

Workshop to establish the Indigenous Peoples Advisory Forum to the Aluminium Stewardship Initiative (ASI)

April 16th – 18th, 2016
Kuantan, Malaysia

Introduction

In May 2015, with the support of IUCN and convened by the Asia Indigenous Peoples Pact (AIPP) and the Forest Peoples Programme (FPP), an Expert Meeting of Indigenous Peoples was held in Chiang Mai, Thailand, to provide input into the development of a performance standard for the production and use of aluminium. This workshop produced a range of detailed recommendations regarding the assessment and measurement of compliance with the ASI performance standard, and a range of general recommendations regarding appropriate governance for the standard.

Contained in these recommendations was the request that there be established separate avenues for engagement with indigenous peoples' organisations and communities, distinct from the involvement of civil society organisations in general. Based on that recommendation, the ASI proposed to convene a standing Indigenous Peoples Advisory Forum (IPAF) as part of its formal governance structure.

The Expert Workshop held on 16-18 April 2016 in Kuantan, Malaysia was convened to discuss the ASI responses to the original recommendations submitted in 2015, and in particular to discuss the possible formation and potential mandate of the Indigenous Peoples Advisory Forum.

One of the main principles of indigenous engagement with the ASI is that the processes through which indigenous peoples provide input should be guided and, where possible, hosted by indigenous peoples' organisations.

The workshop in Malaysia was hosted and organised by JOAS, the Indigenous Peoples Network of Malaysia (Jaringan Orang Asal SeMalaysia) in collaboration with Forest Peoples Programme (FPP) and the Asia Indigenous Peoples Pact (AIPP). Kuantan was chosen as the location of the workshop as it is a town made infamous over the unregulated opencast bauxite mining over the last couple of years resulting in severe environmental pollution.

So large was the scale of the mining that the BBC reported Malaysia as being the top bauxite producer last year with an export estimate of nearly 20 million tonnes¹. A moratorium on all bauxite-related activities has since been imposed by the federal government to rethink the regulation of the industry.

Malaysia, particularly the indigenous population, is also further threatened by the proposed development of many mega hydroelectric dams, an associate facility of the aluminium processing industry.

1 <http://www.bbc.com/news/world-asia-35340528>

The convening organisations all thank the hard work of the JOAS secretariat in bringing this workshop together and supporting the work of the workshop with such efficiency and grace.

Objectives

1. To review, amend and approve the Terms of Reference for the Indigenous Peoples Advisory Forum to the Aluminium Stewardship Initiative.
2. To review and provide any comments to the Governance Arrangements of the ASI, including the Complaints Procedure.
3. To establish the Indigenous Peoples Advisory Forum with due regard to expanding input and membership.
4. To establish the criteria for, and propose members to, participate in the Standards Committee of the ASI.

The workshop gathered over 10 participants from Australia, Cambodia, Guinea, India, Malaysia, and Suriname, most of whom hail from communities affected by the exploration, mining and processing of bauxite.

Participants were selected on the basis of their experience with primary production of aluminium (bauxite mining and/or transportation, smelting and refining) and their interest and commitment to engage in the ASI as a strategy to raise the requirements on companies to recognize and respect the rights of indigenous peoples to their lands, territories and resources.

The participant list built on the original small team of participants from the first Expert Meeting, with additional participants sought from Guinea and Brazil due to the significance of the bauxite mining and aluminium production industries in those countries. Participants from Brazil were unable to attend due to visa difficulties but are committed to engage in follow up to this meeting.

See Annex I for Participant List.

Agenda

The workshop begun with presentations from participants from each country on the adverse effects of the aluminium industry to their community or the communities they work with. Participants also shared their experiences in taking proactive actions to address the issues caused by the industry (See Annex II for Summary of Experiences shared.)

Building on the foundation provided by this extensive sharing of experiences, the participants reviewed the outcomes of the previous Expert Meeting, and discussed in detail the proposal from the ASI for the establishment of an Indigenous Peoples Advisory Forum. FPP provided an overview of the history of the development of the ASI and the engagement of indigenous peoples in the development of the standard and in the establishment of the governance arrangements for the standard. Review and discussion of the proposed Terms of Reference for the IPAF involved group work between the various countries represented and resulted in a preliminary outcome document intended to sharing with the ASI directly.

The second day of the workshop began with a closed-door review of the outcome of discussions on the first day, and then proceeded as a dialogue between the assembled indigenous peoples'

organisations and the ASI, represented by the ASI Executive Director. The second day of dialogue included more detailed review of the governance of the ASI, and the critical elements of that governance arrangement still being developed, in particular the Assurance Model and the Complaints Mechanism and the future role of the IPAF. (See Annex II for the Agenda as Read).

It was noted in the workshop that the Constitution of the ASI, planned to be adopted in the ASI Annual General Meeting in Germany in late April, had not been shared with or reviewed by the involved indigenous peoples' organisations prior to being finalized. Participants indicated that in the future, any documents, policies or procedures relevant for indigenous peoples should be shared with sufficient time provided to enable input from the IPAF.

On the third day of the workshop, participants were brought to visit the bauxite mining sites spread out across town, as well as the Kuantan Port to view the remaining stockpile of bauxite waiting in line to be exported to China.

Participants later visited Kampung Mengkapur, an indigenous Semaq Beri Orang Asli village affected by iron and gold mining. The community hosted the group for the day.

A short discussion was held between the host community and participants to exchange their experiences in defending their traditional territories against the mining industry.

Participants integrated with the community through informal sharing sessions on hunting equipment and learning to rubber tap. They were also brought to visit a nearby site of spiritual and historical significance, Gua Tongkat (Tongkat Cave) and a limestone quarry close by.

Solidarity night was held in the village to conclude the workshop, where traditional songs and dances were shared by the hosts as well as participants.

Outcomes

The meeting resulted in a draft Terms of Reference for the establishment and functioning of the IPAF, including a proposal to have two different initiatives;

1. The establishment of a network of information exchange and sharing of indigenous peoples' organisations and communities based on experience with primary aluminium production;
2. Development of the Terms of Reference of the IPAF .

The Outcome Document draft (see Annex IV) will be circulated to indigenous organizations engaging in the process for review and comments. The document includes a broadened proposal for the Terms of Reference of the IPAF, to be submitted to the ASI once consultation has been completed. It also includes a plan of action in continuing to build and to strengthen the engagement of indigenous peoples' representatives from areas affected by the aluminium industry.

As the workshop was held two weeks in advance of the inaugural meeting of the Standards Committee of the ASI, participants also gave a range of valuable input to be proposed to integration into the development of the ASI assurance model and complaints procedures which were noted by the ASI Secretariat and tabled at the ASI Standards Committee meeting in Ingolstadt in April 2016. Two interim representatives were selected to participate in the Standards Committee meeting, to

continue coordination with the ASI and to represent the recommendations brought forward by the workshop.

It is expected that the Indigenous Peoples Advisory Forum to the Aluminium Stewardship Initiative will be formally constituted at the 2017 workshop, when the Terms of Reference are accepted and its mandate finalized.

Annexes:

- I. Participant List
- II. Summary of Experiences Shared
- III. Agenda (as read)
- IV. Outcome Document (draft 18 April)

ANNEX I - Participant list

(Redacted from website version to protect participants' confidentiality)

ANNEX II - Summary of Experiences Shared

Experiences of Indigenous Peoples on Bauxite Mining and processes related to aluminium production

Summary of the country presentations (Suriname, Guinea, Malaysia, Australia, Cambodia, and India)

A. BAUXITE MINING Operations

Guinea (Hamdallaye)

- CBG Bauxite Mining Operations (49%) and Halco Mining (Alcoa, Rio Tinto, Dadco) (51%)
- port infrastructure

Australia

- Rio Tinto Alcan and Glencore
- including aluminium refinery and smelter
- port infrastructure

Suriname

- Alcoa and BHP Billiton (they did concession but did not push through)
- including dam

Cambodia

- Alex Corporation (Chinese Company)
- Exploration ongoing

India (Nyamgiri) – Vendanta

- including aluminium refinery and smelter

Malaysia

- Aluminium Smelter plant (Press Metal Sdn Bhd)
- mega dams
- port infrastructure



Australia



Aluminium smelter plant in Nyamgiri, India.



Exploration in Cambodia

B. COMMON EXPERIENCES

ENVIRONMENTAL IMPACTS

- Subsidence of groundwater, increased sedimentation of rivers, waterways and air pollution, deforestation, rehabilitation of mined out areas, etc (India, Malaysia, Guinea, Australia)



HEALTH IMPACTS

- Skin diseases, noise pollution, respiratory problems (India, Guinea, Malaysia)



LABOUR

- Workers in the mines are not well paid (Guinea); workers from outside are getting higher pay than those coming from the affected communities.
- Not that much opportunities for employment of those from the affected/ host communities

ASSOCIATED FACILITIES (ie dams)

- Many of the host and surrounding communities did not have electricity. Power from the dams were mainly for the cities and the refinery plant. (Suriname)
- Improved transportation for some communities (Guinea)

VIOLATIONS TO THE CIVIL AND POLITICAL RIGHTS

- Suppression of legitimate actions from affected communities including arrests and criminalization of protesting community members.
- Extrajudicial killings (India).

BENEFIT SHARING SCHEMES AND COMPENSATION

- No clear terms of benefit sharing for the affected communities.
- Lack of just compensation for affected communities.

PARTICULAR TO INDIGENOUS PEOPLES

- No legal recognition of states on the rights of indigenous peoples (collective rights as enshrined in the UNDRIP)/
- Free Prior and Informed Consent (FPIC) of communities are not sought before any activity is implemented in their territories.
- Impacts to the community cohesion and weakening of traditional governance systems.
- Lack of information on the project/ activity.
- Impacts to the traditional livelihoods of indigenous peoples (ie hunting).
- Resettlement and displacement (loss of culture and identity).
- Impacts to indigenous women (socio-economic, etc).

C. QUOTES

"Niyamgiri is our God, our parent. It means everything to us. We have been worshiping it for years...our forefathers too. If we are thrown out from Niyamgiri, we would die like fish without water. Does the government want us to die like insects," asked an emotional Govind Sikaka of Serkapadi, in Kui and Oriya language, echoing the emotions of the Niyamgiri tribal people present at the meeting.

"We can give our head, our blood, but not Niyamgiri. It has given us everything, fruit, water, air," said Rupu Jakesika, a woman of Serkapadi, who signed two resolutions - one rejecting the proposal to mine Niyamgiri and the second staking a community rights claim over the Niyamgiri mountain.

ANNEX III - Agenda (as read)

Day One: Indigenous Peoples Discussions

8.30	Registration	
9.00 – 9.10	Welcome	Yusri Ahon, JOAS
9.10 – 9.30	Introduction to the agenda	Helen, FPP
9.30 – 10.30	Introduction of participants with Experience Sharing from affected community and indigenous peoples' organizations representative: 10 minute slots of their experience with the aluminium industry	All participants Facilitated by AIPP <ul style="list-style-type: none">• Guinea• Suriname• Australia
10.30 – 10.45	COFFEE	
10.45 – 11.45	Continued Experience Sharing	<ul style="list-style-type: none">• Cambodia• India• Malaysia
11.45 – 11.50	Summary of experiences shared	Robie, AIPP
11.50 – 12.30	Overview of ASI and the engagement of indigenous peoples in the ASI	Helen, FPP
12.30 – 13.30	LUNCH	
13.30 – 14.30	ASI Performance Standard, Principle 9	Helen, FPP
14.30 – 15.30	Presentation of the draft Terms of Reference for the IPAF and scope for additions	FPP
15.30 – 15.45	COFFEE BREAK	
15.45 – 16.45	Working group discussions	JOAS / AIPP / FPP
16.45 – 17.30	Plenary presentation of working group outcomes, discussion and agreement of inputs	Facilitated by AIPP

Day Two: Dialogue with the ASI

9.00 – 10.00	Introduction of participants and the issues they are facing	Facilitated by AIPP
10.00 – 11.30	Introduction to the ASI	Fiona, ASI
Coffee break	<ul style="list-style-type: none">• Mandate	
10.30 – 10.45	<ul style="list-style-type: none">• Governance• Complaints system	
11.30 – 12.30	Dialogue with the ASI	Facilitated by AIPP
12.30 – 13.30	LUNCH	
13.30 – 14.30	Presentation and discussion of inputs to the TORs and mandate of the IPAF	FPP/AIPP
14.30 – 15.00	Discussion of modalities to elect members of the Indigenous Peoples Advisory Forum	
15.00 – 15.15	COFFEE	
15.15 – 16.00	Agreement on methods for engagement in the IPAF and ASI Governance (including coordination plans): Action Plan	
16.00 – 16.30	Expanding the membership of the IPAF	
16.30	Orientation for the field trip	

Day Three

8am	Introduction to the local bauxite campaign
8.30am	Leave for the port
11.30am	Field trip to indigenous communities affected by mining
6pm	Cultural night in the village
9pm	Arrive back at the hotel (approx.)

ANNEX IV

Outcome document

Proposals for the Indigenous Peoples Advisory Forum

Propose to have two different initiatives: the establishment of a network of information exchange and sharing of indigenous peoples' organisations and communities based on experience with primary aluminium production; a formal Advisory Forum body with a determined membership with a Terms of Reference to engage with the ASI.

The following sections on 'Composition of the Forum' and 'Terms of Reference' are proposed as part of the ASI by-law establishing the Forum (the ASI Governance Handbook):

Composition of the Forum

1. The Indigenous Peoples Advisory Forum (IPAF) Network is open to any indigenous person or organisation and support groups and individuals to apply, based on interest to be engaged and commitment to provide input based on experience.
2. The Indigenous Peoples Advisory Forum Members will be regionally self-selected from within the Network of engaged organisations and communities.
3. Members will serve on the Forum for a term of four (4) years, and may extend this term if mutually agreed at a Forum meeting for an additional term.
4. Selection criteria for the IPAF Members will be based on:
 - o In-depth knowledge of indigenous peoples' rights, life-ways and issues at the local, national and regional level
 - o Must be an indigenous person with integrity and credibility, from the region being represented on the Forum
 - o Members must be endorsed by his/her communities, traditional institutions and/or organizations
 - o Level of experience with bauxite mining, refining and/or smelting issues and familiarity with the ASI (or commitment to build familiarity)
 - o Gender balance, and representation of youth and elders and persons with disability will be taken into account
 - o Representation from affected communities will be ensured
 - o Geographical representation will be ensured according to the relevant regions within the UN regional process (Africa, Asia, Central and South America and the Caribbean, Central and Eastern Europe, Arctic, Russian Federation, Central Asia and Transcaucasia, North America and Pacific – relevance to be checked). Number of representatives will be according to relevance and extent of aluminium production, with a maximum number of 15. Alternate representatives will be identified.
 - o Consideration will also be given to ensuring that countries with bauxite reserves and mining activities, and those with refineries and smelters, are both represented, as well as countries that have both
 - o Having the time and the commitment to attend meetings, report back to and collect feedback from their respective regions, and perform other tasks as defined in the Terms of Reference.

Terms of Reference of the Forum

1. The IPAF will be independent from the ASI with its own protocols and rules of procedure.

2. The IPAF Members will hold least one face-to-face ordinary meeting annually, with the potential for a second meeting in the case of urgent attention needed to a particular issue (and if ASI has resources available). ASI will provide resources for the annual meetings and translation needs of the IPAF.
3. Two designated IPAF Members shall be the IPAF representatives on the ASI Standards Committee to ensure that indigenous peoples' rights, concerns, and recommendations are taken into account.
4. The IPAF representatives on the Standards Committee shall meet directly with the ASI Board at least once a year, usually at the ASI AGM. This will be an opportunity to report on and discuss issues raised to the Board's attention during the course of the year, issues raised during the IPAF meeting, and general concerns and recommendations from indigenous peoples.
5. The IPAF shall provide advice and recommendations during the development of ASI documents as they relate to indigenous peoples.
6. The IPAF shall review, reflect on and provide recommendations for improvement or change to ASI's governance arrangements.
7. The IPAF will recommend processes for participatory monitoring of compliance of ASI Standards that can directly involve indigenous peoples and participate in ASI's oversight procedures for certification and accreditation processes.
8. The IPAF's engagement with the ASI Complaints Mechanism shall include:
 - a. Acting as a resource on ASI Certification and non-conformance with ASI Standards relating to indigenous peoples;
 - b. Being informed of complaints related to the rights and interests of indigenous peoples;
 - c. Nominating indigenous rights experts to serve on Complaints Mechanism panels convened to respond to such complaints;
 - d. Participating in ASI's oversight procedures for the Complaints Mechanism.
9. The IPAF may request additional resources from the ASI for specifically identified needs, including commissioning specific research into issues raised by indigenous peoples² which ASI may contribute to if resources are available.
10. The IPAF will be responsible for regular expansion and targeting of un-represented areas or regions to ensure that membership adequately represents indigenous peoples from territories impacted by the primary aluminium supply chain.
11. The IPAF may create sub-committees or working groups of people within the Forum to deal with specific issues raised and brought to the IPAF's attention and may designate representatives to thematic ASI working groups.
12. All members of the IPAF will be responsible for providing reports back to the communities and organisations they represent and will be responsible for gathering feedback and inputs from indigenous peoples in their respective regions.
13. If a member of the IPAF is unable to fulfil their function during their term a replacement may be proposed by regional members of the wider network between Forum meetings.

Internal coordination agreements

Convening the Indigenous Peoples' Advisory Forum:

1. The IPAF meetings will be convened separately from the ASI AGM and Board meetings and will be held on an annual basis
2. Meetings will be held in indigenous territories or affected communities hosted by indigenous peoples' organisations or network members
3. Where relevant, meetings will be held at least 3 months in advance of the AGM, to consider items of importance to be considered at the AGM
4. Meetings of the IPAF may, at their discretion, choose to invite Directors (Board members) for dialogue during open sections of the IPAF meeting

² For example, issues faced by indigenous peoples, e.g. best practice in rehabilitation processes involving or controlled by indigenous peoples, health conditions caused by smelting, environmental issues

5. Meetings will have a standing agenda item on presenting and sharing positive and negative experiences of indigenous peoples related to bauxite mining and primary aluminium production including reflection/review of the ASI processes where IPAF is engaged

Methods of coordination

1. We need to create a formal framework for communication, as there will be a need to sustain regular communication between Forum meetings.
 - a. The IPAF nominated representatives on the Standard Committee will be responsible for ensuring that they share with the wider network, and with the IPAF members, all relevant communication regarding the work of the Standard Committee.
 - b. The ASI Secretariat will communicate directly with the full membership of the IPAF when necessary.
2. Hosting arrangements should rotate between meetings with indigenous peoples' organisations
3. The Forum could establish a Secretariat during each Forum meeting, headed by the next host organisation.
4. The secretariat could be guided by a small committee comprised of a person from each continent – cross continental group

Action Plan

Step 1. Initiate a network listserv to be managed (in the interim) by AIPP

- a. AIPP will establish the network and add members based on input coming from the outreach being done by all organisations currently involved
- b. All members are responsible for sharing information on the listserv directly
- c. Any information that the ASI would like shared with the whole network will be sent through the IPAF representatives serving on the Standards Committee for sending on to the listserv

Step 2. Outreach both within Asia and further globally

- a. AIPP will lead on outreach within Asia (assisted by: India – Nicholas, Cambodia – Samin/CIYA, Malaysia – JOAS)
- b. FPP will conduct outreach in Africa and South America
- c. VIDS will conduct outreach in Central America and the Caribbean
- d. MDC will also conduct outreach within Africa, with a particular focus on Cameroon
- e. Mark Annandale will conduct outreach among other indigenous groups affected by or involved in bauxite mining in Australia

Step 3. 2nd edition of the Indigenous Peoples' Rights and Aluminium book

- a. Additional case studies from (Matek/JOAS), Brazil (Cathal), Cambodia (Samin/CIYA), India (Nicholas/Gujarat)

Step 4. Coordination and hosting of the next Expert Meeting of Indigenous Peoples on the ASI

- a. Possible hosting arrangements in Australia (Wik Waya) will be explored by Mark and Gina
- b. VIDS will look into the possibility of hosting arrangements in Suriname
- c. MDC will look at the possibility of hosting the Forum in Guinea

Statement of concern regarding effective consultation

The participants of the Expert Workshop of Indigenous Peoples held in Kuantan, Malaysia, to discuss the establishment of an Indigenous Peoples Advisory Forum to the ASI, would like to note for the record the following:

- i. It is a principle of engagement that documents, policies and procedures relevant to and impacting on indigenous peoples should be shared in advance to the engaged indigenous peoples organisations for input

- ii. Documents, policies or procedures shared in this way, must be shared sufficiently in advance for the input and feedback of indigenous peoples to be taken into account
- iii. The participants in Malaysia were concerned that the draft Constitution of the ASI was shared in a final form, after the stage at which any recommendations or revisions from the indigenous peoples' organisations present could be considered
- iv. Not wanting to delay the adoption of the Constitution, the participants instead ask that this principle be acknowledged and respected in the future, and that the proposed amendments provided below be acknowledged and considered in future revision of the Constitution.

Proposed text for future amendment of the ASI Constitution:

The IPAF will be independent from the ASI with its own protocols and rules of procedure, governed by the Terms of Reference. Amendments to the Terms of Reference by the ASI Board will be made only with the agreement of the IPAF. Members of the Forum will be selected through a self-selection process from within their regions.

The IPAF will:

- Liaise with the ASI Board and Standards Committee on issues material to indigenous peoples
- Nominate two representatives to the ASI Standards Committee and co-ordinate input to the Committee's work program
- Recommend processes for participatory monitoring that can directly involve indigenous peoples
- Act as a consultative body for the ASI Complaints Mechanism from an indigenous peoples' perspective, in terms of:
 - Design of procedures
 - Recommendations for appropriate experts/processes to support indigenous communities that raise grievances
 - Advice on how learning from complaints processes should be addressed by ASI.
- Participate in ASI's oversight procedures for the certification and accreditation processes, and of the Complaints Mechanism