording compliance with and following up on commitments
- embed engagement mechanisms and processes into agreements (see Section 4: Agreements)
- implement strategies to reduce the impact that loss of key staff might otherwise have on company/community relationships (e.g. through succession planning and by diversifying the network of relationships in the community)
- set up effective arrangements for resolving disputes and grievances (see Section 6: Managing disputes and dealing with grievances).





LAYING THE GROUNDWORK



Indigenous Kamoro woman from Kakonao operates a haul truck at Freeport's Grasberg mine, Papua, Indonesia

Source: *PT Freeport Indonesia*



3.1 Introduction

This section deals with the actions that companies can take early in the life of a project⁶ to provide a solid basis for ongoing engagement with the Indigenous Peoples of the area and to anticipate and manage risks and opportunities that may be associated with the project and the ways in which it may potentially impact on the community. The specific topics covered in this section are:

- processes for determining relevant Indigenous Peoples' rights and interests
- social mapping
- baseline studies
- cultural heritage surveys
- impact assessments (including conflict and gender impact assessments).

3.2 Determining relevant Indigenous Peoples' rights and interests

Prior to commencing exploration or development activity, leading companies will generally have taken all reasonable steps to ascertain whether the activity is likely to impact on or involve Indigenous Peoples in some way. This will include identifying any national and sub-national laws relevant to Indigenous Peoples and the constraints and obligations these laws impose for conducting mining-related activities on indigenous lands, as well as customary or traditionally defined rights that may not be formally recognized in law.

The costs of getting it wrong

Failure to identify Indigenous Peoples' interests during environmental impact assessment leads to community protest

One company's environmental impact assessment did not fully acknowledge the impact of a transportation route through a group of local villages. The communities, having not been consulted on the potential benefits of the project, and having witnessed heavy mine transport passing through their villages on a daily basis, began to protest against the company. The communities approached an independent organization for assistance with their concerns, claiming traditional hunting rights over the mine area and transportation route and criticizing the mine operator for failing to develop an Indigenous Peoples' development plan to minimize the impacts of mining and ensure that they participated in the benefits of the project. While the communities' complaints were only partly upheld, the company was publicly criticized for its failure to engage constructively and openly with members of local communities during the project planning process.

⁶ Exploration projects often have limited resources and there may be a reluctance to invest in building good relations when there is only a low probability that exploration will lead to the development of a full-scale mining operation. However, responsible companies recognize that it is false economy to neglect community relations at this early stage, as to do so could jeopardize subsequent stages of development. A helpful reference for the exploration phase is the *e3Plus: A Framework for Responsible Exploration* launched by the Prospectors and Developers Association of Canada. www.pdac.ca/e3plus

3 LAYING THE GROUNDWORK



A sub-clan leader performs a traditional warlike display of his clan's strength on a platform built for the Loriahat ceremony to express their support in cash, traditional shell money (mis) and pigs to a host clan. Lihir, Papua New Guinea

Source: *Lihir Gold*



3.2.1 Understanding the legal context

As noted in Section 1, there are significant differences between countries – and, sometimes within countries – in the extent to which the rights of Indigenous Peoples are formally recognized and afforded legal protection, the ways in which customary title and land/resource use are dealt with (e.g. the process for determining who has ownership when such claims are recognized and the rights that go with this) and the procedural requirements that govern access to indigenous lands.

At one end of the spectrum are countries such as Australia, Canada and the Philippines, which have introduced relatively comprehensive legislative regimes that define (and limit) Indigenous Peoples' rights over land, and set out procedures for resolving claims and granting title. Further along the spectrum are countries like Papua New Guinea, where rights over land are recognized, but are governed almost entirely by customary procedures. At the other end of the scale are those countries where there is no customary or formal legal recognition of Indigenous Peoples' rights over land. Countries with ostensibly similar legal regimes can also differ considerably in the extent to which legislation is enforced and complied with in practice.

Protection of cultural heritage protection is a related aspect that may also be subject to legal regulation at the national or subnational level. In several countries, physical sites, narrative or story sites, artefacts and remains and, in some cases, landscapes are protected by law and companies are required to avoid damaging such sites, or to provide proper compensation where some damage is unavoidable. Few countries currently have laws in place to protect intangible cultural heritage (language, oral traditions, performance arts, rituals, traditional knowledge, etc), but this is changing.

Consideration of the many, complex, legal issues pertaining to Indigenous Peoples and mining is beyond the scope of this Guide. Such issues have to be understood and addressed on a country-by-country basis and companies will need to seek expert advice for this purpose. The main point to make here is that companies need to know and comply with relevant national and local laws and be aware of any state commitments to international conventions and instruments. Lack of an effective national legal framework does not mean that companies should not continue to engage respectfully with Indigenous Peoples and act consistently with ICMM's Position Statement.


ICMM Position Statement, Recognition

Statement 6: 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.

PRIOR TO COMMENCING EXPLORATION OR DEVELOPMENT ACTIVITY, LEADING COMPANIES WILL GENERALLY HAVE TAKEN ALL REASONABLE STEPS TO ASCERTAIN WHETHER THE ACTIVITY IS LIKELY TO IMPACT ON OR INVOLVE INDIGENOUS PEOPLES IN SOME WAY.



A member of the Fuerabamba community close to Xstrata Copper's Las Bambas project at a Sunday market. Department of Apurimac, Peru



“THE GREAT SPIRIT IS IN ALL THINGS, HE IS IN THE AIR WE BREATHE. THE GREAT SPIRIT IS OUR FATHER, BUT THE EARTH IS OUR MOTHER. SHE NOURISHES US, THAT WHICH WE PUT INTO THE GROUND SHE RETURNS TO US.”

Big Thunder (Bedagi), Wabanaki Algonquin

3.2.2 Ascertaining customary land ownership and use

Where there is a legal regime that recognizes customary ownership in some form of rights over land, it may be possible to ascertain relatively quickly which indigenous groups, if any, have a connection to the land on which exploration or mining is proposed, as the claims of these groups may already have been recorded and recognized. In many instances, however, there will not be a readily accessible source of information about who has, or who has claimed, title or usage rights over the land. It will be important, therefore, to carry out an appropriate due diligence process that would include a review of recent court decisions in order to fully understand the status of land ownership and claims and for this purpose, companies are likely to find that they will need to obtain local expert advice.

In some indigenous societies, Indigenous Peoples occupying and using the land may not be the indigenous owners. However, both classes of people have traditional rights and responsibilities that need to be recognized and taken into account. Some questions that will assist companies to determine whether Indigenous Peoples are connected to an area are:

- Do Indigenous Peoples currently inhabit the land?
- Is the land used by Indigenous Peoples to support traditional livelihoods (e.g. nomadic grazing, harvesting, fishing, hunting, utilisation of forest resources)?
- Is the land accessed (or avoided) for cultural purposes, or has it been in the past (e.g. religious ceremonies, festivals)?
- Is there evidence that Indigenous Peoples have inhabited or used the land in the past?

After initial engagement with local community representatives, guidance should be sought as to which national, regional and local representative organizations may assist in collecting relevant information. Other suggested actions are to:

- consult with representatives of government agencies, international organizations and NGOs, and local or international researchers that are working, or have worked in the area
- undertake desktop research to ascertain if any historical, anthropological or archaeological studies of the area have been undertaken
- seek the advice of any other companies or organizations that already have a presence in or near the area.

The costs of getting it wrong

Land-ownership dispute prompts legal sanction against company

A community requested a moratorium on the development of a forest area until a formal consultation had taken place. The company did not acknowledge the request and raised project funding on the basis that the community had verbally given its consent. A major community protest followed and both parties went to court, with the company requesting billions of dollars in damages from the community. The court ruled in favour of the community and an injunction was imposed to prevent development of the disputed area.

A social mapping study (see below) may also clarify the situation in relation to traditional ownership and use.

3.2.3 Dealing with competing, overlapping and adjoining claims

Sometimes, more than one group may claim customary ownership over an area, or part of an area, or there may be disputes between groups over boundaries. These issues are most likely to arise where there has been intermingling of groups as a result of displacement and internal migration, or people have moved away from their traditional lands to new areas.

It can be tempting for companies in these circumstances to favour whichever group is more co-operative and supportive of mining, but this path is fraught with difficulties. Such a response could result in a group that potentially has a legitimate claim to an area being excluded from discussions and negotiations, which might develop into a dispute between the company and that group. Reacting in this way is also likely to cause or exacerbate tension between the relevant groups themselves and intensify opposition to mining from those who have been excluded.

Good practice in these cases is to adopt an inclusive approach and assume that claims from different groups are valid until shown otherwise. Also, where there are conflicts and disagreements between groups, companies should look for opportunities to assist groups to resolve their differences (e.g. by helping to identify a mediator, or perhaps offering to fund one) rather than leaving it to “the law” to run its course.

Another situation that may arise is where a project and related infrastructure (such as pipelines and railways) crosses over the land of different traditional owner groups, or otherwise impacts on these lands (as in the case of a watershed, for example). In these cases, good practice is for companies to be consistent and transparent in their dealings with all impacted groups.

3.2.4 Dealing with disconnection

In some countries, sections of the indigenous population have become disconnected, both materially and culturally, from their traditional lands as a result of expropriation, discrimination, economic exploitation, migration and the wider impacts of social and economic change. One consequence is that there may be indigenous groups living in the vicinity of an area of interest to a mining company who may not necessarily be regarded as the traditional owners of this land, but who might nonetheless be considered “local”. This can arise, for example, where a group has migrated from one part of the country to another, in response to the loss of their traditional lands, or where they have been relocated into a government-controlled settlement or a mission.

If these groups live on land that is, or is likely to be, affected by mining or are reliant on it for their livelihoods, their support should still be sought and they are entitled to be compensated fairly for any loss of access, use or amenity. Dispossessed Indigenous Peoples are often in considerable distress, having lost their connection to their traditional land. These groups will have distinct opinions on how they would like to be considered in any project design, particularly around impact management and benefit-sharing arrangements.

The reverse situation can apply where the traditional/customary owners of the land where the mining project is to take place have themselves been displaced and now live away from their lands. These groups also need to be engaged with and their concerns and aspirations taken into account, particularly where they still maintain some connection to the land.



3.3 Baseline studies

Baseline studies provide a benchmark against which the potential impact of mining operations can be anticipated and change measured. They are also valuable for building mutual understanding between companies and local communities. They may incorporate social mapping and social organization studies, cultural heritage and archaeological surveys, and impact assessments. Such studies will not normally be undertaken until a project is at concept stage, although in some cases (e.g. where there is a risk that exploration activities may damage cultural heritage) they may be more appropriately initiated earlier.

ICMM Position Statement, Commitment 2: Clearly identifying and fully understanding 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.

Baselines and assessments were traditionally undertaken as part of development approval processes, but are now being recognized as having much broader application. Leading companies now routinely require their operations to undertake such studies and update them at regular intervals, including when there is any significant change to the scale or shape of a project. Some companies also provide quite specific guidance to operations on what should be covered in these studies.⁷

Conducting robust baseline studies

The joint venture gold and copper project of Oyu Tolgoi between Rio Tinto and Ivanhoe is located in the south Gobi region of Mongolia.

The Oyu Tolgoi project is funding a social baseline study to establish a set of reference points or indicators at the national, aimag (province) and soum (sub-province) level. The study used secondary sources for much of the national-level data and conducted field research at the local household level. Focus group discussions were used to gather qualitative data to complement the quantitative survey data. The groups were designed to ensure that all sections of society were represented, with gender being one of the main selection criteria.

An advisory group comprising different stakeholders from different interest groups and areas of expertise, both within Mongolia and externally, is guiding the study and the final report to ensure that the data are accessible to those who may wish to utilize the findings in the future. An intensive socio-economic and environmental impact assessment will follow and use some of the information from the baseline study as a benchmark.



⁷ Where initial contact has been made by an independent prospector or exploration company, it is important in the baseline study to ascertain the nature of the relationship and what, if any, information was given and agreements or promises were made. The prospector's or junior company's perspective on these issues should also be sought.

The desired end result of a baseline study is an agreed upon repository of information and indicators that provides a solid basis for impact mitigation and community development initiatives. Ideally, most of the information in the baseline study will be accessible to all parties involved, although caution will need to be exercised in relation to some matters, such as genealogies. There are some important considerations when collecting baseline information from indigenous groups:

- information may not be shared easily in a public setting – different approaches and forums should be used to ensure that there is a good cross-sectional representation
- participants may sit and listen rather than share initially – silence does not mean having nothing to say but that the relationship between interviewee and interviewed is being assessed
- there may be a need to return several times for information to be drawn out or clarified; a baseline should not be seen as a one-off event but as an iterative process
- some of the information collected may be very sensitive to indigenous groups, meaning that a company may need to be prepared to sign confidentially agreements with communities.

The Akwé: Kon Guidelines⁸ of the Convention on Biological Diversity provide more detailed guidance on considerations to incorporate into baseline and impact assessment processes.

Some specific rules of good practice are to:

- identify whether the community has existing guidelines for conducting research⁹
- negotiate the level of community participation in the design, collection, analysis and management of the process
- seek broad-based support from Indigenous Peoples at the commencement of the research process and ensure that they have given their informed consent to participate in particular research activities (e.g. interviews)
- conduct surveys and interviews in the local language with the full participation of indigenous community representatives (where appropriate)
- use methodologies that facilitate participation, such as focus groups, ethno-mapping and participatory appraisal (see: www.iied.org).

Identifying environmentally and culturally sensitive areas

The community consultation process for the Ksar Hirane exploration program in Algeria was designed to take into account that the affected indigenous communities were typically semi-nomadic Bedouin people.

Prior to commencement of the survey, a local archaeologist was employed to identify any culturally significant areas along the exploration route. He also conducted cultural awareness sessions with the BHP Billiton exploration team so that they would appreciate heritage sites and know how to protect them.

During the exploration mapping exercise, any potentially sensitive areas were noted and plans were made to mitigate possible disturbance or damage. For example, although exploration routes usually follow straight lines, these were rerouted away from culturally important areas. Also the exploration team reduced the vibration intensity around some sensitive areas.

⁸ Full title: *Akwé: Kon Voluntary Guidelines for the Conduct of Cultural, Environmental and Social Impact Assessments Regarding Developments Proposed to Take Place on, or Which Are Likely to Impact on, Sacred Sites and on Lands and Waters Traditionally Occupied or Used by Indigenous and Local Communities* (<http://www.cbd.int/doc/publications/akwe-brochure-en.pdf>).

⁹ See, for example, *Negotiating Research Relationships with Inuit Communities: A Guide for Researchers* by Inuit Tapiriit Kanatami and Nunavut Research Institute (<http://www.itk.ca/sites/default/files/Negotiating-Research-Relationships-Researchers-Guide.pdf>).

A baseline study of an indigenous community will most likely include much of the same data that would be collected in a “standard” baseline study (for example, quantitative data on employment, income levels, health, living conditions, and so on) but ought also to include explicit consideration of:

- social structures: roles and responsibilities
- cultural protocols, including traditional ways of dealing with grievances and conflict
- governance and decision-making structures
- environmental and natural resource management strategies
- knowledge of local foods and medicines
- knowledge of health and education;
- the structure and operation of the local economy, common property rights and, reciprocity
- intangible cultural heritage, such as language, stories, art, music, ceremonies, spirituality.

Social mapping and social organizational studies, cultural heritage and archaeological surveys, impact assessments, gender analysis and conflict analysis are all elements of a comprehensive approach to performing a baseline study. Each of these is briefly discussed below.

3.3.1 Social mapping and social organizational studies

Social mapping is normally undertaken at an early stage of a project by anthropologists, social geographers or other specialists. A standard social map will identify key groups, how they are connected to each other, who has influence within those groups, systems of land tenure, inheritance and ownership, and so on. Some social mapping exercises may go well beyond tangible structures and relationships and look at “ethnohistory”; that is, Indigenous Peoples’ perspective on their history, cosmology and mythology.

Conducting comprehensive multi-stakeholder baseline surveys

The West Kitikmeot Slave Study (WKSS) Society was set up in 1996 to collect environmental and socio-economic information in order to enable better-informed planning and contribute to a baseline study for assessing and mitigating the cumulative effects of (mostly mineral) development on a 300,000 Km² area between Yellowknife and the Arctic Coast in Canada’s Northwest Territories.

Nine founding partner organizations – representing a range of interests including governments, Inuit and Dene communities, environmental organizations and the mining industry – contributed financially and held seats on the board. WKSS board members were assisted by a Traditional Knowledge Steering Committee and a Project Steering Committee.

The near-US\$10 million project covered four areas: wildlife and habitat studies, physical environment, socio-economic and preliminary studies relating to traditional knowledge. The traditional knowledge gathered by the project had never before been captured in written form. The project sponsored both traditional knowledge and scientific studies and sought ways to bring both to bear on critical research problems, encouraging a community-based training component where possible. (see: www.enr.gov.nt.ca/_live/pages/wpPages/West_Kitikmeot_Slave_Study.aspx)

3.3.2 Cultural heritage assessment

In some jurisdictions, companies are now required to undertake cultural heritage and archaeological studies prior to any significant ground disturbance. Even where there is no legal obligation to do so, responsible companies will conduct these surveys as a matter of good practice.

Surveys are designed to ascertain whether any exploration or development work that is planned has the potential to disturb or destroy tangible forms of cultural heritage (e.g. graves, campsites, trees, meeting places) or intangible forms (e.g. sacred sites both publicly known and those known only to the indigenous community). This information should then be used to inform the development of cultural heritage management plans.

Surveys are best carried out in conjunction with knowledgeable members of the local indigenous community, but may also require the use of specialist advisers, such as archaeologists/ethnographers. Wherever practical, women as well as men should be involved in the surveys. As a general principle, cultural heritage information should be owned and managed by the local communities.

Participation of Indigenous Peoples in exploration activities

Prior to each exploration session, Teck holds an on-site meeting with the Traditional Owners in order to review the upcoming field program, including a field examination of the proposed locations of drillholes, and geophysical and geochemical surveys.

Several features of the area possess sacred, traditional and/or mystic qualities, and as such are considered extremely sensitive to the Gooniyandi. The “on the ground” consultations help to ensure that exploration activities respect these features and locations by observing restricted access or specific customs associated with each site.

Members of the Gooniyandi community have joined Teck’s exploration team, further ensuring that exploration is carried out sensitively while providing the Gooniyandi with a range of practical and applied mining skills. Their extensive knowledge of the landscape and ability to work in sometimes difficult conditions has also been of great benefit to the team. A flexible working environment responds to the importance of family, cultural and community obligations of Gooniyandi employees. For example, the company has arranged for a transport service to allow workers to be with their families during the evenings.



3.3.3 Impact assessments

As discussed in Section 1, mining projects can impact on Indigenous Peoples in a variety of ways – some positive, some negative, some a mixture of both. Typically, any impact will not be experienced equally by all of the Indigenous Peoples in an area. In particular, there is a strong body of evidence demonstrating that women, children and the elderly are more likely to be adversely affected by mining development and resettlement, especially in the developing world. Groups and communities as a whole who are relocated are also likely to be significantly detrimentally affected.

Exposure to negative impacts is likely to be greater during the construction and operational phases of a mine, but can be significant even at the early stage of exploration. For example, construction of a road for exploration purposes may open up an area to illegal loggers or artisanal miners from another region and increase in-migration and informal settlements; drilling crews may introduce diseases into a previously unexposed area; watercourses can be contaminated; or, significant cultural heritage sites can be damaged or destroyed.

As this example indicates, exploration and mining activities can have an impact well beyond the land on which they are conducted. Similarly, a poorly managed mining operation can have a detrimental impact on the quantity and quality of water available to Indigenous Peoples living many miles downstream. For this reason care should be taken to identify all indigenous groups who may be indirectly affected by the project, directly or indirectly, even if no exploration or mining is planned for their lands.

Leading companies are addressing these issues both at the baseline study and social mapping stage and linking this knowledge through to subsequent processes, including impact assessments and in the design and implementation of suitable controls (see below).

As is the case with baseline studies, impact assessment ought to be seen as an iterative process, rather than a one-off exercise. The initial assessment will normally be conducted as early as possible in the project life cycle, prior to the commencement of significant exploration activity if possible, and then updated as new information comes to hand or circumstances change.

The principles and methodology for impact assessments relating to Indigenous Peoples are essentially the same as for baseline studies. Impact assessments should address consequences that Indigenous Peoples themselves consider important and which are specific in their cultural context.¹⁰ For example, different indigenous groups may have specific cultural definitions of sustainable development that give greater emphasis to the perpetuation of customary traditions than to economic progress. For these groups, the economic benefits of a mining project (such as employment, revenues) may carry with them significant cultural costs (e.g. erosion of traditions, loss of language and customs, and new social pathologies).

Impact assessments and baseline studies should also be done at a pace that is amenable to broad-based discussion and with consideration of indigenous communities. As discussed in Section 2, Indigenous Peoples need to be provided with timely, open and honest information (and in a considered format) about the potential impact of the project, participate actively in processes to identify risks and opportunities, and be involved in decisions about how to deal with these issues and others that were not foreseen in original studies.

¹⁰ The International Association for Impact Assessment (IAIA) describes basic and operating principles that aim to promote a meaningful integration of traditional knowledge as well as the respectful incorporation of Indigenous Peoples in impact assessment, <http://www.iaia.org/iaia-climate-symposium-denmark/indigenous-peoples-traditional-knowledge.aspx>



Women from the Dongria Kondh tribe in the village of Devapada on the slopes of Niyamgiri mountain, Orissa, India. The mountain is regarded as sacred by the Dongria Kondh.

THERE IS A STRONG BODY OF EVIDENCE DEMONSTRATING THAT WOMEN, CHILDREN AND THE ELDERLY ARE MORE LIKELY TO BE ADVERSELY AFFECTED BY MINING DEVELOPMENT AND RESETTLEMENT, ESPECIALLY IN THE DEVELOPING WORLD.

3.3.3.1 Gender impact analysis

The risks and benefits of mining to Indigenous Peoples are often considered only at a community level, which often fails to distinguish between the impact on women and men. While there is considerable evidence that the benefits of family/community members employed in mining have significant flow-on development advantages for women and families, the direct benefits from mining accrue more to men in the form of employment and business opportunities. This is in contrast to the costs of social disruption and environmental change and degradation, which often fall predominantly on women.

A gender analysis entails:

- understanding the different roles of women and men within the indigenous social and cultural context, including the division of labour between the sexes and the different rights and obligations within the household and the broader indigenous community
- analysis of the impact that operational policies, plans and programs will have on women as compared to men
- analysis of the impact of predominantly male employment and associated risk of power imbalances, income inequality, and flow-on domestic conflict
- identification of issues and risks related to discrimination and unequal access of women to resources and services
- understanding power structures and the politics within women's groups in communities, and society as a whole, so as to identify commonalities and differences around impacts and assess the potential for conflict within such groups.

A crucial aspect of gender analysis is the use of sex-disaggregated data, which enables the impact of a project on women and men to be assessed separately and for the intersection between gender and indigenous identity to be considered.

More broadly, gender considerations should be addressed by:

- ensuring indigenous women as well as men are involved and participate in community consent and engagement activities
- establishing gender-sensitive policy positions, such as for cultural heritage, employment and business development
- mainstreaming gender into project planning, particularly for community development
- using gender-sensitive indicators, such as employment data disaggregated by gender
- consultation with national and international women's organizations.

3.3.3.2 Conflict assessments

Conflict assessment aims to assess the potential of a project to contribute to conflict at the local level or beyond, and to identify preventative strategies for reducing the risk of escalation and violent confrontation (see Section 6: Dealing with grievances). In an indigenous context, the analysis should consider not only the possibility of conflict occurring between indigenous groups and the company, but also tensions being generated between and within indigenous groups, the company and the non-indigenous population.

A good conflict analysis will require the same diligence as any type of risk analysis, to look below the surface to identify the potential for future issues to arise. The absence of overt conflict or violence in an area does not mean it will not occur in the future, especially with the changes that a mining project can bring (e.g. conflicts over access to financial payments and employment opportunities). Conflict levels may also be sensitive to changes to other external factors unrelated to the mining project.

A useful source of guidance on undertaking conflict assessments is International Alert's *Conflict-Sensitive Business Practice: Guidance for Extractive Industries* (www.international-alert.org).



AGREEMENTS



A child touches her hand with a “shaman” during a spiritual ceremony paying tribute to the pre-Colombian earth gods at the meeting of indigenous women from across the Americas. Lima, Peru



4.1 Introduction

The focus of this section is on the use of negotiated agreements to define and regulate relations between mining companies and indigenous communities.¹¹ The topics covered are:

- the business case for agreements
- characteristics of effective agreements
- making agreements
- components of agreements
- implementation of agreements.

4.2 The business case for agreements

There is now broad recognition among the leading companies in the global mining industry that strong, but flexible agreements with indigenous groups are mutually beneficial for both companies themselves and the communities they operate in.

For companies, agreements can provide a means of securing long-term access to resources, lowering transaction costs and uncertainty, and reducing exposure to disputes and legal action from indigenous groups. For Indigenous Peoples, the agreement-making process can be a positive step in redefining their relationship with mining companies operating on their lands, allowing them to become partners to the project rather than merely stakeholders, and helping them to maximize the benefits and minimize the impacts of the project.

In the last two decades, negotiated agreements have become commonplace in jurisdictions such as Northern America and Australia where formal recognition of customary ownership has led to the creation of strong statutory frameworks. In these countries, the law promotes agreement making by giving a “right to negotiate” to traditional owners, establishing procedures for registering and giving legal effect to agreements, and providing an alternative legal avenue (adjudication) if agreement cannot be reached.

Negotiation is generally preferred over adjudication in such systems, as the latter course of action typically involves lengthy delays, is considerably more expensive, diminishes the capacity of parties to influence outcomes and almost invariably hinders the building of long-term relationships.

In the past, if there was no legal imperative to negotiate, many companies would have seen no need for an agreement, but as the example below shows, there is now a greater willingness to go beyond compliance and voluntarily seek out opportunities to form agreements. For companies, the benefits in doing so include developing goodwill with indigenous groups, proactively addressing and resolving points of conflict and tension, and creating a governance mechanism around which engagement and dialogue can occur into the future. This last factor can be particularly important in countries where government capacity is limited and there is a low level of trust in the courts and other institutions of the state.

¹¹ A 2010 publication, *The IBA Community Toolkit: Negotiation and Implementation of Impact and Benefit Agreements* (Ginger Gibson and Ciaran O’Faircheallaigh) provides a detailed guide to negotiating, developing and implementing agreements from the perspective of indigenous communities (www.ibacommunitytoolkit.ca).



Aboriginal dancers from the East Kimberly region, Western Australia

Source: *Rio Tinto Diamonds*

Recognizing the interests of the traditional occupiers of local land and working together with them to draft agreements

The Boddington Gold Mine (BGM) in Western Australia is situated on land traditionally owned by the Gnaala Karla Booja people of the Noongar Nation. While the operation is situated on freehold land and therefore largely not subject to native title, the mine owners wanted to develop a process that acknowledges the Gnaala Karla Booja people as the Traditional Owners.

The project partners worked with the Gnaala Karla Booja to draw up a Community Partnership Agreement acknowledging the Gnaala Karla Booja's relationship with the land and committing the company to employing 100 members of the indigenous community during the lifetime of the mine. To support this objective, the agreement covers the following areas:

- training and employment
- business enterprise development
- school retention programs
- scholarships, apprenticeships and cadetships
- mentoring programs
- work experience
- development of a cultural centre.

The Gnaala Karla Booja wrote the preamble to the agreement highlighting the importance of their relationship to the land. Added to the Community Partnership Agreement is a Cultural Heritage Preservation Agreement, drawn up because the mine owners wanted to ensure they were acting properly and respectfully when engaged in ground disturbance work.

4.3 What makes for a successful agreement?

In the broadest terms, successful agreements are those that build and sustain positive, mutually beneficial relationships and partnerships between indigenous groups and companies. What this entails will vary considerably according to the particular circumstances and the aspirations and resources of the parties. However, there are some key defining features.

A prerequisite for a successful agreement is that the parties – and, in particular, the indigenous parties – view the process that led to the agreement as fair and equitable. If people feel that an agreement has been imposed on them, or they were not properly informed of their rights and obligations under the agreement before signing it, they are much less likely to commit to making it work. Leading practice agreements also go beyond a narrow, short-term focus on compensation to address long-term development goals and the issue of post-project sustainability.

The most effective agreements are treated not as static legal documents, but as flexible instruments that provide a framework for governing the ongoing and long-term relationship between a mining project and affected indigenous communities. Such relationships are characterized by willingness by all parties to change and improve the agreement as circumstances require. Accordingly, these kinds of agreements usually contain commitments from all involved parties, which reinforce the mutually beneficial aspects of the relationship, and are characterized by a willingness by all parties to change and improve the agreement as circumstances require.





A Dogon elder tells the future with Cowrie shells, Mali

4.4 Making agreements

4.4.1 Establishing the overall aims of the agreement

Effective agreements depend, first and foremost, on both parties having a thorough understanding of each other's objectives and needs.

The company should strive to understand the aspirations, concerns and development needs of the community so that these can be addressed as best as possible. These will vary depending on the context; for example, generating economic development opportunities will be very important for some indigenous groups, whereas for others protection of traditional livelihoods and cultural heritage may be the highest priority. Baseline studies and social impact studies will provide valuable insights into community needs and aspirations (see Section 3), but further issues will often be drawn out in consultations and negotiations undertaken as part of the agreement-making process.

Communities, in turn, need to understand the interests of the company and the potential impact of the project (both positive and negative). Company objectives and plans should be clearly communicated to all to ensure that the agreement is realistic and achievable. The risks as well as the opportunities associated with the project must be understood by all to avoid unreasonable expectations.

Establishing these long-term objectives at the outset of a project and revisiting them through the negotiation process and beyond will also help define strategies for managing the transition to closure. Issues that should be addressed as part of this dialogue include the duration and extent of ongoing company support and institutional arrangements for any remaining assets and finances covered by the agreement.

Matters for companies to consider prior to entering into formal agreement negotiations include:

- What rights do the Indigenous Peoples of the area have to control the use and development of land and subsurface minerals?
- What legal and procedural requirements, if any, apply to agreements between Indigenous Peoples and mining companies? (For example, do agreements have to be registered, or can they be outside the formal legal framework and what, if any, rules should the company comply with in negotiations?)
- Who in the indigenous community has authority (customary or formal) to negotiate on behalf of the community?
- Who else in the community should properly be included in this process and how might their input be obtained?
- How could mining negatively impact on, or contribute to the community and its development?
- What is the current, expected and desired relationship between the company and the community like?
- What skills and experience do the company and the community and their representatives have in negotiating similar agreements?
- Does the community lack capacity in other areas that would disadvantage its ability to negotiate?
- What existing community organizations could be involved in the agreement?
- Does the community have any relevant agreements with any other organizations or companies?
- What is the relationship between the government and the community like? What role is government likely to play in the agreement process?
- What remedies should the parties properly be entitled to in the event that the agreement is breached?
- Should the agreement include a mechanism for termination and, if so, what provisions should be made for outstanding claims?
- Is it expected that the agreement will require significant and/or frequent updating or revision and how is this best effected?
- By what means would the parties seek to resolve disputes under the agreement and how could they enforce it?

Indigenous communities, for their part, should be encouraged and assisted to engage in an internal dialogue about what they are hoping to achieve from an agreement, any concerns they may have about mining and the particular project, and their hopes and goals for the community over the longer term (see 4.4.3, opposite).

4.4.2 Building understanding and respect

Building understanding and respect can take time. Negotiations between companies and indigenous groups have been known to last up to five years or longer, which requires staying power and the willingness to return to issues that may have been agreed sometime previously. There may also be a significant challenge in managing the changes in the individuals involved on both sides over this period of time. While this may seem a long time before the project can start, establishing a strong agreement from the outset can help avoid delays and disagreements later.

Sometimes it is better to spend time initially building relationships before embarking on formal negotiations. Overall, this can result in more effective and shorter negotiations compared to starting the process without a solid foundation.

Applying the principles of “good faith negotiation” will help establish a relationship of mutual respect, particularly when there has been a legacy of conflicts and tensions. This form of negotiation seeks to establish, in a balanced way, where points of disagreement and agreement lie and what the options are for resolving disagreements. Underpinning this approach is the recognition that there may be asymmetries in information and unbalanced negotiating power between the parties involved. This is in contrast to the positional bargaining strategy often adopted by companies in commercial negotiations, with its emphasis on “ambit claims”, “bottom lines” and seeking maximum bargaining advantage.

Some practical steps that companies can take to facilitate good faith negotiations are:

- agree on the negotiation process and procedures through a Memoranda of Understanding (MoU), including agreeing on the style of negotiation. (for example, negotiations do not always have to follow Western negotiation styles)
- ensure that company personnel and representatives are trained in culturally appropriate negotiations techniques and relationship building
- undertake detailed consultation with all the affected indigenous communities so as to make the negotiation process as inclusive as possible
- provide plain language summaries of technically and legally complex documentation, using the preferred language(s) of indigenous groups
- allow sufficient time for the negotiation process, in appreciation of the need to give time to indigenous groups to arrive at decisions
- use interim agreements to help demonstrate that both the company and indigenous groups are committed to reaching a final agreement.

4.4.3 Building knowledge and capacity

Building knowledge and capacity among both parties is an essential part of negotiating and implementing agreements. This involves not just sharing information on objectives and needs, but also ensuring that it is presented in a meaningful way; in particular, by taking care to avoid jargon and too much technical language when communicating with the community.

In line with the principles of good faith negotiation, the goal should be to have the negotiations conducted on a level playing field, such that neither party feels disadvantaged in any way. The company will almost certainly be more experienced in formal negotiations than the indigenous group it is working with and should ensure that the group has the capacity to participate equitably. This can be done, for example, by providing funding to indigenous groups to employ independent expert advice, covering travel and meeting costs, funding legal and negotiations training and underwriting the cost of hiring a lead negotiator (a common practice in Australia and some other countries).

4.4.4 Managing internal disagreements

Any tensions and disputes within the company should be resolved before its representatives begin negotiating. All departments that might be impacted on by the agreement need to understand the issues that are likely to be discussed in negotiations and should be kept informed about the company's position in relation to these issues. Indigenous groups may themselves be divided over the desired outcomes for the agreement. Where this occurs it may be necessary to work with the community to create special subgroups for wider consultation on the agreement, with the aim of ensuring that people within the community do not feel disenfranchised and that community representatives fully understand and adequately represent the interests of all. For example, in Canada, to avoid situations where internal disagreements inside the community may be ignored or concealed by the leadership negotiating the agreement with the company, it is considered best practice to embed a formal process of ratification by community members in the agreement itself, by means such as a vote, referendum or otherwise. For longer duration negotiations, it is also useful if the community negotiators report back on a regular basis to the wider community on progress.

4.4.5 Involving other parties

Governments will often have an active interest in the outcomes of negotiations between indigenous groups and mining companies and sometimes may themselves be parties to agreements. For example, the Gulf Communities Agreement, which covers MMG's Century mine in Queensland, Australia, included commitments by the Queensland government in the areas of infrastructure, health and social development, education and training, and institutional support.

While it is good practice to look for opportunities to involve, and leverage from, governments in the delivery of development objectives, the question of whether to include governments in the negotiation process and/or as agreement partners needs to be addressed on a case-by-case basis. If there is distrust among indigenous groups towards government, this may hinder, rather than facilitate, the reaching of agreement and will add to the complexities of implementation. For this reason, the issue of government's role should always be discussed and (except in those cases where government can be a party to the process as a matter of right) agreed in advance with the indigenous parties.

Representative organizations, NGOs and civil society groups may also seek to become involved in negotiating and implementing agreements. This may extend to advocating on behalf of the indigenous community around issues of participation, recognition and rights. If Indigenous Peoples have genuinely delegated representative and advocacy roles to external agents, then this needs to be acknowledged and accepted by the mining company and new ways of working need to be formulated. This should include giving consideration to whether the NGO or civil society organization needs capacity-building support.

Involving third party representatives of indigenous community interests

The South West Aboriginal Land and Sea Council (SWALSC) is a representative body of the Noongar people (the traditional owners of South-West Australia), which works with its members to find resolution for native title claims. SWALSC provided assistance and support to the Gnaala Karla Booja people during negotiations with the owners of the Boddington mine around the Community Partnership Agreement and helped ensure fair outcomes for the community. The SWALSC also helped manage high community expectations around the agreement by explaining some of the practical difficulties in meeting certain expectations.

4.4.6 Confidentiality of agreements

One of the issues that will have to be addressed as part of the negotiation process is what information about the agreement should be made public and what may be sensitive and ought to remain confidential.

In some jurisdictions, it has been common practice for most of the agreement to be kept confidential. Often companies have been active supporters of this approach, in part because they have been concerned that disclosing information could create a precedent for future negotiations with other indigenous groups. Sometimes it has been indigenous groups themselves who have pushed most strongly for confidentiality, possibly because they do not want others (such as governments or other indigenous groups) knowing the financial details of compensation arrangements, or because the agreement deals with culturally sensitive issues.

Community concerns about disclosing sensitive information (for example, details of payments to individuals or groups) clearly need to be taken into account, but it is now generally accepted as good practice that the use of confidentiality clauses should be kept to a minimum, in the interests of transparency, accountability and sound governance.

4.5 Components of agreements

There are no hard and fast rules about what should, and should not, be in an agreement. This will depend on the context, the goals and aspirations of the parties to the agreement and what they see as fair and reasonable. It is possible, however, to give some guidance on what the options are and the risks and potential benefits associated with different approaches.

The types of issues that can potentially be addressed in agreements include:

- financial payments and disbursement arrangements (see Section 4.5.1)
- employment and contracting opportunities (see Section 4.5.2)
- environmental, social and cultural (heritage/language) impact management (see Section 4.5.3)
- governance arrangements (see Section 4.5.4) and
- any provisions that might be agreed in relation to the local community's use of certain land.

Regardless of how an agreement is structured or what it contains, it should not restrict or exempt companies from undertaking other engagement, impact management and benefit-sharing activities outside the scope of the agreement.

**“WHEN ALL THE TREES HAVE BEEN CUT DOWN,
WHEN ALL THE ANIMALS HAVE BEEN HUNTED,
WHEN ALL THE WATERS ARE POLLUTED, WHEN
ALL THE AIR IS UNSAFE TO BREATHE, ONLY THEN
WILL YOU DISCOVER YOU CANNOT EAT MONEY.”**

Cree Indians prophecy

4.5.1 Financial

There are several different types of financial arrangements available for providing both short- and long-term benefits and for compensating for losses or damages that indigenous groups may experience as a result of a mining project. These payments can be disbursed in cash and/or as financing for specific community development projects, to named individuals or wider groups. Specific agreements can incorporate one or a combination of these arrangements.

4.5.1.1 Types of financial packages

Financial arrangements are generally used to address both compensation and benefit sharing. These packages can take one or more of the following forms:

- **Production or profit-based payments** – an annual payment for use of the resource or land, based on a percentage of production or profits. Production/profit-based payments usually take one of three forms:
 - a percentage or an amount based on annual production
 - a percentage of the annual revenue
 - profit sharing based on a percentage of annual profits (see the Raglan Agreement below).

Production/profit-based arrangements need to be negotiated on a case-by-case basis as there is often no overriding framework for fiscal arrangements, even during negotiations between governments and companies.

Revenue-sharing agreements

The Musselwhite mine is located near Opapimiskan Lake, 430 km northwest of Thunder Bay, Ontario, Canada. It is primarily an underground gold mine that started commercial production on 1 April 1997 and produces about 250,000 oz of gold per year. It has proven reserves until 2012 but new discoveries may extend this to 2020. It is presently owned by Goldcorp, although the agreement was originally negotiated by Placer Dome (subsequently acquired by Barrick Gold). It is a fly-in, fly-out operation. The mine has all-weather road access but communities only have winter road access from approximately December to February.

There are five First Nations communities in the direct impact area of the mine: North Caribou Lake First Nation, Cat Lake First Nation, Wunnumim Lake First Nation, Kingfisher Lake First Nation and the Mishkeegogamang First Nation. The closest community is about 90 km from the mine. The First Nations are a mix of Ojibway and OjiCree and have been reliant on a subsistence economy. There were about 1,500 people in total in the communities in the late 1990s when the first agreement was signed with the company.

The First Nations had some limited experience dealing with mining companies prior to the mine being built, primarily in exploration activities, and originally had serious concerns about the proposed mine. They finally agreed to it on the condition that Placer Dome agree to put a cap on production and provide benefits such as local hiring (with a goal of 30% First Nations employees), job training, service contracts (housekeeping, catering, trucking) and some support for community infrastructure projects (e.g. financial assistance to a local airline and to a community arena). The company also provided some support for the hiring of external consultants to advise the First Nations on environmental issues. Furthermore, a community oversight role was defined for the First Nations with the creation of an Environmental Working Committee that undertook environmental studies and monitored compliance.

The first agreement ran from 1996 to 2001 and, in general, while fairly comprehensive in scope, was less focused than it could have been. This caused some difficulties for Placer Dome and the communities in how to interpret some broadly written clauses. The company usually took the final decision over which activities to support.

After a number of years, it became obvious that the production cap was not allowing the company to achieve economies of scale and so it asked the First Nations if they could raise the cap in order to have unlimited production tonnage. In exchange, Placer Dome offered a revenue-sharing agreement with the First Nations based on the amount of gold produced and the prevailing selling price.

Accessing royalties


Red Dog is a zinc and lead mine in a remote area of Northwest Alaska. In 1982, the Red Dog “lease” agreement between Teck and the Northwest Arctic Natives Association (NANA), a representative body for 10 Inupiat communities, was signed. The agreement granted Teck exclusive rights to build and operate the Red Dog mine and to market its metal production in exchange for royalties from production for NANA.

NANA received US\$1.5 million in 1982 as a signature bonus and received an additional US\$1 million every year until production. Once production began, NANA agreed to receive royalties of the net smelter return annually in the sum of 4.5% until Teck’s initial capital investment was recovered (late 2007). NANA then began receiving a share of the mine’s net proceeds, beginning at 25%, and increasing by 5% every five years to a maximum of 50%, at which point NANA and Teck will share equally in the profits.

Teck also agreed to hire NANA shareholders as first preference and provide sufficient training as well as educational programs for community youth. Currently, over half of the staff at Red Dog are NANA shareholders. The agreement also called for a Subsistence Committee, which ensures the protection of caribou and whale populations by shutting down transportation routes during migrating periods.

- **Equity** – a share of ownership in the project, and subsequent share of dividends paid to shareholders, in return for financial payments, or in recognition of the value of support from the indigenous group or the rights which the group has over the resource. The principal benefits of an equity share are that the shareholder will have a direct share of the profits from the project and hold some degree of ownership in the company or project. However, the income stream from an equity share is not so certain as that from production/revenue-based payments, and equity participation poses the risk of negative returns and exposure to project capital injections, for example, for expansion.
- **Other types of fixed annual payments** – depending on the context, these payments may be defined as benefit-sharing payments or social investment payments. In some cases these annual payments may be based on a certain proportion of the total capital expenditure (capex) on a project.
- **Fixed single payments** – these may be either one-off payments for reaching agreed milestones, such as completion of construction or achieving production targets, or a fixed compensation payment to redress damage or a particular loss, or a right of way payment. Fixed payments may be used prior to production/profit-based payments or equity-sharing arrangements.





“IN OUR CULTURE, SURVIVAL MEANT SHARING. IF SOMEONE CAME INTO OUR TERRITORY AND THEY WERE HUNGRY AND WE HAD FOOD, WE WOULD SHARE. IT’S CONFUSING WHEN INDUSTRY COMES INTO OUR TERRITORY AND IS NOT PREPARED TO SHARE. WE HAVE HAD TO LEARN NEW SKILLS TO NEGOTIATE WITH INDUSTRY BUT EVEN TODAY IT IS HARD TO NEGOTIATE WHEN OUR CULTURE IS BASED ON THE PRINCIPLES OF SHARING, WITHOUT HAVING TO ASK. INDUSTRY MUST STOP SEEING US AS A COST OF DOING BUSINESS AND RECOGNISE AND UNDERSTAND OUR CULTURE AND OUR VIEW OF SHARING THE BENEFITS FROM OUR TERRITORY.”

Charlie Okeese
Eabametoong First Nation
Ontario, Canada



Inuk hunter dressed in traditional Caribou skin clothing travels by dog sled on a winter hunt, Nunavut, Canada

Innovative profit-sharing mechanism

In 1992, six years prior to production beginning at Raglan mine in Northern Quebec, Canada, mine representatives met with members of the Makivik Corporation (an Inuit-owned economic development company) and agreed to initiate a more formal consultation process. The Raglan Agreement was signed in 1995 between the Makivik Corporation, Raglan mine and local communities.

The comprehensive socio-economic agreement addresses environmental protection and mitigation, dispute resolution, procurement priority given to competitive Inuit businesses and employment. The agreement also featured the first profit-sharing arrangement in the Canadian mining industry, which provided fixed annual payments during the early years of the mine's development until the mine became profitable. The profit-sharing arrangement includes a commitment to provide 4.5% of operating profit to the community partners in the agreement once the mine has recouped its initial capital investment.

The money is placed in a trust, which in turn distributes 25% of the money to the Makivik Corporation (an Inuit-owned economic development corporation), 30% to Kangiqsujuaq and 45% to Salluit. The Makivik Corporation and local communities distribute the funds among the 14 communities in the Nunavik region, based on an evaluation of needs. The arrangement was precedent-setting and controversial within the industry. The Raglan Agreement paved the way for a range of financial benefit-sharing measures in mining projects in Canada.

4.5.1.2 Types of financial disbursement mechanisms

Agreements should document **disbursement procedures, rules or criteria** that limit and define how the money in the agreements can be spent and on which beneficiaries. **These mechanisms should be consistent with the broader purposes of the agreement and help support the objective of building a sustainable future for the community.**

Financial packages may be channelled through a variety of disbursement models, as outlined below. Typically, funds will also be allocated to cover the administrative costs of managing each of these models. The pros and cons of different models should be carefully explored and either agreed in full or in principle during the negotiations for the agreement. These matters should not be left to be dealt with after the agreement has been settled.

- **Payment to named individuals or groups** – this type of disbursement model will usually be made as a one-off payment or an annual payment, and may cover financial compensation for specific damage that the project is expected to cause or payment for the use of, or access to, land. The payment will usually not involve the establishment of governance structures to administer it.
- **Payment to an indigenous group through its representative organization** – like the Raglan mine model, this type of disbursement will usually be in the form of a one-off payment or an annual payment, and may also cover compensation for specific damage that the project is expected to cause a third party or payment for the use of, or access to, land. In these cases, funds tend to be paid into a bank account held either solely by the indigenous representative organizations or jointly with the company.
- **Payment through an intermediary organization** (such as the government or an NGO) – this model involves funds being paid to and administered by an intermediary organization external to either the indigenous group or the company.

- **Payment into a company internal fund or program** – this model involves funds being managed internally within the company, or paid into a specially set-up fund, on behalf of the indigenous group, which is usually a formal organizational structure within the business, with agreed budgets, and decision-making criteria that may involve external stakeholders. One model that is increasingly being favoured is keeping the capital of the trust intact, with the communities using the interest from the capital to finance immediate needs. However, this needs to be balanced with demands for more immediate distribution of financial benefits.
- **Payment into an external trust, fund or foundation** – these are usually legally distinct entities set up separately from each of the company, the indigenous representative body or the government, and with the specific purpose of managing and disbursing funds. There are various implementation models for trusts/funds. The funds into trusts/funds may be disbursed immediately and/or invested for future use. Funds may also be set aside for use beyond the life of the mine, which can ensure that there are ongoing benefits for future generations. For example, future generation trusts are trusts, usually established by or for landowner companies, in which a proportion of mining-related benefits (often payments from project revenue) are paid, for use at a future point in time, usually after mine closure.

There are often strict legal rules that determine what a trust can or cannot do, how it must be managed and its relationship with its original donor (i.e. the company). These rules vary from one country to another. For example, the concept of a trust is not recognized in some jurisdictions such that alternative structures may need to be considered. The independent status of trusts may also allow them to be tax-efficient and attract funding from other sources, such as government revenues or financial streams from other companies. Trusts/funds may include arrangements where management and ownership is transferred over time to the community (as part of a wider effort to increase community self-governance/self-determination).

Establishing charitable trust funds

Under the terms of the Community Partnership Agreement the Boddington mine operation in Western Australia provides annual financial assistance to the Gnarla Karla Booja. The money is disbursed to a charitable trust managed by an indigenous group. The charitable trust will be the principal mechanism for managing all the financial benefits received from the mine. A Relationship Committee representing the Traditional Owners and the mine owners has been established. This committee will decide how the money will be disbursed in the areas of local business development, scholarships, school retention programs and community projects.

Trust Fund for Community Development

The principal mechanism for funding the objectives of the Community/Indigenous Peoples Development Plan (C/IPDP) for the Sepon mine in Laos is the Trust fund for Community Development. The eight-member board of the Fund comprises company, government and representatives of the two main ethnic groups. A 17-member committee – also drawn from the various stakeholder groups, and including the chiefs of the six villages in the mine's area – undertake the day-to-day running of the trust fund.

The fund supports projects in the areas of education, agriculture, transportation, utilities and health. Education projects include three government-run schools whose construction was financed by the trust, and adult training to reintroduce traditional weaving skills that had been lost when people fled the area during the Vietnam War. The agricultural projects were linked to the other areas of the C/IPDP such as business development, health, the weaving project, rehabilitation and mine closure.

4.5.2 Employment and contracting opportunities

Agreements may include employment and contracting provisions for Indigenous Peoples (although these provisions can also be provided by companies to indigenous groups outside of agreements).

Employment and procurement provisions can offer opportunities for indigenous men and women to further benefit from mining industry operations, particularly in areas where there are few other economic opportunities.

Some agreements contain quite explicit targets in relation to employment and business development and specify actions and timelines for achieving this, whereas others are restricted to general statements of commitment to preferentially employ, or contract, Indigenous Peoples. There is an ongoing debate in industry about the merits of setting numerical targets, but experience has shown that commitments to providing employment and business opportunities are more likely to be taken seriously – both within the company and by the community – if the agreement identifies specific actions to advance these objectives. (See Sections 5.3.1 and 5.3.2 for a discussion of practical steps that mines can take to increase indigenous employment and generate business opportunities.)

By way of example, the Gulf Communities Agreement, which covers MMG's Century mine in far north Queensland, Australia, includes a schedule devoted specifically to employment and training, which covers matters such as formation of an Employment and Training Committee with local indigenous representation; development, implementation and monitoring of an employment and training plan; skills auditing; provision of education, employment and training advice; employment of support personnel; the establishment of regional infrastructure; and communications with the communities about the progress of Century mine in the Gulf region. This has contributed to Century sustaining one of the highest rates of indigenous employment of any mine in Australia.



WELL-DESIGNED AGREEMENTS CAN PROVIDE INDIGENOUS GROUPS WITH SOME LEVEL OF ASSURANCE AND ACCOUNTABILITY TO ENSURE THAT THE COMPANY WILL MANAGE ENVIRONMENTAL, CULTURAL AND SOCIAL ISSUES TO HIGH STANDARDS.

4.5.3 Environmental, cultural and social impact management

Mining industry projects can pose significant risks to the environment, communities and their cultural heritage, and some indigenous groups may have experience of projects not managing these risks effectively. Well-designed agreements can provide indigenous groups with some level of assurance and accountability to ensure that the company will manage environmental, cultural and social issues to high standards. This increasingly includes participatory monitoring programs, which actively involve people from indigenous groups and draw on their traditional knowledge.¹²

Establishment of community-managed socio-economic monitoring committees

Early in the development of Diavik Mine in Canada's Northwest Territories, the project team made a commitment to provide training, employment and business opportunities to people from the Northwest Territories. To provide a formal mechanism to ensure Diavik's commitments were appropriately implemented and monitored, the environmental assessment of the Diavik Diamond Mine included a requirement for a Socio-Economic Monitoring Agreement (SEMA).

As part of the agreement Diavik formally involves communities in monitoring and in an advisory capacity through the Diavik Communities Advisory Board. The government of the Northwest Territories and the mine each have a representative on the board, which otherwise comprises community elders. The board provides recommendations to the communities, government of the Northwest Territories and the mine itself. A similar committee structure helps to ensure that the company adheres to the environmental agreement.



¹² See the CommDev study and tools on *Managing Risk and Maintaining License to Operate: Participatory Planning and Monitoring in the Extractive Industries*. This study focused on communities in general, rather than indigenous communities specifically, but most of the tools identified are applicable in the latter context as well. www.commdev.org/content/document/detail/2037.

4.5.4 Institutional arrangements for ongoing governance

Leading practice agreements typically include a range of provisions around governance arrangements for managing the relationship between Indigenous Peoples and the mining company on an ongoing basis. Governance arrangements should have the ultimate objective of providing assurance to all concerned parties as to the transparency, accountability and successful achievement of the objectives of the agreement.

Actions that can be taken to advance these goals include:

- Establish a **liaison committee** comprising both indigenous and company representatives (and possibly others; for example, representatives from local government authorities) to oversee the agreement, deal with implementation issues and provide a forum for addressing disputes. Some agreements also provide for the formation of committees to address specific functional areas (e.g. employment and training, cultural heritage management). It is important that the role, functions, jurisdictions and powers of these bodies are clearly defined from the outset, to avoid confusion and conflict later on. (For example, is the committee advisory only, or does it have decision-making authority? If the latter, what is the procedure for reaching decisions?)
- Detail **financial governance arrangements**; for example, the creation of trust mechanisms with clearly defined spending priorities, independent investment advice and external financial oversight (see above).

- Document processes for **resolving disputes** over the interpretation and application of agreement provisions. Where there is no statutory dispute resolution scheme in place, dispute resolution is best managed through a series of escalating mechanisms from less formal, amicable resolution to more formal meetings between the two parties, mediation, to independent arbitration. Agreements usually provide that the dispute resolution mechanisms are without prejudice to the legal rights of the community and company. However, it is generally in the long term interests to avoid recourse to the courts unless there is no effective alternative. (See Section 6 for a broader consideration of dispute and grievance processes.)

- Require ongoing **monitoring and reporting** on activities undertaken pursuant to the agreement, compliance with key provisions, and actions taken to address issues and concerns raised by the parties. Reporting back should preferably be to the liaison committee in the first instance, but in the interests of transparency some form of regular public reporting should also be considered.
- Build in **regular reviews** that provide an opportunity to stand back and assess progress against the objectives of the agreement and to modify and refocus the agreement as appropriate. This may involve splitting the agreement into those components that cannot be easily or regularly altered, as opposed to those which need to be regularly reviewed.

GOVERNANCE ARRANGEMENTS SHOULD HAVE THE ULTIMATE OBJECTIVE OF PROVIDING ASSURANCE AS TO THE TRANSPARENCY, ACCOUNTABILITY AND SUCCESSFUL ACHIEVEMENT OF THE OBJECTIVES OF THE AGREEMENT.

One of the issues that companies will need to consider in relation to governance arrangements is whether and under what circumstances they are willing to share decision-making power with indigenous groups and their representatives. There is a natural caution among companies about how much control to concede, but giving Indigenous Peoples a voice in the future direction of the project promotes a sense of shared responsibility and is a way of building confidence about the project. This, in turn, might help the company to secure the support of local communities if required later on in the project life cycle.

For example, at one mining development in northern Australia, Traditional Owners were very concerned about how mining might affect the environment and, in particular, the flow and quality of local waterways.

This was addressed by including in the agreement provision for the formation of an Environment Committee, the majority of whose members would be Traditional Owner representatives. Among other things, the agreement specified that matters could be referred to an independent adjudication panel if the committee and mine management could not agree on how an environmental issue should be addressed. The panel's power extended to being able to order the cessation of mining and processing activities until the problem is addressed. These provisions have never been invoked, but the willingness of the company to agree to them was one of the factors that helped to secure Traditional Owner support of the project.



Leaders of Putput Village sorting out food and pigs for village groups at a village dispute resolution ceremony, Lihir, Papua New Guinea

Source: *Lihir Gold*

Company/community committee to govern agreement

The agreement for the Raglan mine in Canada (see case study in Section 4.5.1 for background) is governed by the six-member Raglan Committee, comprising Salluit, Kangiqsujuaq and the Makivik Corporation representatives, and three Xstrata Nickel representatives. The committee meets four or five times each year and addresses issues that may arise between the company and the local communities. The results of all environmental monitoring are reported to the committee. Should mitigation measures not be acceptable to members of the committee, a formal arbitration process is in place, although this has never been invoked.

Since 1995, the committee has had a significant influence on the manner in which the mine is operated. For instance, concerns were raised that normal shipping practices were potentially disruptive to the migratory patterns of the seal population. Normal shipping – which involves ice-breakers – also interfered with traditional Inuit hunting activity during specific seasons. These issues were examined by the Raglan Committee, and it was collaboratively agreed that all shipping would cease between 15 March and 15 June each year.

Another, very important, issue to address in relation to governance is that of capacity. Actively involving Indigenous Peoples in the governance of the agreement (say, as representatives on liaison committees, or as board members on trusts) is a desirable objective, but can be challenging for people who may have had limited exposure to Western-style processes and structures (or, in some cases, no exposure at all). To address this, companies should be prepared to provide financial and in-kind support for capacity-building activities in areas such as legal and negotiations training, development of leadership skills, meeting procedure, institutional governance and board member responsibilities, and business development and management.

A good example of capacity building is provided by the Cerrejon mine in Colombia, which has helped Wayuu communities to understand better how they can access royalties (paid by Cerrejon and administered by government entities) and to participate in the so called “Planes Integrales de Vida”. This has allowed indigenous communities to shape local development plans according to their own interests and to access public funds (Source: Second Progress Report on Cerrejón's Social Commitments, April 2009).

COMPANIES SHOULD BE PREPARED TO PROVIDE FINANCIAL AND IN-KIND SUPPORT FOR CAPACITY BUILDING ACTIVITIES.



4.6 Implementing agreements

Planning for implementation is fundamentally important, as it will ultimately determine the success or failure of an agreement. Companies can also place themselves at risk of legal or political action (such as blockades and demonstrations) and possibly also at the risk of breaching the terms of any permits they have been issued if they fail to follow through on commitments made in agreements.

As just discussed, the issue of implementation can be partly addressed at the agreement-making stage, by setting up appropriate governance processes and building in monitoring and review requirements. Companies, for their part, can facilitate implementation by ensuring that:

- agreement obligations are fully documented in an accessible form
- responsibility for implementing different components of the agreement is allocated at an early stage and people know what is expected of them
- someone within the organization has overall responsibility for the ongoing management of the agreement
- an up-to-date register is maintained indicating what action has been taken, is in train or proposed to address specific agreement obligations
- action plans are aligned with the agreement
- there is ongoing internal monitoring of compliance
- capacity building remains a focus throughout the life of the agreement, recognizing that both company and community personnel involved in monitoring and implementation will change over time.

Implementation is not simply about ensuring that there is formal compliance with the terms of the agreement. While this aspect is obviously important, the most effective agreement management processes are those that are outcome focused rather than just process focused. This requires keeping the ultimate aims of the agreement clearly in sight, monitoring performance against these aims and being prepared to change practice, and even the agreement itself, where it is apparent that the desired outcomes are not being achieved. This can only be achieved if there is commitment by both parties to making the agreement work and if there is good leadership at both the company and community level.

Reviewing the implementation and effectiveness of company/community agreements

The WCCCA is a comprehensive agreement signed in March 2001 between Rio Tinto Alcan, the Queensland government and numerous Aboriginal parties on Western Cape York Peninsula, Australia. In late 2003, the company commissioned a review of the implementation of WCCCA by two academics with expertise in indigenous relations and a senior community relations adviser from Rio Tinto.

Findings of the review were that there had been good progress in implementing the agreement in the areas of employment and training, cultural heritage protection, the initial establishment of governance and administration systems, and internal company support for local indigenous businesses. However, the review found a general lack of knowledge and understanding among company employees and community members about the content and intent of the agreement.

Subsequently, the company took action to address these issues, including by clarifying internal lines of responsibility, strengthening monitoring and review processes, providing an increased level of capacity building support for indigenous organizations and initiating a further round of company/community engagement about the agreement and its objectives.

Source: P. Crooke, B. Harvey and M. Langton, *Implementing and Monitoring Indigenous Land Use Agreements in the Minerals Industry: The Western Cape Communities Co-existence Agreement*, in M. Langton et al, *Settling with Indigenous People*, Sydney: Federation Press, 2006.

MANAGING IMPACTS AND SHARING BENEFITS



Two generations of Aboriginal people in the Kimberly region, Western Australia. There are many different languages spoken by aboriginal people in the Kimberly who share religious and other beliefs across the region.

Source: *Rio Tinto Diamonds*

5.1 Introduction

The ICMM Position Statement includes commitments for member companies to avoid adverse impacts wherever possible and to strive to deliver net benefits to affected communities:

ICMM Position Statement, Commitment 6:

... design projects to avoid potentially adverse impacts of mining and related activities and, where this is not practicable, minimise, manage and/or compensate fairly for impacts.

ICMM Position Statement, Commitment 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.

This chapter focuses on the practical aspects of impact management and benefit sharing. This is partly about the design and implementation of agreements (see Section 4: Agreements); however, mitigating the adverse impacts of mining impacts and addressing Indigenous Peoples' concerns and priorities around land; environment; and physical, spiritual and economic well-being raises a broader set of issues.

5.2 Impact mitigation and enhancement

As discussed in Section 1, mining projects can impact Indigenous Peoples in a variety of ways – both positive and negative. The full impact of a project cannot always be predicted or fully mitigated, but there are some basic steps that can help to reduce the scale of any negative impact, and enhance the likelihood that there will be positive long-term outcomes for communities.

Leading companies already have internal processes in place to assist operations improve their management of a project's impact on the community, environment and so on. Anglo American's Socio-Economic Assessment Toolkit (SEAT) is a good example of such a framework. The basic principles underpinning these frameworks also apply to indigenous communities, although *how* they are applied will be highly dependent on the context.

Key learnings are as follows:

- 1 Strategies and actions should be underpinned and **informed by knowledge** of the communities and groups within those communities that may be affected by, or benefit, from the project. Social maps, baseline studies, cultural heritage surveys and impact assessments (see Section 3) are all valuable tools for building this knowledge, as is ongoing engagement.
- 2 There needs to be **input, support for and participation** of Indigenous Peoples in identifying issues, and framing and implementing responses (see Section 2). Taking account of Indigenous Peoples' perspectives on development is essential.
- 3 Good **planning and design** (see below) can enable many potential problems to be avoided from the outset.
- 4 Attention to **implementation** is critically important. Strategies should be underpinned by action plans that specify what needs to be done when and by whom, and ensure that adequate resources have been allocated.
- 5 **Ongoing monitoring and regular evaluation** is required to track progress, identify emerging issues and assess the effectiveness of strategies. Monitoring and evaluation processes should be relevant to Indigenous Peoples and their concerns and aspirations, and participatory wherever possible.

5 MANAGING IMPACTS AND SHARING BENEFITS



Yanacocha mine worker and child, Department of Casanare, Peru

Source: *Newmont*



5.2.1 Addressing the likelihood of a project having a negative impact at the design stage

Much of the risk that a project may have an adverse impact on the community can be addressed in the project design phase. This is true not only for the project's environmental impacts (e.g. land disturbance, noise, dust, water use, water quality, biodiversity) but also the project's socio-economic, cultural and political impact. For example, the risk of uncontrolled in-migration into indigenous lands might be reduced by minimizing road construction (see the IFC publication, *Projects and People: A Handbook for Addressing Project-Induced In-Migration*). Placement of workforce camps some distance from indigenous communities will lessen the risk of sexual or other contact between Indigenous Peoples and project workers, or of local people getting easy access to alcohol (although basing indigenous workers in these camps might also increase the burden on those left behind in the communities). Similarly, resettlement and disturbance of cultural heritage sites can often be avoided through giving sufficient advance thought to the location and layout of a mining operation and to mine planning.

IFC policy, as set out opposite, makes it clear that companies should make every effort to avoid resettlement of indigenous communities.

Indigenous Peoples and resettlement

Resettlement, whether physical or economic, can be a major and critical impact of mining projects, and is considered especially contentious with regards to Indigenous Peoples. Due to the distinct attachment and relationship to lands, territories and resources that many indigenous groups have, and a widespread history of dispossession and forced removals, resettling Indigenous Peoples is considered to lead to particularly adverse impacts on their cultural survival.

The International Labour Organization Convention No. 169 on Indigenous and Tribal Peoples states that Indigenous Peoples should only be relocated from their lands in exceptional circumstances and only with their free and informed consent. To date, 20 countries have ratified the convention, 14 of these in Latin America.

Article 10 of the UNDRIP states that: "Indigenous peoples shall not be forcibly removed from their lands or territories. No relocation shall take place without the free, prior and informed consent of the Indigenous Peoples concerned and after agreement on just and fair compensation and, where possible, with the option of return."

The International Finance Corporation's (IFC's) standard for companies to apply where projects affect Indigenous Peoples (Performance Standard 7) recommends that companies should make every effort to avoid any physical relocation of Indigenous Peoples from their customary lands.

MUCH OF THE RISK THAT A PROJECT MAY HAVE AN ADVERSE IMPACT ON THE COMMUNITY CAN BE ADDRESSED IN THE PROJECT DESIGN PHASE.

Altering site design to enhance community water supply

An ethno-ecological study of the Xikrin indigenous land was undertaken as part of the installation licensing process for Onça Puma Mining Project, a nickel extraction and processing refinery located in the Brazilian state of Pará in the Amazon region.

The study's scope was very wide and included overall ecological characterization of the land; general social, economic, cultural and historical characterization of the Xikrin people; and detailed discussions about the project's impact on indigenous communities and land.

Both extraction and processing facilities are located a few kilometres from the indigenous land and main communities. Although based in a tropical forest, the particular region where the Xikrin live has limited water availability and the community depends on the Cateté River for its survival. The river was already partially degraded by cattle farms and sewerage from nearby towns.

The Onça Puma project initially involved using the Cateté River water for its activities, potentially further depleting water quality and availability. During the fieldwork, the proposed use of the river was strongly resisted by the Xikrin, especially by the women. The project team reported this concern to the company, and Vale accepted the community's position and made alternative arrangements for the project's water supply.

As an alternative measure, the company constructed a storage dam, built in such a way that it ensured that local streams had water throughout the year, rather than only during the wet season. Therefore, as well as avoiding a potentially negative impact, the new design provided a positive benefit to the Xikrin and other communities.





Xikrin hunter carrying fresh-water turtles, Amazon rain forest, Brazil

5.2.2 Compensation

Although the concepts of compensation and sharing benefits often overlap in practice, they are conceptually different. Compensation is focused primarily on redressing loss or damage that can be attributed to a project (for example, loss of access to land and assets), whereas benefit sharing aims to promote broader economic participation in projects (for example, through royalty streams linked to production, or provision of employment and business opportunities). Compensation should also be distinguished from other avoidance, mitigation and enhancement measures used to address any potentially adverse impact the project might have and/or promote positive outcomes (for example, re-situating project infrastructure, paving a road, raising employee awareness, etc.).

In some jurisdictions, processes for determining compensation are specified by law; in other cases compensation may be a negotiated outcome (either within or outside of a legal framework). Compensation for disruption, displacement, and damage or loss of assets is a complex subject, even more so when “value” for many aspects of indigenous life cannot be easily expressed in monetary terms.

Affected communities will often need considerable additional developmental and financial support to re-establish productive and sustainable livelihoods when these have been affected by projects. A generally accepted principle is that full and proper compensation should be provided for all assets and livelihoods that are lost or irreparably damaged as a result of the impact of a project, with the aim of ensuring that, at a minimum, people are left no less well off. Good practice is to try and enhance people’s position and future so that they are left better off as a result of the mining project’s presence.

In order to meet the principle of “full replacement cost” (see box opposite), assets and livelihoods need to be valued accurately in economic terms, within their specific social and cultural contexts. In practice, this process of valuation can be difficult, particularly within indigenous communities, where property is often not conceived of in terms of private ownership, where market forces are not at play or where resources are not readily replaceable in cash terms.

Land may be especially hard to compensate for or replace, as simply providing someone with similarly productive land elsewhere would ignore the intangible bond derived from cultural and spiritual coexistence. In the case of impacts that lead to loss or damage to intangible assets (such as damage to sacred sites, loss of cultural assets) the question of how to value compensation amounts is particularly complicated. Ultimately, therefore, the best way of resolving these matters is likely to be through a process of fair negotiation, rather than by applying a predetermined formula.

Compensation is too large a subject to cover in detail in this Guide but there are some good resources to draw on. For example, the IFC Performance Standard 5 has comprehensive guidelines relating to the compensation of people who have been resettled.

IFC Performance Standard 5: Land Acquisition and Involuntary Resettlement

General Requirements: Compensation and Benefits for Displaced Persons

Paragraph 8: When displacement cannot be avoided, the client will offer displaced persons and communities compensation for loss of assets at full replacement cost and other assistance to help them improve or at least restore their standards of living or livelihoods, as provided in this Performance Standard.

Standards for compensation will be transparent and consistent within the project. Where livelihoods of displaced persons are land-based, or where land is collectively owned, the client will offer land-based compensation, where feasible. The client will provide opportunities to displaced persons and communities to derive appropriate development benefits from the project.

www.ifc.org

The costs of getting it wrong

Resettlement proposal damages company share price and leads to abandonment of project

A large mineral deposit was discovered near a town of 20,000 people. The proposed mine would have involved resettlement of the town, and initially, the government agreed to the resettlement scheme. The company attempted a consultation process but the community claimed that information provided by the mining company was neither accurate nor complete, and the magnitude of the impact of the project had been downplayed. When the government failed to take any action amidst growing community opposition, residents attacked the mine site and set fire to some equipment. The community held a public referendum: there was a near-unanimous vote against the mine development. The government withdrew its stake in the project and the day after the referendum, the company's share price fell by more than a quarter on a major stock exchange. The mine was not developed.

COMPENSATION FOR DISRUPTION, DISPLACEMENT, AND DAMAGE OR LOSS OF ASSETS IS A COMPLEX SUBJECT, EVEN MORE SO WHEN "VALUE" FOR MANY ASPECTS OF INDIGENOUS LIFE CANNOT BE EASILY EXPRESSED IN MONETARY TERMS.



5.3 Strengthening the community asset base

As noted in Section 4 on agreements, social and community investments can contribute to the community's asset base (the stock of physical, economic and human capital) and general well-being. A stronger asset base assists the long-term sustainability of the community, which can be one of the major benefits provided by a mining project. The community's well-being is also linked to the sustainability of the community and can enhance the quality of the relationship between the mining company and the community. An example is provided below.

5.3.1 Employment and human capital development

Indigenous Peoples are often economically marginalized, experience above-average levels of poverty and have below-average rates of participation in mainstream labour markets. This is due to a combination of factors, including accumulated socio-economic disadvantage, discrimination, geographical location and, in some cases, cultural preferences for traditional lifestyles.

One of the most tangible ways in which mining can benefit Indigenous Peoples is by providing employment opportunities in locations where there may be few, if any, alternative sources of paid work. Jobs are important, not only because they generate income and the benefits that flow from that, but also because they provide opportunities to build skills and increase mobility.



Establishing mutual targets for engagement with the indigenous community

Newmont operated the Kori Chaca gold mine in western Bolivia. A “contractual framework” was drawn up with the local indigenous Iroco community that covered social, technical, environmental and economic issues and activities agreed by both parties. Foundations of good practice for the project included early engagement by a skilled team including anthropologists to understand the cultural needs, engaging a broad representative group, creating economic and social benefits, and technical training for local people to maintain projects. Mutually agreed targets on local employment, enterprise development, support for small farmers, infrastructure development, and education and training were developed.

Employment: The company initiated a pre-employment training program to ensure that the community members were job-ready. Other employment opportunities included contract and temporary work in areas such as transportation, food catering and cleaning.

Enterprise development: Local companies have been established that bid for work in the mine's supply chain. Micro-enterprises were established supplying working clothing such as overalls, vests, jackets, etc. Micro-loans provided by the company have been repaid.

Support for small farmers: The company engaged in capacity building for cattle farmers through veterinary services, improvement of the local genetic stock and support for rental of grazing pastures.

Infrastructure development: These included a community centre, (including medical facility, library, computer room), water tanks and supply pipes and improvements to the town's sewage system. The construction of a town square helped boost the community's sense of pride in their town.

Education and training: The community centre, library and computer room facilitated educational activities for children, and training courses for members of the community in literacy, use of machinery and heavy equipment, car maintenance and repair, and industrial mechanics.

Making a commitment to indigenous employment sends a clear signal that a company is determined to share benefits at the local level and build positive and long-term development initiatives. This is particularly the case if the company can show that it is focused not just on meeting the short-term labour needs of an operation, but on growing the labour pool and developing the skills and capabilities of people in the longer term. A company may need to facilitate this process by ensuring that non-indigenous managers are trained (on an ongoing basis) in cultural understanding to support and work with indigenous employees from the indigenous community.

Attracting and retaining employees from the indigenous community will be more challenging in some instances than in others. Some indigenous communities derive a significant amount of income from social welfare, rather than direct employment. This may pose a challenge in terms of people from these communities transitioning from welfare to work, due to a lack of exposure to mainstream employment. Other communities have no state-based welfare support but may lack the skills and capacities to meet minimum employment requirements. In addition to work readiness, and depending on their particular circumstances, there can be a variety of barriers to the employment of Indigenous Peoples, including:

- lack of education and relevant training
- geographical isolation
- cultural beliefs and practices
- challenges in balancing mainstream employment with family and cultural obligations
- poor health.

As the case studies below illustrate, leading mining companies appreciate that socio-economic disadvantage can hinder the recruitment and retention of Indigenous Peoples, and are now taking a more holistic, long-term approach to addressing issues relating to the employment of people from indigenous communities.

Establishing innovative local training and employment programs

At the Donlin Creek mining project in northern Alaska, an innovative local hiring program was established to provide employment and skills training for the Indigenous Peoples of the Yukon-Kuskokwin region. In order to provide them with stable jobs and develop their skills, the company sought primarily to employ people from the local indigenous community, so far as possible.

A cross-cultural outreach plan was implemented at the Donlin Creek project in order to try and gain a deeper understanding of the social, cultural and economic differences between indigenous communities and non-native employees. To build trust, a local Alaska Native was hired as the program coordinator who played an important role in developing a solid working relationship between villages and the project. Interviews and discussions were held with community leaders in order to develop appropriate workplace strategies.

The results of the action plan included the following:

- The company's drug policy was redrafted. Incentives were included for employees to improve their performance and be supported to remain drug and alcohol free.
- An on-site professional counsellor was hired, specializing in substance abuse, family counselling, workplace counselling and stress management.
- Worker rotations were adjusted to allow more time at home, a good monthly wage and time for traditional subsistence activities.
- Cultural sensitivity training was conducted for both Native and non-Native employees.
- Large gathering places, camp dining and recreational rooms were constructed to allow for more traditional, open interaction in a family-like setting.

Currently, 92% of site employees and 90% of crew supervisors are native Alaskans. A stable and increasingly effective and productive workforce has emerged, as the Donlin Creek project moves towards the permitting, construction and operating phases.

Establishing educational programs to promote continued development

The Papuan province is one of Indonesia's most remote regions, an area without a long history of advanced educational programs. Job training programs in this area must offer more than technical skills development.

The Nemangkawi Mining Institute was established by Freeport-McMoRan Copper & Gold's PT Freeport Indonesian affiliate in 2003. Since its inception, several thousand individuals have participated in the institute's pre-apprentice, apprentice and adult education programs whose objective is to provide world-class education, competency training and employment priority to qualified indigenous Papuans. Enrolment priority is weighted towards individuals from the Amungme and Kamoro ethnolinguistic communities nearest to Freeport's project area. Graduates of the Nemangkawi program can accept employment anywhere they like, but most seek jobs at the Freeport operations. Since the institute's opening, more than 1,000 apprentices have been hired as employees of PT Freeport Indonesia or partner companies.

Whereas Nemangkawi's mission from the start was to focus on provision of industrial and technical skills for the local workforce, the institute is also addressing a need for advanced professional development. In partnership with PT Freeport Indonesia and the prestigious Bandung Institute of Technology (ITB), Nemangkawi offers a Master of Business Administration degree program, with classes designed around participants' work schedules. The first 40 graduates of the program received diplomas in 2009.

5.3.1.1 Indirect employment

Typically, companies use a range of contractors for building, operating and providing services to mining projects. These areas all provide potential opportunities for the employment of local Indigenous Peoples.

At the contract tendering stage, mining companies can make it clear that successful tenderers will be expected to have plans and programs for indigenous training and employing members of the indigenous community. For large contracts Indigenous Peoples might be working directly with the main contractor and/or with the sub-contractors working for the main contractor.

Just as with mining companies, contractors can also assist with the creation of business opportunities for Indigenous Peoples (see Section 5.3.2).

5.3.1.2 Attraction and recruitment

Recruitment procedures should be fair and transparent and perceived as such by Indigenous Peoples. Specific strategies for overcoming traditional barriers to recruitment include:

- use local knowledge gained from the local indigenous communities or from credible third parties to help identify potential recruits
- focus on face to face rather than written communication with potential applicants
- provide pathways to employment such as developing work-readiness programs that prepare Indigenous Peoples for the transition into the mainstream workforce – this might include, for example, mine access and vocational training programs; scholarships; vacation work experience and employment; literacy, numeracy and other skill development programs
- provide cultural awareness programs for all employees – indigenous and non-indigenous – as part of induction and re-induction processes (see Section 2.7.1)
- employ a transparent process for selecting candidates that includes opportunities for women and youth, and offers a dedicated technical and other skills training program.

5.3.1.3 Retention

Specific retention strategies may have to be developed for employees from the indigenous community, who often face particular challenges in balancing work and family commitments and making the transition to the mainstream workforce. Trained personnel can sometimes be lost because of misunderstandings or cultural obligations, such as attending traditional ceremonies, weddings or funerals for extended periods; practising cultural or spiritual rituals and rites; and, usually in the case of women, maintaining domestic and carer responsibilities. Furthermore, many indigenous groups practise some forms of subsistence-based livelihoods that can have a significant spiritual and cultural meaning. In these cases, Indigenous Peoples may wish to take advantage of employment opportunities while still being able to maintain subsistence-based livelihoods during certain parts of the year (such as hunting migratory animals).

Strategies for increasing retention include:

- provision of ongoing mentoring and support
- special leave for employees from the indigenous community to fulfil cultural requirements (ceremonies, family events, initiations/weddings/funerals)
- more flexible work rosters (e.g. extended and seasonal leave)
- provision of fair wages and benefits and career development opportunities
- provision of family support
- addressing racism and other forms of discrimination in the workplace and promoting cultural understanding
- following up with employees who resign, to ensure that there is a proper understanding of why they left.



5.3.1.4 Career development

Many of the jobs currently held by Indigenous Peoples in the mining industry are entry-level positions, reflecting generally low levels of formal education and limited exposure to mainstream employment experiences. Longer term, however, the goal should be to have indigenous employees working in all levels of the organization. This objective can be assisted by providing indigenous employees with career development opportunities and training and educational support to obtain qualifications. If employees from indigenous communities have the opportunity to develop their careers, they will be more likely to stay in the mining workforce over the longer term; they will also have greater employment mobility when and if the mine closes.

Another important reason for increasing the number of employees from indigenous communities in skilled roles and supervisory and management positions is to provide positive role models within their communities and in the workplace. An example of an initiative along these lines is Rio Tinto's Diavik Mine First Nations Leadership Development Program (see case study below).

5.3.1.5 Complying with labour standards

In providing local employment, companies also need to ensure that appropriate labour standards are being met and that local employees are treated equitably. The example below illustrates how a company's failure to meet labour standards for indigenous employees can lead to protracted difficulties.

The costs of getting it wrong

Perceived deficiencies in working conditions leading to breakdown in employee relations

In protest at a company's perceived failure to provide appropriate working conditions, workers from local indigenous communities closed the gates in order to prevent expatriate managers from entering the mine site. The government's labour department investigated and found that working conditions violated labour laws, citing inadequate food and unsanitary facilities and housing. Despite corrective measures being undertaken to the government's satisfaction, clashes continued to occur between local and expatriate workers. Work had to be stopped several times for up to a week at a time, and the police were called to intervene on at least two occasions.

5.3.2 Creating business opportunities

Mining companies can share benefits and contribute to the economic development of indigenous communities through the downstream and upstream business opportunities they create. These opportunities can range from small-scale operations that require only a small amount of start-up capital (for example, cleaning or gardening services, supply of fresh vegetables) through to major service contracts (for example, trucking contracts) and joint ventures (see case study below). Supporting the development of businesses, particularly those that are not dependent on a single mining operation, will help build the economic resilience of communities and their capacity to cope with the impact of a mine being closed or a project being wound down.

Opportunities for business creation need to be identified on a case-by-case basis, having regard to such factors as the extent of interest in the community, the level of business expertise, the capacity of local providers to deliver the required services, distance from markets, ease of access to capital and so on. Where indigenous communities have been marginalized from the mainstream economy and do not have a tradition of involvement in business, the opportunities may be quite limited, particularly in the short-term. However, there are a range of actions that companies can take to build local capacity and provide more economic opportunities over time. These include:

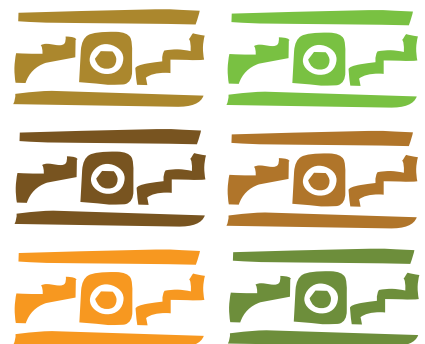
- training indigenous groups on business and management practices (either directly or through a third party), including financial literacy and transparency of accounting processes
- incubation of small businesses through mentoring and support
- mentoring and supporting new businesses
- reviewing tendering and procurement processes to ensure that they provide genuine opportunities for local businesses
- assisting local businesses to become compliant with mining company requirements (e.g. on health and safety)
- helping with access to finance (ranging from funding a microcredit scheme through to facilitating bank loans)
- identifying suitable partners for joint ventures and other commercial arrangements.

Establishing joint ventures to capitalize on local demand generated by mining and drilling projects

For many years, Canadian First Nations have been attempting to capitalize on additional income from oil and gas development over and above the royalties and land bonuses received.

Several First Nations have set up service companies to supply the oil and gas industry in their areas. The Saddle Lake Nation 2003 joint venture with Western Lakota Energy Services, an established drilling company in the oil and gas business, to provide oil and gas rigs drilling services to EnCana Corporation is one such service company.

The joint venture is an equal ownership of the two rigs; however, full ownership of the rigs will eventually be transferred to the Saddle Lake Nation. The government Indian and Northern Affairs Canada provided the Saddle Lake Nation CAD\$787,500 to purchase their share of the first rig. The venture has provided 10 direct jobs on the rig and 77 indirect jobs in the oil and gas industry for members of the Saddle Lake Nation, as well as transferable and industry specific training beyond the project, and on-the-job training, safety and first-aid courses.



Establishing and delivering on effective participation agreements

The Diavik Diamond Mine is located in Canada's Northwest Territories. When operations began in 1999, Rio Tinto signed a series of participation agreements with the government of the Northwest Territories and representatives of five Aboriginal groups.

The agreements provided for Rio Tinto to work together with the Aboriginal signatories to maximize the project's benefits to the community through employment, training, building local business capacity, as well as providing scholarships and support for a range of community projects.

In order to raise the proportion of qualified Aboriginal supervisors and managers employed at the mine, Rio Tinto launched an Aboriginal Leadership Development Program. Diavik also committed to hire, as a priority, local northern residents and Aboriginal people with traditional ties to the area.

In order to meet commitments to local sourcing of goods and services, the mine has directed almost three-quarters of its spending locally, outsourcing work wherever possible. The mine makes efforts to provide work to diamond cutting and polishing firms in northern and southern Canada.

An environmental monitoring advisory board, which oversees the mine's environmental impact, comprises representatives of the five Aboriginal communities, as well as government and industry representatives.

Other initiatives under the agreements include support for local educational, sporting and cultural projects, such as the sponsorship of an annual dog-sledding tournament and publication of the biographies of local Aboriginal elders.

5.3.3 Improving infrastructure and services

Indigenous Peoples often live in remote areas and can lack access to the basic services that governments normally provide: water, roads, schools, health clinics, etc. As a result, indigenous communities frequently suffer from serious and widespread social and health issues. Although the provision of services is usually undertaken by the state, in many circumstances governments may not be in a position to provide infrastructure and services due to lack of capacity and/or resources. In such cases, mining companies have often been prepared to facilitate or provide basic service delivery. Seeking local expert advice is essential in these circumstances so as to ensure that any services or facilities are provided in compliance with any applicable legal requirements.

The specific requirements of the indigenous community will invariably shape planning for provision of infrastructure and services (see case studies below). Targeted investment by companies – particularly if in partnership with other parties, such as government, development agencies and NGOs – will help to support overall community development goals as well as create opportunities for skill building, employment and business growth. Service provision work is high profile and, if done in a participatory and sustainable manner, builds significant goodwill between the company and the community and potentially government at the local level.

Sustainability of infrastructure and services, including provision for ongoing maintenance post-closure, should be considered at the outset of a project. This can best be addressed by strengthening management bodies from the indigenous community and ensuring that they are adequately resourced (e.g. through creation of a community infrastructure fund). Opportunities should also be sought to partner or align with government and regional development plans, to ensure there is neither overlap in the provision of services nor a lessening of government responsibility to provide for its citizens.

Partnering with development NGOs

The Maruwai Coal Project (MCP) in Indonesia committed to work with the villages in improving infrastructure, and improving health and hygiene in partnership with the communities and government bodies. In order to deliver the water and sanitation infrastructure, MCP contracted Yayasan Cahaya Reformasi (YCR) – an East Kalimantan-based non-governmental organization specializing in cross-sector water and sanitation projects in rural areas.

YCR undertook an initial feasibility survey and study, planning and design, construction, and management and training work for the community in relation to a new clean water facility. YCR worked with the local community, religious leaders, young people and academics and as an indication of building goodwill YCR's employees were accepted into and participated in many community functions and activities.

YCR then worked with the community to establish a "Clean Water Management Committee" drawn from a cross-section of villagers, chaired by the head of the village. The committee was responsible for implementing the project and, upon its completion, managing daily operational activities including the collection of water usage fees and repairs, and overseeing operational repair and maintenance and operational management. A community resource mobilization team co-ordinated input from the villagers. The team also managed community donations of land and resources for the project.

Increasing community self-sufficiency

The Los Bambas copper project is located in the Cotabambas and Grau provinces of Peru. Xstrata's socio-economic profile of the area revealed that the local economy was based on barter, and that the main form of livelihood was subsistence farming on the limited area of productive soil.

Initial engagement was led by the company's community relations team, which comprised Quechua speakers. There was extensive consultation through community workshops with NGOs, local mayors, community leaders and schools. Workshops involved visioning exercises where the community graphically represented the future improvements it would like to see. Nutrition, health, domestic violence and communications have all been identified as areas of focus.

Action plans were drawn up, and projects included improving the area's irrigation infrastructure. The company worked with the local community to implement an irrigation and hydroponics scheme to improve grasslands and strengthen agricultural management. An overall objective was to improve the community's self-sufficiency, in particular by supporting income-generating activities, improving nutrition and improving education. In addition, an independent advisory group comprising social and economic development experts has been established in order to ensure that the project proceeds in a way that meets the community's needs.

A LARGE INVESTMENT IN TRAINING AND EDUCATION MAY BE REQUIRED TO ENABLE GENUINE PARTICIPATION OF INDIGENOUS PEOPLES IN IMPACT MITIGATION.

Building capacity for community development

BHP Billiton Iron Ore has set a range of targets for strengthening relationships with Martu people across its Pilbara operations, Western Australia. The targets are set out in the company's Indigenous Relationships Strategy and cover employment, education, engagement, contracting, heritage and native title and partnerships.

The company has collaborated with Oxfam Australia for a number of years on a program called Corporate Community Leadership Program. This program provided the opportunity for employees that worked at the community level across global operations to be exposed to community/participatory development as a means to work towards a sustainable and meaningful engagement and engagement process with the indigenous community wherever BHP Billiton operated.

The program involved travelling with Oxfam representatives through some of the Eastern Provinces of India and meeting with villages who were undertaking community development processes. The company representatives also received continual training and development around the social sciences. The idea of the program was to return home post-exposure and look at how the managers could apply some of the lessons learnt in the local community.

As a follow up from work in the Pilbara, Oxfam undertook workshops with both the indigenous community and also the service providers (including government and NGOs) to provide all parties with the opportunity to understand the participatory development approach. This capacity and institutional strengthening exercise assisted in operational procedures for managing community affairs, running Aboriginal owned or partnered enterprises, the effective use of available services and improved standards of well-being of community members.

These efforts currently represent work in progress, and the efforts will continue during the whole of the life of the mine. The overall objective is to enable the Martu people to plan and implement initiatives, to co-ordinate service delivery and to improve communication across cultures and organizations. The idea is that the community will be able to articulate their priorities, and with support (including moral support) from the company, present these issues to the government in order to inform public policy.

5.3.4 Building capacity for community development

Different parties may not always have the requisite skills and capacities to implement agreements and provisions, address risks when they arise, or manage the impact of an event when it occurs. A large investment in training and education may be required to enable genuine participation of Indigenous Peoples in impact mitigation, the implementation of agreements (see Section 4.6) and the development of benefit programs. Companies, for their part, may also benefit from internal capacity building, as this case study from Australia shows.



5.4 Cultural preservation

Cultural heritage management and preservation (or preferably going beyond preservation by enhancing culture and increasing cultural importance) encompasses the protection and enhancement of the more tangible aspects of cultural heritage, as well as intangible cultural heritage such as traditional practices around governance, ceremonies, spiritual practices and traditional knowledge.¹³

In a growing number of countries specific legislation is being developed or is in place to protect significant aspects of cultural heritage, such as archaeological sites, ethnographic¹⁴ sites or areas and aspects of traditional knowledge. In Australia, for example, the Aboriginal and Torres Strait Islander Heritage Protection Act 1984 aims to protect "areas and objects ... that are of significance to Aboriginals in accordance with Aboriginal tradition".¹⁵ There may or may not be tangible physical manifestations of these components; for example, archaeological sites by definition are physical sites, whereas ethnographic and traditional knowledge components may not always have physical expressions.

It is becoming more common for companies to prepare cultural heritage management plans (CHMPs) at the outset of projects, or when expansions are being planned. This is mainly done to meet a legislative requirement, but some companies now do this voluntarily. Some leading companies have also retrospectively developed plans for "legacy sites".

Plans are best developed in partnership between the company and the respective indigenous representative group(s). Where cultural heritage is in danger of being damaged, the responsible course of action is to provide full, open and honest information about impacts and seek guidance from traditional decision makers on how to plan to avoid or minimize damage. Some companies have also assisted local Indigenous Peoples to be formally trained and mentored in the identification and protection of cultural heritage.

Any disturbance, damage or use of cultural heritage the company management measures, which can include compensation, should be fully discussed, negotiated and agreed by the impacted indigenous community. Failure to follow this process is likely to breed mistrust and could pose a threat to the stability of a project.

Broader community concerns and aspirations around the preservation and enhancement of cultural heritage can also be dealt with in community development plans and agreements, rather than through CHMPs. Actions that companies can take in this regard include:

- funding the recording of languages, stories and songs (e.g., Rio Tinto's Diavik Mine in Northwest Territories, Canada has paid for the writing and publication of biographies of indigenous leaders – see case study above)
- helping to establish cultural centres or cultural houses as a place for the communities to meet for cultural activities and also to receive visitors these can also serve as "keeping places" for cultural artefacts
- supporting cultural workshops to maintain or stimulate the traditional skills and arts to young people
- sponsoring festivals to promote traditional dance and ceremonies
- helping to generate a market for traditional arts and crafts
- incorporating cultural rituals (e.g. smoking ceremonies and "welcome to country") into workforce inductions and company events.

¹³ See the UNESCO "Convention for the Safeguarding of the Intangible Cultural Heritage" (Paris, 2003), <http://www.unesco.org/culture/ich/index.php?pg=00002> .

¹⁴ A working definition of an ethnographic (or sacred) site or area is a site or area of ritual, mythical or ceremonial significance to Indigenous People based on their cultural customs and laws.

¹⁵ Aboriginal and Torres Strait Islander Heritage Protection Act, 1984, s.4.



The Wiradjuri, New South Wales, Australia

Source: *Barrick*

Respecting the cultural heritage of Indigenous Peoples

The Wiradjuri people are recognized as the Traditional Owners of the Lake Cowal area in Australia. Barrick worked collaboratively with the Wiradjuri Council of Elders and the Registered Native Title applicants, over a 15-month period to negotiate an equitable Native Title Agreement and Cultural Heritage Management Plan. Under the terms of the agreement, the company agreed to support the community in the areas of environmental and cultural heritage, employment, training and education, business development and CHMP. The agreement, established the Wiradjuri Condobolin Corporation (WCC) to facilitate the business, further education and employment opportunities for the Wiradjuri people. The WCC established the Wiradjuri Cultural Heritage Company, which Barrick employed to manage Wiradjuri heritage protection activities during the mine's development and ongoing operation. These activities included as many as 60 Wiradjuri cultural heritage field officers, working with qualified archaeologists to identify and preserve many artefacts found at the site. The Cultural Heritage Company also delivers a comprehensive cultural heritage induction course for all new Barrick employees and contractors.

5.5 Environmental protection, rehabilitation and monitoring

The natural environment is of central importance to many Indigenous Peoples, not only because they often depend wholly or partly on it for their livelihoods, but also because it has strong cultural, and often spiritual, significance.

Companies can deal proactively with these issues by partnering with Indigenous Peoples in identifying, planning, mitigating and monitoring environmental impacts, for example by:

- including representatives from the indigenous community in environmental assessment panels (although this has generally been initiated or required by governments rather than companies)
- consulting widely with indigenous communities to understand their environmental concerns about mining and how these can be addressed
- including Indigenous Peoples on environmental monitoring committees and involving them in the collection and analysis of monitoring data (e.g. water samples).

There are also many opportunities to involve Indigenous Peoples in environmental protection, rehabilitation and restoration. Examples include gathering seeds of native plants for use in rehabilitation, fire management and wildlife management. Indigenous Peoples have often been the guardians of their territories for centuries and can bring traditional knowledge and natural resource management practices to complement the company's technical expertise.

Preserving traditions and promoting arts and culture

Freeport-McMoRan Copper & Gold places a high value on learning about and preserving the unique cultures of the company's neighbours and partners who live near its PT Freeport Indonesia operations in the Papuan province. The company's community support programs, in addition to working to broaden access to education, health care and economic opportunity, include a commitment to promote and celebrate the unique Papuan cultures nationally and internationally.

Freeport has sponsored and supported cultural festivals celebrating the world-class woodcarving talents, dancing and canoe-racing skills of the Kamoro people who live along the southern coast of Papua, while also supporting the Asmat Cultural Festival in the neighbouring Asmat Regency. PT Freeport Indonesia employees joined art enthusiasts from around the world to take part in a three-day art auction in October 2009. The auction of wood carvings and woven pieces crafted by several hundred Asmat raised nearly US\$100,000 for the carvers and their organizations. Funds were also raised to rebuild the Catholic Diocese of Agats' abbey, which was destroyed by fire last year. The Asmat community, through its leaders, expressed that the festival holds a much deeper significance than being purely a commercial event. The fame of Asmat art has brought international attention and interest in Asmat culture from across the world.

THE NATURAL ENVIRONMENT IS OF CENTRAL IMPORTANCE TO MANY INDIGENOUS PEOPLES. IT HAS STRONG CULTURAL, AND OFTEN SPIRITUAL, SIGNIFICANCE.

Sustainability-centred decision making

During the development of Voisey's Bay nickel mine in northern Canada an innovative environmental assessment and a set of associated negotiations resulted in multi-stakeholder agreements between the company, provincial governments, and the indigenous residents of Inuit and Innu identity.

The Voisey's Bay agreements represent "sustainability-centred decision making". The agreements brought together contesting parties with very different histories, priorities and commitments. The main reasons for success fall in four broad categories:

Proponent capacity – ability of the company to recognize and adjust to regulatory and community demands for improved social and environmental performance

Political commitment – the government of Newfoundland and Labrador and the Innu and Inuit organizations were firmly committed to achieving durable social and environmental development

Local power – the Innu and Inuit gained effective influence and were able to play proper roles in the assessment and negotiation of the final agreements affecting their interests

Suitable implementation tools – as the Innu and Inuit, along with the federal and provincial governments, were signatories to the Memorandum of Understanding that established the environmental assessment panel, the panel review was their process. The panel was successful in addressing the Innu and Inuit concerns in ways that all parties could accept.

5.6 Preparing for mine closure

In the same way that mines can have a major impact on indigenous – and other – communities when they start up, closure can bring further significant changes to communities, particularly where the mine has been a major source of income, employment and/or services (e.g. medical services, transport, support for local schools). Good practice is for closure planning to commence early in the life of a project – ideally, at the design stage – and remain a focus across the life of the mine. This planning should address the socio-economic as well as the environmental aspects of closure.

Actions that responsible companies can take to mitigate these impacts and build community resilience include:

- ensuring that people are kept informed about when the mine is expected to close and the likely impacts this will have on the community and region
- engaging actively with community groups and organizations on how this impact should be addressed
- working with organizations representing the indigenous community to develop benefit streams that will continue beyond mining (e.g., by creating "future generation" trusts and other forms of long-term investment)
- if desired by the local community, helping to develop alternative forms of economic activity, such as tourism or livestock raising, that are not dependent on mining
- designing low technology physical infrastructure (e.g. water supply systems) that can potentially be maintained by the local community post-closure
- equipping employees with skills and qualifications that are potentially transferable to other industries in the region and assisting local employees who are interested in finding future work
- helping to build community governance capacity.



5.7 Addressing discrimination and historical disadvantage

The underlying causes of the marginalization of Indigenous Peoples are unlikely to be fully addressed through localized community development programs. In many cases, there will be structural barriers within society that hinder Indigenous Peoples from integrating and enjoying the rights of the majority of the population and perpetuate socio-economic disadvantage. These may include discriminatory laws, social stigmatization and poor, or non-existent, service delivery arrangements. The regional, social, economic and cultural transformations brought on by mining projects may well reinforce this sense of discrimination.

Well-designed company programs can help break down the marginalization experienced by Indigenous Peoples. While the primary responsibility of a company is to the communities where its mines are located, there are opportunities for companies acting individually and collectively to have an influence on a broader scale. Examples of initiatives that companies have taken include:

- Supporting research and training programs focused on delivering better health and education outcomes for Indigenous Peoples. For example, in Australia the Rio Tinto Aboriginal Fund is supporting a three-year pilot program to deliver mobile ear, nose and throat health screening to Aboriginal children in remote Queensland, as well as the evaluation of a study of whether community-appointed health brokers can improve the hearing of Aboriginal children.

- Advocating for and supporting policy change at the national and/or provincial level where there are laws that directly or indirectly discriminate against Indigenous Peoples.
- Providing financial and in-kind assistance to national and local community organizations to strengthen their resource base and build capacity so that they can advocate and represent more effectively. For example, BHP Billiton is a major supporter of Reconciliation Australia's Indigenous Governance Program, which is designed to identify, celebrate and promote good practice in relation to policies and matters affecting Indigenous Peoples.
- Providing scholarships, training and mentoring support at the national and provincial level to assist young Indigenous Peoples develop leadership and advocacy skills.
- Building awareness among national or sub-national government officials in relation to Indigenous Peoples' identity and rights (e.g., by sponsoring seminars and study tours).
- Partnering with government to target the development of infrastructure and service delivery initiatives to assist geographically marginalized indigenous communities (see case study below).
- Partnering with national representative bodies to increase investments, procurement and employment opportunities for Indigenous Peoples.

THERE MAY BE STRUCTURAL BARRIERS THAT HINDER INDIGENOUS PEOPLES FROM INTEGRATING AND ENJOYING THE RIGHTS OF THE MAJORITY OF THE POPULATION.

Building sustainable indigenous communities

In June 2005, the Minerals Council of Australia (MCA) entered into a strategic partnership with the Australian government through signing a five-year Memorandum of Understanding (MoU). The MoU established a platform for government and industry to work together with Indigenous Peoples to build sustainable and prosperous communities in which Indigenous Peoples can create and take up employment and business opportunities in mining regions.

The MoU is founded on principles that guide activity at the regional level:

- collaboration and partnership between the parties based on mutual respect
- collaboration and partnership between the parties and indigenous communities based on shared responsibilities and respect for culture, customs and values
- the integration of sustainable development considerations within the MoU partnership decision-making process
- joint commitment to social, economic and institutional development of the communities with which the parties engage.

The minerals industry recognizes that companies can assist community development through providing employment, training and enterprise development opportunities related to its mining activities. However, industry clearly differentiates between its own responsibilities and government's responsibilities in delivering integrated basic social services to remote and regional communities, essential to building social and economic well-being in indigenous communities. The MoU seeks to deliver enhanced government accountability and service delivery to Indigenous Peoples through improved access to:

- education to develop literacy and numeracy education
- work readiness initiatives such as Fitness to Work programs
- drug and alcohol rehabilitation services

- financial services
- family support services, including childcare and counselling services
- human and financial capital to facilitate the development of enterprise in the indigenous community.

The MoU builds on previous relationships and practices, but requires parties to agree on principles for engagement to ensure that increased employment outcomes for local Indigenous Peoples is the number one priority. Specifically, the MoU encourages parties to work together through the development of an overarching Regional Partnership Agreement that provides a strategic approach, with a focus on achieving high-level alignment between the parties before consideration of project details.

An MoU National Steering Committee has been established to oversee the implementation of the MOU. It includes representation from relevant government agencies, the MCA and individual member companies.

There is a strong focus on evaluation of the MoU at both the national and regional level, not only to assist effective communication of the successes and learnings of the project, but also to support the replication of these new working arrangements between government and industry to other mine sites.

Source: Department of Industry, Tourism and Resources. 2006. "Community Engagement and Development", in *Leading Practice Sustainable Development Program for the Mining Industry*. Australian government



DEALING WITH GRIEVANCES



Ancient cave paintings, Patagonia, Argentina



6.1 Introduction

As part of good engagement practice, companies should seek to agree effective, culturally appropriate processes and structures for pre-empting, responding to and resolving community concerns and grievances. This section addresses:

- why grievance mechanisms are important;
- sources of potential disagreement or conflict;
- designing grievance mechanisms;
- involving other parties in resolving grievances.

6.2 Why are grievance mechanisms important?

Even with the best-designed social impact assessments, agreements, engagement programs and risk mitigation strategies, conflicts and disagreements can still occur, in some cases with the potential for rapid escalation. How a mining company anticipates and responds to these situations can be critical to determining the future quality of relations with the community and, ultimately, the company's social licence to operate. This is particularly the case with indigenous communities, where there may be history of prior grievances relating to a lack of recognition of land and resource rights and interests, as well as negative legacies associated with poorly planned and implemented projects.

Conflicts are commonly perceived as negative and destructive. This is not always the case: sometimes disagreements can be a creative force for transformational change and can lead to strengthened community/company relationships and improved outcomes. But, escalated disputes can cause reputational damage and also lead to or involve violence and threats to the lives and property of affected communities and mine employees.

The Office of the Compliance Advisor Ombudsman (CAO) for the International Finance Corporation (IFC) and Multi-lateral Investment Guarantee Agency (MIGA) has summarized the advantages of a well-functioning grievance mechanism as:

- providing a predictable, transparent and credible process to all parties, resulting in outcomes that are seen as fair, effective and lasting
- building trust as an integral component of broader community relations activities
- enabling more systematic identification of emerging issues and trends, facilitating corrective actions and pre-emptive engagement.¹⁶

As noted by the CAO, the alternative to implementing a grievance mechanism is to rely on the company's reputation to avoid disputes ("blind trust") or to deal with complaints and disputes on an ad hoc basis ("hope for the best"). The first approach is inherently risky because, as noted above, the social and political environment in which mining is conducted is rarely predictable, let alone controllable. The ad hoc approach lacks transparency, has a high risk of inconsistency, is reactive and is "too dependent on the skills of the particular project personnel who happen to receive the complaint".¹⁷

There is increased attention being paid internationally to how companies respond to community concerns and grievances, particularly as they relate to human rights. Most notably, the UN Secretary-General's Special Representative on Business and Human Rights, Professor John Ruggie, has highlighted as a critical issue, that "[a]n effective grievance mechanism is a part of the corporate responsibility to respect [human rights]". Professor Ruggie has reiterated the importance of providing legitimate and trusted avenues – judicial and non-judicial – for communities to have their concerns and grievances recognized and remedied in his most recent report to the Human Rights Council (April, 2009).

^{16/17} Compliance Advisor/Ombudsman (CAO) 2008. A Guide to Designing and Implementing Grievance Mechanisms for Development Projects. CAO: Washington DC.

In recognition of this growing focus on grievance mechanisms, in October 2009 ICMM released a pilot testing version of a guide on *Handling and Resolving Local Level Concerns and Grievances*, as part of its Human Rights in the Mining and Metals Sector series.¹⁸ The ICMM Position Statement on Mining and Indigenous Peoples also contains an explicit commitment to establishing appropriate mechanisms to dealing with Indigenous Peoples' complaints and grievances as well as those from Indigenous Peoples and the wider community.

**ICMM Position Statement, Commitment 8:
Supporting 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.

The ICMM guide recognizes that complaint mechanisms can provide a well-respected channel of communication between mining and metals companies and local people over issues of concern. In so doing, these mechanisms can serve as a tool to build trust and common understanding of the issues and thereby strengthen stakeholder support for projects. They also can help operations detect local concerns at an early stage rather than leaving them unresolved with the potential to later erupt in more damaging ways for the company.

Close to when the ICMM guidance document was released, the IFC published a good practice note on *Addressing Grievances from Project-Affected Communities*.¹⁹ This note outlines various basic requirements for dealing with complaints laid out in the *Performance Standards on Social and Environmental Sustainability* for projects funded by the IFC. Also relevant is the guidance tool on *Rights-Compatible Grievance Mechanisms*, produced by the Corporate Social Responsibility Initiative of the Harvard Kennedy School in January 2008.²⁰

Collectively, these various guidance documents provide a strong indication that there are growing expectations being placed on companies to enhance their approach to dealing with community grievances, complaints and concerns; both for Indigenous Peoples and for communities more generally.

A note on terminology

In line with the approach taken in the 2009 ICMM guidance note on *Handling and Resolving Local-Level Concerns & Grievances*, the term "complaints mechanism" is used here as shorthand to describe the set of processes that a company may have in place to deal with local-level concerns and grievances.

As discussed in the ICMM guide, community concerns can range from commonly occurring, relatively minor issues to more entrenched or serious ones that have become a source of significant concern or resentment. In addition, concerns and grievances may either be individual or collective. They can be openly expressed in conversations between companies and communities or, for a variety of reasons, individuals or communities may be reluctant to openly raise or discuss them.

Some companies prefer to use other terms, such as "procedure" rather than "mechanism", or "feedback" rather than "complaint". However, these differences in terminology are not critical provided that there is an underlying commitment to providing local communities with a means of raising issues and concerns relating to the company's operations and to resolving these in a fair and transparent manner.

¹⁸ <http://www.icmm.com/page/14809/human-rights-in-the-mining-and-metals-industry-overview-management-approach-and-issues>

¹⁹ [http://www.ifc.org/ifcext/sustainability.nsf/AttachmentsByTitle/p_GrievanceMechanisms/\\$FILE/IFC+Grievance+Mechanisms.pdf](http://www.ifc.org/ifcext/sustainability.nsf/AttachmentsByTitle/p_GrievanceMechanisms/$FILE/IFC+Grievance+Mechanisms.pdf)

²⁰ http://www.hks.harvard.edu/m-rcbg/CSRI/publications/Workingpaper_41_Rights-Compatible%20Grievance%20Mechanisms_May2008FNL.pdf

6.3 Sources of potential disagreement or conflict

Many of the factors that may give rise to conflict between indigenous groups and mining companies can be a source of conflict with non-indigenous communities as well. These include, for example:

- establishing a mine in the absence of broad community support
- inadequate engagement or decision-making processes
- inadequate or inequitable compensation for land
- inequitable distribution of benefits
- broken promises and unmet expectations of benefits
- failing to generate opportunities for employment, training, supply or community development
- environmental degradation
- disruption to amenity and lifestyle
- loss of livelihood
- violation of human rights
- social dislocation
- historical grievances not being adequately addressed.

In addition, however, there are some contextual factors that have particular salience for Indigenous Peoples' and their relations with mining companies. For example, a lack of respect (perceived or actual) for indigenous customary rights or culture, history and spirituality, is likely to trigger a strong reaction. Similarly, issues around access to and control of land and the recognition of sovereignty are very important for many Indigenous Peoples and can lead to serious conflict if they are not handled sensitively and with due respect for the rights of affected groups.



The costs of getting it wrong

Concern over environmental damage and human rights violations leads to the withdrawal of funding by an institutional investor

Many villagers were displaced and large tracts of forests were cleared in order to accommodate a company's bauxite refinery. As a result, the villagers lost their livelihoods and the ability to live self-sufficiently. A court case on behalf of the villagers was referred to the country's Supreme Court, which banned the company from mining operations. Despite this sanction, the company attempted to widen an access road – meeting with opposition from community protestors. Due to concern over environmental and human rights issues, an investment bank (and signatory to the Equator Principles) issued a warning to the company, while an institutional investor entirely withdrew its funding of the company.

The costs of getting it wrong

Lack of respect for customary rights of an indigenous community leading to blockades of a mine

When a customary authority representing the indigenous community rejected a company's environmental impact assessment, the national government ignored the rejection and granted a mining permit. Residents and some external experts feared that mine waste would end up flowing into nearby coastal waters. There followed several years of conflict between the company and community, including regular blockades of the mine site by community representatives (leading to a mine shutdown and many expatriate employees returning home) and a protest march to the regional capital involving 3,000 people.

6 DEALING WITH GRIEVANCES



Army and police preside over forced eviction of a Maya Q'eqchi' community from a proposed mining area, Guatemala



ISSUES AROUND ACCESS TO AND CONTROL OF LAND CAN LEAD TO SERIOUS CONFLICT IF THEY ARE NOT HANDLED SENSITIVELY.

6.4 Designing grievance mechanisms

On the basis of extensive multi-stakeholder and bilateral consultations, the UN Special Representative of the UN Secretary-General on Business and Human Rights, Professor John Ruggie, has proposed a list of six principles that should inform the design of judicial and non-judicial grievance mechanisms.²¹ Specifically, mechanisms should be legitimate, accessible, predictable, equitable, rights-compatible and transparent. These principles underpin the approach outlined in the ICMM guidance document.

The Corporate Social Responsibility Initiative at the John F. Kennedy School of Government, Harvard University has also produced a useful guidance tool for companies related to rights-compatible grievance mechanisms.²²

While there are many options, locally based and jointly designed processes that are not exclusively controlled by the company are more likely to facilitate effective and lasting solutions, particularly where they need to address more complex or serious concerns or grievances. This is consistent with the IFC design principle of “proportionality”, and with the tiered approach of ICMM which envisages incrementally greater third party involvement as a means of enhancing the trust in and independence of the mechanism. Ideally, these processes will have been discussed and agreed to as part of the early engagement process, before serious issues emerge or escalate.

Responding promptly and effectively to the concerns of marginalized members of a community or neighbouring communities is particularly important. The mechanism also needs to be capable of addressing community issues that are based on perceptions and felt experience, as well as “hard” data. For example, concerns of the indigenous community over deteriorating water quality may not align with a particular mine’s environmental monitoring data, but should receive respectful attention nonetheless.

Wherever practical, agreed processes for dealing with community grievances – and company obligations in regard to follow-up, monitoring and reporting – should be formalized in an agreement with the community (see also Section 4).

Case studies of functioning grievance mechanisms

The ICMM guidance note on *Handling and Resolving Local Level Concerns and Grievances* provides several examples from the mining industry of functioning grievance mechanisms, including Newmont’s Ahafo operation in Ghana and its operation at Batu Hijau in Indonesia, OceanaGold’s Didipio gold and copper project in the Philippines, and the Tintaya copper mine in Peru (formerly owned by BHP Billiton).

See www.icmm.com

6.4.1 Taking a holistic approach

Policies and processes for dealing with complaints, disputes and grievances ought to be seen as part of a broader, holistic, approach to risk management and community engagement. Other key elements include early and inclusive engagement, comprehensive impact assessment and risk analysis, commitments to human rights and effective community development programs. In the words of the CAO, “trust is not a substitute for a grievance mechanism and a grievance mechanism is not a substitute for trust” (2008: p.8).

Effective complaint-recording mechanisms can provide an “early warning system” for emerging issues that have not been predicted through other processes. If issues do emerge, companies may benefit from having the capability to receive, log, screen, assess, assign responsibilities for management and respond to issues as they arise, and as they escalate.

²¹ J. Ruggie, *Protect, Respect and Remedy: A Framework for Business and Human Rights*, Report of the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises, April 2008 p. 24: http://www.unglobalcompact.org/docs/issues_doc/human_rights/Human_Rights_Working_Group/29Apr08_7_Report_of_SRSG_to_HRC.pdf

²² Rights-Compatible Grievance Mechanisms, A Guidance Tool for Companies and their Stakeholders, Corporate Social Responsibility Initiative, John F. Kennedy School of Government, Harvard University, January 2008 http://www.hks.harvard.edu/m-rcbg/CSRI/publications/Workingpaper_41_Rights-Compatible%20Grievance%20Mechanisms_May2008FNL.pdf

6 DEALING WITH GRIEVANCES



A woman stands next to police officers during a protest against a proposed new mining law in Nabon, 330 kms south of Quito, Ecuador



6.4.2 Ensuring cultural appropriateness

How conflicts and disagreements are interpreted and handled is shaped by culture, both indigenous and corporate. For this reason, it is very important that companies understand the cultural preferences that indigenous communities have for dealing with disputes. Well-designed and executed baseline studies will help to build this understanding. Advice from the IFC is that:

“Grievance mechanisms need to make a clear distinction between procedures used for mainstream local population and those for Indigenous Peoples. Indigenous Peoples have unique attributes, including language, culture, and political, economic, and social institutions. They are also more sensitive to issues such as alienation of customary land rights, claims to natural resources, and impacts on cultural property. In addition, Indigenous Peoples may be politically marginalized and unfamiliar with (or do not trust) engagement processes used by the mainstream society.”²³

Companies should be aware that how people view and deal with conflict may vary according to factors such as gender, age and status within the organizational or social system. Women from indigenous communities, for example, may have very different ways of understanding and dealing with conflict than men in a given community. Often, women in particular indigenous communities play an important role in dispute resolution, community building and peace processes, but there is a risk that their role can be overlooked or downplayed by some company processes.

The aim should be to integrate both indigenous and corporate ways of resolving problems into the complaints mechanism. Systems and procedures must adequately reflect Indigenous Peoples’ preferences for direct or indirect interaction, negotiation, debate, dialogue, and application of indigenous traditional management and/or ceremony, with external agents to ensure mutually acceptable processes and outcomes. Where a company is dealing with more than one indigenous group, there may well be multiple culturally appropriate methods for dealing with problems by different interests.

Given the often marked differences between corporate and indigenous cultures, it is highly desirable to utilize processes that focus on dialogue, building cross-cultural understanding and through this finding mutually agreeable solutions. Such approaches are more equitable and, on a practical level, are more likely to facilitate viable, long-term resolution of community issues and concerns.



²³IFC 2009 Addressing Grievances from Project-Affected Communities. IFC: Washington DC.

Understanding internal community conflict

Industry may sometimes face significant challenges related to pre-existing tension of divisions within a community or between indigenous groups. These may not have been caused by, or related to the mining project. However, companies may exacerbate these divisions, even if unintentionally; for example, by favouring one group over another, or triggering a conflict over the sharing of benefits. A lack of knowledge about pre-existing conflict dynamics within the community can add considerable risk for a company in securing and maintaining a social licence to operate.

It is important that the company attempts to understand the dynamics of internal community conflict. Through understanding, and by adopting an inclusive approach to engagement, a company may avoid further inflaming community tensions. In some circumstances, it may even be able to play a positive role by helping to resolve fractious situations.

One of the keys to handling these issues well is a good understanding of cultural dynamics, leadership and decision-making structures, and an approach that accommodates community differences.

6.4.3 Communication

In order for a complaints mechanism to be effective, people who are affected by the mine operation need to know about the mechanism and understand how it works. By communicating openly, a company demonstrates its willingness to take community concerns seriously and its commitment to maintaining positive and collaborative relationships. Involving Indigenous Peoples in the development of the mechanism is one of the best ways of ensuring that they are aware of the mechanism and understand how it works. It is also likely to ensure that the mechanism works as efficiently as it can.

6.4.4 Ensuring access

All sections of the community, including those with low levels of literacy, should be able to access the mechanism easily. Operations can facilitate access by maintaining and publicizing multiple access points to complaint mechanisms, such as at the project site and in key locations within communities, including downstream and remote communities. Communities should also be provided with a variety of options for communicating issues and concerns, including in writing, orally, by telephone, over the internet or through more informal methods. In the case of marginalized groups (such as women and young people), a more proactive approach may be needed to ensure that their concerns have been identified and articulated. This could be done, for example, by providing for an independent person to meet periodically with such groups and to act as an intermediary between them and the company. Where a third party mechanism is part of the procedural approach to handling complaints, one option could be to include women or youth as representatives on the body that deals with grievances. It should be made clear that access to the mechanism is without prejudice to the complainant's right to legal recourse.

6.4.5 Documenting and recording

Documentation of complaints and grievances is important, including those that are communicated informally and orally. These should be logged, assessed, assigned to an individual for management, tracked and closed out or "signed off" when resolved, ideally with the complainant(s) being consulted, where appropriate, and informed of the resolution. Records provide a way of understanding patterns and trends in complaints, disputes and grievances over time. While transparency should be maintained – for example, through regular reports on issues raised and rates of resolution – provision should also be made for confidentiality of information or anonymity of the complainant(s) whenever necessary.

6.4.6 Responding to complaints

Once parties agree on a path forward – such as an apology, compensation or an adjustment to operations – an action plan should be formalized and implemented. Depending on the issue, responses may vary from a single task to a program of work that involves different parts of the operation. Effective responses will also include engagement with parties involved to ensure that the response continues to be appropriate and understood. Communities should also be advised of the close-out of the issue and what has been done to achieve it. This feedback provides an opportunity for the company to demonstrate that it has addressed the issue as well as confirming that the community considers the response satisfactory and the matter closed.

6.4.7 Understanding root causes

As outlined above, there are many factors that can potentially lead to conflict or disagreement between mining companies and communities, both indigenous and non-indigenous. Although it is not always possible to identify root causes, some issues will warrant deeper analysis in order to better understand the issue and avoid its further escalation. Many companies have well-established methodologies for root cause and problem analysis for environmental and safety incidents. In the absence of a tailored methodology for analysing community-related disputes and grievances, these methods may be adapted to guide this analysis. Providing funding and support for community-based research to highlight the indigenous community's perspective could also provide a deeper understanding of the causes of conflict.



6.4.8 Monitoring and reporting

It is important to collect data on community interactions – from low-level concerns and complaints to ongoing disputes and higher-order grievances – so that patterns can be identified and management alerted to high-risk issues. Effective monitoring may also help to prevent the escalation of lower-level disputes into more serious conflicts. Information can be gathered through various channels, such as formal review, evaluation and analysis or through day-to-day interaction with Indigenous Peoples. Monitoring can help determine the effectiveness of processes for responding to community concerns; for example, by tracking complaint resolution rates over time. This information can then be used to refine the system and improve the outcomes being achieved. The outcomes of monitoring should be reported formally to the community on a regular basis, in addition to being used for internal management purposes.

6.5 Involving other parties

6.5.1 Enabling recourse to other mechanisms

In situations where the local-level resolution of disputes or grievances proves to be intractable, companies and communities may consider establishing a formal relationship with an independent third party mechanism to provide a pathway for recourse beyond the local level.

In some cases, the factors that lead to disagreement or conflict may not be within the direct control of companies; for example, there may be long-standing, deep-rooted divisions within or between indigenous communities that make it impossible to get community consensus on a way forward. However, experience has shown that inappropriate company culture, policies, systems and practices are often key contributing factors to poor relations between companies and communities. Involving a mutually acceptable third party may sometimes assist in resolving company/community disputes and conflicts. Depending on the context, an external party could play a role such as by facilitating or mediating discussion, acting as an arbitrator or providing specialist advice to conflicting parties.

Whatever the role of the third party, involvement should aim to level the playing field between parties and facilitate reaching an outcome that is mutually beneficial. While more of an adhoc rather than a systematized approach to handling grievances, the Cerrejon Coal case study below provides an example of an independently facilitated process that had a successful outcome.

Independently facilitated process to resolve long-standing dispute

An independent review was commissioned in 2007 by Cerrejón's shareholders (Anglo American, BHP Billiton and Xstrata Coal) to assess Cerrejón's social engagement. The review panel consisted of a team of research and NGOs from a variety of countries. The panel undertook extensive engagement with local communities as well as international stakeholders.

The central recommendation made by the panel in its February 2008 report was for the company to meet with the community of Tabaco in order to discuss outstanding problems relating to the relocation of Tabaco residents in 2001, which involved the expropriation by the Colombian state of some Tabaco families who refused to sell their property to the former owners of Cerrejón. The town was later demolished in order to make way for the mine. This led, among other problems, to divisions in the Tabaco community and tensions between Cerrejón and its neighbours.

In April 2008, the company publicly committed to meet with the Tabaco Relocation Committee (TRC) in order to resolve the outstanding problems. The chair of the independent panel agreed to facilitate a series of dialogues between the company and the TRC. These meetings took place between August and December. As a result, the company agreed to buying land in order to enable the reconstruction of the town of Tabaco and to funding projects to promote the cultural and economic sustainability of the town.

Sources: Cerrejon Coal and Social Responsibility: An Independent Review of Impacts and Intent', February 2008; Cerrejon Coal press release, 12th December 2008; agreement and settlement between the community of Tabaco and Carbones del Cerrejon Ltd.

In some cases indigenous communities may wish to be represented in such a process by another party, so it is important that companies remain open to the involvement of NGOs, inter community committees and so forth. At all times it is essential that the involvement of a third party be trusted by both the community and the company. The use of third parties can raise complex issues of representation, voice and equity, but if it is done properly may assist communities and companies in improving communications, bridging differences and identifying mutually acceptable outcomes.

6.5.2 The role of government in resolving grievances

A much better outcome for all parties can be achieved if governments play a positive role in addressing community grievances, complaints and concerns. This may be possible if the government is empathetic to the situation of Indigenous Peoples and/or obliged to protect their rights under the national legislative frameworks and/or under international human rights law. The ICMM Position Statement on Mining and Indigenous Peoples recognizes the important role that governments can potentially play.

ICMM Position Statement, Commitment 5: Encouraging governments where appropriate to participate in alleviating and resolving any problems or issues faced by Indigenous Peoples near mining operations.

Before seeking the involvement of government, it is critical for a company to establish a clear understanding of the relationship between Indigenous Peoples and their government. For example, with issues such as claims to land and resource, government support, or lack thereof, for these claims should be considered (including their support for international conventions such as ILO Convention 169 or the UN Declaration on the Rights of Indigenous Peoples). Companies should also bear in mind levels of self-interest, corruption, favouritism and racial discrimination as well as any negative legacy concerning the historical relationship between the government and Indigenous Peoples.

In some circumstances, despite what companies consider to be their best efforts, communities will seek remedy through the judicial system, in situations where these remedies are available. Ideally, companies and communities would find alternative pathways to remedy before legal avenues are pursued.

CONCLUSION

ICMM encourages companies in the mining and metals industry to establish meaningful relationships with any Indigenous Peoples affected by their work. ICMM considers that developing such relationships with Indigenous Peoples based on mutual respect can be beneficial both for companies in the mining and metals industries and the communities they work in and with.

It is important that companies take the time to properly understand the communities they work with including their particular context, concerns and aspirations. ICMM's aim in preparing this Guide is to assist companies in establishing mutually beneficial and meaningful, effective relationships with the Indigenous Peoples their work impacts.

ICMM recognizes that each mining project is as unique in its challenges as the local communities it affects. Accordingly, it is important to ensure that guidance can be locally adapted for use by mining companies in developing mutually beneficial relationships with local communities.

The Guide is not intended as a one-size-fits-all approach to developing relations with local communities, but instead is designed to provide useful information and direction for both companies and indigenous communities when considering issues around engagement and participation, agreements, impact management, benefits sharing and dealing with grievances. This Guide will form part of ICMM's ongoing engagement on these issues and will be reviewed in light of practical experience.

“NOBODY OWNS THE LAND. WE SAID WE’D WATCH OVER IT, BECAUSE THAT’S OUR RESPONSIBILITY. YOU TAKE CARE OF THE LAND, AND IT TAKES CARE OF YOU.”

Virginia Poole
Seminole/Miccosukee



APPENDIX A: ICMM POSITION STATEMENT ON MINING AND INDIGENOUS PEOPLES – 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.



Individual ICMM position statements are available at www.icmm.com

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.

¹In 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. Since its adoption, two of the four countries that voted against have reversed their positions and now endorse the Declaration. A third has signalled that it will take steps to endorse the Declaration and the fourth has indicated that it will also review its position.

APPENDIX A: ICMM POSITION STATEMENT ON MINING AND INDIGENOUS PEOPLES – MAY, 2008

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.

APPENDIX B: ACRONYMS

ACRONYMS	
CAO	Compliance Advisor Ombudsman
EIR	Extractive Industries Review
FPIC	Free, Prior and Informed Consent
IBA	Impact and Benefit Agreement
ICMM	International Council on Mining and Metals
IFC	International Finance Corporation
ILO	International Labour Organization
ILUA	Indigenous Land Use Agreement
NGO	non-governmental organization
SIA	Social Impact Assessment
UN	United Nations
UNDRIP	United Nations Declaration on the Rights of Indigenous Peoples

APPENDIX C: FURTHER RESOURCES

A number of resources have been highlighted in this Guide. A listing of these resources and additional useful references is included here.

GENERAL READING – INDIGENOUS PEOPLES AND MINING

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ACKNOWLEDGEMENTS

The development of this guide would not have been possible without the input and support of many individuals and organizations. ICMM gratefully acknowledges the following contributions:

Indigenous Peoples Advisory Group

An independent Indigenous Peoples Advisory Group was convened to provide constructively critical advice on substance and process throughout the development of the Guide. The Advisory Group members acted in their individual capacity, rather than as representatives of their respective organisations. ICMM is indebted to these individuals for sharing their wisdom and insights throughout the process of developing the Guide:

Mike Rae,
Director of NRPlan (Canada)

Cassio Inglez de Souza,
Independent Expert on Indigenous Affairs (Brazil)

Meg Taylor,
Vice President, Compliance Adviser/Ombudsman (CAO) for the International Finance Corporation and the Multilateral Investment Guarantee Agency (Papua New Guinea/Baiman Tsenglap)

Lucy Mulenkei,
Indigenous Information Network (Kenya /Maasai)

Mick Dodson,
Director, National Centre for Indigenous Studies, Australian National University (Australia/Yawuru)

ICMM Working Group

The development of the Guide was overseen by an ICMM Working Group, chaired by Jo Render (formerly of Newmont Mining). ICMM is indebted to the members of the working group for their engagement on iterative drafts which led to the final document. The working group comprised:

Jon Samuel	Anglo American
Paul Hollesen	AngloGold Ashanti
Thando Njoko	AngloGold Ashanti
Laura Tyler	BHP Billiton
Ian Wood	BHP Billiton
Caroline Rossignol	Barrick
Peter Sinclair	Barrick
Stan Batey	Freeport-McMoRan Copper & Gold
Dina Aloï	Goldcorp
Barnard Mokwena	Lonmin
Sarah Fuller	Minerals Council of Australia
Julie Gelfand	Mining Association of Canada
Chris Anderson	Newmont
Helen MacDonald	Newmont
Alejandra Maurtua	Vale
Bernarda Elizalde	PDAC
Glynn Cochrane	Rio Tinto
Eric Christensen	Rio Tinto
Jeffrey Davidson	Rio Tinto
Bruce Harvey	Rio Tinto
Claude Perras	Rio Tinto
Gillian Davidson	Teck
Patricia J. Dillon	Teck
David Parker	Teck
Luana Andrade	Vale
Natascha Cunha	Vale
Paul Jones	Xstrata

Indigenous representatives/advocacy organisations

The second draft of the Guide was circulated to over 50 representative and advocacy organizations working on indigenous issues for comment, on the understanding that providing comments in no way implied endorsement of the content. ICMM would like to sincerely thank those organisations that took the time and effort to provide comments. All external comments were discussed in a face-to-face meeting in Vancouver between the Indigenous Advisory Group and the ICMM Working Group to determine how best to address them.

Consulting Team

The Guide was developed by a consulting team comprising specialists from the Centre for Social Responsibility in Mining (CSR/M) of Queensland University, Australia, and Synergy Global Consulting. ICMM is indebted to the team for their expert input into the drafting and development of the publication:

David Brereton, CSR/M (Project Leader)
Ed O'Keefe, Synergy Global (Project co-leader)
Warwick Browne, CSR/M (Project Manager)
Deanna Kemp, CSR/M (Consultant)
Kathryn Tomlinson, Synergy Global (Consultant)

ICMM Team

Aidan Davy and Claire White led the process to develop this Guide on behalf of the ICMM Secretariat. Fernanda Diez provided support on the communications and outreach for the guide. We are indebted to Bob Dick for his creative input to the design process.

Photo credits

ICMM wishes to thank the following photographers, member companies and photographic agencies for the use of the following images:

Photographer	Weblink	Pages
Bryan and Cherry Alexander, Arctic Photos	www.arcticphoto.co.uk	1, 15, 56, 63/64,
Pichugin Dmitry, Birute Vijeikiene, Eduardo Rivero, Shutterstock	www.shutterstock.com	6, 12, 27/28, 35, 95
Aidan Davy, ICMM	www.icmm.com	14
Anglo American	www.angloamerican.com	22
Freeport McMoRan	www.fcx.com	31, 37
Lihir Gold	www.lglgold.com/asp/index.asp	39, 70
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Published by International Council on Mining and Metals (ICMM), London, UK

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Design: Duo Design
Print: DPS Print Solutions
Available from: ICMM, www.icmm.com, info@icmm.com

This publication is printed on Edixion Challenger Offset. This paper stock is Forest Stewardship Council (FSC) certified and holds ISO 14001, ISO 9001 and ISO 9706 certification.

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 of member companies working together and with others to strengthen the contribution of mining, minerals and metals to sustainable development.

'Ngapa Jukurrpa' (Water Dreaming)

by Angelina Nampijinpa Tasman

The site depicted in this painting is Pirlinyarnu (Mt. Farewell), about 165km west of Yuenduma in the Northern Territory.

Two Jangala men, rainmakers, sang the rain, unleashing a giant storm that collided with another storm from Wapurtali. The two storms travelled across the country, from Karlipinpa near Kintore. A Kirrkaranji (brown falcon) carried the storm further west until it dropped the storm at Pirlinyarnu, forming an enormous Maliri (lake). A 'mulju' (soakage) exists in this place today. At Puyurru the bird dug up a 'warnayarra' (rainbow serpent). The serpent carried water with it to create another large lake. Whenever it rains today hundreds of 'ngapangarlpa' (bush ducks) still flock to Pirlinyarnu.

The 'kirda' (custodians) for this Jukurrpa are Jangala/Jampijinpa men and Nangala/Nampijinpa women.



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