

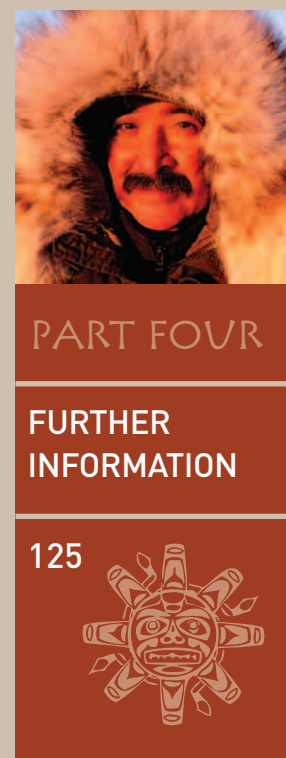
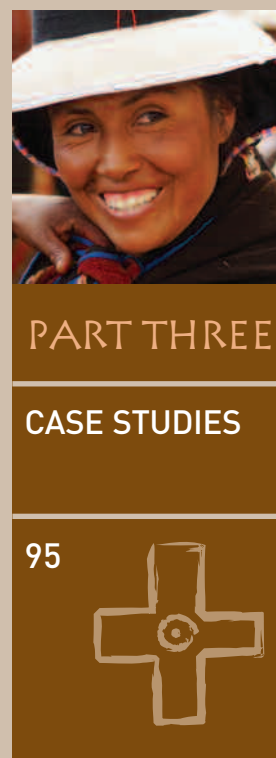
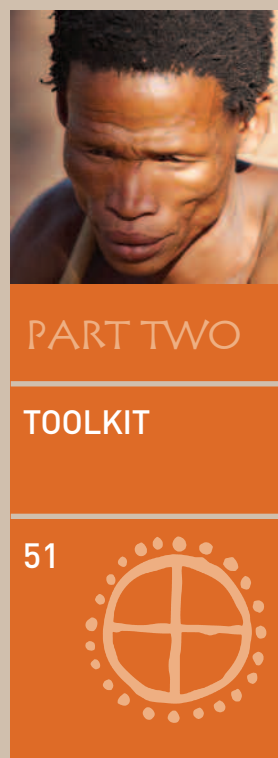
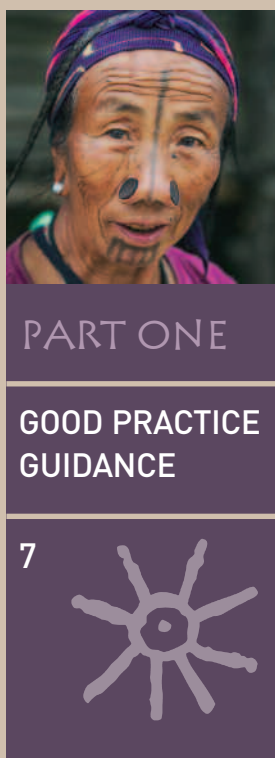
GOOD PRACTICE GUIDE

INDIGENOUS PEOPLES AND MINING

SECOND EDITION



Mining companies that are responsive to Indigenous Peoples' aspirations for development are not only more likely to successfully contribute to sustainable and equitable outcomes, but also gain community support and build a positive reputation in a region or country.



FOREWORD

ICMM works to support our member companies to build constructive relationships with Indigenous Peoples. In 2008 we developed a position statement on Mining and Indigenous Peoples. Based on international developments and feedback from stakeholders, the position statement was revised in 2013 to include a commitment to work to obtain the Free, Prior and Informed Consent (FPIC) of affected indigenous communities.

Our 2013 position statement on Indigenous Peoples and mining articulates a vision of *“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.”* This vision is the foundation for this Good Practice Guide, which is an update to our 2010 Good Practice Guide *Indigenous Peoples and mining*. It provides guidance on the new position statement, and has taken into account member input and stakeholder feedback received during a public comment period. It includes a number of practical tools to guide members through the range of activities that support building strong and mutually beneficial relationships with Indigenous Peoples.

Responsible mining companies engage with the communities where they operate, building strong relationships based on trust and respect. While good practice guidance is partly about helping companies avoid negative impacts – or doing no harm – it is also intended to help companies contribute positively to communities, regardless of whether they are Indigenous or non-Indigenous.

What differentiates Indigenous Peoples are those unique characteristics – relating to rights, culture and special connections to the land – that require companies to adopt a progressive and inclusive mind-set and approach. Awareness of these characteristics, and an understanding of how they may affect the way companies engage with Indigenous Peoples, is important to ensuring mutually beneficial engagement and outcomes.

We hope that the guide provides an effective framework for ICMM members to bring long-term benefits to indigenous communities and companies – and serves as a useful tool for promoting best practice across the mining and metals sector more broadly.



Tom Butler
Chief Executive Officer, ICMM



Traditional owners consultation, Weipa, Australia.

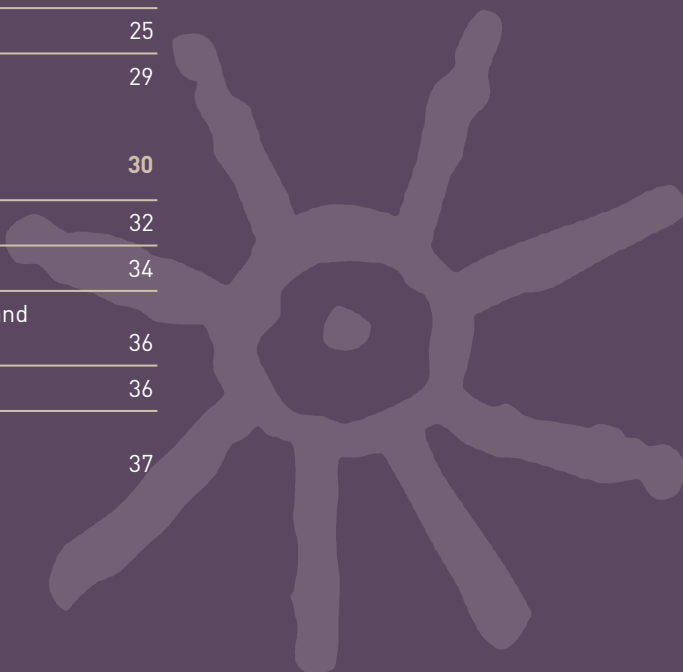


An Apatani tribal women from the North east region of India, Arunachal Pradesh.

PART ONE

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CHAPTER 1

INTRODUCTION



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

Part one of this document provides general good practice guidance around aspects of engagement between companies and indigenous communities. The relevant tools are listed alongside the introduction to each section.

Mining deposits intersect with the traditional lands of Indigenous Peoples worldwide. In Australia, for example, it has been estimated by the Minerals Council of Australia that 60 per cent of mining operations neighbour Aboriginal communities.¹ Mining companies that are responsive to Indigenous Peoples' aspirations for development are not only more likely to successfully contribute to sustainable and equitable outcomes, but also gain community support and build a positive reputation in a region or country that improves access to future resources. In addition, companies that adopt good practice in relation to interactions with Indigenous Peoples are likely to be considered as 'responsible companies' which in turn, has reputational benefits. Also Importantly, it is now widely accepted that companies have a responsibility to respect human rights, including the rights of Indigenous Peoples.

This Guide presents an updated version of ICMM's 2010 Good Practice Guide *Indigenous Peoples and mining*. Like the earlier version of the Guide, it is intended as a good practice resource for mining companies and others with an interest in ensuring that mining projects bring long-term mutual benefits to companies and host communities.

¹ Minerals Council of Australia website:
www.minerals.org.au/corporate/about_the_minerals_industry

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 seek to leave a positive legacy, particularly in relation to local social and economic development. The basic principles of good engagement are the same across the board (see Section 2.2),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 (and now updating) a guide that focuses specifically on Indigenous Peoples and mining:

- There is now widespread recognition at an international level that Indigenous Peoples have distinct rights and interests, and a growing expectation that these will be respected by responsible companies.
 - 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 such as improved access to resources) that need to be understood and addressed.
 - Indigenous Peoples often have cultural characteristics, governance structures, and traditional ways of interacting and decision making that set them apart from the non-indigenous population, which require companies to utilize forms of engagement that are sensitive to these characteristics.
 - Legislation in some countries requires mining companies to engage with Indigenous Peoples and, in some cases, to actually seek their consent for undertaking mining operations on their land. In most countries, however, “neither indigenous peoples nor any other population group actually have the right to veto development projects that affect them”, so free, prior and informed consent (FPIC) should be regarded as a “principle to be respected to the greatest degree possible in development planning and implementation”.³
- 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. On the other hand, Indigenous Peoples potentially have much to gain from the positive impacts of a mining project if appropriately engaged. 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 updated ICMM position statement

In May 2013, the International Council on Mining and Metals (ICMM) released an updated version of its 2008 Mining and Indigenous Peoples Position Statement. The development of the updated position statement included a review of the changes to the international policy landscape since 2008, notably the inclusion of an FPIC provision within Performance Standard 7 (on Indigenous Peoples) of the International Finance Corporation’s (IFC’s) revised Performance Standards on Social and Environmental Sustainability.

The May 2013 position statement supersedes the 2008 version and builds on several years’ work at ICMM. It contains several key recognition statements that acknowledge the importance of having special regard for Indigenous Peoples’ rights and interests. These recognition statements have been given practical effect through six commitments that ICMM members have committed to abide by, to the extent that they do not conflict with the relevant national or provincial laws.

2 For further information on good practice engagement, see, for example, L Zandvliet and M B Anderson, *Getting it right: making corporate–community relations work*, Sheffield, UK, Greenleaf Publishing, 2009.

3 As expressed in the Department of Economic and Social Affairs of the United Nations (UN) Secretariat, *Resource kit on Indigenous Peoples’ issues*, New York, UN, 2008.


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

1. Engage with potentially impacted Indigenous Peoples with the objectives of: (i) ensuring that the development of mining and metals projects fosters respect for the rights, interests, aspirations, culture and natural resource-based livelihoods of Indigenous Peoples; (ii) designing projects to avoid adverse impacts and minimizing, managing or compensating for unavoidable residual impacts; and (iii) ensuring sustainable benefits and opportunities for Indigenous Peoples through the development of mining and metals projects.
2. Understand and respect the rights, interests and perspectives of Indigenous Peoples regarding a project and its potential impacts. Social and environmental impact assessments or other social baseline analyses will be undertaken to identify those who may be impacted by a project as well as the nature and extent of potential impacts on Indigenous Peoples and any other potentially impacted communities. The conduct of such studies should be participatory and inclusive to help build broad cross-cultural understanding between companies and communities and in support of the objectives described in commitment 1 above.
3. Agree on appropriate engagement and consultation processes with potentially impacted Indigenous Peoples and relevant government authorities as early as possible during project planning, to ensure the meaningful participation of Indigenous Peoples in decision making. Where required, support should be provided to build community capacity for good faith negotiation on an equitable basis. These processes should strive to be consistent with Indigenous Peoples' decision-making processes and reflect internationally accepted human rights, and be commensurate with the scale of the potential impacts and vulnerability of impacted communities. The processes should embody the attributes of good faith negotiation and be documented in a plan that identifies representatives of potentially impacted indigenous communities and government, agreed consultation processes and protocols, reciprocal responsibilities of parties to the engagement process and agreed avenues of recourse in the event of disagreements or impasses occurring (see commitment 6 below). The plan should also define what would constitute consent from indigenous communities that may be significantly impacted. Agreed engagement and consultation processes should be applied in collaboration with potentially impacted indigenous communities, in a manner that ensures their meaningful participation in decision making.
4. Work to obtain the consent of indigenous communities for new projects (and changes to existing projects) that are located on lands traditionally owned by or under customary use of Indigenous Peoples and are likely to have significant adverse impacts on Indigenous Peoples, including where relocation of Indigenous Peoples and/or significant adverse impacts on critical cultural heritage⁴ are likely to occur.⁵ Consent processes should focus on reaching agreement on the basis for which a project (or changes to existing projects) should proceed. These processes should neither confer veto rights to individuals or subgroups nor require unanimous support from potentially impacted Indigenous Peoples (unless legally mandated). Consent processes should not require companies to agree to aspects not under their control.
5. Collaborate with the responsible authorities to achieve outcomes consistent with the commitments in this position statement, in situations where government is responsible for managing Indigenous Peoples' interests in a way that limits company involvement. Where a host government requires members to follow processes that have been designed to achieve the outcomes sought through this position statement, ICMM members will not be expected to establish parallel processes.
6. Address the likelihood that differences of opinion will arise, which in some cases may lead to setbacks or delays in reaching a negotiated agreement in good faith. Companies and potentially impacted indigenous communities should agree on reasonable tests or avenues of recourse at the outset, to be applied where differences of opinion arise. This might include seeking mediation or advice from mutually acceptable parties. Where commitment 4 applies and consent is not forthcoming despite the best efforts of all parties, in balancing the rights and interests of Indigenous Peoples with the wider population, government might determine that a project should proceed and specify the conditions that should apply. In such circumstances, ICMM members will determine whether they ought to remain involved with a project.

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

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





ICMM members were expected to implement the commitments of the position statement by May 2015. The commitments do not apply retrospectively, that is, to projects that had already been approved, or had started approvals and permitting processes at the time of the adoption of the position statement. This guide aims to support ICMM members in implementing the position statement but does not represent an interpretive guide to, nor does it extend the scope of, the ICMM position statement and is not mandatory.

The position statement is available on ICMM's website:
www.icmm.com/publications/icmm-position-statement-on-indigenous-peoples-and-mining

“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



In response to grievances from Kamoro communities related to sedimentation in the Ajkwa estuary, PTFI has provided a 50 passenger boat to provide regular water transportation services for coastal villages to healthcare, education and economic trade in the Timika area.

1.3 Structure and scope of the Guide

The Guide is primarily aimed at providing guidance to companies on good practice where mining-related activities occur on or near traditional indigenous land and territory.⁶ This recognizes that particular rights, legal requirements and interests come into play, and in such cases these situations tend to present significant challenges for mining companies.

The main 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.

The remainder of Part one of this guide is divided into four chapters, each of which deals with an important thematic area that mining companies should be familiar with in order to ensure that their operations not only avoid or minimize their negative impact on indigenous groups, but also make a positive contribution to community and social development in indigenous communities.

Chapter 2 is concerned with engagement and indigenous participation across the project life cycle. In addition to other aspects of engagement with Indigenous Peoples, the chapter discusses the issue of FPIC.

Chapter 3 focuses on the practical aspects of managing the impacts of a project on Indigenous Peoples. The topics addressed include how to approach impact mitigation and enhancement, preserving cultural heritage, environmental protection, mine closure, and addressing discrimination and historical disadvantage.

Chapter 4 deals with agreements: both the making of them and their ongoing implementation across the project life cycle. Topics addressed in this section include sharing the benefits of projects through agreements, the factors that make for successful agreements, components of agreements, and implementation and participatory monitoring of agreements.



Students near Goldcorp's El Sauzal mine in Mexico. Contributing towards education, healthcare and community development create long-term social and economic benefits that outlive the life-cycle of mining.

Chapter 5, which concludes Part one, 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.

Part two of the Guide contains a series of 13 tools. These tools have been developed to give practical effect to the good practice principles and themes discussed in Part one.

Part three provides a number of case studies from ICMM members which relate to different sections of the document.

Part four contains further information including a list of useful resources.

⁶ Indigenous land and territory are sometimes used interchangeably. While there is no firm distinction, "lands" is often used to refer to land over which Indigenous Peoples have formal or customary title, whereas territory 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 connections to the spirit world. "Land" may also include areas beneath the waterline, such as reefs or river beds.

1.4 Who are Indigenous Peoples?

The designation of “Indigenous Peoples” has come to be recognized over the last few decades as a particular demographic category under international law through instruments such as the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP), and in some countries through national legal mechanisms.

The term “Indigenous Peoples” has principally been applied to those who are considered to be the descendants of the pre-colonial peoples of the Americas, Scandinavia, Australia and New Zealand, such as Native Americans, Inuit of the Arctic, Sami people of Scandinavia, 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 majority of the population and who have historically occupied certain regions, are often also referred to as, or self-identify themselves as, Indigenous Peoples (eg 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, Chile and Bolivia use the Spanish equivalent of *pueblos originarios*, meaning “First Peoples”. In the United States, the term “Native American” is commonly used. “First Nations” is an official term used in 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 (eg Malaysia, China, Botswana), or only recognize some groups as indigenous despite others also claiming that label (eg Russia).

The issue of setting a single definition for Indigenous Peoples has been extensively debated in UN 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 1), emphasizing the particular importance of self-identification.

It is important to emphasize that, like any community, indigenous communities may not be homogeneous or harmonious. They can be characterized by heterogeneity in terms of power, knowledge and wealth. Conflict may be a part of daily life, which is not seen as pathological but rather as a way of interacting that flares up and down over time.

Box 1 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 International Labour Organization (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 pre-colonial 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 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.





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.

1.5 International rights for Indigenous Peoples

At the international level there has been a strong drive to define a body of rights that specifically address 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 two most important instruments at the international level relating to Indigenous Peoples' rights are the 2007 UNDRIP and ILO's Convention No 169 on Indigenous and Tribal Peoples of 1989 (ILO Convention 169). Key rights articulated in these instruments include the rights of Indigenous Peoples to:

- self-determination
- lands, territories and resources
- maintenance of their cultures, including their cultural heritage, and recognition of their distinct identities, customs and structures
- their spiritual traditions and property
- be asked for their FPIC in decisions that may affect them, and access to legal redress.

As noted, the extent to which Indigenous Peoples are legally recognized and their rights protected varies widely between countries. This has prompted the UN Special Rapporteur on the rights of Indigenous Peoples to argue that states have a duty to *effectively consult* with Indigenous Peoples and that this duty is grounded in the core human rights instruments of the UN.⁷

Further, the UN Special Rapporteur has also argued that the responsibility of business to respect human rights, as outlined in the Guiding Principles on Business and Human Rights (endorsed by the United Nations Human Rights Council in 2011), "extends to compliance with international standards concerning the rights of indigenous peoples, in particular those set forth in the United Nations Declaration on the Rights of Indigenous Peoples, no less than it applies to compliance with other international human rights standards".⁸

ICMM member companies' commit in the position statement 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.

⁷ J Anaya, *Report of the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people*, Human Rights Council, fifteenth session, 19 July 2010, page 14, UN document A/HRC/15/37.

⁸ J Anaya, *Report of the Special Rapporteur on the rights of Indigenous Peoples, James Anaya: extractive industries and Indigenous Peoples*, Human Rights Council, twenty-fourth session, 1 July 2013, page 15, UN document A/HRC/24/41.



1.6 Indigenous Peoples and mining

As documented in the ICMM 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 and spiritual/religious 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.

In addition, they may be employees of and/or suppliers to the mining operations, and potential receivers of taxes and royalties (either directly or indirectly through government distributed funds).

Any impact of mining development on Indigenous Peoples may be positive, negative, or a mix of both, depending on a number of factors. These include geographical location, community characteristics, past experiences with mining, the nature of the mining activities and, critically, how the company approaches the management of community engagement and the impact of these factors. Where significant impacts occur, they may generate complex socioeconomic interactions introducing unexpected secondary impacts, which can be positive or negative in nature. The scale and nature of impacts will also vary over the life of the mining projects.

Table 1 highlights some of the ways in which mining projects may potentially impact Indigenous Peoples both positively and negatively.

“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

Table 1: Examples of the ways in which mining projects may impact on Indigenous Peoples

Negative impacts	Positive impacts
Physical or economic displacement and resettlement.	Improved infrastructure and services (eg access to clean water, sanitation, power, roads).
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).	Better health outcomes due to improved services and delivery, better preventive measures (eg spraying for malaria).
Displacement of artisanal miners. ⁹	Improved support for education and better resources and facilities.
Destruction of, or damage to, culturally and sacred or spiritually significant sites and landscapes – both tangible and intangible.	Enhanced employment and business opportunities, both in mining and ancillary industries.
Social dislocation and erosion of cultural values as a result of rapid economic and social change (eg the shift from a subsistence to a cash economy).	Increased income flows through royalty streams and compensation payments.
Social conflicts over the distribution and value of mining-related benefits (eg royalties, jobs).	Improved living standards due to increased wealth.
Increased risk of exposure to diseases such as AIDS, tuberculosis and other communicable and non-communicable diseases, mental health disorders, accidents and injuries, and nutritional disorders.	Company and government assistance for community development initiatives and livelihood support programs.
Further marginalization of some groups (eg women).	Company support for identification, protection and promotion of cultural heritage (in some cases protecting cultural heritage that may not have previously been protected).
Outsiders (including artisanal miners) moving on to traditional lands (due to areas being opened up by the construction of roads).	Environmental restoration and protection (eg through reforestation initiatives, improved fire management).
Emergence of associated problems (eg community health and safety risks, increase in social problems such as alcoholism, drug use, gambling, prostitution, etc).	Special measures for the improvement of marginal groups (eg through support for intercultural education and literacy, small business development programs).
Large-scale uncontrolled in-migration contributing to increased competition for resources and social tensions.	

⁹ In many countries artisanal and small-scale mining (ASM) is an important economic activity for Indigenous Peoples. The development of large-scale mining projects can potentially trigger conflict between companies and those involved in ASM, including Indigenous Peoples, who might be displaced by new operations. ICMM's guide *Working together: how large-scale mining can engage with artisanal and small-scale miners* (ICMM, 2010) provides good practice guidance for companies on how to engage positively with those involved in ASM.



CHAPTER 2

ENGAGEMENT AND INDIGENOUS PARTICIPATION



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

Tools for this chapter

TOOL 1

Applying principles of good engagement

TOOL 3

Dealing with challenges in the identification and recognition of indigenous land rights

TOOL 4

Ensuring engagement is consistent with Indigenous Peoples' decision-making processes

TOOL 5

Dealing with the challenges of engagement

TOOL 8

Baseline studies and impact assessments

TOOL 10

Good faith negotiation

TOOL 11

Working to obtain consent: a suggested process across corporate engagement

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.

The first part of this chapter discusses the importance for companies to understand the local context before engaging with Indigenous Peoples, and the need to maintain and update a knowledge base of this context throughout the life cycle of a project. This is followed by a discussion of the principles of good engagement as they apply to Indigenous Peoples and how companies should approach initial contact with indigenous communities. The next sections examine the principle of FPIC. The remaining sections of the chapter address:

- Indigenous Peoples' involvement in decision making
- managing workforce and contractor behaviour
- dealing with some of the key challenges that emerge during engagement.





2.1 Understanding the local context for engaging with Indigenous Peoples

Despite numerous commonalities, the specific indigenous context needs to be ascertained at the earliest stage of a project. Baseline information is particularly important to gather and, among other things, should focus on the following key characteristics of the local context:

- demographic information about the nature of the community in terms of tribal identities, clan relationships within the tribe and population growth data. This is important to ascertain in order to monitor changes in these characteristics during engagement and project development
- land ownership and tenure from a legal and customary perspective, as well as any contestations about tenure within clan families. Overlapping ownership claims to be documented through government channels, but also through independent inquiry from local experts
- cultural heritage significance and association with particular sacred sites to be ascertained, for example from tribal elders who have the confidence of the community
- livelihood and subsistence data on how the community meets its basic food and shelter needs, as well as the level of connectivity (if any) that the community has with the market economy, to be ascertained prior to engagement
- information about the ethnic composition and relations in the area, as well as the history of migration
- current conflicts between local and regional governments and indigenous communities, and historical grievances with extractive industries in the region.

TOOL 8 will provide more specific guidance on how to undertake such baseline evaluations. Good practice guidance on recognizing indigenous land rights is provided in **TOOL 3**.

2.2 The principles of good engagement

Ensuring inclusivity at the earliest stage

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. During engagement with indigenous communities, company representatives should make it clear that they are committed to acting in an inclusive and non-discriminatory way.

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.

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

- Indigenous Peoples have an understanding of their rights
- companies in turn understand the rights, aspirations and concerns of Indigenous Peoples, both in their operations and more generally
- 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
- companies understand and address positive and any potentially negative impacts, and recognize, respect and use traditional knowledge to inform the design and implementation of mitigation strategies

- there is mutual understanding and respect between the company, the indigenous community and other relevant stakeholders regarding their respective roles, responsibilities, rights, challenges and decision-making processes
- indigenous aspirations and concerns are taken into account in project planning so that people have ownership of, and participate fully in decisions about, community development programs and initiatives¹⁰
- the company has worked to obtain the broad, ongoing support of the community including, where applicable, their FPIC (see Section 2.5)
- the voices of all in the community are heard, that is, engagement processes are inclusive.

Companies should refer to **TOOL 1** for guidance on how to apply these principles in practice.

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 exploration, project or 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 a specific area without first seeking permission to do so
- do not engage broadly and 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 and impact assessment 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 and spiritual/religious 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 senior 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.

¹⁰ One approach that is gaining favour as a means of ensuring that Indigenous Peoples have their perspective taken into account is "ethnodevelopment". 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://documents.worldbank.org/curated/en/2000/01/1631749/defining-ethnodevelopment-operational-terms-lessons-ecuador-indigenous-afro-ecuadoran-peoples-development-project>



2.4 Indigenous Peoples' involvement in decision making

- ICM recognizes that the broad support of communities is essential for mining projects to be successfully developed. Key steps that companies should take to ensure that broad community support has been sought – including, where applicable, their consent (as outlined in Section 2.5) – 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, spirituality, 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.
- Collaboratively develop an effective means to ensure that Indigenous Peoples are informed about and understand the full range (short, medium and long term) of potential environmental, social and health impacts from a mining project on their community, any benefits it may offer across the full project cycle. Companies should also seek to communicate the perspectives of relevant stakeholders on proceeding with the project (both positive and negative).¹¹ 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 (eg from non-governmental organizations (NGOs), government bodies, academics, industry experts and other communities that have dealt with the company) where they may be able to usefully contribute additional information or perspectives. If requested and appropriate, companies should also consider providing Indigenous Peoples with the means to engage independent information-gathering experts of their own choice.
- 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 described in **TOOL 4**, 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.
- Ensure that the involvement of Indigenous Peoples is inclusive and captures the diversity of views within and between communities (rather than only community leaders' views), 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.
- Agree acceptable timeframes 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. Potentially impacted 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 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 indigenous communities' capacity to engage in decision making, for example by providing access to independent expert advice where appropriate, capacity-building, facilitation and mediation, or involving external observers. Capacity-building efforts can be included as an element of an Indigenous Peoples' development plan, which aims to enhance benefits and minimize the adverse effects of a project on significantly impacted Indigenous Peoples.

¹¹ Examples 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.

Through some or 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. Further guidance on negotiating in good faith is provided in **TOOL 10**.

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 circumstances where consent is not forthcoming, despite the best efforts of all parties, companies will determine whether they ought to remain involved with a project. The issue of FPIC for projects is discussed in some detail in Section 2.5, with specific guidance on how companies can work towards obtaining consent from Indigenous Peoples for projects on their land provided in **TOOL 11**.

RELEVANT CASE STUDY

Early engagement and agreements with native title owners in New South Wales (Barrick), see page 101.

2.5 Free, prior and informed consent (FPIC)

This section of the Guide outlines ICMM members' approach to FPIC, which seeks to respect the rights and interests of Indigenous Peoples and recognize the rights of states to make decisions in relation to the development of resources within their jurisdictions. As well as outlining ICMM's approach, this section discusses the perspectives of Indigenous Peoples and governments (including intergovernmental bodies) regarding the need to consult with, and obtain consent from, Indigenous Peoples for resource development on their lands. Though various perspectives are presented here, it should be acknowledged that there are varying perceptions within stakeholder groups and not all companies, indigenous communities and governments will have the same view of the issues. ICMM members' approach to FPIC is to acknowledge, rather than endorse, these perspectives while seeking to balance the legitimate interests of all stakeholders, including Indigenous Peoples, governments and industry.

Indigenous Peoples have individual and collective rights and interests, and it is internationally recognized that their rights should be protected by governments and respected by companies. As discussed in Chapter 1, two of the key international instruments in this area are ILO Convention 169 and the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP). In addition, the IFC's Performance Standard 7 from 2012 requires client companies to obtain the consent of Indigenous Peoples for project "design, implementation, and expected outcomes related to impacts affecting the communities of Indigenous Peoples". For example, in situations involving relocation of Indigenous Peoples or where critical cultural heritage may be significantly impacted.¹² This requirement is also applicable to companies seeking project finance from Equator Principles Financial Institutions.¹³

FPIC is of particular importance 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.¹⁴
- 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 fair 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.

¹² For details see IFC, Guidance Note 7 Indigenous Peoples, in *International Finance Corporation's Guidance Notes: Performance Standards on Environmental and Social Sustainability*, Washington, DC, IFC, 2012, GN28.

¹³ For details see www.equator-principles.com

¹⁴ These include the UN Declaration on the Rights of Indigenous Peoples (2007), the ILO Indigenous and Tribal Peoples Convention, 1989 (No 169), the European Bank for Reconstruction and Development's 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.





Local women near Newmont's Yanacocha mine, Peru.

Indigenous perspectives on FPIC

This section summarizes some indigenous perspectives on FPIC as captured in the research paper referenced below,¹⁵ which is based on a number of interviews with indigenous leaders and representatives of indigenous communities globally.

Indigenous Peoples regard FPIC as a right, based on their collective right to self-determination and collective decision making. According to Indigenous Peoples, FPIC embodies, and is fundamental to, their rights over their lands, territories and resources and the need to be consulted in a manner that is in keeping with the people's own indigenous culture. FPIC is the means for guaranteeing respect for the rights of all communities and groups made up of Indigenous Peoples.

Indigenous Peoples also view FPIC as part of a process of operationalizing the right to self-determination by guaranteeing respect for their decision-making processes and their associated right to accept or reject a project that will affect them. It builds upon customary practices of paying respect and asking permission for entering, or having an impact on, an Indigenous Peoples' territory. As a result, if an indigenous person or community does not consent to a concession being issued over their territory, or a project commencing in it, they regard that decision as binding on all parties.

FPIC is also regarded by Indigenous Peoples as a principle of negotiating in good faith on the basis of mutual respect and equality. Meaningful negotiations require consultations free from intimidation, coercion, bribery or undue influence, and an acceptance of the outcome of those negotiations. For Indigenous Peoples, FPIC entails an internal process of consensus building among their people. Consensus is not necessarily a majority vote or a decision made by the leaders in the community. Rather, it is a process whereby the different parts of a community can be included in decision making in accordance with their customary laws and practices or procedures that they have internally agreed. Decisions are frequently taken in community general assemblies, where everyone participates.¹⁶

Indigenous Peoples have their own perspectives on their rights (including their right to self-determination, FPIC, etc). These may or may not be supported by domestic laws and intergovernmental processes, but should be taken into account to ensure outcomes consistent with ICMM's position statement.

Intergovernmental and government perspectives on FPIC

With few exceptions, most countries retain the ownership of mineral rights in the interests of the population as a whole. It naturally follows that states have the right to make decisions on the development of resources according to applicable national laws, including those laws implementing host country obligations under international law.

ILO Convention 169 is legally binding on the 22 countries that have ratified the convention.¹⁷ In countries within Latin America that have ratified the convention, international treaties have force of law upon ratification, whereas this is not the case in other countries who are not signatory to ILO 169. The convention recognizes the cultural and spiritual value that Indigenous Peoples attach to their lands and that rights to these lands are fundamental to achieving the broader set of rights related to self-determination. The convention also recognizes traditional occupation and use of land as the basis for Indigenous Peoples' rights to lands and resources, rather than the official recognition or registration of ownership by the state.

Where states retain ownership of sub-surface resources, the convention requires governments to consult Indigenous Peoples before exploration or exploitation takes place and to ascertain whether and how their interests would be adversely affected. The convention requires Indigenous Peoples to participate in the benefits of such activities wherever possible, and receive fair compensation for any damages they may sustain as a result.


ILO Convention 169 stipulates that Indigenous Peoples should not be removed from their lands and provides safeguards against such displacement. Where relocation of Indigenous Peoples from their lands is unavoidable, the convention requires this to be done with their consent and participation, and to enable return to these lands as soon as possible. Where consent is not forthcoming, relocation shall take place only following appropriate procedures established by national laws and regulations. Under the convention, where it is not possible for Indigenous Peoples to return to their lands, they should be compensated and provided with land of equal quality and legal status.

15 Taken from C Doyle and J Cariño, Making free, prior and informed consent a reality: Indigenous Peoples and the extractive sector, research paper, 2013.

16 Ibid, page 18.

17 Argentina, Bolivia, Brazil, Central African Republic, Chile, Colombia, Costa Rica, Denmark, Dominica, Ecuador, Fiji, Guatemala, Honduras, Mexico, Nepal, Netherlands, Nicaragua, Norway, Paraguay, Peru, Spain, Venezuela.





The UNDRIP recognizes FPIC as an aspect of Indigenous Peoples' right to property, their cultural rights and their right to self-determination. Although UN declarations, unlike conventions, are not legally binding, the legal significance of the UN declaration has the potential to increase if states begin incorporating its principles into national laws and using them to inform their legal decisions.¹⁸

Legally mandated requirements for consultation and/or consent of Indigenous Peoples vary significantly across national jurisdictions. The Philippines has stipulated requirements for FPIC in the Indigenous Peoples Rights Act (1997), which has been further strengthened by the National Commission on Indigenous Peoples in 2012.¹⁹ In Papua New Guinea, the Development Forum process is designed to ensure meaningful involvement of customary landowners and provincial-level governments in development decision making. The main objectives are firstly, to establish a forum to bring together all stakeholders to negotiate and agree on all aspects of the project and secondly, to establish how the benefits are to be shared among stakeholders. In Australia, varying degrees of indigenous participation in decision making over the development of mineral resources apply in different states and territories. Finally, in Canada the Supreme Court has ruled on the requirements for consultation and accommodation with Aboriginal groups prior to any impact on their rights or lands.²⁰

In Africa, the concept of "indigenous" is more contested, but has become more aligned with "traditional" or "land-connected minority" populations. While the African Commission on Human and Peoples' Rights and the Indigenous Peoples of Africa Co-ordinating Committee have helped achieve recognition for Indigenous Peoples in Africa, no country has provided for FPIC.

ICMM members' approach to FPIC

ICMM's view is that successful mining and metals projects require the support of a range of interested and affected parties. This includes both the formal legal and regulatory approvals granted by governments and the broad support of a company's host communities. Indigenous Peoples often have cultural characteristics, governance structures, and ways of interacting and decision making that set them apart from the non-indigenous population. This requires companies to engage in ways that are culturally appropriate and to pay special attention to the capacities, rights and interests of Indigenous Peoples, within the context of broader community engagement.

ICMM's position in relation to FPIC, and its members' commitments to give effect to that principle, seeks to respect the individual and collective rights and interests of Indigenous Peoples, as well as those of states, to make decisions on the development of resources (recognizing that there may be limited recognition for indigenous rights in some countries). These commitments are set out in its *Indigenous Peoples and Mining Position Statement*, dated May 2013 (see Section 1.2)

The commitments include working to obtain the consent of Indigenous Peoples for new projects (and changes to existing projects) "that are located on lands traditionally owned by or under customary use of Indigenous Peoples and are likely to have significant adverse impacts on Indigenous Peoples". This would include situations where relocation of Indigenous Peoples and/or significant adverse impacts on critical cultural heritage is likely to occur. Consent processes should focus on reaching agreement on the basis for which a project (or changes to existing projects) should proceed.

In ICMM's view, FPIC comprises a process and an outcome. Through this process Indigenous Peoples are:

- able to freely make decisions without coercion, intimidation or manipulation
- given sufficient time to be involved in project decision making before key decisions are made and impacts occur
- fully informed about the project and its potential impacts and benefits.

18 143 countries voted in favour of the UNDRIP at the UN General Assembly in 2007.

19 Republic of the Philippines, Administrative Order No 03-12 or The revised guidelines on free and prior informed consent (FPIC) and related processes of 2012 (April 2012).

20 The most important of these is the 1997 *Delgamuukw* decision of the Supreme Court of Canada.

The outcome is that Indigenous Peoples can give or withhold their consent to a project, through a process that strives to be consistent with their traditional decision-making processes and host government policies, while respecting internationally recognized human rights laws and standards, and is based on good faith negotiation.

The commitments in the position statement relating to FPIC apply to new projects, and changes to existing projects, that are likely to have significant impacts on indigenous communities. The position statement recognizes that where consent is not forthcoming despite the best efforts of all parties, in balancing the rights and interests of Indigenous Peoples with the wider population, government might determine that a project should proceed and specify the conditions that should apply. In such circumstances, ICM members will determine whether they ought to remain involved with a project.

It is important to note that governments have a critical role to play in the process of engaging with Indigenous Peoples, particularly since it is governments who are a party to instruments such as the UNDRIP and ILO Convention 169, not companies. Their role can include determining which communities are considered to be indigenous, and shaping the processes to be followed for achieving FPIC, negotiating agreements and/or obtaining community input into decision-making processes relating to resource projects. However, Indigenous Peoples and their rights exist irrespective of recognition by the state, which is not always forthcoming. One factor that defines people as being indigenous is their self-identification as such.²¹

Negotiated agreements between companies and indigenous groups, as discussed in Chapter 4, provide a means through which a community's consent for a project, and the terms and conditions of projects negotiated through the process of FPIC, can be formalized and documented.

TOOL 11 suggests one process that companies may choose to follow in the event that FPIC is relevant and the process is permissible under national law. This tool also provides guidance for companies in the event that indigenous groups withhold their consent for activities on their land.

2.6 Some engagement challenges

Companies and their operational staff will almost certainly encounter challenges when engaging with Indigenous Peoples. Some of the most common include:

- dealing with negative legacies and perceptions
- managing community expectations about projects
- language and other communication challenges
- maintaining focus on engagement over time.

Good practice guidance on dealing with each of these common challenges can be found in **TOOL 5**.

“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

21 See ILO Convention 169, Article 1[2].



CHAPTER 3

MANAGING IMPACTS



Water monitoring program taking place with local residents near Yanacocha in Peru.

Tools for this chapter

TOOL 6

Impact avoidance and mitigation

TOOL 8

Baseline studies and impact assessments

As discussed in Chapter 1, mining projects can impact Indigenous Peoples in a variety of ways – both positive and negative. Companies should work to enhance benefits and avoid negative impacts on Indigenous Peoples wherever possible. Although sometimes the overall environmental, social or economic impact of a project cannot always be predicted or fully mitigated, 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.

This chapter deals with the practical aspects of managing impacts on Indigenous Peoples. Although impact management can entail sharing the benefits of mining, the topic of benefit sharing will be left until the next chapter on agreements. This chapter is intended to be read in conjunction with **TOOL 6**, which provides practical guidance and steps for avoiding and mitigating the impacts of mining projects on Indigenous Peoples.



3.1 Impact mitigation and enhancement

Leading companies have internal processes in place to assist operations in improving their management of a project's impact on the community, environment and human rights. The basic principles underpinning these frameworks also apply to indigenous communities, although how they are applied will be highly dependent on the context.

The key principles are as follows:

- 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, cultural relic registries and impact assessments (see **TOOL 8**) are all valuable tools for building this knowledge, as is ongoing engagement.
- It is important to seek the input, support and participation of, Indigenous Peoples in identifying issues, and framing and implementing responses (see **TOOL 8**). Taking account of Indigenous Peoples' perspectives on development is essential.
- Good planning and design can enable many potential problems to be avoided from the outset.
- 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.
- Ongoing monitoring and regular evaluation is required to track progress, identify emerging issues and assess the effectiveness of strategies to enhance benefits and minimize the impact or consequences of a project or project activities. Monitoring and evaluation processes should be relevant to Indigenous Peoples and their concerns and aspirations, and participatory wherever possible.

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

Where there is a risk that a project may have an adverse impact on the community, much of this can be addressed in the project design phase. This is true not only for the project's environmental impacts (eg land disturbance, noise, dust, water use, water quality, biodiversity) but also the project's socioeconomic, cultural, human rights and political impact. For example, the risk of uncontrolled in-migration into indigenous lands might be reduced by minimizing road construction.²² Other examples of actions that can be taken to address the negative impacts of projects in the design stage are provided in **TOOL 6**.

There are a number of guiding principles for consideration at the design phase. One which has been adopted as policy by the IFC and other international development institutions, is that companies should make every effort to avoid resettlement of indigenous communities (see Box 2).

Another guiding principle, which is embodied in ICMM's 2003 Position Statement on Mining and Protected Areas, is that operations should not be established in World Heritage Sites, which can include areas of cultural significance to Indigenous Peoples. The position statement commits ICMM members not to mine or explore in World Heritage Sites.²³

There is also the question of those groups who have made it known that they wish to live in voluntary isolation, prior to, and independent of, the announcement of mining activity in their territories. In such situations, it will be very difficult for mining or other forms of development to proceed with either the support or consent (as applicable) of affected indigenous communities.

²² See IFC, *Projects and people: a handbook for addressing project-induced in-migration*, Washington, DC, IFC, 2009.

²³ www.icmm.com/document/43

Box 2**Potential negative impacts associated with resettlement of Indigenous Peoples**

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.

ILO Convention 169 states that Indigenous Peoples should only be relocated from their lands in exceptional circumstances and only with their free and informed consent. However, Article 16 does recognize that free and informed consent may not be possible in all circumstances and that: "Where their consent cannot be obtained, such relocation shall take place only following appropriate procedures established by national laws and regulations, including public inquiries where appropriate, which provide the opportunity for effective representation of the peoples concerned." To date, 22 countries have ratified the convention, 14 of these in Latin America.

Article 10 of the United Nations Declaration on the Rights of Indigenous Peoples (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."

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.

Managing workforce and contractor behaviour

A key risk for mining companies working in or near indigenous communities is that its 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 cross-cultural training programs for all employees and contractors (see below)
- making clear to employees and contractors what is expected of them (eg 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.



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 (eg advice on body language, initiating and ending conversations, culturally disrespectful actions, etc)
- involve local indigenous men and women in the delivery and teaching of the program (eg in conducting welcoming ceremonies and sharing their experiences)
- are differentiated according to the target audience (eg more intensive tailored programs for company personnel who supervise indigenous employees)
- differentiate between cultural awareness and cultural competence²⁴
- 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.

3.2 Cultural preservation

Cultural heritage management and preservation (or preferably going beyond preservation by enhancing culture and increasing cultural importance) involves protecting and enhancing the tangible and intangible aspects of cultural heritage. Tangible aspects include such things as artefacts, buildings, and sacred and other sites of significance. Intangible cultural heritage includes things such as traditional practices around governance, ceremonies, spiritual practices and traditional knowledge.²⁵

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, ethnographic sites²⁶ 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 particular significance to Aboriginals in accordance with Aboriginal tradition”.²⁷ 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 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”.

Guides such as *Why cultural heritage matters*, produced by Rio Tinto, provide detailed information on how companies can manage the impacts of mining – both positive and negative – on tangible and intangible cultural heritage.

²⁴ Cultural competence requires employees and contractors to not only be aware of cultural differences, but to integrate this awareness into their work practice to improve the outcomes of their workplace behaviour, interactions, relationships and service delivery.

²⁵ See Unesco, Convention for the Safeguarding of the Intangible Cultural Heritage, Unesco, Paris, 2003. www.unesco.org/culture/ich/index.php?pg=00002


²⁶ A working definition of an ethnographic (or sacred) site or area is a site or area of ritual, mythical or ceremonial significance to Indigenous Peoples based on their cultural customs and laws.

²⁷ Aboriginal and Torres Strait Islander Heritage Protection Act 1984, s 4.



Aboriginal artist near Newmont's operations in Australia.

3.3 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. For these reasons, when projects adversely impact the environment, they may also be impacting Indigenous Peoples' rights and interests.

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, and incorporating traditional knowledge into environmental impact assessments
- including Indigenous Peoples on environmental monitoring committees and involving them in the collection and analysis of monitoring data (eg 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.

RELEVANT CASE STUDIES

Martu ranger program in Western Australia (Newmont), see page 104.

Respecting the cultural heritage of Indigenous Peoples (Barrick), see page 105.

3.4 Preparing for mine closure

It is good practice 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 incorporate indigenous perspectives wherever possible to help address the socioeconomic, as well as environmental, aspects of closure. In terms of socioeconomic impact, closure can bring further significant changes to communities, particularly where the mine has been a major source of income, employment and/or services (eg medical services, transport, support for local schools). From an environmental perspective, if properly managed and resourced, high standards of environmental rehabilitation are possible during the mine closure stage, including restoration and/or enhancement of the natural resources that Indigenous Peoples may use to sustain their livelihoods.

As discussed in Chapter 4, there are a number of actions that responsible companies can take to mitigate these impacts and build or enhance local environmental, social, cultural and economic resilience. Companies, in partnership with local and national government, should be supportive of diversifying the local economy throughout the project life cycle. Companies should engage openly with indigenous communities where a diverse post-mine closure local economy is not possible because of local social, environmental and economic constraints. To increase the chances of sustainable and diverse local economic development, companies should take the following actions:

- ensuring that people know from the beginning, and are kept informed, about the eventuality of the mine closing 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 (eg 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 (eg 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 post-closure in other locations
- helping to build community governance capacity.

3.5

Addressing discrimination and historical disadvantage

There are limits to which the underlying causes of the marginalization of Indigenous Peoples can 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 which perpetuate socioeconomic 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 and, if not addressed, can exacerbate the negative impacts of mining on vulnerable groups.

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:

- providing training for employees on diversity and cultural awareness
- putting in place zero tolerance policies concerning racism and addressing any discriminatory actions
- supporting research and training programs at the local level focused on delivering better health and education outcomes (including intercultural education) for Indigenous Peoples, as well as lobbying all levels of government to fulfil their own responsibilities in these areas
- partnering with government to target the development of infrastructure and service delivery initiatives to assist geographically marginalized indigenous communities
- 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 local and national community organizations to strengthen their resource base and build or enhance capacity so that they can advocate and represent themselves more effectively
- 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 (eg by sponsoring seminars and study tours)
- partnering with national representative bodies to increase investments, procurement and employment opportunities for Indigenous Peoples.

RELEVANT CASE STUDY

Preparing for mine closure In Indonesia.
(Freeport-McMoRan), see page 106.

“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





CHAPTER 4

AGREEMENTS



Traditional meeting of aboriginal elders in Australia.

Tools for this chapter

TOOL 7

Strengthening the community asset base

TOOL 9

Making agreements

TOOL 10

Good faith negotiation

TOOL 11

Working to obtain consent: a suggested process across corporate engagement

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. Agreements also provide a governance mechanism to define roles and responsibilities which can support engagement and dialogue into the future.

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. It can allow them to become partners to the project rather than merely stakeholders, and help them to maximize benefits and minimize impacts of the project.



4.1 The business case for agreements

In the last two decades, negotiated agreements have become commonplace in jurisdictions such as Canada and Australia, where formal recognition of customary use and ownership has led to the creation of strong statutory frameworks. In Australia, the law promotes agreement making by giving a “right to negotiate” to traditional users and 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. Negotiated agreements are also becoming increasingly common in the developing world.

The focus of this chapter is on the use of negotiated agreements to define and regulate relations between mining companies and indigenous communities.²⁸ The topics covered are:

- the factors that make for a successful agreement
- managing impacts and sharing the benefits of mining through agreements
- components of agreements
- implementation of agreements.

This chapter is intended to be read in conjunction with **TOOL 9**.

RELEVANT CASE STUDY

Fostering local culture and language – Shoshone Youth Language Apprenticeship Program (Barrick), see page 111.

4.2 The factors that make for a successful agreement

In the broadest terms, successful agreements are those which 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 which are discussed below.

A prerequisite for a successful agreement is to ensure that both parties (the company and the indigenous parties) view the process that led to the agreement as fair and equitable. Companies must be aware that indigenous communities may have different views of importance, and measures of equity and success. For example, companies may judge an agreement a success based on the outcomes it achieves. Whereas, Indigenous Peoples may place greater importance on the process and relationships built during it. 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. One hallmark of a good agreement is that it aims to provide intergenerational benefits for indigenous groups that extend long after a mine has closed.

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 the willingness of all parties to change and improve the agreement as circumstances require. Accordingly, these kinds of agreements usually contain commitments from parties to work together to ensure mutual benefit, and change and improve the agreement as needed.

The success of an agreement also depends on a company's ability to properly implement and monitor the agreement. To assist this process, companies may develop a committee to oversee the agreement's implementation, and undertake regular meetings and reporting (see Section 4.5 for further guidance).

²⁸ G Gibson and C O'Faircheallaigh, *The IBA Community Toolkit: negotiation and implementation of impact and benefit agreements*, Toronto, Walter & Duncan Gordon Foundation, 2010, provides a detailed guide to negotiating, developing and implementing agreements from the perspective of indigenous communities (www.ibacommunitytoolkit.ca).

4.3 Managing impacts and sharing the benefits of mining through agreements

For indigenous groups, there are a number of advantages of entering into a negotiated agreement with mining companies over the use of their land. For example it provides a structured, usually legally binding, mechanism through which their rights and interests are documented and respected, and they can obtain a satisfactory share of the benefits that mining can bring. 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 and impacts to high standards. This increasingly includes participatory monitoring programs, which actively involve people from indigenous groups and draw on their traditional knowledge.

In addition to impact management, negotiated agreements often provide indigenous groups with a broad range of financial and non-financial benefits. While many indigenous groups welcome such benefits, companies cannot automatically assume that the kinds of benefits commonly offered by mining projects, whether these are employment and business opportunities or new roads, will automatically be welcomed or needed by all Indigenous Peoples. Consultation with Indigenous Peoples about what they want is therefore essential, and some indigenous communities may choose to maintain their traditional lifestyle, as opposed to new jobs in the mining project, for example.

The main benefits of negotiated agreements are detailed in the sections below.

Strengthening the community asset base

A common objective of many negotiated agreements is to contribute to the community's asset base (the stock of physical, economic, human, social and natural capital)²⁹ and general well-being through community and social investments. 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.

Negotiated agreements provide a mechanism by which mining companies can play a role in strengthening this asset base. Common areas of focus include:

- employment and human capital
- creating new business opportunities
- improving infrastructure and services
- building capacity for community development.

Guidance on specific actions that can be taken to strengthen a community's asset base in these areas is provided in **TOOL 7**.

Preservation and enhancement of cultural heritage

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 only through cultural heritage management plans. Actions that companies can take in this regard include:

- funding the recording of languages, stories and songs (eg Barrick's Shoshone Youth Language Apprenticeship Program in Nevada, USA, which aims to revitalize the Shoshoni language in Western Shoshone communities)
- helping to establish cultural centres or cultural houses as places for communities to meet for cultural activities and receive visitors; these can also serve as "keeping places" for cultural artefacts
- supporting cultural workshops to maintain or stimulate 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 (eg smoking ceremonies and "welcome to country") into workforce inductions and company events.

RELEVANT CASE STUDY

Raglan mine: Company–community committee to govern agreement (Glencore), see page 119.

²⁹ See the UK Department for International Development's sustainable livelihoods approach for further details on the five capitals (physical, economic, human, social and natural), and strengthening an individual's livelihood opportunities and asset base.



La Granja's Community Relations staff talking to local weavers at an agricultural and livestock fair in the community of Paraguay.

4.4 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 examples 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:

- company support (not necessarily financial) in the development and implementation of community projects and initiatives
- financial payments and disbursement arrangements
- employment and contracting (supplying goods and/or services) opportunities
- environmental, social, health and cultural (heritage/language) impact management
- governance arrangements
- any provisions that might be agreed in relation to the local community's use of certain land.

Agreements should also include provisions outlining the role and responsibilities of both the company and the indigenous community going forward, any mechanisms for implementing and monitoring the agreement, required project budgets and mechanisms for resolving community concerns or grievances relating to the agreement's implementation. Consideration should also be given to "locking in" commitments and objectives of agreements with Indigenous Peoples for the life of a mine so that all parties are protected in the event of a change in ownership. For Indigenous Peoples, this provides greater certainty that what they have agreed to with one company will be honoured by a future owner. For governments who may be party to the agreement, locking in an agreement can potentially reduce the chance of misunderstandings and conflict in the event that the future mine owner does not continue with prior commitments. For companies, locking in an agreement can protect against future reputation damage in the event of conflict between Indigenous Peoples and the new mine owner.

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.

Good practice guidance on negotiating and designing the components of agreements is provided in **TOOL 9**.

4.5 Implementation of agreements

A focus on implementation is the key to a successful agreement. 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 that they have been issued if they fail to follow through on commitments made in agreements.

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
- implementation is collaborative, involving Indigenous Peoples and companies working towards stated goals, for example through a liaison committee (see **TOOL 9**)
- an up-to-date register is maintained indicating what action has been taken, is in train or is proposed to address specific agreement obligations
- action plans are aligned with the agreement
- there is ongoing internal and independent monitoring of compliance
- capacity building of Indigenous Peoples 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, undertaking internal and independent external performance monitoring 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 realized. 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.





CHAPTER 5

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.

Tools for this chapter

TOOL 12

Designing and implementing
grievance mechanisms

TOOL 13

Steps towards consensus

As part of good engagement practice, companies should seek agreement with indigenous groups on effective, culturally appropriate processes and structures for pre-empting, responding to and resolving community concerns and grievances.

This chapter addresses:

- why grievance mechanisms are important
- sources of potential disagreement or conflict.

TOOL 12 and **TOOL 13** provide good practice guidance on how to design and implement a leading practice grievance mechanism, as well as techniques for resolving disagreements and achieving sustainable consensus in the context of mineral developments in indigenous territories.



5.1 Why grievance mechanisms are important

Even with the best designed impact assessments, agreements, engagement programs and risk mitigation strategies, conflicts and disagreements can still occur, in some cases with the potential for rapid escalation. 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. The latter are sometimes referred to as grievances. 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. However, 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.

Companies can take steps to reduce the incidence and severity of conflict at their operations. Open communication with Indigenous Peoples and a clear approach to grievance management is critical to building and maintaining trust and collaboration. Companies can also reduce the chance of serious conflict by taking steps to comprehensively understand the national and local context of their projects, as well as by designing them to avoid significant environmental and social impacts.³⁰

Operational-level grievance mechanisms are one of the most important ways through which companies can prevent or mitigate conflict. The Office of the Compliance Advisor/Ombudsman (CAO) for the IFC and Multilateral Investment Guarantee Agency 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.³¹

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 former 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 part of the corporate responsibility to respect [human rights]".³² In a report to the Human Rights Council (April 2009) Professor Ruggie reiterated the importance of providing legitimate and trusted avenues – judicial and non-judicial – for communities to have their concerns and grievances recognized and remedied. Further guidance on how both states and companies can establish effective grievance mechanisms is provided in the 2011 UN Guiding Principles on Business and Human Rights.

In recognition of this growing focus on grievance mechanisms, in October 2009 ICMM released a guide on Handling and resolving local level concerns and grievances, as part of its Human Rights in the Mining and Metals Sector series.³³ The ICMM Indigenous Peoples and Mining Position Statement also contains an explicit commitment to establishing appropriate mechanisms for dealing with Indigenous Peoples' complaints and grievances, as well as those from the wider community.

30 ICMM, Research on company-community conflict, London, ICMM, 2015. www.icmm.com/publications/research-on-company-community-conflict

31 www.cao-ombudsman.org/howwework/advisor/documents/implemgrieveng.pdf

32 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, 2008, UN document A/HRC/8/5.

33 <https://www.icmm.com/document/691> and www.icmm.com/document/8331

The ICMM guide recognizes that complaint mechanisms (see Box 3) can provide a well-respected channel of communication between mining and metals companies with local people over issues of concern. 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. High-level consultative committees, irrespective of whether these are attached to a functioning grievance mechanism, can be important for defusing issues before they become complaints.

It is good practice for companies to involve local communities and respected third parties in the design and implementation of the grievance mechanism. In instances where community distrust reaches an elevated level, companies should consider establishing a grievance process that is largely run by a respected, independent body.³⁴

Other key sources dealing with the issue of grievance handling include the IFC's Good Practice Note on Addressing grievances from project-affected communities³⁵ and the guidance tool on Rights-compatible grievance mechanisms, produced by the Corporate Social Responsibility Initiative of the Harvard Kennedy School in January 2008.³⁶

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. As a result, many companies have established leading practice grievance mechanisms.

TOOL 12 draws on the principles and techniques outlined in these sources to provide guidance to companies on how to design and implement a good practice grievance mechanism.

Box 3 A note on terminology

In line with the approach taken in the 2009 ICMM guidance note *Handling and resolving local level concerns and 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.

³⁴ ICMM, *Human rights in the mining and metals industry: handling and resolving local level concerns and grievances*, London, ICMM, 2009.

³⁵ www.ifc.org/wps/wcm/connect/cbe7b18048855348ae6cfe6a6515bb18/IFC%2BGrievance%2BMechanisms.pdf?MOD=AJPERES&CACHEID=cbe7b18048855348ae6cfe6a6515bb18

³⁶ www.hks.harvard.edu/m-rcbg/CSRI/publications/Workingpaper_41_Rights-Compatible%20Grievance%20Mechanisms_May2008FNL.pdf



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

5.2

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 or, where required, their FPIC
- inadequate engagement or decision-making processes
- inadequate or inequitable compensation for land
- inequitable distribution of benefits
- broken promises and unmet expectations of benefits (including employment and procurement opportunities)
- failing to generate opportunities for employment, training, supply or community development
- failure to follow through on commitments in a timely fashion (eg HR not employing locals as promised, finance/procurement divisions taking too long in paying local suppliers for goods and services provided, etc)
- environmental degradation
- disruption to amenity and lifestyle
- loss of livelihood
- inappropriate mine employee or contractor behaviour
- 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 of the indigenous community, or for Indigenous Peoples' culture, history and spirituality, is likely to trigger a strong reaction. Similarly, issues around access to and control of land 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.

“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





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

PART TWO

TOOLKIT



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TOOL 1

Applying principles of good engagement

As discussed in Chapter 2, there are a number of key principles of good engagement that companies should seek to apply when engaging with Indigenous Peoples. This tool provides practical instructions on how operational staff can put these principles into practice.

Practical steps for engaging with Indigenous Peoples

To ensure good practice engagement with indigenous communities, companies must understand and respect local etiquette for engagement. Company staff should consider the following when engaging with Indigenous Peoples residing in the area in which they operate.

STEP 1

Listen to indigenous communities

An attitude of respectful listening and willingness to learn from Indigenous Peoples goes a long way to building confidence between the different parties. It also demonstrates a genuine commitment to working with indigenous communities as partners, rather than as beneficiaries. Company staff should ensure they are open to listening to indigenous communities. This may involve:

- being willing to take extra time in meetings, listening to stories and having informal discussions and interactions outside of official meetings
- Listening respectfully to all concerns instead of giving quick – and what may be perceived as patronizing – answers, as these concerns may be real issues to the indigenous community
- extensive talking around an issue in order to gauge the right moment before getting to the point of business
- refraining from going straight to business talk without following cultural protocols and “affirming the relationship”.

STEP 2

Allow adequate time for discussions

Companies are often under time constraints to achieve objectives according to project milestones. However, indigenous groups will need time to consider the consequences of project propositions, particularly if they have not previously had any experience of mining developments. When engaging with indigenous communities, companies should:

- notify indigenous communities about potential company time constraints, but try not to rush any process with them as this could be counterproductive
- negotiate an agreement with community representatives regarding key dates and deadlines, to avoid an open-ended process, but recognizing the need for some flexibility to be built into the engagement process
- 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.
- remember that many Indigenous Peoples view time as cyclical, in contrast to the Western view of time as progressing in a linear way without stopping (ie past-present-future).³⁷

³⁷ Viewing time in a cyclical manner 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.

STEP 3

Understand and respect Indigenous Peoples and their customs

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 feel that they are not well understood or respected by a company. To demonstrate respect, companies should consider:

- learning a “courtesy level” of local language
- accepting invitations to join in local celebrations, activities and meals with members of the community
- reciprocating hospitality to indigenous communities
- ensuring that the appropriate people are involved at the appropriate times, for example making sure the general manager is present at critical meetings with community leaders.

STEP 4

Ensure openness and clear and frequent communication

Company information should be presented in an honest and open manner and in a format that is readily accessible to indigenous communities. In the first instance, companies should consult indigenous leaders or community representatives about the preferred avenue for receiving information. Information should be accessible, digestible and relevant to communities. Companies may:

- provide information orally and visually (eg through conversation, pictures, slides, animation, DVDs and models) in communities where literacy and technology are limited
- give Indigenous Peoples the opportunity to visit other mining operations (ensure visits are organized through the indigenous communities associated with the other mining operation rather than the other mining operation itself to maintain independence and credibility of the visit)
- place emphasis on information relevant to the community (eg potentially negative environmental, socioeconomic and health impacts; how these will be managed; and potential community benefits) rather than sharing technical information about the operations of a mine throughout its life cycle
- carefully listen to community questions and feedback to help community relations officers to plan follow-up information sessions
- provide information materials (eg booklets, leaflets, posters and DVDs) that can be left with the community to read or view in their own time.

STEP 5

Use local language

Companies should communicate in the local language, particularly where the majority of the community are not proficient in the national language. Working in the local language shows respect for the affected community, as does the attempt of company staff to develop a functional level of language proficiency. With this in mind, companies should consider:

- using plain language to communicate technical concepts associated with mining activity
- re-emphasizing important concepts to reduce the risk of misinterpretations and other translation and communication problems.



TOOL 2

Building engagement capacity in companies

To foster good relations with indigenous communities, companies should ensure they have the right team in place at the corporate and operational levels, underpinned by strong management systems. This tool provides guidance for companies when they are choosing staff teams that are responsible for engaging with indigenous communities.

Rather than providing discrete steps, this tool provides a number of key issues companies should consider when building a team.

Setting the scene through commitment from top-level management

Management interface with Indigenous Peoples should go beyond good public relations work, which is more about image, reputation and brand risk. Instead, companies should ensure that senior operation management staff:

- understand the rights, interests and perspectives of Indigenous Peoples
- convey the business case for engaging constructively with Indigenous Peoples to all staff
- are able to commit and lead a company team to respect, understand and work with indigenous communities.

Further, the responsible company team should also help the organization adapt and change its approach as necessary.

Qualified and experienced community staff

In terms of engaging with Indigenous Peoples, it is essential that companies appoint staff who are experienced and qualified in engaging with indigenous communities and the complexities this may bring. Companies should ensure that all staff hired to engage with indigenous communities either have the following qualities, or are provided with the appropriate training where required:

- awareness and understanding of how to interact with Indigenous Peoples
- experience or familiarization with the context in which they will need to work
- skills to support specific tasks associated with the employment of Indigenous Peoples, business development support and community development.



Martu Rangers in the Australian desert. The rangers are the land management group of native aboriginals and were supported by Newmont (previous owners of the Jundee mine).

Indigenous advisers

Indigenous advisers can play a vital role in facilitating engagement, acting as a liaison point with local Indigenous Peoples. Companies should seek to include indigenous advisers in their operations wherever possible.

In the first instance, companies should look to hire adequately skilled people from the indigenous community. However, if Indigenous Peoples with the requisite skills are not available for these types of positions, identifying and training people for these roles should be a company priority. In some cases, it may be necessary to engage the services of external representatives of the indigenous community (eg a civil society group) until such time as local people are fully prepared for a community relations role.

Given the pressures of the role and the difficulties associated with working for the company while living in the community, companies should provide mentoring and supportive supervision of indigenous advisers. Companies should be fully transparent about the adviser's role and avoid, wherever possible, putting the adviser in a situation that compromises their allegiance to the community.

In terms of timing, it is important to note that employing local people in community engagement and relations roles in the initial stages of contact may not always be a good idea. Instead, companies may want to first establish a relationship with the community and then facilitate a community hiring committee to help choose suitable staff. This process can help ensure that there is some community backing and confidence in appointed indigenous advisers.



Community consultation in Madhya Pradesh, India.

Gender sensitivity

Gender sensitivity during engagement is important, particularly in traditional indigenous communities where men may be more comfortable engaging with male representatives of a company, and women with female representatives. When engaging with indigenous communities, company staff should seek to:

- recognize any gender imbalances that may exist within the indigenous community
- ensure that excluded groups' (eg women's) voices are heard in engagement and decision-making processes
- endeavour to find culturally appropriate and accepted ways to meaningfully involve excluded gender groups (eg women) if customary approaches to engagement or decision making prevent inclusion.

Company staff may undertake a gender impact analysis to better understand the context and any possible gender imbalances in the community (see **TOOL 8**).

RELEVANT CASE STUDY

Cultivating mutual understanding and learning (Rio Tinto), see page 96.

TOOL 3

Dealing with challenges in the identification and recognition of indigenous land rights

Some steps that operational staff of companies or others (eg consultants) can take to identify whether indigenous groups have land rights in a particular area, and to deal with various challenges, are as follows:

STEP 1

Undertake preliminary research

The first step is to undertake some preliminary research that might involve the following activities:

- consulting with representatives of government agencies; local, national and international organizations and NGOs; relevant Indigenous Peoples' organizations; and local, national or international researchers that are working, or have worked, in the area
- undertaking desktop research to ascertain if any historical, anthropological or archaeological studies of the area have been undertaken
- seeking the advice of any other companies or organizations that already have a presence in or near the area.

STEP 2

Understand the legal context

The next step is to understand the legal context, including whether or not Indigenous Peoples and their traditional and/or customary rights to land and resources are recognized in domestic law. The many complex legal issues pertaining to Indigenous Peoples and mining have to be understood and addressed on a country-by-country basis, and companies will need to seek expert legal and anthropological advice for this purpose.

STEP 3

Ascertain whether there are indigenous land rights that are not recognized in law

Where there is a legal regime that recognizes traditional ownership or customary use rights, it may be possible to ascertain relatively quickly which indigenous groups, if any, have rights to land on which exploration or mining is proposed, as the claims of these groups may have already been recorded and recognized.

In many instances, there may be indigenous groups who have customary rights to land that are not recognized in law. To ascertain whether such rights exist in the project area, companies should consider undertaking a due diligence process that could involve:

- reviewing recent court decisions in order to fully understand the status of land ownership and claims – for this purpose, companies are likely to find they will need to obtain local expert advice
- undertaking some initial engagement with local community representatives – the focus of such engagement might be guided by the following kinds of questions:
 - Do Indigenous Peoples currently inhabit the land?
 - Is the land used by Indigenous Peoples to support traditional livelihoods (eg shifting cultivation, nomadic grazing, harvesting, fishing, hunting, utilization of forest resources)?

- Is the land accessed (or avoided) for cultural, spiritual or religious purposes, or has it been in the past (eg religious ceremonies, festivals)?
- Is there evidence that Indigenous Peoples have inhabited or used the land in the past (eg presence of tangible cultural artefacts such as rock art)?
- Are there any Indigenous Peoples who claim to have rights to land in the area?

A social mapping study (see **TOOL 8**) will also clarify the situation in relation to traditional ownership and use of the relevant land.

STEP 4

Incorporate information about land rights into a knowledge base

It is important that any information about traditional land ownership and customary use rights acquired during the steps above is captured in a knowledge base that is accessible to both operational staff who engage with Indigenous Peoples and decision makers. The knowledge base should be updated as new information comes to light.

The knowledge base will be an important tool for understanding the complex array of customary rights that often exist in indigenous communities, including understanding and dealing with competing, overlapping or adjoining claims to land and other challenges (see below).

Strategies for dealing with specific challenges

Lack of government and/or legal recognition of indigenous land rights

Mining companies often operate in countries or jurisdictions where:

- indigenous rights to land are not recognized in law
- the existence of Indigenous Peoples may not be officially acknowledged by the state
- associations with Indigenous People may be actively discouraged.

Regardless of where they operate, companies need to comply with relevant national and local laws, but in a way that demonstrates respect for internationally recognized Indigenous Peoples' rights. It is good practice for companies to seek to apply the steps outlined in this guide, even if there is a lack of an effective national legal framework or formal recognition of indigenous status, providing this does not breach national law. In seeking to apply the steps outlined in this guide, there is the potential to create tensions or conflict between the company and host country governments, and/or Indigenous Peoples and host country governments. In such situations, companies will need to assess the issues and risks carefully on a case-by-case basis.

Where the legal framework may be ineffective or formal recognition of Indigenous Peoples does not exist, there may still be ways in which most of the goals of this guide can be achieved in practice and done in a way that avoids the risk of creating tensions or conflict, or being in breach with local laws. For example, this might include framing the engagement and any agreements in the context of a broader community engagement, or by achieving agreement to a project through consensus-building consultation and proactive engagement with impacted Indigenous Peoples.

This might include the provision of benefits to impacted Indigenous Peoples through community programs, but not necessarily framing or documenting these in a way that is perceived by government as granting rights that the host government does not recognize and may actively oppose.

Competing, overlapping and adjoining claim to the same land

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. Such situations are likely to arise when 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.

While each context and situation will require a unique response, the following strategies are likely to be helpful:

- Do not immediately favour whichever group is more co-operative and supportive of mining, or individuals who speak up first (and loudest) – although tempting, this can be fraught with difficulties. For one, this 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. It is also likely to cause or exacerbate tension between the relevant groups themselves and intensify opposition to mining from those who have been excluded. Instead, adopt an inclusive approach and assume that claims from different groups are valid until shown otherwise.



- Where there are conflicts and disagreements between groups, companies should look for opportunities to assist groups to resolve their differences – for example, help to identify a mediator, or perhaps offer to fund one, rather than leaving it to “the law” to run its course. However, care should be taken to avoid becoming embroiled in conflicts, and the company should maintain the image of being a neutral arbiter.
- In cases 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, it is good practice for companies to be consistent and transparent in their dealings with all impacted groups.

Disconnection from land

This situation arises when some 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”. In these situations, companies should keep the following principles in mind:

- If these groups live on land that is, or is likely to be, significantly 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. However, because such groups have migrated from another area and are not necessarily the traditional owners of the land, the question of whether or not there is a need to work towards obtaining consent, where appropriate, is not straightforward. In such cases, companies should carefully consider a number of factors, including the length of time the Indigenous Peoples have resided in the area. Regardless of whether or not they are the traditional owners, residence in an area for one or two generations is evidence of a significant connection to the land and companies should act with this in mind.

- The reverse situation can apply when 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.

TOOL 4

Ensuring engagement is consistent with Indigenous Peoples' decision-making processes

This tool outlines some of the differences between company and traditional decision-making structures and processes, and provides practical steps mining company staff can take to ensure the company's engagement activities are consistent with Indigenous Peoples' decision-making processes.

Differences between company and traditional decision-making structures and processes

In many places around the world, Indigenous Peoples have retained at least some aspects of their traditional decision-making structures and processes.

A number of international standards and best practices recommend that companies seek to recognize, understand and work through traditional decision-making structures as early as possible when engaging with indigenous communities (see Box 4).

Box 4

Traditional decision-making structures

Decisions in indigenous communities are often reached through a consensus-based approach of participatory group consultation, negotiation and mediation. Often elders and other traditional community leaders play a key role in these decision-making processes. Further, traditional decision-making processes often take time so indigenous groups can fully consider the consequences of issues and can revisit particular issues multiple times if required. Often, it may be considered culturally inappropriate or disrespectful to talk about business without following cultural protocols and "affirming the relationship". On the other hand, mining companies often operate under strict time constraints to achieve objectives under project milestones, and decisions are often reached based on time and cost efficiency.

To ensure that Indigenous Peoples have meaningful involvement in project decision-making processes and the achieved outcomes are representative of Indigenous Peoples, it is essential that companies understand these differences in decision-making structures and seek to work through traditional decision-making processes where possible.



STEP 1

Understand traditional decision-making structures and identify decision makers

In some cases, traditional decision-making structures and processes may already be documented (eg where there is a government agency that deals regularly with a particular community). However, in other instances, it may be necessary for company staff to investigate whether there are particular traditional decision-making structures and processes in place, and to identify key indigenous decision makers in the project area (recognizing they may not represent or speak for the entire community). This can help companies better understand the complications that could arise from the diverse and sometimes conflicting interests between and within indigenous communities. Things company staff can do to learn more about who makes decisions on behalf of other members of the community include:

- consulting broadly with a range of indigenous community members
- talking to other companies who operate, or who have operated, in the area
- consulting with NGOs, academics and others who are familiar with the community.

Some useful questions that may assist mining company staff to better understand indigenous communities' traditional decision-making structures and processes include:

- Who makes important decisions on behalf of the community? Is there a recognized decision-making body or individual?
- Does the body or individual employ any formal processes to reach a decision? If yes, what are these?
- How are differing opinions and disputes resolved?

Company staff may also engage and seek professional advice from experts like anthropologists to assist them to better understand the traditional decision-making structures and processes in the area in which they plan to operate.

STEP 2

Ensure inclusivity

Company staff should work with and through traditional structures wherever practical, subject to the proviso that these structures respect other internationally accepted human rights, such as in relation to gender equality. Traditional decision-making processes may not include all voices in a community. For example, women and youth are sometimes excluded from decision-making bodies though they may be part of deliberations. Where traditional decision-making structures exclude marginalized groups (which in some cases can include women, youth, elderly and the mentally and physically disabled) it may be necessary to obtain input from these groups by less direct means. For example, where possible, company staff may conduct:

- community needs surveys and baseline studies
- hold informal discussions with small groups in separate meetings
- seek the help of third parties such as NGOs who are familiar with the area or community, who can seek the input of marginalized groups.

It is particularly important that company engagement teams include women. It is also important to respect the fact indigenous women themselves, not company representatives or indigenous men, should decide how and when they participate in decision-making processes.

Companies should acknowledge and support women's efforts in this regard. Engagement staff should endeavour to explain to traditional decision makers that, while they respect existing structures and will work through them wherever possible, it is important that the company understands how its activities might affect all groups within the community.

STEP 3

Document agreed-upon processes and protocols

Company staff should document any agreed-upon consultation processes and protocols for each potentially impacted indigenous community, for example through an indigenous engagement plan. The engagement plan should be reviewed and updated regularly and linked to the operation's broader management and planning processes, and the community's own traditional structures and future plans.

If the company is unable to reach a documented agreement on process issues, it should document the steps taken to engage with indigenous groups and the rationale taken in each step.

STEP 4**Build the capacity of traditional decision-making bodies**

While engaging with indigenous communities, traditional decision-making structures should be used as much as possible. Sometimes there may be limitations with these traditional structures and decision-making processes in terms of dealing with technical issues associated with mining developments. Further, sometimes indigenous communities and traditional leaders may not have the capacity and technical knowledge to fully understand and deal with the foreign and complex issues associated with mineral project developments.

In this instance, company staff should provide culturally appropriate training and educational activities to enhance traditional community leaders' understanding of technical information and issues associated with mining developments on Indigenous Peoples' land. Companies may also need to train staff to ensure they are able to use plain and non-technical language when introducing and explaining complex information and ideas. Table 2 provides a list of some common aspects to consider when working to ensure company engagement is consistent with indigenous communities' decision-making structures.

Table 2: Ensuring engagement is consistent with traditional decision-making structures

Things to consider	Yes – ✓ No – ✗
Has your company consulted government, community leaders or experts to better understand the nature of traditional decision-making structures and processes in the area in which your company plans to operate?	<input type="checkbox"/>
Have you taken steps to understand and respect local etiquette for engagement?	<input type="checkbox"/>
Has your company taken the appropriate steps to engage and obtain input from minority groups (eg women, young people, etc) in a way that is respectful to traditional decision-making structures?	<input type="checkbox"/>
Have you documented all agreed-upon consultation processes and protocols for each impacted indigenous community?	<input type="checkbox"/>
Have you documented all encountered issues, steps taken and rationale for steps when engaging with indigenous groups?	<input type="checkbox"/>
Where required, have you undertaken culturally appropriate capacity-building training or educational activities to enhance the knowledge of traditional community leaders or decision makers?	<input type="checkbox"/>
Are your staff members capable of explaining themselves clearly? Have they been trained for doing that in a simple and culturally appropriate way, avoiding the use of technical or legal jargon?	<input type="checkbox"/>



TOOL 5

Dealing with the challenges of engagement

Engagement with Indigenous Peoples can present a diverse range of challenges for the operational staff of mining companies. Some of the most common challenges include:

- dealing with negative legacies and perceptions
- managing community expectations about projects
- language and other communication challenges
- maintaining focus on engagement over time.

It is also essential that companies appoint and retain staff members who understand these common challenges, and are appropriately experienced and qualified.

This tool provides some strategies and tips for dealing with these challenges.

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) are also often suspicious of “outsiders” coming onto their land or territory.

A further complicating factor for a large mining company is that initial exploration and development or operations may have been undertaken by a previous company that may not have operated to the standards expected today. Prior negative experiences in the relationships between government and Indigenous Peoples may also contribute to an understandable initial hostility to mining companies.

If companies encounter such negative legacies, they should:

- Show respect for the culture and customs of local people
- use a trusted intermediary, such as an indigenous community organization, a religious group, a civil society group or an NGO, to facilitate initial meetings and the exchange of information
- provide people from the community with the opportunity to meet and interact with senior management, and the CEO in particular
- be prepared to acknowledge and apologize for past mistakes and seek out opportunities to remedy any legacy of past sociocultural and environmental damage (eg by restoring damaged cultural sites, filling in abandoned drill holes, re-vegetating disturbed areas)
- be open and honest about the risks and benefits associated with the project
- highlight that the company has standards, processes and practices that make it accountable for its environmental, social and health performance and inform communities about how they may be involved in these processes
- find out what historical commitments may have been made (eg by an exploration company or joint venture partner) and, wherever practical, honour those commitments
- 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.

Managing community expectations about projects

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. Some tips for managing community expectations include:

- Communicate clearly and in a transparent manner. Ensure there is 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. Making promises that may not eventuate, such as promising X number of jobs for Indigenous Peoples, can create further problems down the line.
- Develop a high-level consultative mechanism to help deal with, and manage, community expectations on an ongoing basis.
- Communicate regularly, even when there may not be anything substantive to report, to minimize rumours.
- 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).
- Formalize commitments and agreements in writing, or at least keep a record of promises made, and document progress towards achieving such commitments.

RELEVANT CASE STUDY

Managing expectations
(Freeport-McMoRan), see page 97.

Language and other communication challenges

Problems during engagement in projects can often be explained by the fact that Indigenous Peoples feel they are not listened to or understood. Indigenous Peoples often have their own languages or dialects and may not speak the national language. A history of disadvantage, particularly among women, who often have limited access to education, may also make it difficult for Indigenous Peoples to voice their concerns or have input during engagement processes. In overcoming such challenges, companies should:

- ensure that company staff who are involved in engagement are aware of any language or other communication challenges, including gender-related barriers
- ensure that the engagement team includes members who speak the local language/dialect, and includes women
- ensure that the engagement team has some education and/or training in local etiquette, customs and protocols for engagement/discussions with particular groups (eg leaders, women, elders, youth, etc)
- ensure that information about the project is disclosed in a form that Indigenous Peoples will understand – this may involve translating materials into local languages, use of brochures, maps, diagrams and local radio stations for verbal transmission of information
- avoid using technical and legalistic text and languages.

Maintaining focus on engagement over time

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 the 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 over time include:

- Formalize a comprehensive engagement plan/indigenous engagement plan, which is reviewed and updated regularly. It should link 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 (eg a “promise” or commitment register).
- Embed engagement mechanisms and processes into agreements (see Chapter 4).
- Implement strategies to reduce the impact that the loss of key staff might otherwise have on company–community relationships (eg through succession planning and by diversifying the network of relationships in the community).
- Set up effective arrangements for resolving disputes and grievances (see Chapter 5 and **TOOL 12**).



TOOL 6

Impact avoidance and mitigation

“Do no harm” is a fundamental principle of engaging with all communities, not just indigenous communities. However, Indigenous Peoples may be particularly at risk because they have historically been 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.

This tool provides good practice guidance aimed at helping companies avoid and/or mitigate the negative impacts of mining projects on Indigenous Peoples. The tool is presented as a series of steps that deal with the key impact areas associated with mining in indigenous territories.

Basic principles of impact mitigation

While companies cannot always predict or fully mitigate the full impact of a project, there are some basic principles that can help guide them to reduce the scale of a negative impact and enhance the likelihood of positive long-term outcomes for communities. When trying to mitigate potential impacts, companies should consider the following basic guiding principles:

- Strategies, processes and actions should be underpinned and informed by the local knowledge of impacted communities and groups.
- It is essential that there is input, support for and participation of Indigenous Peoples when identifying issues, and framing and implementing responses.
- Potential problems can be avoided at the outset if companies adequately identify impacts, and plan and design projects to avoid them (eg planning a road so that it goes around a community rather than through it).
- Attention to implementation is critical, and all strategies should be underpinned by action plans that specify what needs to be done, by whom and how.
- Ongoing monitoring and regular evaluation is required, which needs to be relevant to Indigenous Peoples and their concerns.

STEP 1

Undertake baseline studies and impact assessments

Undertaking a baseline study and impact assessment (including environmental, social, health and human rights³⁸ impact assessments) is the starting point for determining whether impacts exist and for avoiding and mitigating impacts on any community (irrespective of whether or not Indigenous Peoples are involved).

As outlined in **TOOL 8**, baseline studies seek to document the state of a community and/or the environment prior to the commencement of significant project activity. Social and environmental impact assessments use information from baseline studies and other sources to make predictions about how communities, individuals and the receiving environment may be affected by a project. These impacts can be planned or unplanned, positive or negative, depending on when and where the impact occurs and how it is experienced. Impact assessments also typically seek to identify measures that can be taken to avoid or mitigate undesired impacts and/or enhance desired outcomes. Such measures are usually included in management plans (eg social management plans). A number of international development institutions such as the IFC require companies or governments to develop an Indigenous Peoples Plan (IPP) as a condition of lending.³⁹

³⁸ Human rights impact assessments recognize the underlying rights of communities and the duties of a company to respect those rights. For further guidance refer to IFC, *Guide to human rights impact assessment and management (HRIAM)*, Washington, DC, IFC, 2010.

³⁹ The IFC Performance Standards, Guidance Note 7 Indigenous Peoples provides some suggestions for the contents of an Indigenous Peoples' Plan.

When assessing the impacts of mining projects on Indigenous Peoples is that the assessment process should be participatory. This means that Indigenous Peoples should be involved and consulted on what impacts they themselves consider to be important in their cultural context, as well as the design of measures to manage impacts.

STEP 2

Address negative impacts of projects at the design stage

The first priority of companies should be to design projects to avoid adverse impacts. For example, by relocating a road to avoid disturbing critical cultural heritage, or changing a mine layout so that people do not have to be resettled. Where avoidance is not possible, the focus should be first on minimizing, and then on managing and compensating for, residual impacts. These measures should be informed by comprehensive impact assessments and social and economic baseline studies, and communities should have the opportunity to participate in the design and implementation of appropriate responses. Table 3 provides some examples of negative impacts and project design features that can help avoid and/or mitigate them.

Further information on how projects can be designed to minimize negative impacts can be found in the Asian Development Bank's Involuntary resettlement (1995) guidelines.

Table 3: Examples of negative impacts and project design features

Impact/risk	Project design feature
Uncontrolled in-migration into indigenous territories	Minimize road construction into indigenous lands
Increase in social problems such as alcoholism, drug use, gambling, prostitution, etc, associated with the arrival of workers from other areas	Situate workers' camps some distance from indigenous communities
Resettlement of Indigenous Peoples from lands that are traditionally owned or under customary use	Consider alternative project designs in consultation with affected communities of Indigenous Peoples and independent experts
Disrupted access to religious/culturally significant sites	Build roads or other means of access to sites, subject to safety requirements

STEP 3

Compensate to mitigate negative impacts

Compensation to Indigenous Peoples is usually provided in relation to three main areas of impact:

- physical displacement of individuals or communities from land that is traditionally owned or under customary use
- economic displacement, whereby projects disrupt people's livelihoods, for example by preventing access to customary hunting grounds
- negative impacts on cultural heritage.

Physical displacement

It is good practice for companies to make every effort to avoid the resettlement of Indigenous Peoples. However, where this is not possible, companies should follow guidance on involuntary settlement offered by

international development institutions such as the IFC. Some of the main recommendations of the IFC include:

- Appoint staff who have adequate knowledge and experience in the resettlement and displacement field. Companies should engage and seek advice from resettlement experts, indigenous advisers and indigenous community leaders throughout this process.
- Develop a resettlement action plan that includes, among other things, replacing land and assets lost as a result of the project at full replacement cost in local markets.
- In cases where people are required to move to another location, offer feasible resettlement options (or cash compensation where appropriate), relocation assistance and new settlement sites that provide improved material living conditions.
- Aim to provide compensation and overall support to displaced people in a manner that leaves them better off than before.

Economic displacement

Where a project disrupts people's livelihoods, but does not require physical resettlement, it is good practice for companies to:

- develop a livelihood restoration plan that provides compensation to affected people/communities in a manner that is equitable, transparent and consistent
- compensate people (through appropriately governed monetary payments or replacing livelihoods) who lose assets or face restrictions on access to assets or a means of livelihood at full replacement cost.

The overall aim of mitigation measures for economic displacement is to provide people with an opportunity to re-establish productive and sustainable livelihoods.

Detailed guidance on compensating and mitigating the impacts of physical and economic displacement can be found in IFC Performance Standard 5, Land Acquisition and Involuntary Resettlement.

Table 4: Components of a cultural heritage management plan

Components
Information on the history, current profile and aspirations of the indigenous community
Description of the cultural heritage characteristics and values of the community
Identification of management priorities and community perspectives on cultural heritage
A discussion of the planning background that has influenced community consultation and management decisions
The governance and management arrangements for the area of cultural heritage, including responsibilities of all parties
Identification of monitoring and reporting objectives
Information on grievance handling

Source: Rio Tinto, *Why cultural heritage matters*.

Impacts on tangible cultural heritage

Where a project damages or otherwise has negative impacts on tangible cultural heritage, for example, damage to rock art, sacred sites or graves, companies may choose to:

- provide cultural "offsets", which are measures to protect or enhance cultural heritage that have been agreed with the community as a form of compensation for negative impacts⁴⁰
- provide monetary compensation, bearing in mind this should be sensitive to the local context given the potential for it to create intra-community conflict.

Additional guidance on avoiding and mitigating negative impacts on cultural heritage is provided below.

STEP 4

Manage impacts on cultural heritage

The likely impacts of a project on Indigenous Peoples' cultural heritage should be known following the completion of the impact assessment prior to commencement of activities. In some jurisdictions, specific cultural impact assessments are required by law.

It is good practice for companies to develop and implement a cultural heritage management plan prior to project activities, or prior to significant changes in the project (eg expansion of operations). The plan should aim to preserve (and enhance) both tangible and intangible cultural heritage. In some instances, a cultural impact assessment process is undertaken as part of the process of developing a cultural heritage management plan (see also **TOOL 8**). Common components of such a plan are shown in Table 4.

⁴⁰ See Rio Tinto, *Why cultural heritage matters: a resource guide for integrating cultural heritage management into communities work at Rio Tinto*, Melbourne/London, Rio Tinto, 2011.

Some key points to consider when developing a cultural heritage management plan include:

- 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 and from government, where appropriate, 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 company management measures, which can include compensation, should be fully discussed, negotiated and agreed to 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.

A suggested process for developing a plan can be found in Chapter 2 of the Rio Tinto publication *Why cultural heritage matters*.

STEP 5

Protect and rehabilitate the environment

Given that Indigenous Peoples often have an intimate connection with the natural environment, efforts to protect against negative environmental impacts resulting from project activities should draw on their knowledge. Companies should where possible, partner with them to identify, plan, mitigate and monitor environmental impacts. They can do this 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 or mutually trusted third parties on environmental monitoring committees and involving them in the collection and analysis of monitoring data (eg water samples)
- involving Indigenous Peoples in environmental rehabilitation activities (eg gathering native plants for rehabilitation, fire management and wildlife management).



TOOL 7

Strengthening the community asset base

This tool provides an overview of some of the major contributions mining can make to a community's asset base and outlines some of the key areas that companies should focus on sharing benefits. As discussed in Section 4.3, however, it is important to emphasize that indigenous communities may not desire the kinds of benefits that mining projects may bring, and instead may choose to maintain their traditional lifestyle.

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 socioeconomic 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. However, there can be a variety of barriers to the employment of Indigenous Peoples, including:

- lack of education and relevant training
- lack of basic skills or practical restraints (such as not having a driving licence)
- geographical isolation
- cultural beliefs and practices
- challenges in balancing mainstream employment with family and cultural obligations
- poor health and well-being.

Actions that companies can take to support employment and human capital development are outlined in the sections below.

Make a commitment to indigenous employment

This 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. Concrete steps companies can take include:

- determining the employment aspirations of Indigenous Peoples
- developing an indigenous employment policy
- 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
- setting internal targets for indigenous employment and retention, and regularly reviewing performance against those targets
- using social baseline information in order to understand the barriers that may be preventing Indigenous Peoples from participating in the workforce and developing strategies to address these
- ensuring that appropriate labour standards are being met and that all local employees, including Indigenous Peoples, are treated equitably.

In some cases, providing training and employment in mining operations during the operational stage can also equip Indigenous Peoples with skills that might allow them to undertake small- to medium- scale mining in the longer term, even after mine closure.

Promote indigenous employment in the company's supply chain

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.

Steps companies can take to promote indigenous employment in their supply chains include:

- At the contract tendering stage, make it clear that successful tenderers will be expected to have plans and programs for indigenous training and employing members of the indigenous community.
- Provide encouragement and guidance for contractors to also create business opportunities for Indigenous Peoples, for example as their subcontractors.
- Understand that relationship building is key to Indigenous Peoples in developing business opportunities.

Take strategic steps to attract and recruit indigenous employees

Given the barriers to indigenous participation in the workforce, companies should take strategic action to recruit Indigenous Peoples, for example:

- Use local knowledge gained from the indigenous community 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; and 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.
- Employ a transparent process for selecting candidates that includes opportunities for women and youth, and offer technical and other skills training program.

Focus on retention of indigenous employees

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. Some common problems include losing trained personnel 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 form of subsistence-based livelihood 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 (eg 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 there is a proper understanding of why they left.



Focus on career development for Indigenous Peoples and not just “jobs”

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 the following:

- Provide indigenous employees with career development opportunities, 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.
- Focus on employability and not just employment. This means company training programs that enhance a wide range of knowledge and skills that are transferable to diverse roles (and industries). Employability encompasses such things as communication skills, learning, being able to take initiative, teamwork, problem solving, computer skills, and planning and organization.

Create 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 (eg cleaning or gardening services, supply of fresh vegetables) through to major service contracts (eg trucking contracts) and joint ventures. The following guidance can be considered when planning to create business opportunities for Indigenous Peoples:

- Support the development of businesses, particularly those that are not dependent on a single mining operation. This 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.
- Identify opportunities for business creation on a case-by-case basis.

When identifying business opportunities, it may be helpful to take into consideration the following factors, which will help determine the suitability and feasibility of a particular business:

- extent of interest in the community for the business
- the level of business expertise by the potential owners
- the capacity of local providers to deliver the required services
- distance from markets
- ease of access to capital.

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
- incubating, mentoring and supporting new businesses
- reviewing tendering and procurement processes to ensure that they provide genuine opportunities for local indigenous businesses, including in the supply of goods and services
- assisting local businesses to become compliant with mining company requirements (eg on occupational health and safety and other business policies and practices)
- helping with access to finance (ranging from funding microcredit schemes through to facilitating bank loans)
- identifying suitable partners for joint ventures and other commercial arrangements
- formalizing local procurement and capacity building of indigenous-owned businesses through legal agreements.

RELEVANT CASE STUDY

Diavik mine – Establishing and delivering on effective participation agreements (Rio Tinto), see page 98.

Improve 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. The guidance below is provided to help companies target their efforts in these areas.

Work with government and other development agencies to support needed infrastructure and services

- Be strategic and target investments in infrastructure that communities really need and want. It is essential to seek local expert advice to ensure that services or facilities are provided in compliance with any applicable legal requirements.
- Wherever possible, partner with government and other parties, such as development agencies and NGOs. This will not only help the company design good programs and avoid replicating existing initiatives, but will also bring expertise that can be leveraged to help create opportunities for skill building, employment and business growth.

Service provision work is high profile and, if done in a participatory and sustainable manner, can build significant goodwill between the company and the community, and potentially government at the local level.



Strategic Indigenous Housing and Infrastructure Program, Northern Territory, Australia.

Think about the sustainability of projects from the beginning

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 they are adequately resourced (eg through creation of a community infrastructure fund)
- seeking opportunities to partner or align with national, regional and local government development plans, to ensure there is neither overlap in the provision of services nor a lessening of government responsibility to provide for its citizens.

TOOL 8

Baseline studies and impact assessments

Baseline studies seek to document the state of a community and/or the environment prior to the commencement of significant project activity. Such studies are generally used to enhance a company's knowledge of the context in which it is operating and provide a benchmark against which the potential impact of mining operations can be anticipated and change measured.

Baseline studies

Well-designed baseline studies not only provide a snapshot at one point in time, but also have a dynamic component focused on identifying historical trends and likely trajectories. Examples of baseline studies include:

- cultural heritage assessments and archaeological surveys
- vegetation and wildlife surveys
- water monitoring studies
- ethnographies and social mapping studies
- livelihood and household surveys
- community health studies and surveys
- economic capabilities analysis

Baseline studies are usually undertaken at the concept stage as part of an environmental and/or social impact assessment, but companies may initiate them earlier if needed (eg where there is a risk that exploration activities may damage cultural heritage or potentially adversely affect community health). Such studies should not be static one-off exercises, but rather updated regularly, particularly when there is a significant change to the scale and/or scope of a project.

Prior to conducting baseline studies and subsequent stakeholder engagement, it is important that companies are aware of the ethical considerations and issues relating to such activities. In the absence of careful planning, companies can unintentionally breach individuals' privacy if they disclose sensitive information, which in some cases can

put the individual at risk of physical or other harm. Companies should report the findings of baseline studies back to local communities in a language they can understand. However, ethical and privacy considerations must be taken into account prior to doing so.

Undertaking a baseline study

Like all baseline studies, a baseline study of an indigenous community usually involves the following components:

Desktop analysis

To gather contextual and background information, companies should undertake a desktop analysis of existing literature (eg from government agencies, NGOs, development organizations, schools, health posts and businesses in the area, etc) and any previous related company documents and reports.

To provide greater context, data should be collected at both the local and regional levels. A baseline study of an indigenous community will likely include the same collected data as a "standard" baseline study (eg quantitative and qualitative data on employment, income levels, health, living conditions, etc), but should also include explicit consideration of:

- customary property rights
- social structures: roles and responsibilities
- cultural protocols, including traditional ways of dealing with grievances and conflict, principles of reciprocity
- 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
- intangible cultural heritage, such as language, stories, art, music, ceremonies, spirituality.

Gap analysis and development of interview and/or survey questions

Companies should consider undertaking a gap analysis of the collected data to identify whether there are any missing pieces of information. Subsequently, companies should develop a set of interview and/or survey questions to obtain any identified missing information. These questions can also be developed to help verify whether the collected desktop data is consistent and reflective of what is happening on the ground. All questions should be culturally sensitive to the impacted indigenous groups and other impacted communities.

Interviews, surveys and/or focus groups with community leaders and other key stakeholders within the community

Undertaking interviews, surveys and focus groups with key stakeholders will help companies gain a greater understanding of the local community context in which they operate, including Indigenous Peoples' social dynamics, resources and needs. To identify key stakeholders, companies should consider:

- reviewing existing contextual information or studies
- speaking with field staff or any existing community contacts
- undertaking a stakeholder identification or mapping exercise (see below).

Identified individuals may include traditional community leaders and respected people from a range of stakeholder groups, including government, community, schools, health services, etc.

When engaging with Indigenous Peoples and other impacted community representatives, it is essential companies provide open and honest information, ensure engagement processes are inclusive, and encourage Indigenous Peoples to actively participate. Companies should also be mindful of traditional decision-making structures within the contexts in which they operate. If particular groups (eg women, younger people, etc) are excluded within such

structures, companies should obtain input from these groups by more discreet means, while maintaining the respect of traditional decision makers and their structures. See **TOOL 4** for further guidance on overcoming challenges associated with ensuring inclusivity.

Table 5 provides a list of some common questions to consider when undertaking a baseline study. It would be useful for companies to keep these in mind when carrying out the study.

Table 5: Checklist of questions to consider when undertaking a baseline survey

Questions to consider	Yes – ✓ No – X
Does the community have existing guidelines for conducting research? ⁴¹	<input type="checkbox"/>
Have you appropriately negotiated the level of community participation in the design, collection, analysis and management of the baseline study/survey?	<input type="checkbox"/>
Have you sought broad-based support from Indigenous Peoples at the commencement of the research process and ensured that they have given their informed consent to participate in particular research activities (eg interview)?	<input type="checkbox"/>
Have you undertaken a desktop analysis of existing information and literature to provide context and identified any gaps within the information?	<input type="checkbox"/>
Have you conducted surveys and interviews in the local language with the full participation of indigenous community representatives (where appropriate)?	<input type="checkbox"/>
Have you used methodologies that facilitate participation, such as focus groups, "ethno mapping" and participatory appraisal? ⁴²	<input type="checkbox"/>

⁴¹ See, for example, ITK and NRI, *Negotiating research relationships with Inuit communities: a guide for researchers*, S Nickels, J Shirley and G Laidler (eds), Ottawa and Iqaluit, Inuit Tapiriit Kanatami (ITK) and Nunavut Research Institute (NRI), 2007.

www.itk.ca/sites/default/files/Negotiating-Research-Relationships-Researchers-Guide.pdf

⁴² See: www.iied.org



Supporting elements of a baseline study

Social baselines may be supported by a number of additional components to enhance the depth and breadth of contextual and background knowledge:

Social mapping studies

Social mapping studies assist companies to identify key groups within their operational context and the relationships between them. Social mapping studies are usually undertaken as part of a baseline study by anthropologists, social geographers or other specialists. To develop a social map, companies should:

- identify all key groups within the impacted area, including Indigenous Peoples and other impacted communities
- illustrate how these groups are connected to each other
- determine who has influence within those groups
- identify systems of land tenure, inheritance, ownership and so on.

Cultural heritage assessments

Cultural heritage assessments 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 (eg graves, campsites, trees, meeting places, etc) or intangible forms (eg language, beliefs, traditional knowledge, rituals, sacred sites both publicly known and those known only to the indigenous community, etc). While these assessments and plans are not legally required in all jurisdictions, companies may choose to conduct these surveys as a matter of good practice.

Cultural heritage assessments usually involve undertaking a desktop analysis of existing literature and contextual information, and follow-up surveys and/or interviews. Companies should aim to carry out the surveys and/or interviews in conjunction with knowledgeable individuals/organizations from the local indigenous community, but they may also benefit from the input of specialist advisers, such as archaeologists and ethnographers. Wherever practical, companies should involve both women and men in the surveys. As a general principle, cultural heritage information should be owned and managed by the local communities.

Important aspects companies should include in their cultural heritage assessment and management plan include identifying and appropriately assessing (ie explaining why things are culturally significant) indigenous communities' tangible and intangible forms of cultural heritage.

Further information on managing impacts on cultural heritage can be found in **TOOL 6**.

Impact assessments

Impact assessments use information from a variety of sources – such as baseline studies, input from affected communities and other stakeholders, previous research, and data modelling – to make predictions about how communities, individuals and the receiving environment will, or may, be affected by a project. These impacts can be planned or unplanned, positive or negative, depending on when and where the impact occurs and how it is experienced. Impact assessments typically also seek to identify measures that can be taken to avoid or mitigate undesired impacts and/or enhance desired outcomes. It is good practice to make the results of such assessments, including the risks identified, to all communities (indigenous and non-indigenous) public while recognizing and protecting against any potential risks to communities as a result of disclosure.

Undertaking an impact assessment

When assessing potential project impacts on indigenous communities (socioeconomic, human rights, environmental and political impacts), companies should consider undertaking an assessment of:

- who the potentially impacted Indigenous Peoples and other communities are
- the level of potential impact on the identified Indigenous Peoples and their culturally significant values and sites
- the nature of the impact (eg primary or secondary⁴³, long term or short term)
- whether the impact is positive, negative or has no effect
- the magnitude of the impact in relation to the current indigenous population and other impacted communities.

When assessing potential impacts, it is important that companies address the consequences that Indigenous Peoples themselves consider important and specific in their cultural context. Thus, companies need to ensure that social, environmental and cultural impact⁴⁴ assessments are done at a pace that is amenable to broad-based discussion and with consideration of indigenous communities and indigenous local knowledge.

RELEVANT CASE STUDY

Collaborative consultation – experience with a First Nations independent technical review (Teck), see page 99.

⁴³ Primary refers to impacts that occur as a direct consequence of a project or proposed activity, whereas secondary refers to impacts that occur as an indirect consequence.

⁴⁴ 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. www.iaia.org/iaia-climate-symposium-denmark/indigenous-peoples-traditional-knowledge.aspx

In some jurisdictions, regulatory provisions encourage proactive involvement of indigenous communities in impact assessments (eg the Canadian Environmental Assessment Act 2012 encourages the participation of Aboriginal people in environmental assessments), and in some cases Indigenous Peoples are given the opportunity to conduct and manage their own impact assessments. Where regulatory requirements are less demanding, companies should strive to apply these higher standards to encourage ongoing engagement with the indigenous communities in their operational context. To provide further contextual information, companies may undertake a gender impact analysis and conflict assessment.

Gender impact analysis

Often women and men do not feel the direct impacts of mining and associated development equally, with the negative impacts of mining projects often falling disproportionately on women.⁴⁵ Despite this, 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.

Companies should be aware of, and consider, the gendered nature of impacts when undertaking impact assessments, and consequently undertake a specific gender impact assessment where necessary.⁴⁶ To do this, companies, where possible, may collect and use sex-disaggregated data to assess how women and men are affected differently by impacts.

Companies should consider the following questions when assessing the gendered nature of impacts:

- Do you understand the different roles of women and men within the indigenous social and cultural context (eg division of labour between the sexes, the different rights and obligations within the household and the broader indigenous community, etc)?
- What resources do indigenous women and men have access to, and control of?
- Have you analyzed the impact that operational policies, plans and programs will have on women as compared to men?
- Have you analyzed the impact of predominantly male employment and associated risk of power imbalances, income inequality and income flow on domestic conflict?
- Have you identified the key issues and risks related to discrimination and unequal access of women to resources and services?
- Do you understand the power structures and the politics within both women's and men's groups in communities and society as a whole, to identify commonalities and difference around impacts, and to assess the potential for conflict within such groups?

Conflict assessment

Companies should consider undertaking a conflict assessment to assist in planning for, and minimizing, the risks associated with conflict. A conflict assessment involves assessing 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. In an indigenous context, companies 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. Key factors companies should remember when undertaking this assessment include:

- A good conflict analysis will require the same diligence as any type of risk analysis. It should 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 (eg 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.

RELEVANT CASE STUDY

Addressing the gender gap (Freeport-McMoRan), see page 100.

⁴⁵ See Rio Tinto, *Why gender matters: a resource guide for integrating gender considerations into communities work at Rio Tinto*, Melbourne/London, Rio Tinto, 2009.

⁴⁶ See, for example, Oxfam Australia, *Women, communities and mining: the gender impacts of mining and the role of gender impact assessment*, Victoria, Australia, Oxfam Australia, 2009.
<http://resources.oxfam.org.au/pages/view.php?ref=460>

TOOL 9

Making agreements

As outlined in Chapter 4, agreements with indigenous communities can build and sustain mutually beneficial relationships between companies and indigenous communities. However, for this to occur, agreements must be fair, equitable, flexible and mutually agreed upon by both companies and affected communities.

As discussed in Chapter 4, there are no hard and fast rules for companies about what should, and should not, be in an agreement. Therefore, this tool provides a combination of practical steps and guiding principles that companies might consider when negotiating and developing agreements.

STEP 1

Negotiate agreements

Identify who the agreement should be made with

Companies must first identify who the agreement should be made with. They should use their knowledge base, which, following investigations into traditional ownership and customary use rights (see **TOOL 3**), should provide a clear picture of which Indigenous Peoples have rights to land in the mining area.

Establish the overall aims of the agreement

Effective agreements depend on both parties having a thorough understanding of each other's objectives and needs. When establishing agreements, companies must strive to understand the aspirations, concerns and development needs of the community so these can be addressed as appropriately as possible. To better understand these needs and concerns, companies may obtain information and insights from:

- company-developed baseline studies and social impact assessments (see **TOOL 6** and **TOOL 8**)
- community consultations and negotiations undertaken as part of the agreement-making process.

Company staff also need to ensure that indigenous communities fully understand the interests of the company and the potential impact of the project (both positive and negative). To do this, companies should:

- clearly communicate their objectives and plans to indigenous communities
- ensure the proposed agreement is realistic and achievable
- ensure that all risks and opportunities associated with the project are understood by communities.

Taking these steps will ensure that communities better understand the company's interests and the agreement's benefits and limitations, which can help avoid unreasonable and unrealistic community expectations.

An important tip

Establish all long-term objectives at the outset of the project and revisit them continuously through the negotiation process and beyond, to help define strategies for managing the transition to closure. Important issues that should be addressed as part of negotiation processes include the duration and extent of ongoing company support, and institutional arrangements for any remaining assets and finances covered by the agreement.

Box 5 provides a list of key matters companies should consider prior to entering into formal negotiations.

RELEVANT CASE STUDY

Red Dog mine – Accessing royalties and profit-sharing mechanisms (Teck), see page 112.

Box 5**Key matters for companies to consider before entering into formal negotiations**

What legal rights are conferred to Indigenous Peoples in national or sub-national legislation to use and develop land and sub-surface minerals?

What legal and procedural requirements, if any, apply to agreements between Indigenous Peoples and mining companies? (eg 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?

What are the community's expectations of the company and the project (ie what does the community think the company will provide)?

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 the agreement likely to 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.

Build understanding and respect with indigenous communities

Company staff must remember that building understanding and respect can take time. In some instances, negotiations between companies and indigenous communities have been known to last up to five years or longer. Companies should recognize that sometimes it may be better to spend time initially building relationships before embarking on formal negotiations.

Applying the principles of "good faith negotiation", as described in **TOOL 10**, will help establish a relationship of mutual respect, particularly when there has been a legacy of conflicts and tensions.

Build knowledge and capacity of indigenous communities and individuals

Building knowledge and capacity of both parties is an essential part of negotiating and implementing agreements. Wherever indigenous communities feel disadvantaged and unable to adequately participate in agreement negotiations (eg communities do not have the technical knowledge, do not understand foreign and technical language, etc), companies should work in line with the principles of good faith negotiations. So that negotiations are conducted on a "level playing field", companies must ensure that the indigenous groups they are working with have the capacity to participate equitably (see **TOOL 10**).



Appropriately manage internal disagreements

Company staff must ensure that any tensions and disputes within the company are resolved before its representatives begin negotiations. All potentially impacted departments should understand the issues likely to be discussed in negotiations, and they should be kept informed about the company's position in relation to these issues.

In the instance that indigenous communities are divided over desired outcomes for agreements, companies should consider working with the community to create special subgroups for wider consultation on the agreements. In doing so, companies will help ensure that people within the community do not feel disenfranchised, and that community representatives fully understand the issues and adequately can represent the interests of all.

Involve other parties where necessary

Companies may look to involve other parties within the agreement-making and negotiation process. These parties may include government and other representative organizations such as NGOs and civil society groups. While it is often 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 reaching an agreement, and may add to the complexities of implementation.

NGOs and civil society groups may seek to become involved in negotiating and implementing agreements by 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, companies need to consult broadly to understand whether the delegated parties/individuals are genuinely representative of the wider indigenous community. If this is the case, companies need to acknowledge and accept this and formulate new ways to work with this structure.

Set confidentiality terms of agreements

One of the issues 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.

It is 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. However, companies need to consider the following when determining an agreement's confidentiality terms:

- whether the local jurisdiction has any confidentiality requirements
- whether the community has any concerns about disclosing sensitive information.

In some jurisdictions, transparency initiatives are mandated by law and require companies to disclose any payments they make to governments across the world (eg Canada's Extractive Sector Transparency Measures Act). Companies operating in such jurisdictions should recognize that these initiatives may have implications for future negotiations and confidentiality requirements.

STEP 2

Negotiate agreements

Identify who the agreement should be made with

The process of negotiating and implementing agreements plays an important part in determining the content of agreements. Accordingly, companies and communities should be cautious of using a template approach to agreement making.⁴⁷ However, it is possible 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:

- company support (not necessarily financial) in the development and implementation of community projects and initiatives
- financial payments and disbursement arrangements
- employment and contracting opportunities
- environmental, social and cultural (heritage/language) impact management
- governance arrangements
- any provisions that might be agreed in relation to the local community's use of certain land.

Companies may address these issues and components on varying scales within an agreement, ranging from compensation-focused to more sustainable development-focused activities. For example, early agreements between mining companies and indigenous communities tended to focus mainly on compensating communities for

⁴⁷ There does not necessarily have to be one overarching agreement established straight away; companies and Indigenous Peoples may choose to establish agreements around specific issues. Taking such small steps can build trust and eventually result in a much stronger, larger agreement over time.

Table 6: Compensation-focused vs sustainable development-focused agreements

Compensation focused		Sustainable development focused	
EARLY PRACTICE	One-off contributions by companies	Ongoing benefits streams linked to production	CURRENT BEST PRACTICE
	Direct, untied payments to groups and individuals	Payments to trusts, not individuals; growing use of "future generation" funds	
	Environmental concerns and aspirations of Indigenous Peoples not addressed	Traditional owners influence environmental and cultural heritage management	
	Commitments on employment and business development restricted to "best endeavours"	Specific commitments and targets for employment and business development	
	Little attention given to agreement governance	Strong focus on governance and implementation	
	Transactional/focused on "sign-off"	Focus on building long-term, resilient relationships	
	Adversarial approach to negotiation	Approach based on trust building and mutual respect	
	Engagement with existing leadership/elites	Inclusive engagement	

Source: adapted from M Limerick et al, *Agreement-making with indigenous groups: oil and gas development, Australia*, Brisbane, Centre for Social Responsibility in Mining, Sustainable Minerals Institute, University of Queensland, 2012.

losses and impacts associated with mining projects. By contrast, more recent best practice agreements focus more on avoiding and mitigating negative impacts, sharing benefits and promoting long-term sustainable development in indigenous communities (see Table 6).

Decide on the financial payment and disbursement arrangements of the agreement

In many cases, financial arrangements have been used to address both compensation (for losses or damages) and in some situations, benefit sharing. There are several types of financial packages and payment options that companies have chosen in order to provide both short-term and long-term benefits. A summary of these is provided below.

Types of financial packages

Financial packages can take a number of different forms. These may include:

- production-based or profit-based payments – annual payment for use of the resource or land, based on a percentage of production profits
- 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 that the group has over the resource
- other types of fixed annual payments – may include payments defined as benefit sharing or social investment payments, or payments based on a certain proportion of the total capital expenditure (capex) on a project
- fixed single payments – a fixed and sometimes one-off payment made for either reaching agreed milestones, redressing damage/loss or a right of way payment.

Companies could consider these types of packages when negotiating financial payments and disbursements as part of the agreement.

RELEVANT CASE STUDY

Raglan mine – Accessing royalties and profit-sharing mechanisms (Glencore), see page 113.

Types of financial disbursement mechanisms

Companies should ensure that their negotiated agreement documents disbursement procedures, rules or criteria that limit and define how the money in the agreement 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, including:

- payment to named individuals or groups – disbursements usually made as a payment to individuals or particular groups (eg indigenous groups)
- payment to an indigenous group through its representative organization – funds usually paid into a bank account held solely by the indigenous representative organization or jointly with the company
- payment through an intermediary organization (eg government or NGO) – 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 – funds managed internally within the company, or paid into a specially set-up fund, on behalf of the indigenous group (usually a formal organizational structure within the business)
- payment into an external trust, fund or foundation – 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.



Discussions on a Memorandum of Understanding between Newmont and the Pamaka Maroon Tribe of the Marowine River in Suriname.

Companies should carefully explore the pros and cons of the different models and agree on the chosen mechanisms either in full or in principle during negotiations. Company staff should not leave these matters to be dealt with after the agreement has been signed.

Consider types of potential employment and contracting opportunities

Agreements may include employment and contracting provisions for Indigenous Peoples (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 economic opportunities. Employment and contracting provisions should aim to build the capacity of Indigenous Peoples and ultimately lead to a less dependent relationship with the company.

Companies may include employment and contracting opportunities in agreements in a range of forms, including:

- explicit targets in relation to employment and business development, and specifying action and timelines for achieving this
- general statements of commitment to preferentially employ, or contract, Indigenous Peoples.

See **TOOL 7** for a discussion of some practical steps that companies can take to maximize indigenous employment and generate business opportunities.

Set the environmental, cultural and social management terms

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.

Further information about avoiding and/or mitigating the negative impacts of mining projects on Indigenous Peoples can be found in **TOOL 6**.

RELEVANT CASE STUDY

Cowal mine – Procurement from indigenous suppliers (previously owned by Barrick), see page 114.

STEP 3

Establish institutional arrangements for 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 companies should consider to advance these goals include the following:

- Establish a liaison committee comprising both indigenous and company representatives (and possibly others) to oversee the agreement, deal with implementation issues, and provide a forum for addressing disputes. It is important that the roles, functions, jurisdictions and powers of these bodies are clearly defined from the outset, to avoid confusion and conflict later on.
- 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, companies can manage dispute resolution through a series of escalating mechanisms which range from less formal, amicable resolution, to more formal meetings between the two parties, mediation, and independent arbitration (see also Chapter 5 and **TOOL 12** and **TOOL 13**).

- Provide 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. Companies should report back to the liaison committee in the first instance, and 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 that need to be regularly reviewed.

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 and control with indigenous groups and their representatives. There is a natural caution among companies with respect to how much control to concede. However, 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.

Another important issue companies must 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 (see **TOOL 10** for further guidance on building knowledge and capacity of indigenous groups).

RELEVANT CASE STUDY

Olympic Dam – Aboriginal business development (BHP Billiton), see page 116.



TOOL 10

Good faith negotiation

Good faith negotiation is a particular form of negotiation that seeks to establish where points of disagreement and agreement lie, and what options are available for resolving disagreements in a balanced way. It primarily focuses on establishing a relationship of mutual respect between negotiation parties (like companies and indigenous communities) and removing any negotiating power imbalances. This tool provides guidance to companies wanting to facilitate good faith negotiations when engaging and negotiating with indigenous communities.

STEP 1

Understand the concept of good faith negotiation

Negotiation in good faith is a bilateral (or sometimes multilateral) process, which requires the commitment and participation of each of the parties. "Good faith" is a legal term that has been invoked in courts deciding on particular contractual disputes. Good faith negotiation requires that all parties respect each other's decision-making processes and appreciate their constraints. In broad terms, good faith negotiation involves all parties being willing to:⁴⁸

- engage in negotiation and meet at reasonable times and frequency
- provide information needed for informed negotiation and explore key issues of importance
- agree mutually acceptable procedures for negotiation that include sufficient time for decision making
- compromise in pursuit of reaching a formal and documented agreement.⁴⁹

What constitutes good faith negotiation must be considered in the context of the particular circumstances, including the rights, interests and perspectives of the relevant Indigenous Peoples and mining companies. It is important to also note that good faith negotiation strategies are an essential prerequisite to gaining FPIC and sustaining it through the project life cycle.

STEP 2

Build knowledge and capacity of indigenous communities where necessary

In some cases, indigenous groups may have little or no previous experience with mining and mining companies, and may lack the resources to support extended involvement in negotiation processes. In this instance, companies should be prepared to provide support to help build community capacity for good faith negotiation and redress power imbalances. However, where a community lacks access to information that would enable them to assess whether an offer was reasonable or not, it should be made clear to the groups in question that they are under no obligation to accept such offers of support.

Types of support companies may provide indigenous communities can include:

- providing funding to indigenous groups to employ independent expert advice, covering travel and meetings costs
- funding legal and negotiations training
- underwriting the cost of hiring a lead facilitator (a common practice in Australia and some other countries).

Such support should be on a "no-strings attached" basis and be provided through arm's-length processes (eg by allowing a community to choose advisers rather than having to use those provided by the company) to avoid any suggestion that companies may have inappropriately sought to influence the outcomes of negotiations.

⁴⁸ IFC Performance Standards, Guidance Note 7 Indigenous Peoples.

⁴⁹ ICMM, Indigenous Peoples and Mining Position Statement, London, ICMM, 2013, footnote 3, adapted from IFC Guidance Note 7.

STEP 3

Put good faith negotiation into practice

All negotiations with indigenous communities should be conducted in good faith. Companies can demonstrate good faith during negotiations by:

- initiating and responding to communications in a timely way
- making reasonable proposals, considering and responding to counterproposals
- following up a lack of response from the other parties
- attempting to organize and attend meetings in a timely way
- taking reasonable steps to facilitate and engage in discussions
- responding to reasonable requests for relevant information within a reasonable time
- allowing groups to use their own decision-making processes
- sending negotiators with proper authority to negotiate on behalf of the organization or group
- not adopting a rigid non-negotiable position
- not engaging in unilateral conduct that harms the negotiating process, such as by issuing inappropriate press releases or public declarations
- acting consistently and following through on commitments made.

Some practical steps companies can take to facilitate good faith negotiations and demonstrate the above may include:

- agreeing on the negotiation process and procedures through a memorandum of understanding at the outset, including agreeing on the style of negotiation

- providing training to company personnel and representatives in relation to culturally appropriate negotiation techniques and relationship building
- undertaking detailed consultation with all potentially affected indigenous communities so as to make the negotiation process as inclusive as possible
- providing plain language summaries of technically and legally complex documentation, using the preferred language(s) of indigenous groups
- allowing sufficient time for the negotiation process, in appreciation of the need to give time to indigenous groups to arrive at decisions
- using interim agreements to help demonstrate that both the company and indigenous groups are committed to reaching a final agreement.

In addition, when undertaking negotiation in good faith, all parties must avoid conduct that is oppressive or coercive. However:

- any party may act in its commercial interests or make use of its legal rights and remedies (including to seek project rights or approvals from government), provided it acts with full disclosure to the parties in the negotiation to maintain trust
- in conducting negotiations, companies must have regard to other applicable obligations, including laws directed at the avoidance of corrupt practices
- a party is not required to continue negotiations where it believes agreement will not be possible on reasonable terms and/or within a reasonable period (such as where it believes the other party is not acting in good faith or where the reasonable efforts of the parties have been exhausted).

When dealing with compensation payments (monetary or non-monetary) in the negotiation process, which can often occur with indigenous communities in relation to matters such as sacred sites' relocation or loss of cultural heritage value, a widely cited court decision in Australia provides examples of what is required in a "good faith" negotiation:⁵⁰

- A party may not be entitled to threaten a breach of contract in order to bargain for a lower settlement sum than it genuinely recognizes is due.
- A party would not be entitled to pretend to negotiate, having decided not to settle what is recognized to be a good claim, in order to drive the other party into an expensive arbitration that it believes the other party cannot afford.
- If a party recognizes, without qualification, that a claim or some material part of it is due, the obligation may require payment to be made.



⁵⁰ *United Group Rail Services Limited v Rail Corporation New South Wales* [2009] NSWCA 177.

TOOL 11

Working to obtain consent: a suggested process across corporate engagement

This tool provides guidance to companies on the process of obtaining consent from indigenous communities, or to support such processes when led by the government in accordance with domestic laws to commence mining activities, or make significant changes to activities, on lands for which they have traditional ownership or customary use rights. It provides a summary of key elements companies could consider during this process and some common challenges that may arise (see Box 6).

Understanding what consent means

The phrase “work to obtain consent” means that all reasonable steps should be taken to secure the FPIC of significantly and adversely impacted indigenous communities regarding the basis on which the project, or modification of a project, will go ahead. Working to obtain consent should be done according to an agreed process, and acting consistently with the principles of good faith negotiation outlined in **TOOL 10**.

When working to obtain consent, companies should ensure that:

- the process of seeking consent is consistent with that agreed within the engagement plan, and initiated prior to the community/communities in question being exposed to any significant adverse impacts from the project or modification of the project

- the community is not subject to coercion, intimidation, manipulation, bribery or undue time pressure over the course of this process
- appropriate measures are taken to ensure that the community was fully informed about the scale and nature of the proposed project (or modification) and its potential impacts and benefits as identified by previous due diligence.

When obtaining consent from indigenous communities, a company's primary focus should not be on the giving of a simple “yes” or “no” to the project. Rather, companies should aim to reach agreement on the terms under which the project should proceed. It is important to remember that companies should not agree to aspects that they cannot control (such as matters requiring a change in government policy or law).

Box 6

Traditional decision-making structures

It is possible that a company may confront a situation where an indigenous group indicates that it does not wish to enter into discussions or negotiations with a prospective developer or provide even a preliminary level of access. This could happen, for example, in areas where there have been past negative experiences of mining, or where mining is an unfamiliar activity and there is a high level of concern about possible social and environmental impacts. In these cases, a company could consider making an approach through an accepted intermediary (such as a land council in Australia), seeking permission to meet with community representatives and provide them with information about proposed consultation and engagement processes. If that does not open up a dialogue, a company would then have to consider carefully whether it should continue to seek access, and the risks involved in doing so.

A suggested process to obtain consent

Understand when consent is required
It is good practice that companies should work to obtain the consent of indigenous communities in projects that are located on lands traditionally owned or under customary use by Indigenous Peoples, and that are likely to have significant adverse impacts on them. This includes cases where Indigenous Peoples will need to be relocated and/or where it is likely there will be significant adverse impacts on critical heritage.

Significant adverse impacts (see below) should be avoided where practicable, and mitigated otherwise. For example, it may be possible to reduce the number of people to be resettled – or eliminate the need for resettlement altogether – by reconfiguring the layout of a mine, utilizing a different mining method or repositioning key infrastructure. However, where it is technically or commercially impractical to re-engineer projects or implement effective mitigation measures, it is good practice for companies to obtain consent for the proposed development in the circumstances outlined above.

Understand what a significant adverse impact is

What constitutes a “significant adverse impact” needs to be determined in the context of each case, including the circumstances of the project and the rights, interests, perspectives and vulnerability of the relevant Indigenous Peoples. An assessment of whether or not a project is likely to have a significant adverse impact should include consideration of the findings of environmental and social impact assessments.

When determining impacts of significance, companies should remember that:

- An impact of significance is not *any* impact; “significant” means important, notable or of consequence, having regard to its context or intensity. Similarly, “adverse” means a harm or detriment that cannot be easily remedied; it is something more than a temporary inconvenience or disruption and cannot be fully mitigated.
- The primary mechanisms for identifying potential significant adverse impacts are usually social and environmental impact assessments and other social baseline analyses (see **TOOL 8**).
- It is the impact on the indigenous community as a *whole* that is to be considered, not how one or a few individuals might be affected. However, where individuals are exposed to a significant risk of harm or loss, companies will need to take action to remedy this, and ensure that the rights of individuals are not diminished.
- In addition to the direct social impacts of projects (eg resettlement), companies should be aware that environmental impacts may trigger significant adverse social impacts as well. Indigenous Peoples have strong connections to the land, and even disturbance to only a small area of land may pose significant impacts on their daily lives and livelihood sources.

RELEVANT CASE STUDY

FPIC in action: documenting FPIC-related processes during exploration phase – in Suriname (Newmont), see page 115.

Identify who should provide consent

Companies must identify the appropriate indigenous groups or communities from whom consent must be sought. Consent may be sought from particular indigenous groups or communities if it can be demonstrated that they will experience a significant adverse impact if a proposed mineral project goes ahead. Therefore, potentially affected indigenous communities may include any of the following groups:

- Indigenous Peoples who have recognized traditional ownership rights or are customary users of the land on which all or part of the project is located
- Indigenous Peoples who have been formally dispossessed of traditional ownership rights – or never had these recognized – but nonetheless continue to exercise rights of customary usage according to traditional laws and customs
- indigenous groups that retain rights to the land, but no longer live on it or use it to maintain their livelihood (eg where members of the group live in a nearby town and only visit the land occasionally, for ceremonial or cultural continuity purposes).

It can often be challenging to identify indigenous land rights. Practical guidance on how companies can deal with some of the most common challenges is provided in **TOOL 3**.

Companies should remember that in some cases it is possible that there may be more than one community from whom consent needs to be sought. This is particularly the case for projects that have a large-scale geographical footprint, or that happen to be located in areas where lands belonging to different groups adjoin or overlap.

Where there are multiple communities involved, companies should conduct discrete consent processes or reach agreement with the relevant communities to participate in a joint process.



To better understand the significantly affected indigenous communities within a project's potential operating context, and thus determine whom companies should engage with, companies should:

- undertake a social baseline study (including a social mapping study) (see **TOOL 8**)
- review any relevant laws in the country that may include means to determine who has, or can legitimately claim, indigenous ownership rights or rights of customary usage
- conduct interviews, surveys and/or focus groups with community leaders and other key stakeholders within the community
- seek professional advice, such as from land tenure experts, lawyers, anthropologists and specialist agencies where they exist.

Define and record what constitutes consent

Companies should consult with indigenous communities that are likely to be significantly impacted to define what they consider consent to be. This should then be recorded, for example as part of an indigenous engagement plan. Understandings of consent may vary from community to community, depending on the decision-making processes communities employ, and their cultural understanding of concepts such as "consensus".

To avoid later disputes over whether consent was granted or not, companies should engage with communities at a very early stage to understand their preferred approach to decision making, with the aim of reaching agreement on how consent will be demonstrated, and the sequence to be followed.

What happens if consent is not obtained?

Working to obtain consent is first and primarily a process, embodied in negotiation in good faith. In cases where agreement cannot be achieved, despite the best efforts of all parties, it will be up to companies to decide whether they should remain involved with a project.

Any decision by companies to proceed with a project in the absence of consent should be preceded by a due diligence process. Companies should conduct their own independent assessment to ensure they are satisfied the project will not breach the rights and interests of Indigenous Peoples.

In this instance, it is essential that companies ensure that channels for communication remain open, and engagement efforts continue if the project development commences without explicit consent. Companies should remember that if legal action is taken by indigenous parties against the development, there may be communication limitations imposed by the courts. However, even in such cases, companies may wish to recruit mediating bodies (such as particular community organizations) that have relations with indigenous groups to assist in outreach.

Where consent is not forthcoming, companies should determine whether they ought to remain involved with a project, regardless of whether state approval has been provided. Proceeding in such circumstances carries a number of risks, including the reputational risks and potential for conflict associated with proceeding in the face of community opposition.

TOOL 13 offers additional guidance on how companies and communities can come together to build consensus around projects.

RELEVANT CASE STUDY

Raglan mine – Accessing royalties and profit-sharing mechanisms (Glencore), see page 113.

TOOL 12

Designing and implementing grievance mechanisms

This tool deals with handling concerns and grievances in indigenous communities. It outlines some practical guidance and steps mining companies can take to ensure they develop and implement transparent, trusted and culturally appropriate procedures that allow communities (including Indigenous Peoples) to raise concerns about a company and its activities.

Designing a grievance mechanism

Guiding principles

To develop a culturally appropriate and well-functioning grievance mechanism, the system and process should be transparent, legitimate, accessible, holistic, predictable, equitable, culturally appropriate and rights-compatible (see Box 7).

Further, the Handling and resolving local level concerns and grievances guide (ICMM, 2009) highlights the key broad success principles for grievance or complaints mechanisms if they are to appropriately resolve issues and strengthen relations with communities. These include:

- ensuring communities face no obstacle in using the mechanism
- establishing the mechanism early on, and basing it around a transparent, predictable process
- finding ways to build trust in the legitimacy of the mechanism
- creating an organizational structure and mindset to support the mechanism.

Box 7

Principles for designing an effective grievance mechanism

Transparent – the process is sufficiently clear and the public is informed about the mechanism's performance and effectiveness.

Legitimate – the process is transparent, independent and thus trusted by the community.

Accessible – the process ensures all sections of the community are able to access the mechanism easily and communicate their complaints through a variety of options (eg in writing, orally via telephone, online or through more informal methods).

Holistic and integrated – policies and processes for dealing with complaints, disputes and grievances are seen as part of a broader, holistic approach to risk management and community engagement.

Predictable – there is a clear and consistent process with regular timeframes for each stage of the process.

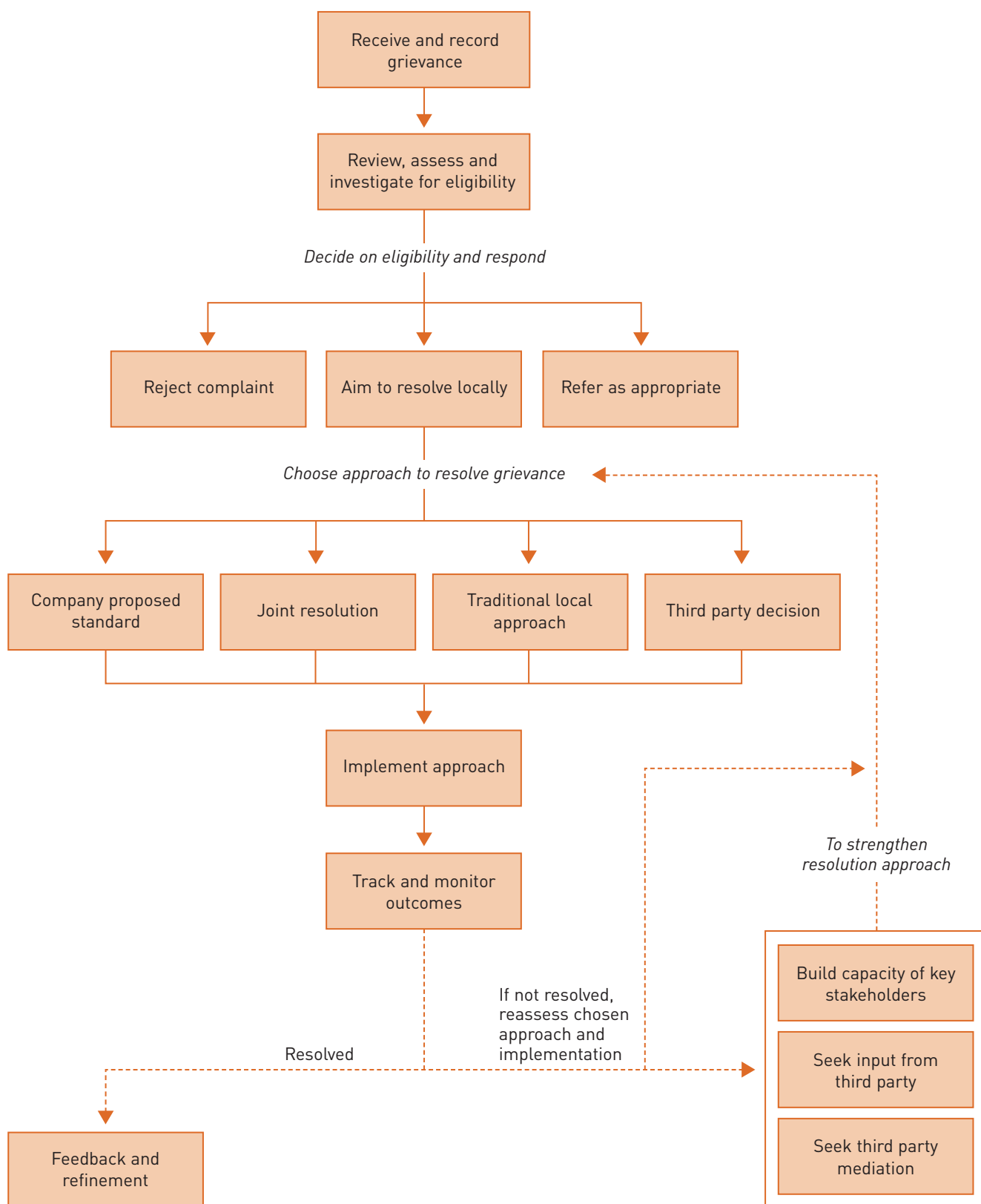
Equitable – all parties have equal access to information, advice and expertise and are able to engage in the process on fair terms.

Culturally appropriate – the process considers Indigenous Peoples' traditional ways of handling community concerns and resolving problems.

Rights-compatible – the process accords to internationally recognized human rights.

See section 1, Overarching design principles, of the *Handling and resolving local level concerns and grievances* guide for further guidance on these four broad principles.



Figure 1: Basic elements of a grievance mechanism (example)

Design of grievance mechanisms

While grievance mechanisms will likely vary across companies, the following key elements and processes should be considered in the design of the mechanism (see Figure 1):

- transparent recording system – receive and record grievances from communities (including Indigenous Peoples)
- grievance eligibility criteria – develop criteria to assess complaints and determine whether or not they fall within the mandate of your grievance mechanism
- grievance review and assessment – investigate and clarify particular details and circumstances raised by the complainant and identify how issues may be resolved
- multiple resolution approaches – utilize a range of approaches to resolve different types of complaints and grievances, including the involvement of independent third parties where appropriate. Approaches may include:
 - internal – company-proposed standards, decision-making process and criteria used to develop a response to the complaint
 - bilateral – direct dialogue and negotiation between the company and the complainant to reach a joint resolution
 - traditional and customary – traditional practices and processes used to resolve a complaint or grievance
 - third party – formal or informal mediation by a third party to reach a decision

- track and monitor outcomes – track and monitor grievances throughout the processing cycle and report outcomes (eg closeout) to the complainant
- feedback and refinement – share information between companies and the complainant to help strengthen grievance resolution processes
- review and strengthen internal processes – review and refine policies and procedures where necessary to strengthen the grievance mechanism and improve the outcomes being achieved
- ensure rights compatibility – the process, outcomes and remedies provided by the grievance mechanism should accord with internationally recognized human rights.⁵¹

(adapted from the Office of the Compliance Advisor/Ombudsman (CAO), *A guide to designing and implementing grievance mechanisms for development projects*, Washington, DC, CAO, 2008)

Whether or not the grievance mechanism should be run by an independent third party will depend on the company's local context and, particularly, the relations with its local communities. Whatever approach is decided, it is essential that the mechanism is legitimate, meaning that it has a governance structure that is clear, transparent and sufficiently independent to ensure grievances are dealt with fairly and without the interference of any party involved in the grievance.⁵²

⁵¹ As outlined in the International Bill of Human Rights and the principles concerning fundamental rights in the eight ILO core conventions as set out in the ILO Declaration on Fundamental Principles and Rights at Work.

⁵² 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, 2008, UN document A/HRC/8/5.

Build trust

Companies may inherit legacy issues or a historic lack of trust of mining companies. In such cases, companies must find ways to strengthen trust between communities and companies and build confidence in their mechanism. Some ways to help build this trust may include:

- engage and deepen community involvement (eg involve community members in the design process of grievance mechanisms)
- set up an independent forum or process, potentially led by a third party (eg engage a respected and independent body to establish and implement a process for resolving issues) (see below)
- report the results of the mechanisms externally (eg through community meetings, local publications or newsletters, etc). It is recommended that companies establish a communications plan through which updates on progress (or lack of progress) are communicated widely to those directly or indirectly involved.

(adapted from the Office of CAO *Guide to designing and implementing grievance mechanisms for development projects*)

Additional guidance on designing grievance mechanisms can be found in:

- *Human rights in the mining and metals industry: handling and resolving local level concerns and grievances* (ICMM, 2009)
- *A guide to designing and implementing grievance mechanisms for development projects* (Office of the CAO, 2008)
- *Addressing grievances from project-affected communities* (IFC, 2009)
- *Rights-compatible grievance mechanisms: a guidance tool for companies and their stakeholders* (John F Kennedy School of Government, Harvard University, 2008).

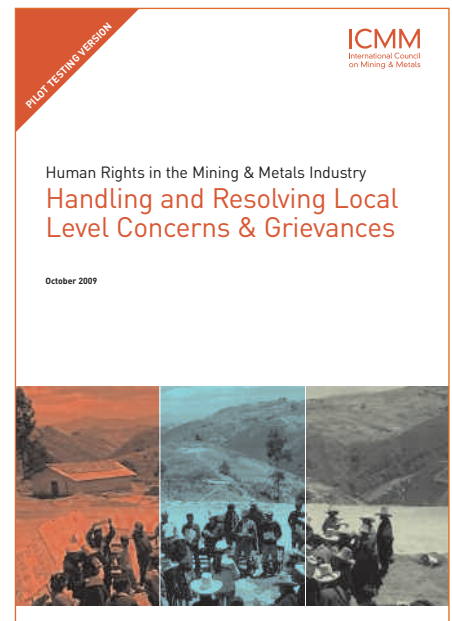


Involving third parties

In situations where the local-level resolution of disputes or grievances proves to be intractable, companies and communities should consider establishing a formal relationship with an independent third party mechanism to provide a pathway for recourse. Depending on the context, an external party may be able to mediate and/or provide advice about company–community disputes and conflicts. Mutually acceptable parties may include local NGOs, civil society groups or government. The nature and level of involvement of third parties in mediation and negotiation should be determined in conjunction with the affected communities. It is important that all parties trust the independent parties and understand why their support would be sought in the event of a disagreement.

If companies decide to engage with a third party as part of their grievance process, it is important they establish the scope and extent of the third party's involvement up front, and this is agreed upon by both themselves and the community (including Indigenous Peoples). Some questions that may assist this process include:

- Who do you wish to engage as a third party (eg local NGO, civil society group, government, etc)?
- Will the third party provide external services or supplement internal company capacity?
- In what capacity will you engage the third party (eg witness, adviser, facilitator or mediator)?
- Is the third party considered independent and unbiased?
- Is the third party trusted and accepted by both the community and company?



In 2009, ICMC produced guidance to help companies design operational level mechanisms to handle local level concerns and grievances in line with the UN Protect, Respect and Remedy Framework.

RELEVANT CASE STUDY

FPIC and expansion project (Cerrejón), see page 122.

TOOL 13

Steps towards consensus

Unlike voting procedures to reach one decision from a choice of many options, consensus processes require a harmonization of various possible decisions to reach an outcome that could be most agreeable to the greatest number of parties.

Voting is generally not a preferred method for indigenous communities, and hence a referendum process should only be used in cases where a long process of consensus-building has already taken place, and a formalization of consent is demanded either by regulators or community leaders. This was the case with the Voisey's Bay agreement between Inco (now Vale) and the indigenous communities in Labrador, Canada. The consensus-building process continued for eight years after which a referendum vote was held and resulted in an 82 per cent approval by the Inuit community and a 76 per cent approval by the Innu, who had previously opposed the mine by a wide majority.⁵³

The MIT-Harvard Public Disputes Program and the Consensus Building Institute have refined a series of steps that are particularly appropriate for engagement with Indigenous Peoples, and should be considered as part of their "mutual gains approach" to developing consensus. The approach they take in even organizing meetings is different from the conventional Western approach of using "Robert's Rules" (which date back to 1876).

This tool provides practical guidance (five key steps) for companies wanting to foster a consensus-building

approach when engaging and making decisions with indigenous communities.⁵⁴ The tool may be helpful in cases where companies are unable to obtain consent from indigenous communities, or when communities are divided about whether a project should proceed. It is important to note in the steps that follow, that while companies do have a role in fostering a consensus-building approach, for example by bringing in an independent facilitator, they should take care to not interfere in Indigenous Peoples' decision-making processes. Their role is to ensure that Indigenous Peoples fully understand all aspects of the project, including its design, impacts, risks and benefits, and allow the community to make its own decision.

STEP 1 Convening

Identifying parties to convene a consensus process requires companies to undertake initial scoping interviews, which could be undertaken in concert with an independent "conflict assessment" (undertaken at the same stage as a baseline data-gathering exercise noted in Chapter 2). All participants should agree on the make-up of the group involved in the negotiations, and try to identify missing tribal members whose absence may affect the credibility of a consensus-building process. Attendees (further to invitations from the convening entity) should collectively note ways of identifying appropriate individuals to add to the group.

The choice of a mediating or facilitating entity that is perceived as neutral to the outcome, but an advocate for fair processes and procedures, is essential at this stage.

⁵³ I Pain and T Paddon, Negotiating agreements: indigenous and company experiences: presentation of the Voisey's Bay case study from Canada, International seminar on natural resource companies, Indigenous Peoples and human rights: setting a framework for consultation, benefit-sharing and dispute resolution, Moscow, 3-4 December 2008.

⁵⁴ L Susskind, An alternative to Robert's Rules of Order for groups, organizations, and ad hoc assemblies that want to operate by consensus, in L Susskind, S McKernan and J Thomas-Larmer (eds), *The consensus building handbook: a comprehensive guide to reaching agreement*, Thousand Oaks, CA, Sage Publications, 1999.

STEP 2**Clarifying responsibilities**

At the outset, it is essential that companies ensure there is a timeline that is agreed upon by both company and community. This timeline should be flexible, and based on a set of contingencies that may arise within the local indigenous context. As the process may take several months, alternative key representatives for meetings should be agreed upon and continuity of regular meetings ensured.

If a facilitator or a mediator is used, there should be similar contingencies built in there for absences. Consideration should also be given to the preferred transparent means of communication throughout the process. It is important to note that the mediator's role is not necessarily to reach a consensus agreement, but to ensure each party sees its best interests most clearly and can decide on an efficient outcome whereby the greatest shared value can be realized.

During this clarifying process, some parties may decide to pursue adjudication rather than participate in consensus-building. In such cases, this should not taint the full process among those parties that are agreeable to moving forward. What is important is that companies ensure that even those parties who are resisting participation in the consensus-building process do not feel excluded.

STEP 3**Deliberating**

The process by which interests and goals are shared between parties is the most crucial phase of a consensus-building process and has often been presented as "Dialogue Tables" (especially in the South American context) or other community engagement processes. However, there are layers of deliberative processes, and broad dialogue tables must concentrically lead towards focused deliberations between key decision makers who have legitimacy. For indigenous communities, the style and tenor of deliberations with a company can make or break negotiations. Companies should withhold criticism during this phase and instead frame their goals within the context of what the indigenous group may consider as its priority.

Companies should seek to undertake discussions and negotiations in the community's preferred space rather than closed board meetings if this can make indigenous groups more comfortable and relaxed. Companies should avoid using technical and legalistic text and languages during deliberations. Instead, companies should keep explanations simple, and may choose to use visual media to highlight the potential project impacts. Following initial deliberations between key decision makers (who may well be seeking legal advice outside the deliberation sphere), companies may choose to engage in separate legal discussions with those indigenous groups that have greater regulatory capacity.

STEP 4**Deciding**

Ultimately, the consensus-building process should lead towards a series of decisions that could be contingent on particular actions by the developer (eg the company and/or community). Decisions among indigenous communities are culturally quite specific and may at times contravene corporate norms. For example, patriarchal societies might not include women in the process of decision making. It is important to respectfully bring forth accepted ICMM norms within the decision-making process since cultural change is constant, and non-representative decisions that may be culturally acceptable at one time, may not be acceptable a few years later in the project cycle.

If scientific data was used in the process of decision making, companies should document it and any dissenting caveats or limitations noted for future studies. Maintaining an oral and written history of the process by which decisions are reached and the sequence of concessions or compromises made by each party in the consensus-building process is essential.

STEP 5

Implementing procedures

While a process of ratification of the outcomes of any consensus-building processes is useful, it is not always necessary for companies to undertake. Usually, a ratification on the corporate side means a sign-off by the board whereas on the indigenous side, there can be a tribal council or other governance entity that provides a similar endorsement. As noted earlier, referenda to show broader community consensus should only be undertaken if there has been a lengthy process in which the broadest community consent has been attempted (often more effective with smaller demographics rather than larger ones).

Ultimately, companies should ensure that the consensus-building process should lead towards an agreement of principles and desired outcomes. The legal side of any agreement can also then refine specific outputs that would be needed to match the desired outcomes.



Shoshone Youth Language Apprenticeship Program students attend an annual national Shosonean Reunion.



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

PART THREE

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Rio Tinto

CULTIVATING MUTUAL UNDERSTANDING AND LEARNING

Rio Tinto's 25-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. This triggered the engagement that resulted in the Argyle Diamond Mine Participation Agreement being signed in 2004.



Many of the early meetings between Rio Tinto's representatives and the traditional owners had no formal agenda. According to participants at these meetings, Argyle diamond mine personnel made a point of listening to the traditional owners and apologizing for mistakes of the past and committing to a relationship built on openness, mutual respect and partnership.

To achieve this, it was imperative that engagement with the communities was 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.

Ten years on from the signing of the agreement, the same level of input is put into ensuring effective communication.

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. The Manthe is a ceremony that both welcomes people to the country and makes them safe while they are on the Argyle site. It is still regularly conducted on-site for employees, contractors and visitors.



The Manthe is a ceremony where the Gija and Mirriwong Traditional Owners welcome all staff and contractors to country and ensure their physical and spiritual safety. The Gija ceremony is a smoking ceremony and the Mirriwong ceremony is a water ceremony.

Freeport-McMoRan

MANAGING EXPECTATIONS

In 2010, Freeport-McMoRan launched a corporate community grievance management system (CGMS) for recording, processing and responding to community grievances. A web-based database was developed for sites to record and track grievances and their resolution. A corporate-wide standard operating procedure (SOP) was also introduced to all Freeport-McMoRan sites to help ensure that the company's community grievance systems were consistent, were well managed and incorporated best practices.



The database has allowed Freeport-McMoRan sites to better monitor the status of grievances and to maintain historical files on grievances, which has been helpful for tracking recurring issues from the community. The CGMS also serves as a means of managing and reducing community and company risks by effectively addressing grievances so that they can be resolved before they escalate into larger conflicts.

At PT Freeport Indonesia (PTFI), the Community Grievance Case Team was formed in late 2010 under the Community Relations and Human Rights Department as a centralized unit for PTFI to handle community grievances. A PTFI site-specific SOP was developed. Supported by three PTFI staff in 2013, the team receives, records and manages grievances received from the community. The Grievance Case Team liaises with other PTFI departments to conduct investigation and analysis of grievances. Since the creation of the Grievance Case Team, PTFI has gradually evolved to a more centralized approach in receiving and responding to community grievances. The team continues to socialize PTFI's grievance mechanism to internal and external stakeholders.

The PTFI CGMS has resulted in outcomes that range from a response and an explanation letter to the community to a meeting facilitated by a third party such as the government or a tribal institution, to development and implementation of community development programs, to establishment of memorandums of understanding. The CGMS is instrumental in helping PTFI manage community grievances and expectations.



Rio Tinto

DIAVIK MINE – 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 five Aboriginal groups. These agreements formalized the partnership between the Aboriginal and Inuit peoples in the region and Rio Tinto on the operation of the Diavik Diamond Mine.



The agreements provided the framework for Rio Tinto and the Aboriginal and Inuit signatories to work together to maximize the project's benefits to communities through employment, training and building local business capacity. The agreements also provide scholarships and support for a range of community projects.

To assist with increasing the number of skilled Aboriginal and local employees, Diavik committed to providing 100 apprenticeships over the life of its mine. Diavik also developed an Aboriginal leadership development program, which is now being delivered by the local college providing all northern businesses with an opportunity to access the programming.

Diavik committed to supporting local businesses and helping to develop local and Aboriginal business capacity. To accomplish this, Diavik committed that throughout mine construction 38 per cent of capital expenditures would be with local/northern businesses. Of the \$1.2 billion in construction contracts awarded during the 2000–02 construction, the value of local/northern contracts was \$874 million or 74 per cent. This was almost double the objective. Northern Aboriginal spending during construction was \$604 million, or 51 per cent. During operations, Diavik committed to providing 70 per cent of its business to local/northern companies.

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

When construction and operations spending is combined (2000–14 mid-year), total spending is \$6.2 billion, of which \$4.5 billion (72 per cent) is local/northern. Of the \$4.5 billion, \$2.4 billion (38 per cent) has been spent with Aboriginal businesses.

See www.riotinto.com/documents/Diavik_SEMA_report_0714.pdf page 14 for all figures

TECK

COLLABORATIVE CONSULTATION – EXPERIENCE WITH A FIRST NATIONS INDEPENDENT TECHNICAL REVIEW

In 2010, Teck took preparatory steps for a potential reopening of its Quintette steelmaking coal mine, located in northeastern British Columbia, approximately 15 kilometres southeast of the town of Tumbler Ridge within Treaty 8 territory. This included submitting a Joint Application for Authorizations to regulatory agencies on 31 March 2012. Prior to submission, Teck conducted extensive engagement activities with First Nations and other Aboriginal groups with the aim of including their interests and concerns, along with possible mitigation and accommodation measures, directly in the application. During this period, a group of Treaty 8 First Nations expressed their desire to co-operatively carry out an independent review of Quintette's Joint Application with external technical support, a similar process they previously undertook with another mining company operating in the region.



Teck agreed to provide support for a consultancy that would be chosen and directly managed by the First Nations. Through this collaborative process, the First Nations had full technical ability to review the application, which enabled both sides to focus on solutions rather than what constituted impacts or areas of concern.

External consultants worked with the First Nations to review the applications and then summarized the concerns and interests into 15 disciplines, including such topics as vegetation, wildlife, groundwater, human and ecological health, cumulative effects and reclamation. Teck and its consultants worked directly with the First Nations to develop appropriate responses and next steps for the identified concerns and interests. This began with face-to-face technical discussions to sort out more straightforward issues such as calculation errors and questions for clarification. More complex issues, such as potential impacts to wildlife, were addressed through workshops with discipline leads, First Nations representatives and Teck.

These workshops led to the joint development of 47 work plans, ranging from revising reclamation prescriptions based on historical pre-disturbance vegetation to conducting an overwintering fish and fish habitat survey. Some of these work plans set out to address issues that exist outside of Teck's direct sphere of influence, such as those related to cumulative effects in the regional assessment area. In those cases, Teck worked with its regional neighbours to fulfil the obligations of the work plan, utilizing previously established data-sharing agreements and identifying areas of co-operation between environmental departments.

Prior to the finalization of the work plans, they were presented, along with a summary of the entire review, to the members of each participating First Nation. The entire process took 12 months to complete. Most of the work plans were completed prior to Quintette receiving its regulatory authorizations and, at the time of writing, only one remains incomplete.

Some lessons were also learned through the experience. For example, many of the issues and concerns identified through the process could have been averted if the First Nations had been involved with baseline scoping during the earliest stages of application preparation. It was also clear how important it is in these processes to establish a strategy for representative continuity in order to be prepared for any changes that may arise in the composition of the review team, particularly for longer processes where it is probable that new individuals will likely become involved.

Since the process concluded, First Nations and the provincial reviewing agencies have stated their appreciation for the effectiveness of the independent review and the collaborative tone it struck among all that were involved. This sentiment has also been expressed by these same groups at numerous industry events, regional meetings and community gatherings. Teck has benefited through the establishment of solid working relationships with each of the First Nations that is built on trust and mutual respect. The thoroughness of the review helped establish a level of comfort and confidence that the resulting project was accepted in the eyes of the First Nations community members.



Freeport-McMoRan

ADDRESSING THE GENDER GAP

An important part of Freeport-McMoRan's community development programs worldwide is addressing the gender gap. Since 2008, PT Freeport Indonesia (PTFI) has assisted Kamoro women in joining the Kaoka Aitomona Women Cooperative, which supports them in small income-generating activities such as sewing and other household-level production.



These activities enable women to supplement their household incomes and to gain a sense of independence. In addition, women were targeted as beneficiaries of PTFI's bank savings program, which built their capacity in managing household finances and running small businesses. By December 2013, 197 women from five Kamoro villages had participated in this program, with an estimated total savings of IDR 102 million.

Established in 2003 by PTFI, the Nemangkawi Mining Institute is dedicated to the long-term development of indigenous Papuans by providing them with rigorous training to gain the necessary skills to work in the mining industry. Since 2007, the Nemangkawi Mining Institute has 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.



Kamoro women that were part of the Kaoka Aitomona Women Cooperative.

Barrick

EARLY ENGAGEMENT AND AGREEMENTS WITH NATIVE TITLE OWNERS IN NEW SOUTH WALES

In 2003, when Barrick owned the Cowal gold mine in Australia*, Barrick and the Wiradjuri indigenous people successfully established governance arrangements for the mine. While this marked a major milestone in relations with the Wiradjuri people, the genesis of the partnership between the Wiradjuri and Barrick began nearly 10 years earlier.



Barrick and the Wiradjuri attribute the success of their partnership to the relationships that the company worked to cultivate with local indigenous groups well before exploration near Cowal began in 2003. As part of this effort, Barrick engaged with Wiradjuri communities to identify stakeholders and to share information and planning ideas.

In addition to its consultations with local indigenous communities, Barrick also met with conservationists and farmers to ensure that all interested parties had access to the same information. The company hosted several stakeholder tours of the proposed mine site in the years leading up to its construction. Establishing these relationships early on helped Barrick generate support from local communities to submit a formal Native Title Application to the government. This document was the final step to approve the construction of the Cowal mine.

The Native Title Agreement, which established the governance arrangements between Barrick and the Wiradjuri for the Cowal mine, took 18 months to negotiate. The Native Title Party, representing the traditional owners of the land, ensured the agreement included several provisions relating to employment, cultural heritage management, training and business development. The Wiradjuri were very clear that they wanted to establish a long-term partnership with Barrick to achieve employment and positive quality of life outcomes. The Wiradjuri communities were not interested in a transactional royalties-based agreement as they did not believe yearly payments would achieve community development or transformation. They based this approach on lessons learned from other Australian indigenous communities.



The Wiradjuri, New South Wales, Australia.

* Barrick sold the Cowal mine to Evolution Mining in August 2015.

Barrick

FLEXIBILITY AND CO-OPERATION IN DELIVERING ON AGREEMENTS

In 2003, when Barrick owned the Cowal mine*, they reached a Native Title Agreement with the Wiradjuri Condobolin Native Title Claim Group and was issued a mining lease to develop the Cowal mine. As part of this agreement, Barrick provided support to the Claim Group in a range of areas, including facilitating the establishment of the Wiradjuri Condobolin Corporation (WCC) and the Education, Training and Business Development Committee (ETBDC).



The ETBDC meetings were used as a platform for discussing indigenous employment, and training and education initiatives that existed within or outside the agreement. One example was Barrick's funding of trade and vocational qualifications for the Wiradjuri people as part of the agreement with the WCC. Barrick had found that traineeships were much more effective than apprenticeships, and the company had struggled in the past to fill the quota of one new apprenticeship per year. After discussing this in an ETBDC meeting, Barrick asked the group to consider changing the obligation to funding traineeships instead, as these are only vocational work and training, which was more suited to both the company's and the Wiradjuri's needs.

The WCC agreed, and Barrick helped a number of Wiradjuri youth attain accredited certifications in a range of disciplines, including warehousing, environmental management and business administration. Instead of insisting that the exact words of the agreement be delivered, Barrick and the Wiradjuri discussed joint challenges and opportunities in the program, and the ETBDC provided the forum to discuss these issues and negotiate better outcomes. Ultimately, a better deal was reached benefiting Barrick and the Wiradjuri.

* Barrick sold the Cowal mine to Evolution Mining in August 2015.

Freeport-McMoRan

ESTABLISHING EDUCATIONAL PROGRAMS TO PROMOTE CONTINUED DEVELOPMENT

Recognizing the importance of education for the development of local communities, Freeport-McMoRan has consistently invested in educational programs at its PT Freeport Indonesia (PTFI) operations. The Papuan Affairs Department was established in 2008 as part of PTFI's commitment to build the capacity of Papuan employees, to support their career development and to help more Papuans become PTFI employees.



Since 2013, PTFI has supported a one-month training program for high-potential Papuan employees at Freeport-McMoRan's headquarters in Phoenix to improve their English language skills, to provide them with leadership training and to allow them to gain an overview of the company's global operations. Twenty-four Papuan employees participated in the program in 2013.

In 2003, PTFI established the Nemangkawi Mining Institute. Since its inception, several thousand individuals have participated in the institute's pre-apprentice, apprenticeship and adult education programs, providing world-class education, competency training and employment priority to qualified indigenous Papuans. Enrolment priority is weighted towards individuals from the Amungme and Kamoro communities who reside within and in proximity to the PTFI Project Area. Graduates of the Nemangkawi Mining Institute are not bound to employment with PTFI and are free to accept employment elsewhere.

Since the institute's opening, more than 3,800 apprentices have been trained, and 2,353 have been hired as permanent employees of PTFI or partner companies.

While Nemangkawi's initial mission was solely to focus on building industrial and technical skills for the local workforce, the institute now additionally addresses the need for advanced professional development. In partnership with PTFI and the prestigious Bandung Institute of Technology, Nemangkawi has been offering a Master of Business Administration degree program since 2007, with classes designed around participants' work schedules. The first 41 graduates of the program received diplomas in 2009. Through its Papuan Bridge Program, Nemangkawi has also provided intensive work readiness training to Papuan university graduates in order to successfully transition them from student life to professional work environments since 2012. Training covers areas such as leadership, computer skills, public speaking and interview skills.



Newmont

MARTU RANGER PROGRAM IN WESTERN AUSTRALIA

Newmont used to operate the Jundee mine site,* located approximately 50 kilometres northeast of Wiluna, Western Australia in the remote Yandal goldfield. The Martu people are the traditional owners of the land on which the mine is located.



In 2008, the Wiluna Regional Partnership Agreement was established between the Commonwealth and Western Australian Governments, representatives of the Martu community, a number of mining companies including Newmont, and various community agencies including Central Desert Native Title Services (Central Desert), with the aim of enhancing the Martu community's opportunities for socioeconomic development. The focus of the agreement is on indigenous employability, real jobs, training and enterprise development in the Wiluna region.

Having identified an opportunity to link the Central Desert's land management ranger program with Newmont Jundee's environmental compliance obligations, a pilot Martu ranger program was launched in 2011, addressing the employment challenge through a new model of employment tied to the Martu community's culture and priorities.

Following the pilot program's success, a more formal program was established in 2012 with the Wiluna Martu rangers being contracted to deliver land management services, including fire, feral predator and erosion control, and biodiversity monitoring on the mine site for the first week of every month. This fits with the Martu's cultural calendar, allowing them time off to meet their cultural obligations when they need to. Since its inception, the project has delivered crucial environmental compliance and rehabilitation services across the 2 million hectares surrounding the mine site by protecting biodiversity in the region.

A key challenge has been how to make the ranger program inclusive while meeting Newmont's corporate requirements such as its strict fitness for work and health and safety standards that require people working on the mine site to be of a particular age and fitness. A second ranger team was therefore established, which works on the broader pastoral lease that does not have the same strict requirements as the actual mine site. The program is now inclusive of women who can bring their children with them as they work on the pastoral lease, as well as elders and youth and others in the community who do not meet the strict fitness for work or health and safety requirements.

* Note that Newmont has divested from the Jundee site, but this case study remains relevant.

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, who used to operate the Cowal mine on the shores of Lake Cowal, worked collaboratively with the Wiradjuri Council of Elders and the Registered Native Title applicants over an 18-month period to negotiate an equitable Native Title Agreement and Cultural Heritage Management Plan.*



Under the terms of the Native Title Agreement, Barrick agreed to support the community in the areas of environmental and cultural heritage, employment, training, education and business development and the creation of the Cultural Heritage Management Plan. In 2003, the agreement established the Wiradjuri Condobolin Corporation (WCC) to facilitate business, 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 artefacts found at the site. The Cultural Heritage Company also delivered a comprehensive cultural heritage induction course for all new Barrick employees and contractors.

The Cultural Heritage Management Plan, which was part of the Native Title Agreement, facilitated the development of a Ground Disturbance Procedure (GDP) for the Cowal mine. This GDP was a comprehensive process that facilitated site visits by representatives of the Wiradjuri community to complete on-the-ground assessments, ensuring no cultural heritage materials were damaged. Barrick was committed to working with the Wiradjuri cultural heritage officers and archaeologists to return artefacts removed during the mine's construction and ongoing operations to culturally appropriate locations.

The Cultural Heritage Management Plan required a GDP to be completed prior to disturbing any new ground at the mine. The GDP included two stages of required surveys. The first stage, called a surface clearance survey, is generally undertaken before mining or other activities that will require the removal of vegetation and top soil. The second stage is called a sub-surface clearance survey, which is required after vegetation and surface topsoil (or rock cover) are removed.

* Barrick sold the Cowal mine to Evolution Mining in August 2015.

Freeport-McMoRan

PREPARING FOR MINE CLOSURE IN INDONESIA

PT Freeport Indonesia (PTFI) operations are found in an area where the Indigenous Peoples of Papua hold customary land rights. Specifically, the Amungme in the Papuan highlands and the Kamoro in the coastal lowlands are considered traditional landowners of the area, along with the Dani, Damal, Moni, Mee and Nduga who co-inhabit in the PTFI Project Area. However, all of the land being used by the company has been legally and formally released for use by the company through a contract of work (COW) with the Government of Indonesia (GOI).



PTFI's "January Agreement" of 1974 with the Amungme was the first recognition in Indonesia of *hak ulayat*, or the right of traditional people to land used for hunting and gathering. Subsequent to that agreement, the GOI formally recognized the right to compensation for *hak ulayat* land rights. Compensation in the form of recognition (*rekognisi*) is paid to communities for a release of *hak ulayat* rights, as *hak ulayat* is a communal property right. Such payments are made in the form of mutually agreed projects or programs benefiting the community. PTFI has paid recognition in several instances over the years through programs mutually agreed by consultation and guided by the laws of the GOI.

Two multi-year recognition programs are currently ongoing in the highland and lowland areas of PTFI's operations. These two programs have provided millions of dollars of infrastructure, social and economic development projects, including housing, school buildings and student dormitories, medical clinics, places of worship, community buildings, roads, bridges, water tanks, electrical power, motorboats, sports facilities and feasibility studies for business opportunities. Both programs were the result of consultation with impacted communities and formalized in memorandums of understanding (MOUs).

In addition, land rights trust funds for the Amungme and Kamoro tribes were created in 2001 to provide voluntary special recognition for the holders of *hak ulayat*. These agreements were also formalized via an MOU, which stemmed from the creation of the Forum MOU 2000, which is a stakeholder body focusing on socioeconomic resources, human rights, land rights and environmental issues. The forum consists of representatives from the Amungme and Kamoro tribal councils and PTFI, and it engages with community leaders, including Yahamak, a non-profit human rights advocacy group for Papuan women and children, and the local government.

In 1996, PTFI established the Freeport Partnership Fund for Community Development (Partnership Fund) where it has committed to providing 1 per cent of its annual revenue to support the development of indigenous Papuan communities. These funds are intended to provide continued support to community development programs, even after mine closure. The Partnership Fund is managed by the Amungme and Kamoro Community Development Organization (LPMK), which oversees the disbursement of funds in four main program areas: health, education, economic development, and culture and religion. LPMK is governed by a board of directors and a board of commissioners, which are made up of representatives from the local Amungme and Kamoro tribal communities, government leaders and church leaders, and one PTFI representative on each board.

Freeport-McMoRan

PRESERVING TRADITIONS AND PROMOTING ARTS AND CULTURE

Freeport-McMoRan places a high value on preserving the unique cultures of the Indigenous Peoples who live in and around its PT Freeport Indonesia (PTFI) operations in Papua Province. In addition to improving the quality of life of local communities through its community development programs in education, health, infrastructure and economic development, the company takes a proactive approach to promoting and celebrating the unique Papuan culture nationally and internationally.



Freeport-McMoRan has sponsored research and the publication of a series of books on Papuan indigenous cultures. Since 2008, three books, namely *Introducing Papua*, *Highlands of Papua* and *South Coast of Papua*, have been published and distributed to schools in the Mimika Regency as part of the company's efforts to provide teaching materials to support the local content requirement of the Indonesian curriculum. The Amungme and Kamoro Community Development Organization (LPMak), which manages the Freeport Partnership Fund for Community Development established by PTFI in 1996, has also published two books – one on the Amungme and Kamoro folklore, and another on traditional music.

In order to create economic opportunities through the preservation of local culture, PTFI supports a wood-carving program, which provides technical assistance and logistical support to Kamoro carvers who would like to exhibit and market their products in Indonesia and abroad.

Since 2012, PTFI has developed strategic partnerships with the Papua Center of the University of Indonesia and Bentara Budaya, a national culture and art institution, to help promote Papuan culture as part of Indonesia's cultural diversity. As part of these partnerships, PTFI organized wood-carving exhibitions, sculpture demonstrations, dance performances, presentations of Kamoro culinary traditions and cultural dialogues with anthropologists.

Through their own initiatives, PTFI employees created the Iyakoko Patea Choir in 2006 to bring together music enthusiasts within the workforce to perform and promote traditional Papuan music. The choir currently has approximately 50 members. It has participated in a number of competitions nationally and internationally, and has won numerous awards.



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

Newmont

MUNTJILJTARRA WURRGUMU GROUP'S MARTU ATTITUDINAL SURVEY

Newmont used to operate the Jundee mine site,* located approximately 50 kilometres northeast of Wiluna, Western Australia in the remote Yandal goldfield. The Martu people are the traditional owners of the land on which the mine is located.



In 2008, the Wiluna Regional Partnership Agreement (WRPA) was established between the Commonwealth and Western Australian Governments, representatives of the Martu community, a number of mining companies including Newmont, and various community agencies including Central Desert Native Title Services (Central Desert), with the aim of enhancing the Martu community's opportunities for socioeconomic development. The focus of the agreement is on indigenous employability, real jobs, training and enterprise development in the Wiluna region.

In 2013, the WRPA co-ordinator proposed the idea of an attitudinal survey in the Wiluna region to document the views of youth and adults about their aspirations for employment and what they see as the major barriers. There was agreement from all members of the WRPA that there were low levels of work participation by Aboriginal people and inadequate engagement by many employers with the local Aboriginal community. This has resulted in a low capacity to respond to work and enterprise opportunities. An attitudinal survey towards employment opportunities would provide useful qualitative and quantitative information for not only the WRPA but for the benefit of the Martu community to assist with planning around long-term community objectives and priorities.

To give voice to Wiluna Martu, the Muntjiljtarra Wurr gumu Group (MWG) considered it essential that the survey be conducted for Martu by Martu. Agreement was reached by the WRPA members to undertake the survey. Funding was sought from industry partners and Central Desert for members of the group to be trained in the development and conduction of a survey, as well as analysis and report writing, under the auspices of the Minerals Council of Australia. Thereby, the survey would be designed, implemented, tested and analyzed by the MWG themselves ensuring community participation, ownership and skills as well as all findings remaining at a community rather than industry level. The results of the 2013 attitudinal survey have been utilized by the agreement partners to inform appropriate employment strategies like the Martu ranger program.

* Note that Newmont has divested from the Jundee site, but this case study remains relevant.

Newmont

REVIEWING PARTNERSHIP AGREEMENTS

On 16 August 2006, a community partnership agreement was signed between the Gnaala Karla Booja (GKB) people, Newmont Boddington Gold and the South West Aboriginal Land and Sea Council (Swalsc). The agreement, identified as “Moorditj Booja”, runs from 30 June 2006 to 31 December 2025. One of its commitments, to undertake an independent review of the structural functionality and governance of the agreement after four years, was completed in 2010.



The review showed that the structures controlling the agreement were too complex for the participants to understand and, rather than assist in progressing the mutual promises made, hindered development and placed unnecessary pressures on partners. While significant effort had been made by all parties to overcome the deficiencies, and that in principle the values and relationships underpinning the agreement had remained, the key structural weakness over the first four years of the agreement was identified as being the lack of a fully functioning relationship committee.

The review made the following recommendations, which were agreed during 2010, and have been implemented in the intervening years:

- communications – agreed quarterly schedule of meetings, agreed standard agenda items, protocol for raising additional meetings, formalized reporting schedule and items to be reported on, operational (focused on progress on deliverables within agreement) vs governance meetings and presentations (focused on the partnership, negotiations, relationship development and partnership intent)
- administration – resources required to drive meetings above and required to support the GKB people in their negotiations, decision making, reporting structures, etc; monitoring and payment of participation fees and honorarium linked to agreed achievements.

- structure, roles and responsibilities – simplification of structure; clarify roles and responsibilities; clarify representation to structure, ie dissolution of the Traditional Owners Liaison Committee and revitalization of a new relationship committee; clarify representation; opportunity to review deliverables in Community Benefits Management Plan for priority, appropriateness and achievability, timeframes and resource requirements, and clarity of expectations.
- relationship development – differentiating the operative delivery of the agreement vs the governance aspect of the agreement (joint decision making, negotiation, consultation, evaluation of progress, development of trust).

The review recommendations were workshopped between the GKB Working Party and Swalsc and were accepted in 2010, and further combined workshops occurred during 2011. Since that time, the new relationship structure and representatives were appointed, and quarterly meetings, administrative support, legal update of agreements, annual work plans (operational and governance) and a refined appointments process for the GKB people have been implemented. The next review of the partnership agreement will occur in 2014.



Rio Tinto

SUPPORTING INDIGENOUS SMALL-SCALE MINERS IN NAMIBIA

The Rössing Foundation was established in 1978 through a deed of trust to implement and facilitate the corporate social responsibility activities of Rössing Uranium within Namibian communities. The Rössing Uranium mine is one of the largest and longest-running open pit uranium mines in the world. It is located in the Namib Desert 65 kilometres from Swakopmund near the town of Arandis in the Erongo Region. Rössing is a member of the Rio Tinto group of companies.



The Damara people once inhabited large parts of central Namibia and are regarded as the oldest inhabitants of Namibia alongside the San and Nama. The Damara people mainly live in the Erongo Region and have been exposed to the region's mining activities for many years. While traditionally relying on agriculture and cattle, sheep and goats herding, many Damara have started working as small-scale miners mining semi-precious stones such as amethysts and topaz in the Erongo Mountains.

In 2004, the traditional authority of the Damara people approached the Rössing Foundation to request support in formalizing the many individual and small groups of small-scale miners to enable them to more efficiently market their stones. The trade of the semi-precious stones had so far not been regulated, and most miners did not have the necessary knowledge to determine the value of the stones they mined, neither were stones cut and polished to add value. The foundation took nearly 10 months to consult, scope and plan a program with the local miners and the Damara traditional authorities. It was jointly decided to put a formal association in place through which the Damara people can organize themselves and increase profits.

Small-scale miners were mobilized to come together and join the locally managed institution known as Erongo Region Small-scale Miners' Association (Ersma), which was established in 2008. The foundation provided business management training and assisted the association with developing its constitution and legally registering as a not-for-profit organization. Today, up to 90 per cent of Ersma's 1,600 members are made up of Damara people.

In 2009–10, Ersma, which is now autonomously run and governed by a board of mostly Damara people, partnered with the Ministry of Mines and Energy to develop a training course on value determination of stones. The Rössing mine itself also worked with Ersma to deliver health and safety training for the small-scale miners. Through these trainings, Ersma began to successfully diversify its products and services by introducing jewellery making, together with other value-addition ventures of cutting and polishing semi-precious stones. Jewellery making was made possible through the acquisition of a tumbling machine. Furthermore, Ersma secured a business outlet at the Namibia Craft Centre in Windhoek, the capital of Namibia, which now offers small-scale miners an opportunity to exhibit and sell their products in the capital as well. A bigger cutting and polishing facility is currently being planned at the Üiba-Ôas Crystal Market, enabling the miners to exhibit their stones to tourists and locals passing through the area.

Barrick

FOSTERING LOCAL CULTURE AND LANGUAGE – SHOSHONE YOUTH LANGUAGE APPRENTICESHIP PROGRAM

Most of Barrick's mining operations in northern Nevada exist within the traditional territory of the Western Shoshone people. While ownership of nearly all of this territory now resides with the United States Government, Barrick has committed to ensuring that the Western Shoshone tribes and bands located in these areas realize long-term benefits from Barrick's development of mineral resources on these lands. For this reason, Barrick entered into the "Collaborative Agreement" with a group of Western Shoshone tribes and bands in 2008. The Collaborative Agreement is aimed at maintaining regular, ongoing engagement between Barrick and these Western Shoshone communities and sharing a spectrum of benefits derived from Barrick's operations with this important stakeholder group.



One project currently being implemented under this framework is a groundbreaking program for language revitalization in Western Shoshone communities through the Shoshoni Language Project in the Department of Anthropology at the University of Utah. Shoshoni has been identified as a dying language, with the number of speakers dropping to several hundred over the last 30 years. To reinvigorate local language and culture and help strengthen self-identity, the Shoshone Youth Language Apprenticeship Program (SYLAP) has brought 12 to 15 youths from Shoshoni-speaking communities in northern Nevada to the University of Utah every summer since 2009 for a six-week residency program of language instruction and related cultural activities. The program is focused on Shoshone high-school students and provides them with an introduction to a university setting. Students who have taken part in the SYLAP demonstrate an increased likelihood of graduating from high school and moving on to college.

Involving local youth in Shoshoni language revitalization has been extremely successful. In 2013, SYLAP students created a Shoshoni language video game using a combination of Native American myth and Tim Burton-style artwork. The game is based on traditional Shoshone stories and called "Enee" – which means "scary, fearful, frightening, oh!" in Shoshoni. Students have also created a talking dictionary and a set of illustrated children's books telling traditional Shoshone stories in the native language. These books are published by Barrick as they become available for use in the communities' own language programs, which are also supported by the company.

A Western Shoshone cultural advisory group was established in conjunction with the Collaborative Agreement to advise and provide guidance to Barrick on the cultural values of the Western Shoshone people as they relate to Barrick's ongoing operations and expansions. The group meets monthly and is facilitated and chaired by a Western Shoshone leader. It also includes representatives from most of the local tribes and bands, as well as representatives from Barrick. Currently, a Western Shoshone cultural awareness training course has been developed by the group and is being delivered by Shoshone elders to multiple levels of Barrick staff.



TECK

RED DOG MINE – ACCESSING ROYALTIES AND PROFIT-SHARING MECHANISMS

Teck's Red Dog Operations, located in Northwest Alaska, near the community of Kotzebue, is one of the world's largest zinc mines. Red Dog was developed in 1982 under an innovative operating agreement with NANA Regional Corporation (Nana), a Regional Alaska Native Corporation owned by the Iñupiat people of Northwest Alaska. The agreement granted Teck exclusive rights to build and operate the Red Dog and to market its metal production in exchange for royalties from production for Nana.



Under the agreement, Nana received royalties of the net smelter return annually in the sum of 4.5 per cent until Teck's initial capital investment was recovered in late 2007. Nana then began receiving a share of the operation's net proceeds, beginning at 25 per cent, and increasing by 5 per cent every five years to a maximum of 50 per cent, at which point Nana and Teck will share equally in the profits. A total of C\$471 million in royalties has been paid to Nana since the agreement was signed.

The agreement also requires training and hiring of Nana's people, preservation of their culture and protection of the subsistence resources. Conditions of the agreement specifically include the establishment of an Employment Advisory Committee and a Subsistence Advisory Committee.

Red Dog has over 550 employees, over half of whom are Iñupiat. The Employment Advisory Committee, with members drawn equally from senior management and human resources personnel from both Teck and Nana, identifies opportunities to work towards the goal of hiring 100 per cent of Red Dog employees from the Nana community. To consider these issues, the committee meets routinely to discuss and formulate plans for improved hiring practices, workforce development, workforce retention and workplace satisfaction.

The Subsistence Advisory Committee of local indigenous hunters and elders was formed in the early 1980s to provide Red Dog with direction on environmental and subsistence matters. The committee meets on a quarterly basis and has a mandate to guide Red Dog's Management Committee to ensure potential environmental impacts are avoided or properly managed and that subsistence resources are protected. For example, the committee provides permission for the start of the shipping season in order to avoid conflict with the traditional hunting of marine mammals. It also provides guidance and direction for operation of Red Dog's 52-mile (84-kilometre) concentrate haul road to mitigate caribou migration impacts.

On 14 July 2014, Nana and Teck hosted a celebration to honour 25 years of Red Dog Operations. The event was attended by employees and a number of special guests, many of whom had worked to make the mine a reality and the economic engine it is today for Alaska and the Nana region.

Glencore

RAGLAN MINE – ACCESSING ROYALTIES AND PROFIT-SHARING MECHANISMS

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 formal consultation process. The resulting Raglan Agreement was signed in 1995 between the Société Minière Raglan du Québec Ltée (now known as Raglan mine) and five Inuit partners (the Makivik Corporation and the two local communities of Salluit and Kangiqsujuaq, as well as their respective landholding corporations, Qaqqalik LHC and Nunaturlik LHC).

The agreement includes several chapters addressing environmental stewardship, local employment, procurement priority given to competitive Inuit businesses and dispute resolution. The agreement also features 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 per cent 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 per cent of the money to the Makivik Corporation, 30 per cent to Kangiqsujuaq and 45 per cent 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.



Signed in 1995 with five Inuit partners, the Raglan Agreement represents Glencore's social licence to operate.

Barrick

COWAL MINE – PROCUREMENT FROM INDIGENOUS SUPPLIERS

Barrick had a range of formal agreements, policies and processes that underpinned its open and co-operative approach to doing business with the Wiradjuri Condobolin Corporation (WCC). For example, the Barrick and WCC teams worked collaboratively to ensure procurement of services satisfied the requirements of Barrick's global procurement standards as well as its local procurement plan.*



This local procurement plan required Barrick to determine whether companies that submitted tenders fell into any of the following six categories:

- Wiradjuri-owned business
- local companies based in the Bland, Lachlan and Forbes government areas
- regional (central west New South Wales)
- state based (New South Wales)
- Australia owned
- international.

The Cowal mine also ensured that supplier pre-qualifications did not create hurdles for local suppliers. This made it possible for the WCC in 2006 to win an open tender for a five-year cleaning contract for all Cowal amenities and operational areas. The contract was subsequently renewed on a yearly basis.

Based on this positive experience of working with the WCC, Barrick suggested to the WCC that it partner with an experienced freight company in order to gain the skills necessary to be considered for a tender for the supply of freight, transport and logistics services to the Cowal mine. The mine facilitated an introduction to a well-known transport and logistics company that led to a joint venture that successfully won the tender. Being part of the joint venture represented a great opportunity for the WCC to learn about the transportation business and to leverage this knowledge and develop added service in that sector.

* Barrick sold the Cowal mine to Evolution Mining in August 2015.

Newmont

FPIC IN ACTION: DOCUMENTING FPIC-RELATED PROCESSES DURING EXPLORATION PHASE – IN SURINAME

Suriname Gold Company (Surgold), a limited liability company owned by Newmont (managing entity), owns and operates the Merian Gold Project in northeastern Suriname. Suriname is one of the most sparsely populated countries in the world, and while no people live directly within Surgold's operating footprint, the Merian project is located on the traditional lands of the Pamaka tribal group, which is recognized as an indigenous people/tribal people by Surgold and the international community. Because of this, special attention is required to protect their individual and collective rights.



Committed to ICMM's Indigenous Peoples and Mining Position Statement, the Merian Gold Project will strive to obtain the FPIC of the Pamaka people to support construction and before any significant change or subsequent phase of the project life cycle.

In line with this, Surgold has documented all historic community engagement activities that have been completed since the start of exploration activities and the development of the environmental and social impact assessment. The goal of the documentation process is to map the historic engagement activities and current agreements against the concepts of FPIC in order to identify gaps that may require other engagement mechanisms or agreements in order to align with FPIC.

Concurrently, in order to ensure a joint understanding of FPIC and its application in the Surinamese context, Surgold has engaged with the Government of Suriname (GoS) regarding the project's FPIC, while similarly respecting government's expressed sovereign rights and decisions related to Indigenous Peoples to ensure GoS perspectives are integrated into the engagement.

In order to institute efficient and transparent communication between the Pamaka community and Surgold, the paramount chief of the Pamaka selected the group of community leaders (referred to as the Pamaka Negotiation Committee (POC)) to represent the overall community. The POC has representation from small-scale mining, local business, traditional authority, journalism and legal and has been officially mandated by the chief to speak on behalf of the Pamaka people. One key role for the

POC is to communicate with the broader community and organize meetings between the company and the community.

Currently, Surgold is working to develop and facilitate a capacity-building program with Pamaka community members/leaders regarding their awareness as to FPIC process/outcomes and rights. The capacity building is required to demonstrate that the Pamaka community understands why the company is engaging with them and what the various agreements are intended to achieve against an FPIC framework. Details of the capacity-building program are currently being discussed, but might include concepts presented under ILO Convention 169, IFC Performance Standard 7, human rights and the UN Declaration on the Rights of Indigenous Peoples in terms of the significance and overall relevance to the Pamaka tribal group.

In August 2013, Surgold and the Pamaka community signed a memorandum of understanding that describes all of the work to be accomplished over the next few years. Together, Surgold and the Pamaka community will create and manage a community development fund, define terms of local employment and local procurement, create a participatory monitoring committee, promote safety and environmental stewardship and develop a complaint mechanism. In the interim, Surgold has established a grievance mechanism that is currently functioning and available for community members to access until a more formal process is collaboratively agreed upon.



BHP Billiton

OLYMPIC DAM – ABORIGINAL BUSINESS DEVELOPMENT

The Olympic Dam copper mine is located in outback South Australia, approximately 570 kilometres north of the state's capital of Adelaide. It is the world's fourth largest copper deposit, with smaller amounts of gold, silver and uranium also mined. The Olympic Dam asset is owned by BHP Billiton Olympic Dam Corporation (BHP Billiton) and is situated on land to which the Kokatha people have long held cultural and spiritual connection.

This spiritual and cultural connection has been formally recognized by the granting of legal native title rights to the Kokatha of over 33,807 square kilometres of land surrounding the Olympic Dam operation. This recognition provides non-exclusive native title rights to the Kokatha people to hunt, fish, camp, gather and undertake cultural activities, including ceremonies and meetings, and to protect places of cultural significance on their traditional country.



In 2009, the Kokatha, along with the Barngarla and Kuyani peoples, entered into a business arrangement with BHP Billiton through the Olympic Dam Agreement (ODA). The ODA ensures that Aboriginal people benefit from the Olympic Dam operation, including the provision of employment, training, education and business opportunities. The broader region consists of more than 20 native title language groups, and all can benefit from the ODA via commercial opportunities and access to the Olympic Dam Aboriginal Community Trust. To date, the trust has delivered over \$2.1 million to Aboriginal people and communities within the northern region of South Australia.

Each of the Aboriginal participation program initiatives put in place through the ODA seeks to enhance the socioeconomic status of Aboriginal peoples and has seen measurably positive impacts on local communities. One such success is the launch of local Aboriginal businesses through Olympic Dam's Tier 1 sponsorship model.

The Tier 1 sponsorship model is a collaborative team-based approach that sees emerging Aboriginal enterprises paired with a Tier 1 contracting partner. In collaboration with BHP Billiton, the established contractor provides the development building blocks to help build the emerging Aboriginal enterprise. BHP Billiton identifies work placement in areas of the mine where required work is performed that does not impact production or safety outcomes, and the Tier 1 sponsor provides on-site work structure and direction when needed. Regular meetings are attended by BHP Billiton, the Tier 1 contractor and the Aboriginal enterprise.

This hands-on facilitation helps the Aboriginal enterprise to succeed in its aspirations of becoming a service delivery contractor and to grow its business in responsibility and scope. It also assists in building local capability beyond the life of the mine and helps strengthen regional business through collective competitiveness.

In shaping the Tier 1 sponsorship model, BHP Billiton recognized that hands-on learning is often more practical and effective than the traditional classroom-based approach historically used in business education. Olympic Dam successfully implemented this innovative model of capacity building in pre- and post-employment training, and positive results prompted a step change away from traditional classroom-based training.

The ultimate goal of the Tier 1 sponsorship model is to ensure Aboriginal enterprises can grow into commercially competitive businesses at Olympic Dam, improving the financial independence of Aboriginal people and their communities.

An important and distinctive attribute of the business-to-business support model is the genuine mutual effort to increase local business competitiveness, rather than resorting to charitable contributions or subsidy. This distinction is of particular importance when it comes to building the confidence and ability of the business and ensuring the community forges partnerships based on equality.

In 2015, three years after implementation of the strategy, Olympic Dam is starting to see the rewards of this investment with three Aboriginal enterprises now directly contracted across various scopes of work and a further Aboriginal enterprise working through the sponsorship model.

BHP Billiton Potash

OPPORTUNITIES AGREEMENTS

In 2010, BHP Billiton conducted baseline studies for the Jansen potash project in Saskatchewan and discovered a challenging socioeconomic situation among some local First Nations communities. The high-school completion and labour force participation rates for these communities were about 40 per cent below the provincial average, and the unemployment rate was three to five times the provincial average. At the same time, there was a very young population with a median age range of 20 to 28 years compared with the provincial average of 38 years.



The demographics and socioeconomic situation presented an opportunity for the mutual benefit of BHP Billiton and the local First Nations. The latent capacity in the workforce was a valuable opportunity in an environment where labour force is difficult to come by. There was the opportunity to develop local suppliers and support communities.

Early attempts for BHP Billiton to engage with the communities to conduct baseline studies were challenging because of an environment that had sowed mistrust between First Nations communities and industry historically. The baseline study that was completed concluded that 24 per cent of the population in the area were Aboriginal. Historically, First Nations people have been under-represented in employment and business participation in the potash industry.

A memorandum of understanding (MOU) to negotiate an opportunities agreement was offered to the First Nations during the environmental assessment process, and one of the First Nations signed an MOU with BHP Billiton. The environmental impact statement filed for regulatory approval included a commitment to pursue opportunities agreements with local First Nations. During the public comment period, the First Nations were not able to provide comments on the environmental impact statement. While studies by regulators and the company determined the project would not impact indigenous land use, the situation highlighted the need to build the First Nations' capacity to provide technical feedback.

To help build a relationship and enhance BHP Billiton's understanding of the communities, BHP Billiton supported traditional knowledge and land use studies with the communities. The studies were resourced sufficiently to document all of the communities' land use rather than being constrained by the Jansen project area. The communities' history was also documented utilizing oral testimony and secondary research. The final product consisted of books that served as a cultural resource for the communities and a tool for BHP Billiton to understand the communities' land use in relation to the project.

Part of the negotiations included bringing the communities' chief and members of BHP Billiton's senior leadership team and management team together for a two-day workshop. During the workshop, BHP Billiton provided presentations on plans and goals for each area of the agreement, and the parties discussed their mutual goals and provided clarity in areas of uncertainty. The topics of discussion included:

- agreement governance
- education
- employment and training
- business development
- support for community development
- engagement with community members
- sharing environmental information
- dispute resolution.

The workshop developed a common understanding of what could be achieved through an agreement.



Following the workshop, a draft term sheet was prepared by BHP Billiton that served as the basis to draft the opportunities agreement.

The agreement was signed and made official according to First Nations protocol. Respect for all First Nations cultural protocols was a key success factor for the negotiations and making the agreement.

The agreement seeks to build capacity and provide opportunities for all parties to achieve sustainable outcomes. The outcomes sought include increased high-school graduation rates and employment rates. The agreement also seeks to provide business opportunities that foster sustainable development of First Nations-owned businesses. Community development investments are also targeted for sustainable initiatives. Sharing traditional knowledge for land use activities will support sustainable environmental management practices.

The agreement is governed by teams that have equal representation from BHP Billiton and the First Nations. The teams create five-year plans in the areas of training, community development and economic development. Transparency with community members is committed to including annual reports being delivered at community meetings. There are also commitments by BHP Billiton to enhance the communities' understanding of the potash industry by hosting annual workshops.

In addition, BHP Billiton provides annual information sessions regarding the project to create an understanding and serve to address issues and concerns regarding the project.



First Nations Community and BHP Billiton sign agreement based on First Nations cultural protocols.

The agreement creates an Elder Advisory Team that can provide cultural advice and guidance for the benefit of BHP Billiton's operations. BHP Billiton provides cultural awareness training to its employees and contractors to which the elders will contribute their knowledge. In addition, the Elder Advisory Team will provide advice that will enhance BHP Billiton's efforts to respect cultural protocols in its operations and for its workforce.

One of the challenges encountered during implementation was the learning curve required by the First Nations to navigate company policy. In particular, submission requirements as they relate to providing approvals for funding for community development projects, training and economic development capacity posed a challenge. A greater focus was required after implementation by both parties to understand each other's processes and cultures. An example is BHP Billiton's need to create an understanding regarding the role of elders, their expertise and protocols for engaging elders among those in the organization that need to endorse and approve activities involving elders.

Confidentiality requirements in the agreement presented a learning opportunity. Sharing confidential information with community members and potential partners to achieve the parties' objectives required some discussion.

BHP Billiton undertook work in advance of execution of the agreement to create the necessary tools for implementation in order to achieve the desired economic development and employment outcomes. A BHP Billiton employee was seconded to a First Nations organization to assist in creating a self-sustaining online database of First Nations businesses and potential jobseekers. The database will help to qualify businesses and to match jobseekers with available positions.

This voluntary agreement formalizes the relationship to foster trust and collaboration. Integrity and respect are guiding principles, and BHP Billiton's value of doing what it says it will do has been important. Mutually developed plans and reporting back to community members will seek to continually improve the meeting of the agreement's objectives. The vision is to create sustainable relationships and initiatives for the benefit of generations to come.

Glencore

RAGLAN MINE: COMPANY–COMMUNITY COMMITTEE TO GOVERN AGREEMENT

The agreement for the Raglan mine in Canada (see case study “Glencore: Raglan mine – Accessing royalties and profit-sharing mechanisms” for background) is governed by the six-member Raglan Committee, comprising Salluit, Kangiqsujuaq and the Makivik Corporation representatives and three Raglan mine representatives.

The Raglan Committee is the official forum for Raglan’s Inuit partners to express their concerns in regards to the company’s past, current and future activities. The committee meets four 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.



The Stope School is one of the many specialized training projects that Tamatumani has developed to allow Inuit workers to become Underground Miners.

Rio Tinto

REVIEWING THE IMPLEMENTATION AND EFFECTIVENESS OF COMPANY-COMMUNITY AGREEMENTS

The Western Cape Communities Co-existence Agreement (WCCCA) is a comprehensive agreement signed in March 2001 between Rio Tinto Alcan, the Queensland Government and 11 traditional owner groups on Western Cape York Peninsula, Australia. In late 2003, the company commissioned a review of the implementation of the 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.



Western Cape Communities Co-existence Agreement was signed by Rio Tinto, the Queensland Government and 11 Traditional Owners groups in 2001.

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 (eds), *Settling with indigenous people: modern treaty and agreement-making*, Sydney, The Federation Press, 2006.

TECK

SHARING KNOWLEDGE OF CULTURE AND COUNTRY

For some traditional owners communities, the landscape and its features provide sustenance and spiritual attachment. The stories communicated through song and dance and the ongoing practice of “ceremony” traditional practices give places and features significance. To minimize impacts to Aboriginal heritage and culture, Teck consults with traditional owners in culturally appropriate ways to promote mutual understanding and co-operation.

In recent years, more than 30 Aboriginal people from four distinct groups have worked alongside Teck staff as heritage monitors and field assistants, learning new skills and sharing their knowledge of culture and country. Teck works with each group individually, recognizing the unique challenges for each, always in a broader legal and social context.

As they engage, Teck encourages participation and seeks ways to build the capacity of people to manage their own affairs and fulfil their personal goals. From the numerous requests for assistance, Teck has supported the provision of cultural awareness workshops, strategic planning, sea ranger programs, administrative training and providing pathways for employment – all initiatives of the groups with which they work.



Teck engagement with the Ktunaxa Nation in southeastern British Columbia, Canada.

Cerrejón

FPIC AND EXPANSION PROJECT

Cerrejón is an independently operated, integrated mining and transport complex in the La Guajira region of northeastern Colombia, owned in equal parts by BHP Billiton, Anglo American and Glencore. It includes a thermal coal mine, a railroad and a maritime port. Although the mining concession covers 69,000 hectares, Cerrejón uses approximately 13,000 hectares, which include the mining area, a 150-kilometre railway and a port at the Caribbean coast.



Several indigenous and non-indigenous communities live around this integrated operation. La Guajira Department, in which Cerrejón is located, has a total population of approximately 902,000 people, 45 per cent of whom are Indigenous Peoples as defined by the Colombian Constitution. The Wayuu represent the predominant indigenous group among other groups such as Kogi and Wiwa.

With the annual coal production at Cerrejón growing progressively since the 1980s, the company drew up the Iwo'uyaa Expansion Project in order to keep up with demand for coal. This expansion would involve a partial modification of the Rancheria River inside the mining area. Conforming with ILO Convention 169 and Colombian law, the company proceeded to carry out the *consulta previa* (prior consultation process) with indigenous communities and according to IFC standard to carry out *consulta pública* (public consultation) with non-indigenous communities.

During the course of 2012, the FPIC was carried out according to international best practice, resulting in 103 communities giving their consent to the expansion project and 12 refusing it based on environmental and economic concerns. Protests broke out over the legitimacy of the entire consultation process and, despite having the possibility of being able to legally continue with the process even with the opposition of 12 communities, in 2012 Cerrejón voluntarily stopped the process due to reduction in international coal prices. During the whole process, Cerrejón also reconfirmed that it would not carry out the expansion project without the communities' approval to the project.

The consultation process was carried out following the stages included in the current Colombian legislation: pre-consultation, formal opening, impact management workshops and pre-agreements. The process also included previous training on indigenous rights provided in the Wayuu's own Wayuunaiki language, with participation of the Ministry of Interior and human rights agencies: the National Ombudsman's Office and the national and local human rights offices (Procuraduría and Personerías). All of the meetings were recorded and detailed minutes were written, and Cerrejón respected the time and process required by the communities for their autonomous internal reflection.

The challenge remains, however, as power to give indigenous communities the right to veto mining projects rests with government and not companies. This may also open a space for politically driven decisions being made. In the case of Cerrejón, the company did not oppose the veto rights of the communities and complied with domestic and international legal requirements by carrying out a thorough and extended consultation period, but the final decision remained with government. The specific project mentioned above continues to be halted, but the company has initiated other smaller expansion projects that seek to enhance annual production to 41 million tons of coal. One of the projects entails a prior consultation process that is currently following Colombian legislation as well as international FPIC standards.



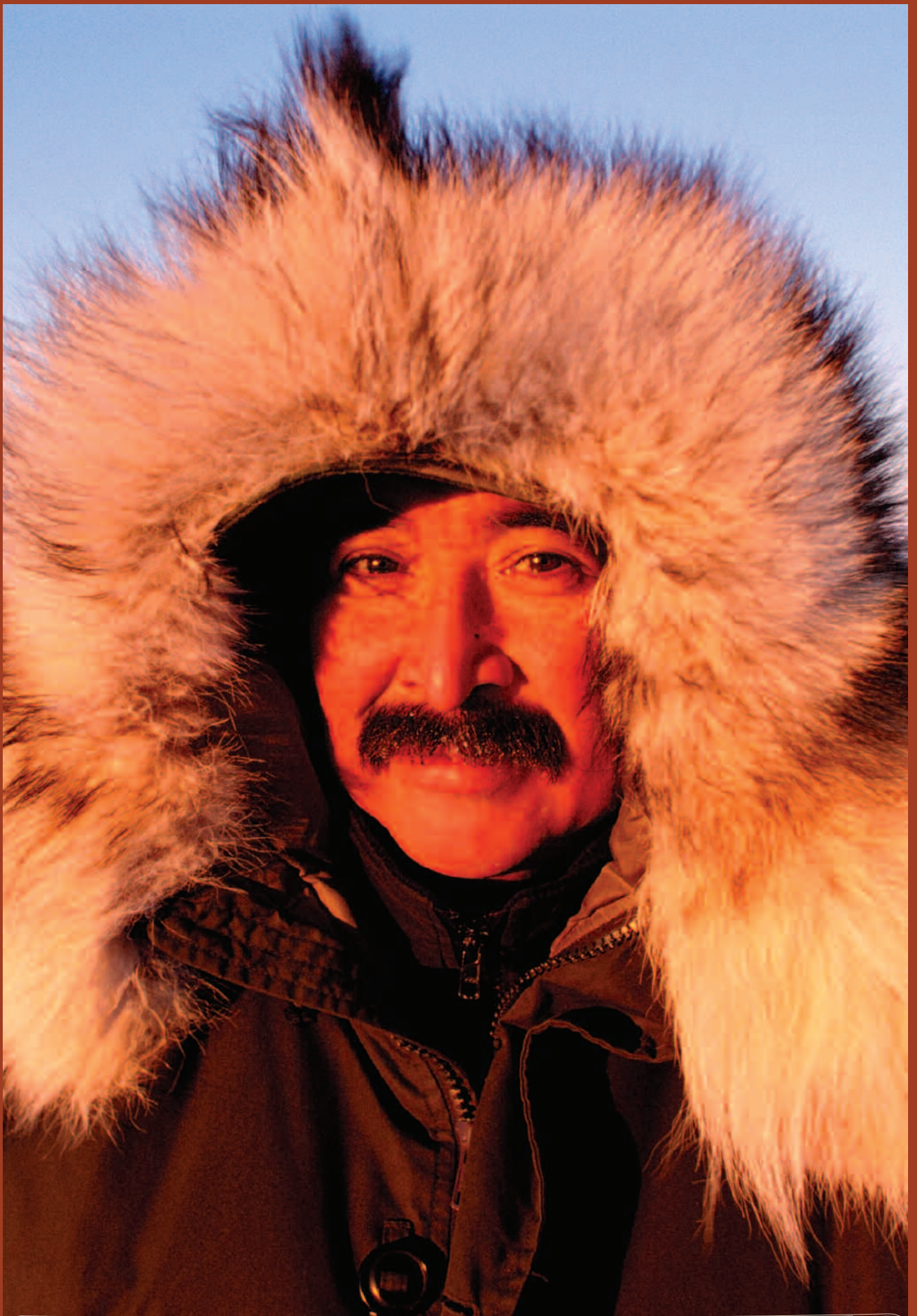
In an ancestral arrival of spring ceremony, members of the Wayuu Indigenous community gather at the Cerrejón Indigenous Foundation Farm, in La Guajira to clamour Mareyguá to send rain to ensure prosperity.

The company has learned many things from this process, including:

- Communities have the expectation of resolving all of their needs through a prior consultation process and not receiving compensations according to the impacts of a project.
- Legislative gaps or the possibilities of jurisprudence interpretation generate conflict, and there needs to be clarity in legislation maintaining the guarantees for the exercise of the right to participation of indigenous communities.
- On some occasions, there are groups that oppose a project arguing against mining altogether or by having an erroneous perception of the impacts of a project. In these complex processes it is desirable to have the presence of a state institution with enough authority to conduct the process and finding answers to community demands and concerns.

Undoubtedly, the history of relationship between the communities and the state, and with business, as well as the respect of their rights, affects the development of prior consultations.





Tony Weyiouanna whose office job involves the relocation of the community of Shishmaref, Alaska.

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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:

2010 Advisory Group

In 2010 when ICMM produced its original Good Practice Guidance on Indigenous Peoples, an independent Advisory Group was convened to provide constructively critical advice on the substance and process to develop the Guide. Significant amounts of the content in this version of the Guide is consistent with the earlier version and we remain indebted to the following individuals for their role in the 2010 version:

Mike Rae
(former director of NRPlan, Canada)

Cassio Inglez de Souza
(Anthropologist, Comtexto Consulting, Brazil)

Meg Taylor
(former Vice President, Compliance Adviser/Ombudsman 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)

Public consultation period

In January 2015, ICMM held a six-week public comment period on a draft of the Guide, welcoming comments from individuals and organizations. We are extremely grateful to the following individuals and organizations who submitted comments on the draft document. Their comments in no way imply endorsement of the content of the Guide. We would like to thank them for their thoughtful and constructive input which has shaped the final version:

University of Dundee

Africa Progress Community

Arcadis Chile

Engineers without Borders, Canada

Estudio Walsh

Gaia Foundation

Lex Justi and Minority Rights Group International

Oxfam

Interfaith Centre on Corporate Responsibility

Internationalization of Indigenous Rights Research Group,
The Balsillie School of International Affairs and the
Centre for International Governance Innovation

Right 2 Respect

Independent Consultant

Latin American Dialogue Group

NEI Investment

Public Health by Design

University of Groningen

Asia Indigenous Peoples Pact (AIPP), Earthworks,
Indigenous Peoples Links (PIPLinks), the
Kitchenuhmaykoosib Inninuwug First Nation, Middlesex
University Business School, MiningWatch Canada and
Natural Justice.

SveMin, Swedish Association of Mines, Minerals and
Metal Producers

Industry Council for Aboriginal Business

Center for Research and Action for Sustainable
Development, Cameroon

ICMM working group

The development of the Guide was overseen by an ICMM Working Group, chaired by Ian Wood (BHP Billiton). ICMM would like to thank the following members of the working group for their sustained engagement on iterative drafts which led to the final document.

The working group comprised:

Tammy Vanlambalgen	Areva Mines SA
Jehanne Aubert	Areva Mines SA
Tricia Wilhelm	Anglo American
John Millikan	AngloGold Ashanti
Ian Wood	BHP Billiton
Carolyn Burns	Barrick
Naomi Johnson	Barrick
Francisca Dominguez	Codelco
Teodoro Schmidt	Codelco
Anders Lundkvist	Euromines
Stan Batey	Freeport-McMoRan Copper & Gold
Christopher Chambers	Freeport-McMoRan Copper & Gold
Ivar Oellingrath	Hydro
Jillian D'Urso	MMG
Nick Cotts	Newmont
Janina Gawler	Rio Tinto
Carlos Gajardo Roberts	Sociedad Nacional de Minería (SONAMI – Chile)
Heather Lawrence	Teck
Tom Syer	Teck resources Limited

Consulting team

The 2010 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. CSRMI developed this version of the Guide and ICMM is indebted to the team for their expert input into the drafting and development of the publication:

Paul Rogers (Project Lead)
David Brereton
Saleem Ali
Ashlee Schleger (formerly CSRMI)

ICMM team

Aidan Davy and Claire Larner led the process to develop this Guide with support from Eva Kirch and Hafren Williams. We are indebted to Fraser Watson for his creative input into the design process.

Photo credits

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

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Publication information

Published jointly by the International Council on Mining and Metals (ICMM), London, UK.

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ISBN: 978-1-909434-15-8

Available from: ICMM, www.icmm.com, info@icmm.com



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