



INDIGENOUS PEOPLES ADVISORY FORUM (IPAF) MEETING

Nhulunbuy (Gove), Northern Territory, Australia, 24-28 July, 2017

Contents

Introduction	2
Gove context.....	3
Objectives of the meeting.....	4
Agenda	5
Outcomes.....	6
Annexes:.....	6
Annexe I: Participants List.....	7
Annexe II: Agenda (as read)	8
Annexe III: Gumatj Corporation	10
Annexe IV : Rio Tinto operations in Gove	13
Rehabilitation process	15
Annexe V: Outcomes Document.....	17
Agenda Item: 'The German Project'	18
IPAF workplan for 2017.....	19
IPAF workplan for 2018.....	21
Appendix: ASI Performance Standard Guidance - 9 Human Rights cons-draft 4 231217 - IPAF inputs	21
References:	39

Introduction

In July 2017, the Gumatj people of East Arnhem Land welcomed the IPAF members to Nhulunbuy (Australia), also referred as Gove, for their annual meeting. With facilitation from Mark Annandale (University of the Sunshine Coast) and Gina Castelain (Wik Waya and University of the Sunshine Coast), as well as a logistics support from the ASI Secretariat, this experience permitted rich discussions with the Gumatj people, contributed to the IPAF members understanding of bauxite mining and generated essential inputs to the ASI performance standards. In addition to its practical outcomes in terms of management of the forum and building of the ASI standards, the meeting also represents an open space for experience sharing and mutual support among representatives of Indigenous Peoples facing various but connected struggles with mining industries and their related facilities.

This meeting follows a series of workshops held in Chiang Mai (Thailand) in 2015 and in Kuantan (Malaysia) in 2016 which had the global aim of involving Indigenous Peoples in an appropriate way through the creation of the ASI. The first workshop was held with the support of the IUCN and convened by the Asia Indigenous Peoples Pact (AIPP) and the Forest Peoples Programme (FPP). It led to a range of specific recommendations regarding the ASI performance standards, and to broader recommendations regarding the governance structure needed in order to address Indigenous Peoples issues adequately. This resulted in the addition of a standing Indigenous Peoples Advisory Forum as an integral part of the ASI formal governance structure.

The second workshop 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). The outcomes of this second edition were, in addition to the substantial experience sharing, the drafting of the Terms of Reference for the establishment and functioning of the IPAF, the emission of valuable recommendations for the ASI assurance model and complaints procedures and the nomination of two representatives to participate in the Standards Committee meetings. This year, Gove was chosen as the location of the IPAF meeting.

The convening organisation are all grateful for the hard work done by every entity involved in the organisation of this meeting and thank the Gumatj people for their generosity in welcoming them to their land and facilities, as well as sharing their experience.

Gove context

Gove is located in the Northern Territory, in Australia, country that is home to numerous aluminium industries as shown on the map below.

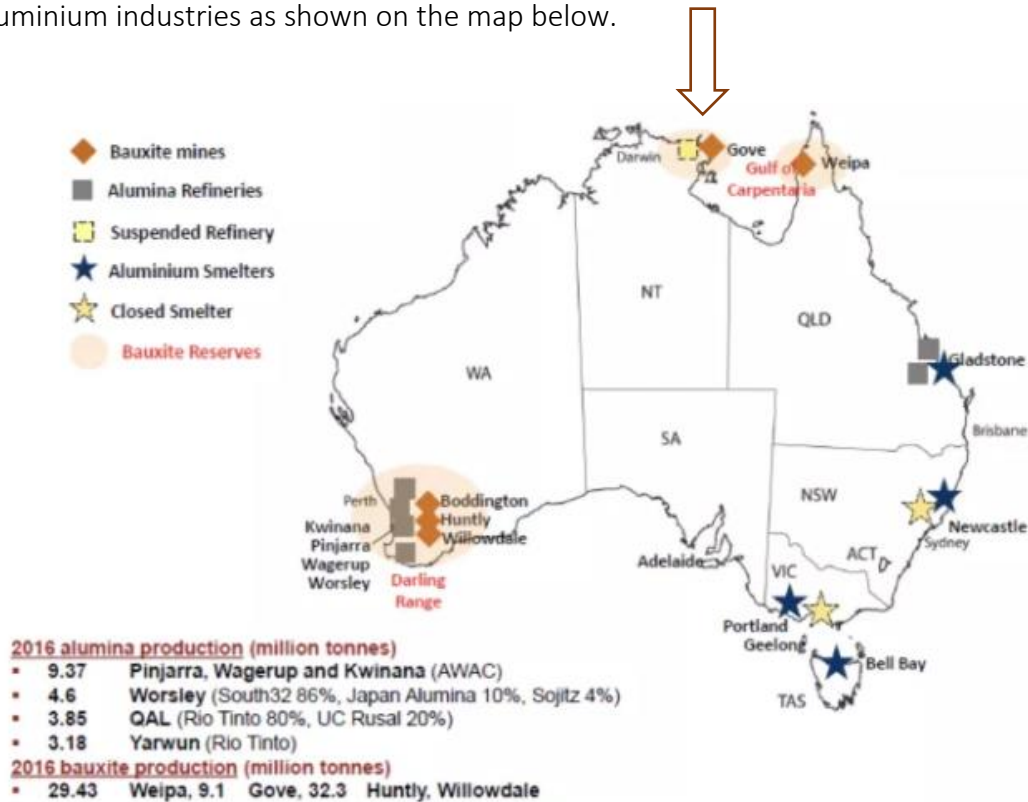


Figure 1: Australia's aluminium industries. Source : Australian Aluminium Council. Company reports.

In 2012, Australia was the world's leading producer of bauxite, the second producer of alumina and the fifth producer of aluminium. According to the estimation, Australia has also the second largest amount of bauxite resources (6400 Mt) after Guinea (7400 Mt) (Australian Government, 2015).

Land of the Yulngu People, Gove peninsula's mining history goes back to 1958, when the first exploration and mineral leases were granted. Since then, the mine passed from Nabalco's hand to Alcan and subsequently to Rio Tinto in 2007. Through all these business transactions, there has been a long history of local Indigenous Peoples fighting for their rights to the land and to participation in the economy. Starting with the Bark Petition presented to the Federal Parliament in 1963, the last contemporary step of the legal relationship between the mining industry and the Indigenous People of Arnhem Land was signed in 2011 with the Traditional Owner Agreement. The curtailment of the refinery in 2014 sent shockwaves to the area, as the main mining town population was cut by half,

raising numerous uncertainties regarding the future of infrastructures, services and general mining activities in Gove (Milman, 2014 ; Davidson, 2015).

Gumatj people, a local clan, has a long history of entrepreneurship, as they have been trading with the Macassans from the seventeenth century until the cancellation of the fishing licenses in 1904 (Pearson and Helms, 2013). The recent Gumatj economic experience is an inspiring one, as they were able to look forward and plan their future under and after the royalties obtained from mining industries. One step at a time, the Gumatj Corporation has established a set of culturally balanced, varied and value-added economic activities offering employment and training opportunities to their people.

in Australia There has been considerable enthusiasm toward the notion of Indigenous entrepreneurship, which sits on the recognition of the socioeconomic struggles affecting Indigenous people across the country and the desire to address them. The Yolngu are considered one of the most socially and economically disadvantaged groups in Australia: high dependence to welfare, poor level of employment in mainstream economy, high rate of suicide or self-harm, important substance abuse problem, low level of literacy and numeracy, etc. (Person et Helms, 2013).

Gumatj people were no stranger to this reality. In fact, Gunyangara, the community created around 1980 by the Gumatj to escape from the impact of the mining in the township, was considered the epicentre of the self-harm epidemic of the region. But the local Indigenous people had a vision. «It was the vision of their forebears. They wanted to build a stable home for themselves, a place with full employment and autonomy. They wanted to keep their religion and tradition intact and they wanted to control their fate.» (Rothwell, 2012) When the social crisis struck their community, local leaders also thought about how fundamental it was for young men, in their traditional Yolgnu bush life, to have tasks and responsibilities which were lacking now. The agreement with Rio Tinto gave them financial resources to invest in their own future and the capacity to act toward their autonomy which is now orchestrated by the arm of the Gumatj Corporation (Rothwell, 2012).

Objectives of the meeting

- To convene IPAF participants with the Gumatj people of East Arnhem Land to share experiences and perspectives
- To increase awareness towards sustainability issues and practices associated with bauxite mining and alumina refining amongst IPAF participants
- To continue to provide IPAF input into the development of ASI's certification program for the aluminium value chain

- To select two IPAF representatives for the ASI Standards Committee

The meeting gathered 10 participants from Australia, India, Malaysia, Suriname, Switzerland and Thailand (See Annex I). Out of these, six were Indigenous Peoples representatives advocating for communities affected by the exploration, mining and processing of bauxite.

As stated in the 2016 report the participants are members of the IPAF that “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 representatives of Guinea and Cambodia were unable to attend the meeting due to issues with visas, but are committed to be engaged in the follow up of this meeting. As stated in the Outcomes section, further outreach will be done in order to include other representatives from areas affected by the aluminium supply chain industries.

Agenda

The agenda, as read, can be consulted at in Annexe II.

The meeting started on a more informal note, as participants discussed the progress of the experiences that had been shared at the 2016 meeting. This informal information sharing was an ongoing process during this five days meeting, and enriched the global experience and deepened mutual understanding.

The introduction and welcome to the country was done on Monday night, when everyone gathered around their first dinner at the Gulkula Site.

The first official day of the meeting started with a visit of the Gumatj Corporation (see Annexe III) office where Klaus Helms explained the development process, the structure and the actual activities done by the corporation. The group then visited several operation sites, either managed by the Corporation or using products from the Corporation. The tour introduced them to the construction of local houses, the Gumatj local shop, the nursery, the wood work shop, the wood sawmill and the cement block factory. After diner the group stopped by a famous Indigenous art gallery, the Yirrkala Art and Crafts. A debrief session was then the opportunity for participants to express their thoughts and interrogations and to discuss what they learned in light of their own experience. The participants also had the opportunity to assist a Rio Tinto Community Meeting, where the company representatives

presented information about their commercial activities and their community involvement programs.

The second day started with a visit to the Rio Tinto operation sites (see Annexe IV). Receiving information directly by multiple Rio Tinto employees, the participants were taken directly on the mining site, where rehabilitation measures can also be seen, and to the curtailed refinery. Information was also shared regarding environmental monitoring and management of the residual disposal area. The afternoon was dedicated to an Indigenous-only discussion.

The third day was entirely composed of discussion with IPAF members and other non-indigenous participants (facilitator, ASI CEO and Board Chair). These discussions led to the collective review of the social section of the ASI performance standards, and to the settlement of forward steps for the next year (that will be outlined in the Outcomes section below). During the evening, the group discussed with a Gumatj traditional owner.

Outcomes

Mainly, the outcomes of this meeting are of two folds.

First, the meeting enabled face to face discussion about the running of the IPAF. This has permitted to take a look back over the last year, to communicate any concerns and to pave the way for the year to come. Globally, the terms of reference were discussed, a membership outreach strategy was suggested, internal and external methods of communication were specified, representative members to stand on the standard committee were selected and action plans were drafted.

Second, the meeting offered a space for a collective review of the social performance standards. From these discussions have arisen valuable recommendations regarding both form and content of the proposed performance standards, which implementation is soon to be done. Discussion about further implication and collaboration of the IPAF in the implementation phase of the certification also took place.

See Annexe 5 for the Outcome document.

Annexes:

- I. Participant List
- II. Agenda (as read)
- III. Gumatj Corporation
- IV. Rio Tinto operations in Gove
- V. Outcome Document

Annexe I: Participants List

Name	Affiliation	Home country
Mark Annandale <i>(Meeting facilitator)</i>	Senior Research Fellow – Tropical Forests and People Research Centre, University of Sunshine Coast	Australia
Gina Castelain	Wik Waya	Australia
Marie-Josée Artist	IPAF rep to the ASI Standards Committee	Suriname
Robie Halip	IPAF rep to the ASI Standards Committee	Philippines
Nicholas Barla	Odisha Indigenous Peoples Forum	India
Aboubacar Diallo*	Mines et Développement Communautaire	Guinea
Prabindra Shakya	Asia Indigenous Peoples Pact	Thailand
Samin Ngach*	Cambodia Indigenous Youth Association	Cambodia
Helen Tugendhat	Forest Peoples Programme	UK
Matek Ak Geram	JOAS	Malaysia
Fiona Solomon	CEO, ASI	Australia
Daniel Weston	ASI Board Chair and General Counsel & Global Head of CSV, Nestlé Nespresso	Switzerland
Émilie Houde Tremblay	French translator, University of Sunshine Coast	Canada/Australia
Klaus Helms	Gumatj Aboriginal Corporation	Australia
Gumatj Traditional Owners		Australia

* Members of the IPAF committee who could not attend the meeting due to difficulties in visa obtention reasons.

Annexe II: Agenda (as read)

Monday July 24

Day	Arrivals into Gove from Cairns/Darwin Transfer to Gulkula accommodation site	All
Evening	Dinner	All

Tuesday July 25

9am	Welcome to country Meeting opening Introductions	Gumatj Mark Annandale, ASI All
10am - lunch	Meeting with Gumatj Traditional Owners Tour of Gumatj activities Lunch at Gulkula site	All
Afternoon	Experience sharing among IPAF participants General discussion	All
Evening	Dinner	All

Wednesday July 26

9am – 12.30	Pick up from Gulkula for site tours of Rio Tinto mine and alumina refinery. Visitor induction will take place on the bus.	All
Lunch	Gove House (Sodexo)	All
Afternoon	Indigenous-only discussions	IPAF participants
Evening	Dinner	All

Thursday July 27

9am	<p>Discussion of ASI program developments from ASI and Standards Committee representatives, including:</p> <ul style="list-style-type: none"> - Overview of 2017 standards development - Indigenous participation in audit processes - Auditor review of FPIC and subsequent indigenous consultation processes - Area of Influence and Associated Facilities 	<p>ASI, Robie Halip, Marie-Josée Artist</p> <p>All</p>
Lunch	Lunch at Gulkula site	All
Afternoon	<p>Potential for German government funding of additional IPAF workshop / project (*see over page)</p> <ul style="list-style-type: none"> - Input into possible areas of focus - Next steps <p>Processes going forward:</p> <ul style="list-style-type: none"> - IPAF representatives to Standards Committee - 2018 IPAF meeting - IPAF-ASI communications 	All
Evening	Dinner	All

Friday July 28

7.30am	Departure – Transfers to Gove Airport for 9.30am flights / Gove township for longer stays	All
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Annexe III: Gumatj Corporation

The Gumatj Corporation is an Indigenous organisation defined as a «not for profit entrepreneurial venture» (Pearson and Helms, 2013). It was established in 2007 with the goal of generating sustainable economic development which would lead to independence from Australian government welfare and subsidies. Their vision is to accomplish it by the ways of sustainable jobs, income, educational opportunities and career paths for their members (Pearson and Helms, 2013). As noted by both the chief executive officer and one of the traditional owners standing on the executive committee, starting small and thinking forward has been the strength of this corporation. They also developed multiple partnerships with private and public bodies.

Through the presentation delivered by the chief executive officer, this focus on employment and economic resilience through time was very clear. Arnhem land has a bit of wealth due to the mining royalties received by the affected clans. But this system can also have adverse consequences if people forget that mining, and its related royalties, will stop. The need for planning in order to ensure economic resilience is then crucial. This is why they are self-funding their activities by the reinvesting royalties. A key element of Gumatj strategy is a 99 years lease on their land, which make it easier to access investment for development projects.

As shown on the organizational chart (photo 1), the Gumatj Corporation includes a wide range of economic activities. Their choices of development reflect their cultural interest and the economic opportunities of the area as well as a desire to offer a variety of employment opportunities (for example, the shops to create opportunities for women) and to answer to their own business needs

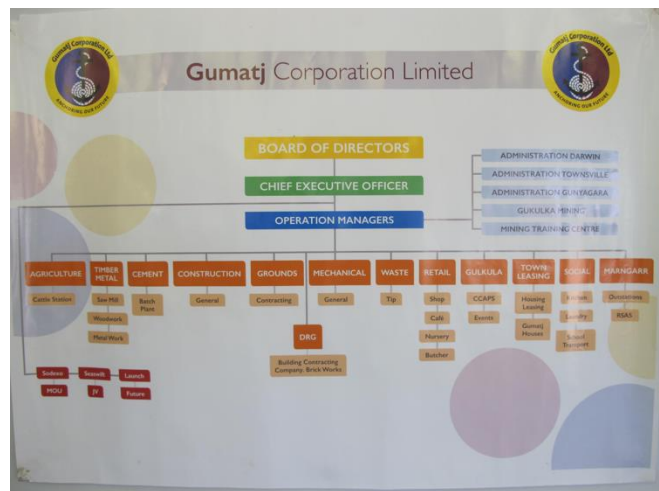


Photo 1

(for example, the mechanical aspect of the corporation, or the wood products and the cement blocks that are inputs for the construction activities). They also have strong commitment to the social aspects of their community. Education is considered important by the Gumatj, as it is lacking among their people. They push towards general education for the young people and specific training system in order to employ the people that are

aged between 20 and 40 years old. They also frequently involve people who are in transition after prison into their activities.

The general governance structure operates with a board constituted of 8 members that are all Gumatj traditional owners. They are elected every year and meets every 3 months. The CEO also expressed a need for a balance between culture and business in that type of enterprise, as a lot of corporations have failed in the past. The board has a crucial role in this matter, as they are the one who are in charge of decision making. All board members have to understand what is done and why it is done, and they all sign the contracts.

We had the chance to visit several sites where the Gumatj Corporation operates. We visited the sawmill, where logs are sawed into various sizes. They operate with a portable sawmill (photo 2). The wood then is then transported to the wood workshop where they make artisanal wood products such as bread boards and furniture (photo 3) as well as construction wood products such as



Photo 2

roof trusses and wooden deck floor planks (photo 4 and 5). The wood that used in these infrastructures are partly collected from the pre-mining operations.



Photo 3



Photo 4



Photo 5

We also visited the nursery (photo 6) which was established to provide plants for local landscaping and amenity as well as build skills for future mine rehabilitation work and the local shop. We then visited the cement block factory where the Gumatj operates in collaboration with another company (photo 7).



Photo 6

We also had the chance to see the site of an ongoing house construction (photo 8). As the area is subject to severe cyclones, there are very strict construction regulation, which also increase the housing prices. Therefore, employees training is needed to ensure work quality. Their key strategy is to practice slow building in order to train people that work well, because they like what they do. The quality of the material produced by the wood work shop and the cement factory is a valuable asset for the construction sphere of the business as their cost and their condition are better because of the minimised transportation distance. In total, the Gumatj Corporation controlled around $\frac{3}{4}$ of the city housing. They rent to Rio Tinto employees and reinvest the money. In total, they count nearly one hundred people on their payroll.



Photo 7

The next steps for the Gumatj Corporation is a small-scale bauxite mining project. They already obtained their exploration lease for 950 hectares.



Photo 8

Alone, this process was an important source of capacity building as it represents a great deal of administrative requirements. In addition, the Gumatj Corporation also established a centre to train their people for the jobs that this new project will create. The idea behind this mining project is that one can better negotiate with mining companies with better knowledge about mining. Moreover, the Corporation aims to have the capacity to take over mining activities in the eventuality of Rio's departure of the site.

Annexe IV : Rio Tinto operations in Gove

In 2007, Rio Tinto acquired Alcan and Gove. Operating on a 22 000 hectares of mine lease, the company extracts high quality bauxite at a rate of 9 million tonnes per year (considering 2016 statistics). In Australia, mining leases are approved by the government and a mining agreement with the Indigenous People is required for this approval. This operation site generates a total of 285 jobs as well as the use of more than 200 contractors. To this date, only a few Indigenous People (less than 10) were presently hired by Rio Tinto, but a training program, including the use of machinery, is in place and specifically targeted towards them. They also contracted an Indigenous company to mine a satellite mine site within the general mining lease, which also provides several employment opportunities for Indigenous People.



Photo 9



Photo 10



Photo 11

Mining process

Before mining a certain area, the company has to go through a pre-mining process where they first engage with the Traditional Owners in order, for example, to preserve cultural areas from being mined. Environmental assessment of the area before mining is also undertaken. If rare or threatened species are for sensitive areas. After the mining planning, Rio Tinto proceeds to tree clearing. Generally, this process involves the bulldozing of trees, which are then burned. In Gove, an agreement was reached with the Gumatj People for them to salvage trees before bulldozing on non contested land. The salvage trees are processed at the Gumatj sawmill and further value adding work is done in the Gumatj work shop, supporting a total of 18 Indigenous jobs.

The actual bauxite mining involves a shallow type of mining, called strip mining, where only the first few meters (1.5 to 4 m) of soil are removed. The first step involves ripping with a D-11 bulldozer to loosen the bauxite. Trucks are then loaded and take the material to the crushers (photo 9 and 10). The crushed bauxite is then transported on a conveyor (photo 11) to the port. Having recently switch

to a business strategy where Rio Tinto directly exports bauxite, the bauxite is now shipped to an alumina refinery. After the refinery, the alumina goes to the final step of transformation in an aluminium smelter. In average, four tonnes of bauxite will produce one tonne of aluminium.

The direct exportation of bauxite is different than what was previously done in Gove, as a refinery (see photo 13, 14 and 15 presenting several of its components) was in operation until its curtailment in 2014. It has been in operation from 1972 to 2014.



Photo 13

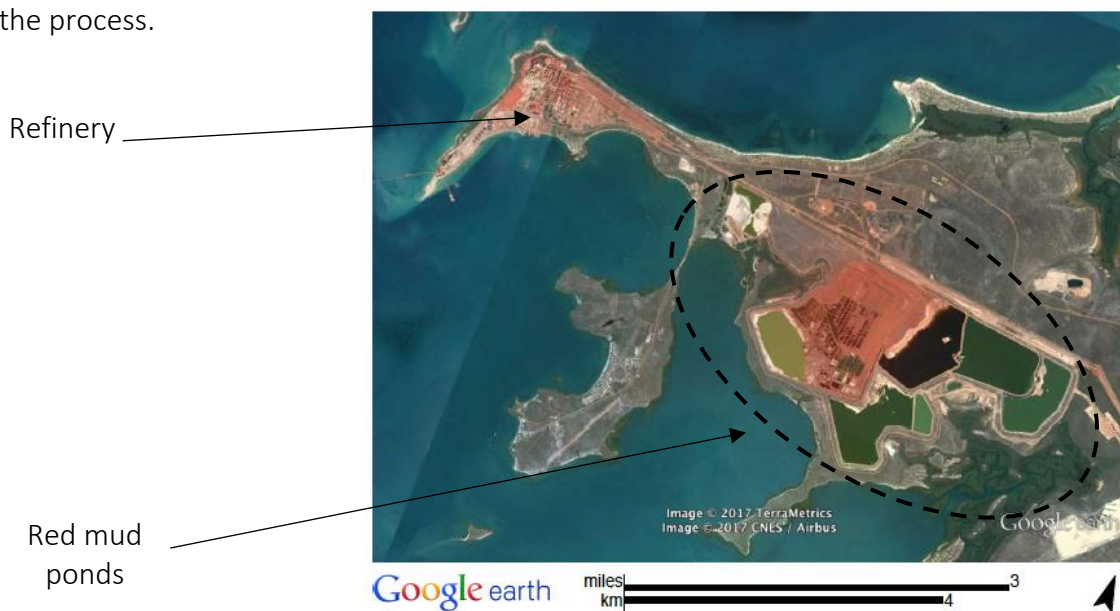


Photo 14



Photo 15

Gove refinery operations include 770 hectares of red mud ponds (see photo below), the toxic waste from the bauxite refinery process. The red mud ponds are used for storing the highly alkaline waste from the refinery. It includes the toxic caustic and needs to be managed for many many years. In order to manage the water balance, Gove residue disposal strategy includes the capping of the ponds. This involves the protection of the top of the pond with special plastic cover as well as the addition of one-meter depth of soil and a grass cover. The environmental monitoring of the site is ongoing and managed by the company. The results are reviewed by the government. Indigenous People are not involved in the process.



Rehabilitation process

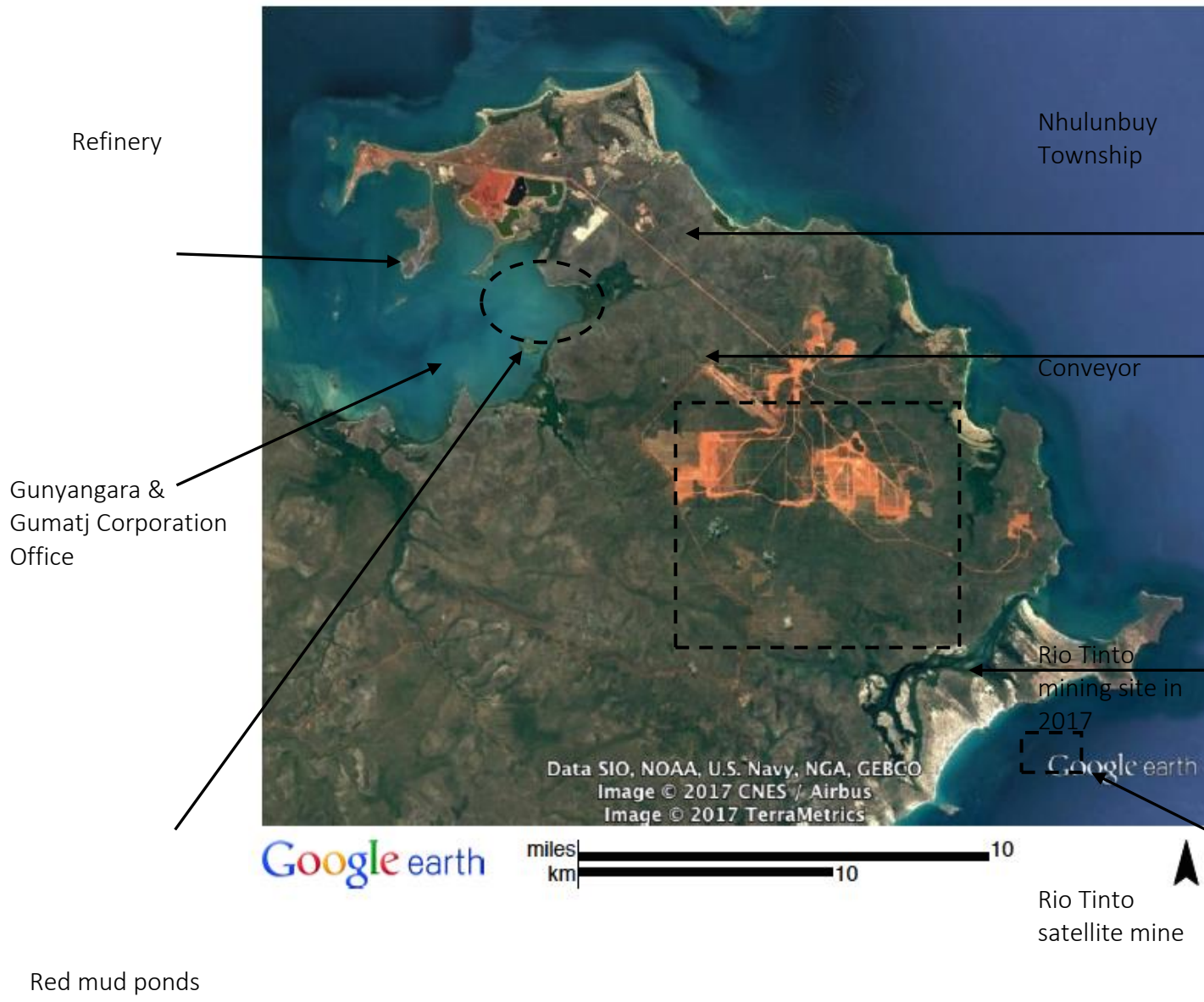
The rehabilitation process begins when seeds are collected from the standing forest that will later be either bulldozed or salvaged before mining activities, depending on existing arrangements. The bulldozing or tree salvaging occurs at least 3 years before the actual mining process. Through this disturbance, the soil and its various constituents gets activated, which generates a good soil that is then collected to be used over a previously mined area. The compacted mined soil and its top of new soil are then scarified in order to create space for the roots to grow. The seeds collected on this mined site are planted in the new soil with the objective to regenerate a forest that is ecologically coherent with what was there before. The management of forest including salvage harvest of trees (photo 16) before mining is important for successful rehabilitation, to collect the right seed and protect the soil. Successful mine rehabilitation is possible with good procedures (photo 17) that produce mine rehabilitation that can be managed for future timber production.



Photo 16

Photo 17

Large scale map of the discussed elements



Annexe V: Outcomes Document

The Objectives of the meeting

1. To convene IPAF participants with the Gumatj people of East Arnhem Land to share experiences and perspectives
2. To increase awareness towards sustainability issues and practices associated with bauxite mining and alumina refining amongst IPAF participants
3. To continue to provide IPAF input into the development of ASI's certification program for the aluminium value chain
4. To select two IPAF representatives for the ASI Standards Committee

The meeting was considered a success because the meeting objectives were met

1. The IPAF participants were able to meet with the Gumatj hosts and see first-hand the impacts of mining on Indigenous lands and their people and observe some methods on dealing with issues and working collaboratively with the mining sector and government. It hasn't all been a smooth ride for Gumatj and other Yolngu people with some significant community and social impact due to mining operations and government making decisions without Indigenous participation, particularly in the past.
2. IPAF participants have an increased awareness of bauxite mining operations, including how the forest is cleared ahead of mining, the actual mining operations and the mine rehabilitation process. The IPAF participants were also able to see a large alumina refinery and how it operates, including what are the legacy community and environmental issues.
3. The meeting enabled face to face discussion about the running of the IPAF. This has permitted to take a look back over the last year, to communicate any concerns and to pave the way for the year to come. Globally, the terms of reference were discussed, a membership outreach strategy was suggested, internal and external methods of communication were specified, representative members to stand on the standard committee were selected and action plans were drafted.
4. The meeting offered a space for a collective review of the social performance standards. From these discussions have arisen valuable recommendations regarding both form and content of the proposed performance standards, which implementation is soon to be done. Discussion about further implication and collaboration of the IPAF in the implementation phase of the certification also took place.

5. The meeting confirmed the IPAF representatives to the ASI Standards Committee IPAF Suriname member Marie-Josée Artist and Robie Halip IPAF Philippines member

Agenda Item: 'The German Project'

GIZ is very active in certification programmes and have been funding work in the University of Queensland looking at mining standards – case studies include ASI and also the copper and steel industries. They will be doing a case study on the ASI pilot certification next year, through the Centre for Sustainability in Mining (?). Preliminary discussions between Fiona and the GIZ have taken place about the work that ASI is doing. Up to €100k appears to be the ballpark for the tender for proposals for the funding stream that may be opened this year.

- Several different organisations could tender to do the workshop itself
- Complaints mechanism and Assurance manual workshop needed
- Could propose planning for the workshop itself as a first phase, and then a second phase of follow up activities that emerge from the workshop itself
- Community exchanges – could be flagged as an outcome with details to be determined
- Livelihood restoration as flagged potential activities

Indigenous Peoples Advisory Forum Aluminium Stewardship Initiative

Work Plan August – December 2017

	Activity	Aug	Sept	Oct	Nov	Dec
1	Staff time support for Standards Committee members					
2	IPAF simplified documents and promotional materials					
3	Disseminate ASI documents finalised 2017 (no date or budget yet)					
4	Complaints mechanism document simplified and translated					
5	Re-print and distribute the book (second print run)					
6	Gumatj case study (Mark)					
7	Malaysia case study (Matek)					
8	Suriname Assessment of Rehabilitation Processes					
9	Outreach at the UN Forum on Business and Human Rights					
10	Layout and printing of new studies (2018 activity)					

Budget August – December 2017

	Activity	Cost (AUD)
1	Staff time support for Standards Committee members	5,000
2	IPAF simplified documents and promotional materials	2,000
3	Disseminate ASI documents finalised 2017 (no date or budget yet)	None.
4	Complaints mechanism document simplified and translated	2,000
5	Re-print and distribute the book (second print run)	3,500
6	Gumatj case study (Mark)	None.
7	Malaysia case study (Matek)	2,000
8	Suriname Assessment of Rehabilitation Processes	None.
9	Outreach at the UN Forum on Business and Human Rights	None.
10	Layout and printing of new studies (2018 activity)	2,500
	Total	15,000

Notes:

Item 2: HT to draft in August, printing and distribution in November

Item 4: Work to be undertaken directly by the ASI Secretariat in collaboration with the IPAF SC members. 'Simplification' refers not only to the use of simplified language but also graphic representation of what the complaint mechanism requires and how the process happens. Translation into French, Portuguese and Bahasa Indonesian. Budget not included as this will be done by the ASI Secretariat.

Item 5: AIPP responsibility

Item 6: MA not being paid for the case study research.

Item 8: Pending discussions in Suriname regarding suitability of the process, cost likely to be covered by the University of the Sunshine Coast.

Item 9: HT and PS to lead on this, no budget required outside of Item 2 for use in November.

Item 10: Budgeted to 2017, although case studies will likely only be finalized and edited by end 2017. Contract for layout to be established in 2017.

IPAF workplan for 2018

Indigenous Peoples Advisory Forum Aluminium Stewardship Initiative

Work Plan January – December 2018 (tentative)

	Activity	J	F	M	A	M	J	J	A	S	O	N	D
1	Staff time for Standards Committee members												
2	Simplification of the ASI Standard												
3	Canadian case study (smelters)												
4	Brazilian case study (dams)												
5	IPAF meeting 2018 (Suriname)												

Budget August – December 2017

	Activity	Cost (AUD)
1	Staff time for Standards Committee members	8,000
2	Simplification of the ASI Standard	2,000
3	Canadian case study (smelters)	2,000
4	Brazilian case study (dams)	2,000
5	IPAF meeting 2018 (Suriname)	43,000
	Total	55,000

Notes:

This work plan is tentative and will be confirmed at the IPAF 2018 meeting in Suriname. Due to this, it is proposed that an initial Agreement confined to the first quarter staff time for SC members and the IPAF 2018 meeting in Suriname be established. Work activities in the remaining quarters can be the subject of a second Agreement with the new fiscal sponsor from within the Forum.

Item 1: Estimated 2 staff days per month, per SC member

Appendix: ASI Performance Standard Guidance - 9 Human Rights cons-draft 4 231217 - IPAF inputs

C. Social
9 Human Rights

Principle

The [Entity] shall respect and support individual and collective human rights affected by its operations. The [Entity] shall take appropriate action to assess, prevent and remedy potential adverse impacts on human rights in a manner that is consistent with international instruments on human rights.

Related criteria

- 2.3 Environmental and social management systems
- 2.5 Impact assessments

10 Labour rights

Applicability

Supply chain activity	Applicability of Performance Standard Criteria								
	9.1	9.2	9.3	9.4	9.5	9.6	9.7	9.8	9.9
Bauxite Mining									
Alumina Refining									
Aluminium Smelting									
Aluminium Re-melting/Refining									
Casthouses									
Semi-Fabrication									
Material Conversion									
Other manufacturing or sale of products containing Aluminium									

Code:

Criteria shaded **green** are generally applicable to those supply chain activities, where they are within the Certification Scope of the Entity.

Criteria shaded **orange** may be applicable to those supply chain activities, where they are within the Certification Scope of the Entity and if the Entity is in the Production and Transformation membership class or also implementing the ASI Chain of Custody Standard.

For more information on defining your Entity's Certification Scope, see the ASI Assurance Manual.

Background

Human rights are relevant to all businesses, regardless of size, sector or country operation. The kinds of rights which are regarded as human rights include:

- Social cultural and economic rights, such as the right to participate in cultural activities, the right to food, the right to clean drinking water and sanitation, and the right to education.
- Labour rights, such as the right to freedom of association and effective recognition of the right to collective bargaining, and freedom from forced labour, child labour and discrimination.
- Civil and political rights, such as the right to life and liberty, freedom of expression and equality before the law.

From a business perspective, many of these rights are often the underlying rationale for a company's policies and procedures. For example, a company's health and safety policy may not use 'human rights' language, but in effect respects employees' right to life, the right to just and favourable conditions of work, and the right to health.

In 2011, the United Nations (UN) released the Guiding Principles on Business and Human Rights, which sets out a "Protect, Respect and Remedy" framework:

- States' duty to **protect** against human rights abuses by third parties, including business, through appropriate policies, regulation and adjudication.
- Business' responsibility to **respect** human rights, which means to act with due diligence to avoid infringing on the rights of others and to address adverse impacts that are linked with their activities.
- Access by victims to effective **remedy**, both judicial and non-judicial.

Key Concepts

Area of Influence – Encompasses, as appropriate, areas likely to be affected by: (a) an Entity’s activities and facilities, and/or impacts from unplanned but predictable developments that may occur later or at a different location, and/or indirect project impacts on biodiversity or on ecosystem services upon which affected communities’ livelihoods are dependent; (b) associated facilities, which are facilities not controlled by the Entity but that would not have otherwise been constructed or expanded and without which the Entity’s activities would not be viable; and (c) cumulative impacts that result from the incremental impact, on areas or resources used or directly impacted by the Entity’s activities, from other existing, planned or reasonably defined developments at the time the risks and impacts identification process is conducted. Examples for (a) include the project’s sites, the immediate airshed and watershed, or transport corridors, and indirect impacts include power transmission corridors, pipelines, canals, tunnels, relocation and access roads, borrow and disposal areas, construction camps, and contaminated land (e.g., soil, groundwater, surface water, and sediments).

For (b), examples of associated facilities may include railways, roads, captive power plants or transmission lines, pipelines, utilities, warehouses, and logistics terminals.

For (c), cumulative impacts are limited to those impacts generally recognized as important on the basis of scientific concerns and/or concerns from affected communities. Examples of cumulative impacts include: incremental contribution of gaseous emissions to an airshed; reduction of water flows in a watershed due to multiple withdrawals; increases in sediment loads to a watershed; interference with migratory routes or wildlife movement; or more traffic congestion and accidents due to increases in vehicular traffic on community roadways. (Adapted from [International Finance Corporation \(IFC\) Performance Standard 1 – Guidance Notes](#))

Community – A term generally applied to any people or communities located in an operation’s or project’s near geographical proximity, particularly those subject to actual or potential direct project-related risks and/or adverse impacts on their physical environment, health or livelihoods. It often refers to a group of people or families who live in a particular locality, sometimes share a common interest (water users associations, fishers, herders, grazers, and the like), often have common cultural and historical heritage and have different degrees of cohesiveness. (Adapted from [IFC Performance Standard 1 – Assessment and Management of Environmental and Social Risks and Impacts – Guidance Note](#))

Conflict-affected and high-risk areas – Areas identified by the presence of armed conflict, widespread violence, including violence generated by criminal networks, or other risks of serious and widespread harm to people. Armed conflict may take a variety of forms, such as a conflict of international or non-international character, which may involve two or more states, or may consist of wars of liberation, or insurgencies, or civil wars. *High-risk areas* are those where there is a high risk of conflict or of widespread or serious abuses as defined in paragraph 1 of Annex II of the OECD Due Diligence Guidance. These are: any forms of torture, cruel, inhuman and degrading treatment; any forms of forced or compulsory labour; the worst forms of child labour; other gross Human Rights violations and abuses such as widespread sexual violence; or war crimes or other serious violations of international humanitarian law, crimes against humanity or genocide. Such areas are often characterised by political instability or repression, institutional weakness, insecurity, collapse of civil infrastructure, widespread violence and violations of national or international law. (Adapted from [OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High Risk Areas](#), 3rd ed 2016).

Discrimination – Where people are treated differently because of certain characteristics – such as race, ethnicity, caste, national origin, disability, gender, sexual orientation, union membership, political affiliation, marital status, pregnancy status, physical appearance, HIV status or age or any other applicable prohibited basis – which results in the impairment of equality of opportunity and treatment. (Adapted from [ILO/IFC Better Work – Guidance Sheet – Discrimination](#)) Provide reference also to the UN Convention on the Elimination of Racial Discrimination, and associated observations of the UN Committee on the Elimination of Racial Discrimination

Free Prior and Informed Consent (FPIC) – Given the diversity of indigenous peoples’ histories and contemporary realities, as well as their broad range of institutions and decision-making practices, a one-size-fits-all formulation of FPIC is not possible. As has been elaborated on by UN bodies addressing Indigenous peoples’ rights, there are a number of overarching principles which are embodied in the four component parts of the requirement for FPIC.

- “Free” implies consent is sought in the absence of any actual or perceived coercion, intimidation or manipulation and indigenous peoples can determine the format of the consultations. Free also reflects the fact that participating in consultations aimed at obtaining their FPIC is a self-determination right of indigenous peoples, rather than an obligation which they must meet.
- “Prior” implies consent is sought sufficiently in advance of any decisions or actions which may impact on indigenous peoples’ enjoyment of their rights and that indigenous peoples have the time they need to make their decisions in accordance with their own processes and through their own freely chosen representatives and institutions;
- “Informed” implies that there is full disclosure of all the information indigenous peoples need in order to meaningfully assess the potential risks and benefits of the project (including its location, duration, scope, impacts, benefits and/or partnership models). This information has to be provided in a format understandable to, and through a process agreed by, the concerned indigenous peoples. This may involve participation in, or indigenous conduct of, impact assessments, access to funding for independent technical and legal advice, and negotiations in relation to benefits.
- “Consent” implies respect by all parties, irrespective of the outcome, for the freely taken informed autonomous decision of indigenous peoples. This decision should be the outcome of good faith rights-based consultations and cooperation with the concerned indigenous peoples. It should be taken by them in accordance with procedures and timeframes of their own choosing and be premised on indigenous rights based principles of self-determination, inclusivity, consensus, harmony and intergenerational well-being.

(Adapted from [Mining, the Aluminium Industry and Indigenous Peoples](#), 2015 – developed through the ASI Indigenous Peoples Advisory Forum).

Human Rights – Universal rights and freedoms regarding as belonging to all people without Discrimination based on internationally recognised standards. At a minimum, these include rights articulated in the International Bill of Human Rights, the ILO Declaration of Fundamental Principles and Rights at Work and Applicable Law. (Adapted from [UN Office of the High Commissioner on Human Rights](#))

Human Rights Due Diligence – An ongoing management process that a reasonable and prudent enterprise needs to undertake, in the lights of its circumstances (including sector, operating context, size and similar factors) to meet its responsibility to respect Human Rights. (Adapted from [The Corporate Responsibility to Respect Human Rights: An Interpretive Guide](#) (UN, 2012))

Indigenous Peoples – Considering the diversity of indigenous peoples, an official definition of “indigenous” has not been adopted by any UN-system body. Instead the UN system has developed a modern understanding of this term based on the following:

- Self-identification as indigenous peoples at the individual level and accepted by the community as their member.
- Historical continuity with pre-colonial and/or pre-settler societies
- Strong link to territories and surrounding natural resources
- Distinct social, economic or political systems
- Distinct language, culture and beliefs
- From non-dominant groups of society

- Resolve to maintain and reproduce their ancestral environments and systems as distinctive peoples and communities.

(Adapted from the [UN Permanent Forum on Indigenous Issues](#))

IFC – International Finance Corporation. The IFC is a member of the World Bank Group and the largest global development institution focused on the private sector in developing countries. (Adapted from [International Finance Corporation](#))

Resettlement Action Plan – A plan that is developed to cover, at minimum, the applicable requirements of IFC Performance Standard 5, regardless of the number of people affected and including compensation at full replacement cost for land and other assets lost. The Plan is designed to mitigate the negative impacts of displacement; identify development opportunities; develop a resettlement budget and schedule; and establish the entitlements of all categories of affected persons. Particular attention is paid to the needs of the poor and the vulnerable. (Adapted from [IFC Performance Standard 5 – Land Acquisition and Involuntary Resettlement](#) (2012))

Implementation

The 'Implementation' section provides general guidance for implementing each of the criteria in the Performance Standard. The guidance is not normative and should be seen as a starting point for information and support where required.

9.1 Human Rights Due Diligence

The [Entity] shall respect Human Rights and observe the UN Guiding Principles on Business and Human Rights in ways appropriate to their size and circumstances, including as a minimum:

- a. [A Policy commitment to respect Human Rights.]
- b. A Human Rights Due Diligence process that seeks to identify, prevent, mitigate and account for how it addresses its actual and potential impacts on Human Rights.
- c. Where the [Entity] has caused or contributed to adverse [Human Rights] impacts, it shall provide for or cooperate in their remediation through legitimate processes.

Where Indigenous Peoples are involved, FPIC (criterion 9.4) may apply.

Points to consider:

- The UN Guiding Principles on Business and Human Rights have become the primary reference for the private sector's responsibility to respect human rights. The Guiding Principles define respecting human rights as:
 - Avoid causing or contributing to (eg causing in part) adverse human rights impacts through your own activities, and address such impacts where they occur; and
 - Seek to prevent or mitigate adverse human rights impacts that are directly linked to your operations, products or services by your business relationships, even if you have not contributed to those impacts.
- A policy commitment to respect human rights can be a stand-alone policy or integrated in the approach taken for criterion 2.1 on Environmental, social and governance policy. It should be informed by internal and/or external expertise, where appropriate.
- The human rights due diligence process that is articulated in the Guiding Principles is based on largely familiar risk management practices often used in business. However its application to human rights and business relationships usually take times to implement in companies. ASI members and auditors should take into account the need for systems to be established and evolved over successive years as part of a continual improvement process. Key points to note include:

- While risk management systems usually focus on identifying and managing material risks to the company itself, human rights due diligence must also assess risks and impacts to rights-holders – such as customers, employees, suppliers, communities, Indigenous Peoples and other stakeholders.
 - ‘Human rights risks’ are understood to be potential adverse human rights impacts, which should be addressed through prevention or mitigation. Actual impacts are those that have already occurred and should be subject to remediation.
- Human rights due diligence:
 - Should cover adverse human rights impacts that your entity may cause or contribute to through your own activities.
 - Should seek to address adverse human rights impacts which may be directly linked to your operations, products, or services by your business relationships.
 - Will vary in complexity with the size of your business, the risk of severe human rights impacts, and the nature and context of your operations.
 - Should be regularly updated, for example when starting a significant new activity or business relationship, recognising that human rights risks may change over time.
- Focus on the most severe human rights risk areas, based on scale, scope and irremediable character. These could include (but may not be restricted to): health and safety, security and human rights issues, human trafficking and forced labour, freedom of association, discrimination and gender equity, working hours, or Indigenous Peoples.
- It might not be feasible or practical to assess every single supply chain risk. Where it is necessary to prioritise, try to prevent and mitigate the most severe risk/s.
 - Note that the UN Guiding Principles are intended to require assessment of supply chain risks, but recognise in some instances it is not possible for businesses to assess the human rights record of every entity with which you have a relationship.
 - Look at region, types of production or service processes, employee demographics etc to help with prioritisation.
 - Consider whether your purchasing practices might impact your suppliers, for example by setting lead times, pricing or seasonality of orders. If some action of yours impels a business partner to cause an adverse impact, you have “contributed” to that impact.
 - However simply having a business relationship with an entity does not mean you have “contributed” to any or all adverse impacts that they may cause. If you find you are at risk of involvement in an adverse impact solely because it is linked to you via business relationship, you do not have responsibility for the impact itself: that responsibility lies with the entity that caused or contributed to it. Your business relationship may, however, create leverage that you can potentially use to seek to prevent or mitigate future adverse impacts.
- Once risks are assessed, the due diligence process includes integrating your risk assessment into business operations, and tracking and communicating your impacts.
- Where your company has caused or contributed to an adverse human rights impact, a remediation process should be established, based on the severity of the identified impact.
 - Develop a time-bound remediation plan developed through consultation with the affected stakeholders, including any vulnerable groups.
 - Forms of remediation include acknowledgement and apology, undertaking steps to ensure the harm cannot recur, compensation (financial or other) for the harm, ceasing the activity or relationship, or some other form of remedy agreed by the parties.
 - Where Indigenous peoples are present, ensure that remediation mechanisms and measures are culturally appropriate and consistent with FPIC principles (see criterion 9.4). This may include acts to remedy harm through traditional means under Indigenous peoples’ customary activities.

- Effective complaints resolution mechanisms enable any party to raise concerns about adverse human rights impacts, and have these addressed early and remediated directly. See also 3.4 on Stakeholder complaints, grievances and requests for information.
- For further guidance on conducting human rights due diligence, consult available references including the [UN Guiding Principles on Business and Human Rights](#) (2011), its accompanying guide, [The Corporate Responsibility to Respect Human Rights: An Interpretive Guide](#) (2012), and the [Human Rights Compliance Assessment Tool](#) of the Danish Institute for Human Rights (2014).

9.2 Women's Rights

The [Entity] shall implement Policies and processes to ensure respect for the rights and interests of women, consistent with international standards, including the UN Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW).

Points to consider:

- Women's rights are human rights. However due to some social structures, traditions, stereotypes and attitudes about women and their role in society, women do not always have the opportunity and ability to access and enforce their rights on the same basis as men.
- The UN Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) is the key international human rights document that seeks to ensure the enforcement of the human rights of women on an equal basis with men. CEDAW deals with rights including the right to vote and stand for election, right to health, equal rights to education, protection from discrimination in the workplace and equality before the law.
- The human rights due diligence process in 9.1 should specifically address gender and women's rights in the assessment of human rights risks and impacts. Consider whether the following issues may be relevant:
 - Women being underrepresented in decision-making roles.
 - Women receiving unequal pay for equal work.
 - Any incidents where women have been targets of physical and sexual abuse.
 - Whether women-owned enterprises lack equal opportunity to compete for business opportunities.
- Where Indigenous peoples are present, consider the following:
 - That Indigenous women's organizations are identified, where they exist, and consultations are held with women and not just men.
 - That there are multiple impacts of land dispossession on women that are not immediately apparent, including impacts on gender roles within customary societies, increased burden of household work in a wage labour economy, impacts on traditional livelihood forms and associated gender-determined roles, and others.
 - That there are specific impacts of mining on women, (for example the presence of security forces, migrant or transient workforces, or impacts of new employment opportunities on traditional roles) are identified with the participation of women. This may be realised through a forum for Indigenous women where these issues are discussed. Where the Indigenous women choose, the entire community may be involved in these discussions.
 - The role of capacity building and training to address women's rights, and to support meaningful participation in consultations, decision-making and benefit sharing. This may include providing support for translation into local languages.
- For more guidance on promoting gender equality in your business, consult available references such as the [Women's Empowerment Principles](#) (UN Global Compact / UN Women) and the UN Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW).

9.3 Indigenous Peoples

The [Entity] shall implement Policies and processes to ensure respect for the rights and interests of Indigenous Peoples, consistent with international standards, including ILO Convention 169 and UN Declaration on the Rights of Indigenous Peoples.

Points to consider:

- This criterion applies where the presence of Indigenous peoples or their lands, territories and resources is identified.
 - Ensure you are aware of legal and customary rights of Indigenous peoples that may exist in affected land areas.
 - Conduct informed consultations with potentially affected Indigenous communities in a culturally appropriate manner.
 - Note that a fundamental criterion for identifying Indigenous peoples is their self-identification as such. Therefore, Indigenous peoples may include those not explicitly recognized by national governments. (See the glossary definition based on the UN Permanent Forum on Indigenous Issues.)
 - Note the term “presence” of Indigenous peoples refers not only to the physical presence in the area of operations, but also to Indigenous peoples in the wider context who might be impacted by the company’s operations in the surrounding areas.
- The human rights due diligence process in 9.1 should specifically address risks to Indigenous peoples’ rights and interests, in conjunction with the concerned indigenous peoples.
 - The UN Special Rapporteur on the Rights of Indigenous Peoples has noted that the following framework should apply: “Companies exercise due diligence by identifying, prior to commencing their activities, matters relating to the rights of indigenous peoples and paying adequate attention to those matters as the activities are being carried out. This includes recognition of the existence of indigenous peoples and of their own social and political structures; indigenous possession and use of land, territory and natural resources, exercise by the State of its duty to consult indigenous peoples in relation to activities that might affect them, and the related responsibility of business; impact studies and mitigation measures; and benefit sharing with indigenous peoples.”
- Draw on experienced and expert assistance, in conjunction with the concerned indigenous peoples, to develop policies, training, strategies, plans and actions. Ensure that these draw on appropriate language, anthropological, cultural and social skills.
 - Careful consideration should be given to the make-up of the team that develops and maintains ongoing relationships with Indigenous peoples.
 - Ensure that Indigenous communities have access to appropriate company contacts for issues related to the operation’s activities.
- In conjunction with the concerned indigenous peoples, develop and implement policies and procedures that address:
 - Respecting the rights, interests, aspirations, culture and natural resource-based livelihoods of Indigenous peoples
 - Clearly identifying and understanding the interests and perspectives of Indigenous peoples regarding operations, projects and potential impacts
 - Engaging and consulting with Indigenous peoples in a fair, timely and culturally appropriate way throughout an operation’s life cycle, ensuring that indigenous peoples have access to all relevant information in a manner, language and form appropriate for them
 - Obtaining Free Prior Informed Consent (FPIC) in applicable circumstances
 - Negotiating partnership and/or programs that provide benefits and mitigate impacts
 - Seeking to build long-term partnership with Indigenous peoples to support self-empowered regional and community development which addresses the development

- priorities of the concerned indigenous peoples, such as through education, training, healthcare, and business enterprise support
 - Ensuring affected Indigenous peoples have opportunities to provide their input into periodic policy reviews and revisions
 - Monitoring the progress of engagement approaches, agreements, and evaluating impacts
 - Gender considerations and their intersection with the above.
- Consider the resources required to implement the policies and procedures effectively.
 - Resources should be allocated to cover company and Indigenous peoples' capacity building needs. Independent expertise may be needed in the areas of impact assessment, negotiation, monitoring, reporting and grievance resolution activities.
 - Ensure all staff relating with Indigenous peoples receive relevant training to ensure sufficient knowledge of key principles, local issues and appropriate conduct.
 - Where Indigenous peoples are also workers in the operations, consideration should be given to the need for cultural awareness training for all staff. The objective should be building cross-cultural understanding for company personnel to understand Indigenous peoples' culture, values and aspirations, and for Indigenous peoples to understand a company's principles, objectives, operations and practices.
- For more guidance on respecting the rights of Indigenous peoples, consult available references including [IFC Performance Standard 7 – Indigenous Peoples – Guidance Note](#) (2012), the [International Council on Mining and Metals \(ICMM\) Good Practice Guide – Indigenous Peoples and Mining](#) (2015), the [Mining, the Aluminium Industry and Indigenous Peoples](#) (2015) report and its associated [Fact Sheet – Identifying Indigenous Peoples, and the UN Declaration on the Rights of Indigenous Peoples](#).

9.4 Free Prior and Informed Consent (FPIC)

Where new projects or major changes to existing projects may have significant impacts on the Indigenous Peoples associated culturally with and living on the relevant lands, the [Entity] shall consult and cooperate in good faith with the Indigenous Peoples concerned through their own representative institutions in order to obtain their free and informed consent prior to the approval of any project affecting their lands or territories and other resources, particularly in connection with the development, utilization or exploitation of mineral, water or other resources.

Points to consider:

- FPIC processes are applicable for new projects or major changes to existing projects or facilities that may have significant impacts on affected Indigenous peoples. This would include:
 - Impacts on lands and natural resources subject to traditional ownership or under customary use;
 - Relocation¹ of Indigenous peoples from lands and natural resources subject to traditional ownership or under customary use;
 - Significant impacts on critical cultural heritage that is essential to the identity and/or cultural, ceremonial, or spiritual aspects of Indigenous peoples; or
 - Use of cultural heritage, including knowledge, innovations or practices of Indigenous peoples for commercial purposes;
 - Changes in government regulations;
 - Changes in company ownership;
 - Changes in surface infrastructure; and or
 - Change in scope of land under direct use or impact.

¹ 'Relocation' in this context refers both to physical displacement – relocation or loss of shelter, and economic displacement – loss of assets, or access to assets, that lead to loss of income sources or other means of livelihood, as a result of project-related land acquisition and/or restrictions on land use.

- There is no universally accepted definition of Free, Prior and Informed Consent (FPIC) and practices are evolving. In broad terms, FPIC comprises a process and an outcome. The process builds upon mutual engagement process and should be established through good faith negotiation between companies and affected Indigenous Peoples. Good faith negotiation involves on the part of all parties:
 - (i) willingness to engage in a process and availability to meet at reasonable times and frequency;
 - (ii) provision of information necessary for informed negotiation;
 - (iii) exploration of key issues of importance;
 - (iv) use of mutually acceptable procedures for negotiation;
 - (v) willingness to change initial position and modify offers where possible; and
 - (vi) provision of sufficient time for decision making.

The outcome, where this process is successful, is an agreement and evidence thereof.

[\(International Finance Corporation \(IFC\) Performance Standard 7 – Indigenous Peoples – Guidance Note \(2012\)\)](#)

- FPIC builds and expands on collaborative engagement and should be established through good faith negotiation processes. This goes beyond consultation.
 - The right to give or withhold consent must be clear in the negotiation process with the affected Indigenous peoples.
 - The company will need appropriate expertise while conducting this process. This includes expertise in sociology or anthropology and knowledge and understanding of the local context, culture and language(s) of the affected Indigenous groups.
 - The process should strive to be fair and transparent, and ensure that all communities and relevant parts thereof are represented.
- **Free:** implies no coercion, intimidation or manipulation.
- **Prior:** implies consent has been sought sufficiently in advance of any authorisation or commencement of activities and respects the time requirements of Indigenous consultation, engagement, deliberation consensus processes.
- **Informed:** implies that information is provided that covers (at least) the following aspects:
 - The nature, size, pace, duration, reversibility and scope of any proposed project
 - The reason(s) or purpose of the project
 - The location of areas that will be affected
 - A preliminary assessment of the possible economic, social, cultural and environmental impacts, including potential risks and benefits
 - Personnel likely to be involved in the implementation of the project
 - Procedures that the project may entail
- **Consent:** consultation and participation are key elements of a consent process. Consultation must be undertaken in good faith. The parties must establish a dialogue allowing them to identify appropriate and workable solutions in an atmosphere of mutual respect, and full and equitable participation, with ample time to reach decisions. This process includes both the option of giving and the option of withholding consent. Indigenous peoples and local communities must be able to participate through their own freely chosen representatives and customary or other institutions. The participation of women, youth and children are encouraged where appropriate.
- Good faith includes respect for how Indigenous peoples wish to develop the FPIC process / protocol and respect for the independence of Indigenous Peoples' decision making processes. FPIC processes are essentially locally determined and therefore developed within the context of the particular culture and traditions of the affected peoples. It is not a corporate pre-defined process and corporations must proceed in cooperation with and under the guidance of the Indigenous authorities.
 - Where the potentially affected Indigenous peoples have an FPIC process / protocol in place the company should abide by its provisions.

- Where there is no pre-existing FPIC process / protocol, the company should provide resources to support the potentially affected Indigenous peoples to develop an FPIC process / protocol independently from the company, where they wish to do so; or where the potentially affected Indigenous peoples do not wish to develop one by themselves, the company should engage with Indigenous peoples' representative institutions in an effort to reach a mutual understanding regarding the FPIC process / protocol.
- If and where non-contacted peoples are involved, indications of their resistance to intrusions into their territories should be taken as clear expressions of their exercise of FPIC and rejection of the proposed intrusions.
- As part of the FPIC process, companies should, consistent with IFC Performance Standard 7:
 - Document efforts to avoid and otherwise minimise impacts
 - Identify, assess and document resource uses and ensure affected Indigenous communities are informed of their land rights
 - Offer compensation, preferably land-based on compensation-in-kind, in lieu of cash compensation
 - Ensure continued access to natural resources, and ensure fair and equitable sharing of benefits associated with the use of resources that are central to the identity and livelihood of affected Indigenous communities.
- The provision for informed consent and other aspects of FPIC may require processes by which affected communities better understand corporate proposals prior to decision making. Information should not only come from corporate representatives, and Indigenous peoples will need access to independent expert inputs and technical advice. Consider how to:
 - Provide sufficient information for decision-making
 - Present information in forms that assist its comprehension
 - Translate materials into local languages
 - Establish funds under the control of Indigenous institutions for gaining independent legal advice or other expert support.
- Where resettlement of Indigenous peoples is proposed, this will require their FPIC.
 - The lands provided must be of a similar quality, enabling them to maintain their livelihoods and, where appropriate and feasible, way of life.
 - As part of the resettlement action plan, full consideration should be given to ensuring that they can access and return to original lands.
 - See also general guidance for criteria 9.6 on Resettlements, below.
- Where FPIC is obtained, contractually binding rights-based project-level agreements should be put in place, addressing issues including: impacts, risks, benefits, monitoring, reporting, grievance mechanisms, project transfer, closure and rehabilitation, and access and protection of cultural and sacred sites.
 - Indigenous Land Use Agreements (ILUA) in Australia and Impact Benefit Agreements in Canada provide examples for such framework agreements.
- For more guidance on implementing FPIC processes, consult available references including the [International Finance Corporation \(IFC\) Performance Standard 7 – Indigenous Peoples – Guidance Note](#) (2012), [Food and Agriculture Organisation of the United Nations \(FAO\) – Respecting Free, Prior and Informed Consent](#) (2014), (2012), the [International Council on Mining and Metals \(ICMM\) Good Practice Guide – Indigenous Peoples and Mining](#) (2015), the [Mining, the Aluminium Industry and Indigenous Peoples](#) (2015) report and its associated [Fact Sheet – Free Prior and Informed Consent \(FPIC\) and the UN Declaration on the Rights of Indigenous Peoples](#).

9.5 Cultural and sacred heritage

The [Entity], in consultation with affected Communities, shall cooperatively identify sacred or cultural heritage sites and values within [the Entity's] Area of Influence and take appropriate

action to avoid or remedy impacts, as well as to ensure continued rights of access to such sites or values.

Points to consider:

- *Note that where Indigenous Peoples' sacred or cultural heritage sites and values may be impacted, criterion 9.4 on FPIC will also apply.*
- Tangible cultural heritage is considered a unique and often non-renewable resource that possesses cultural, scientific, spiritual, or religious value and includes moveable or immovable objects, sites, structures, groups of structures, natural features, or landscapes that have archaeological, paleontological, historical, architectural, religious, aesthetic, or other cultural value.
- Identify, through consultations with relevant communities and stakeholders, any existing sacred and/or cultural heritage sites and values within your areas of operation.
 - The process for Indigenous peoples to identify their sacred and cultural heritage sites remains under their control, and should not be overruled by outside experts. Culturally appropriate processes of site identification should be used as appropriate, which may require additional resources.
- Develop a general policy and procedures on sacred or cultural heritage sites and values, in consultation with potentially affected communities.
- Prior to any ground disturbing activity that may impact on sacred or cultural heritage sites and values, develop and implement specific measures that prevent, remedy or mitigate negative impacts from your activities.
 - Develop these measures with the participation of the relevant stakeholders/communities.
- Where relevant, implement a monitoring system that verifies the effectiveness of these measures, in cooperation with the relevant stakeholders/communities. Where any issues are identified that need to be addressed, the approach taken should build on existing communities' values and processes.
- For more guidance on protecting cultural heritage, consult available references including the [International Finance Corporation \(IFC\) Performance Standard 8 – Cultural Heritage – Guidance Note](#) and the [Mining, the Aluminium Industry and Indigenous Peoples](#) (2015) report.

9.6 Resettlements

- a. The [Entity], in project designs, shall consider feasible alternatives to avoid or minimise physical and/or economic displacement, while balancing environmental, social, and financial costs and benefits, paying particular attention to impacts on the poor and vulnerable, including women.
- b. When physical displacement is unavoidable, the [Entity] in consultation and in cooperation with the affected parties shall develop a Resettlement Action Plan that covers, at a minimum, the applicable requirements of IFC Performance Standard 5 (Land Acquisition and Involuntary Resettlement) and complies with Applicable Law regardless of the number of people affected.

Points to consider:

- *Note that these criteria applies to all resettlements except when Indigenous Peoples are involved, in which case criterion 9.4 on FPIC will also apply.*
- Resettlement refers both to physical displacement – relocation or loss of shelter, and economic displacement – loss of assets, or access to assets, that lead to loss of income sources or other means of livelihood, as a result of project-related land acquisition and/or restrictions on land use.
- Involuntary resettlement occurs when affected persons or communities do not have the right to refuse land acquisition or restrictions on land use that result in physical or economic displacement. This occurs in cases of (i) lawful expropriation or temporary or permanent

- restrictions on land use and (ii) negotiated settlements in which the buyer can resort to expropriation or impose legal restrictions on land use if negotiations with the seller fail.
- Experience has shown that involuntary resettlement can result in long-term hardship for affected persons and communities. Unless properly managed, involuntary resettlement may result in impoverishment, as well as environmental damage and social stress in areas to which they have been displaced.
 - Note that IFC Performance Standard 5 does not apply to resettlement resulting from voluntary land transactions – that is, market transactions where the seller is not obliged to sell and the buyer cannot resort to appropriation or other compulsory procedures if negotiations fail.
- [International Finance Corporation \(IFC\) Performance Standard 5](#) (January 2012) provides an international standard for Land Acquisition and Involuntary Resettlement, with objectives to:
 - Avoid, and when avoidance is not possible, minimise displacement by exploring alternative project designs.
 - Avoid forced eviction.
 - Anticipate and avoid, or where avoidance is not possible, minimise adverse social and economic impacts from land acquisitions or restrictions on land use by providing compensation for loss of assets at replacement cost, and ensuring that resettlement activities are implemented with appropriate disclosure of information, consultation and the informed participation of those affected.
 - Improve, or restore, the livelihoods and standards of living of displaced persons.
 - Improve living conditions among physically displaced persons through the provision of adequate housing with security of tenure at resettlement sites.
 - Consider all feasible alternative project designs that avoid, or where avoidance is not possible, minimise physical and/or economic displacement, while balancing environmental, social and financial costs and benefits.
 - Gender is a critical dimension and women’s interests, expectations and participation should be sought. Gender-sensitive mechanisms should be implemented to avoid negative impacts on women’s livelihoods.
 - Consideration should also be given to the rights of poor and/or vulnerable people, such as those renting land from a landholder who is involved in negotiations.
 - Negotiated settlements help avoid expropriation and eliminate the use of governmental authority to remove people forcibly. Negotiated settlements can usually be achieved by providing fair and appropriate compensation and other incentives or benefits to affected persons or communities, and by mitigating the risks of asymmetry of information and bargaining power.
 - Involuntary resettlement only takes place when all other solutions have been explored and rejected, via a social impacts analysis that balances environmental, social and financial costs and benefits and takes into account the impacts on the poor and vulnerable groups.
 - In case of physical resettlement (i.e. where projects involve the relocation of people from their homes), develop and implement a Resettlement Action Plan that is consistent with IFC Performance Standard 5, with the participation of all affected persons and communities. The scope and level of detail of the Resettlement Action Plan will vary with the magnitude of displacement and the complexity of the measures required to mitigate adverse impacts. At a minimum, the Plan should:
 - Identify all people to be displaced.
 - Demonstrate that displacement is unavoidable.
 - Describe efforts to minimise resettlement.
 - Describe the regulatory framework.
 - Describe the process of informed consultation and participation with affected people regarding acceptable resettlement alternatives, and the level of their participation in the decision-making process.

- Describe the entitlements for all categories of displaced people and assess risks to vulnerable groups of the various entitlements.
- Enumerate the rates of compensation for lost assets, describe how they were derived and demonstrate that these rates are at least equal to the replacement cost of lost assets.
- Provide details on replacement housing.
- Outline plans for livelihood restoration if applicable.
- Describe relocation assistance to be provided.
- Outline the institutional responsibility for the implementation of the Resettlement Action Plan and procedures for grievance redress.
- Provide details of the arrangements for monitoring and evaluation and affected communities' involvement in this phase; and
- Provide a timetable and budget for the implementation of the Resettlement Action Plan.
- Key issues to consider in the Plan include compensation, livelihoods, housing and living conditions at sites, as well as social and cultural continuity of the community.
 - When considering resettlement locations and housing, consider the following criteria for adequacy: accessibility, affordability, habitability, security of tenure, cultural adequacy, suitability of location, and access to essential services such as health and education.
 - There may also be a need to develop agreed strategies for protection of sites or safe movement of objects of special historical, spiritual or cultural significance (see criteria 9.5).
 - Consideration should be given to the possibility of individuals and/or communities returning to the land.
- Compensation standards should be transparent and applied consistently to all those affected, and ready for implementation by the time of the resettlement.
 - Entitlements for the applicable classifications of affected persons, depending on the type of displacement and their formal legal rights, should be consistent with IFC Performance Standard 5.
 - Land-based compensation should be a starting point for agricultural based livelihood communities, rather than cash.
- For more guidance on management of physical and/or economic displacement, consult available references including the [International Finance Corporation \(IFC\) Performance Standard 5 – Land Acquisition and Involuntary Resettlement – Guidance Note](#) (2012), the [IFC Handbook for Preparing a Resettlement Action Plan](#) (2001) and the UN Basic Principles on Development Based Evictions. An outline of a Resettlement Action Plan is provided in Annex A of the IFC Performance Standard 5 Guidance Note, and the Handbook provides step-by-step guidance through the resettlement planning process and includes practical tools such as implementation checklists, sample surveys, and monitoring frameworks.

9.7 Local Communities

- a. The [Entity] shall respect the legal and customary rights and interests of local Communities in their lands and livelihoods and their use of natural resources.
- b. The [Entity] shall take appropriate steps to prevent and address any adverse impacts on local Community livelihoods resulting from its activities.
- c. The [Entity] shall explore with [local] Communities opportunities to respect and support their livelihoods.

Points to consider:

- The human rights due diligence process conducted under criterion 9.1 should be used to identify the presence of issues affecting local communities.

- Note that the scope of this criterion 9.7 is focused mainly on cases where rural and remote communities are dependent upon resources that may be affected by the company's operations, such as mining, refining and/or smelting.
- Make sure you are aware of and respect the legal and customary rights and interests of local communities in relation to their lands and livelihoods, as well as their related access to and use of natural resources.
 - Map stakeholders, and where they exist, review social and environmental impact assessments, and assess current engagement and dispute resolution strategies.
 - Consider each operation's area of influence, which includes areas that are directly impacted, as well as indirect project impacts on biodiversity or on ecosystem services upon which affected communities' livelihoods are dependent.
 - Be aware that local communities, including Indigenous peoples, may not possess legal title to lands but may still use lands and natural resources, including seasonal or cyclical use, for their livelihoods or community purposes.
 - A community engagement approach, based on two-way information sharing and decision-making processes, can help create mutual understanding and responsiveness by all parties.
 - Make sure you consider potential impacts on affected communities such as noise, dust and increased traffic from operations. More broadly, in some areas social conflict can arise in communities where a new operation benefits some community members but not others, changing the social dynamics. The nature of communities can change through in-migration of new workers or people seeking work.
 - In particular, consider the gendered nature of impacts that can arise. Where there are environmental impacts that affect land-based activities in traditional communities, this can undermine women's ability to provide food and clean water for their families and can increase their workload. Where compensation or employment is directed to men "on behalf" of families, this can create a cash-based economy and affect women's traditional status in society. A transient male work force can bring increased alcohol, sex workers and violence into a community, affecting women's safety.
 - Consider also potential community benefits, such as the development of roads and railways in the interest of the local population and opportunities to enhance biodiversity, ecosystem services, and culture.
 - Successful engagement required ongoing frameworks for regular discussion, consultation and interaction. Consider how to be inclusive, equitable, culturally appropriate and rights-compatible in your engagement activities.
- Where actual or potential adverse impacts on local community livelihoods are identified, take appropriate steps to prevent and/or address these.
 - Consider the livelihoods of both women and men.
 - Consider what steps and measures are appropriate for the organisation, given its potential impact and/or sphere of influence. Businesses are not expected to take on the responsibility to sustain the livelihoods of local communities in general, but to avoid and minimise negative impacts that they may cause or contribute to.
 - Where biodiversity conservation measures are likely to affect the livelihood of local communities, decisions on biodiversity conservation and the use of natural resources should be taken in consultation with local communities, including both women and men.
 - As part of the community engagement approach, ensure that complaints and grievance mechanisms are clear, have been communicated to local communities and function according to their expectations.
- More broadly, as part of ongoing community engagement, explore options for supporting community livelihoods and for contributing to local development.
 - Consider initiatives and actions that can stimulate the development of local communities, without creating dependence on the company or other actors.

- For example, capacity building, micro-credit initiatives, improved farming practices, and introduction of governance models for management of shared natural resources, are models that have had success in different contexts.

9.8 Conflict-Affected and High-Risk Areas

The [Entity] shall not contribute to armed conflict or Human Rights abuses in Conflict-Affected and High-Risk Areas.

Points to consider:

- Some of the worst human rights abuses involving business occur amid conflict over the control of territory, resources or a government itself – where the human rights regime cannot be expected to function as intended. Note that operations are not necessarily complicit in conflict or human rights abuses if they are located in a conflict-affected or high-risk area.
- Frameworks and legislation were initially developed to address tin, tungsten, tantalum and gold (also known as ‘conflict minerals’ and ‘3TG’). However in 2016, the OECD Due Diligence Guidance (see below), the primary reference on this issue, was updated to clarify that its risk-based approach applies to all mineral resources.
- Companies must ensure that they do not contribute to conflict, either through their own activities or directly linked to their operations, products or services through their business relationships.
 - Integrate conflict-sensitive sourcing commitments into your company’s Code of Conduct (criterion 1.3), Environmental, social and governance policy (criterion 2.1), and/or human rights policy (criterion 9.1).
 - The obligation to avoid contributing to conflict should be a component of human rights due diligence (criterion 9.1) and should specifically cover the risk of any direct or indirect support to illegal armed groups, who are often the perpetrators of serious human rights abuses.
- The first step is to identify any conflict-affected or high-risk areas where you may have operations or direct suppliers. Note that an area may be a region, a country, an area within a country, or an area that crosses one or more county boundaries. If you are unsure which areas may be conflict-affected or high-risk, seek guidance from:
 - OHCHR conflict guidance [this will widen the information to include sub-national and zones of high conflict which are not in open war zones, e.g. Mindanao, Chittagong Hill Tracts, etc.]
 - Heidelberg Institute Conflict Barometer
 - UN Security Council Resources (noting any applicable UN sanctions)
 - UN Peacekeeping Operations
 - US State Department Country Reports on Human Rights Practices
 - Uppsala Conflict Data Program
 - International Alert
 - International Crisis Group
 - Where applicable, your own in-country risk assessments and/or incident monitoring and reporting.
- Once you have identified any relevant areas where you operate or source directly, use a risk assessment or due diligence process to document and review the heightened risks of adverse human rights impacts and/or contributing to conflict in these areas. The level of detail in the due diligence should be commensurate with the level of risks, based on current social or political conditions, and/or proximity of operations to existing or recent conflict, and/or the complexity and nature of the company’s local suppliers. Review the general 5-step approach contained in Annex 1 of the OECD Due Diligence Guidance:
 - Establish strong company management systems

- Identify and assess risk in the supply chain
- Design and implement a strategy to address identified risks
- Independent third-party audits of supply chain due diligence at identified points in the supply chain (for 3TG, these are smelters/refiners, and a number of industry programs co-ordinate such audits)
- Report on supply chain due diligence
- If you are operating in a conflict-affected or high-risk area:
 - Check that systems are in place to identify all illegal armed groups and their affiliates in the conflict-affected area, and establish systems to prevent payments, logistical assistance or equipment being provided.
- If you are sourcing minerals directly from a conflict-affected or high-risk area:
 - Assess the risks of the supplier contributing to conflict or adverse human rights abuses, particularly the risk of them providing direct or indirect assistance to illegal armed groups.
 - Determine whether the identified risks can be mitigated by continuing, suspending or terminating the relationships with the supplier/s.
- Wherever possible, integrate steps to address identified risks with implementation of related ASI Performance Standard criteria:
 - Consider heightened risks of bribery and corruption in conflict-affected and high-risk areas (see criterion 1.2 on Anti-Corruption)
 - Consider heightened risks associated use of security forces (see criterion 9.9 on Security Practice).
 - Consider heightened risks of Child Labour (criterion 10.2) and Forced Labour (criterion 10.3) in these areas.
 - If there are FPIC (criterion 9.4) processes being undertaken, consider any implications for the “Free” component in the presence of conflict, including military, paramilitary, police or armed security presence in Indigenous peoples’ territories.
 - When operating in, or sourcing from, a conflict-affected or high-risk area, companies should publicly report on their supply chain due diligence policies and practices (relevant to criterion 3.1 on Sustainability Reporting).
 - If due diligence identifies any contributions to armed conflict or serious human rights abuses, then companies must immediately seek to remediate the adverse impacts (see criterion 9.1(b) on Human Rights Due Diligence).
- For more guidance on conflict-affected and high-risk areas, consult available references including the [OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-affected and High Risk Areas](#) (3rd edition, 2016), the [UN Global Compact Guidance on Responsible Business in Conflict-Affected and High-Risk Areas](#) (2010), and the [Voluntary Principles on Security and Human Rights](#).

9.9 Security practice

The [Entity] shall, in its involvement with public and private security providers, respect Human Rights in line with recognised standards and good practices.

Points to consider:

- The primary role of security providers is the protection of people, property and/or assets. Potential security threats include general theft, fraud, violent disturbances, sabotage of infrastructure, illegal mining, organised theft of company product or supplies, and kidnapping, intimidation or assassination of staff.
- Where public or private security forces are used, assess the risks of the security forces contributing to conflict or adverse human rights abuses, and a written policy or agreement should be established on the conduct of security personnel.

- It should establish the importance of respect for human rights, the boundaries of security activities, appropriate procedures for managing security issues and conflicts, and the consequences of any human rights abuses. This could be stand-alone, or part of a broader policy on human rights (criterion 9.1), depending on the use of security providers and associated risks.
- Certain situations may require that security personnel be armed, and this may be determined by the security provider in accordance with their own risk assessments. Any armed personnel must be properly trained and licensed in accordance with applicable law.
- Avoid public or private security forces that have been credibly implicated in human rights abuses. Regularly review internal security personnel and providers for any emerging risks.
- Make your policy public and/or inform security providers, stakeholders and host governments of your commitments, as appropriate.
- Put arrangements in place for monitoring performance against the policy, and for investigations and disciplinary actions, which may include reporting to relevant authorities.
- In sectors such as mining, refining and/or smelting, the Voluntary Principles on Security and Human Rights were developed to guide companies in maintaining the safety and security of their operations within a framework of respect for human rights. These shall be considered the relevant ‘recognised standards and good practices’ referred to in 9.9.
 - The Principles address risk assessment, relations with public security and relations with private security.
 - They call for a regularly updated security risk assessment, and the engagement of local communities in security issues.
 - They stipulate that private security should only provide preventative and defensive services and should not engage in activities exclusively the responsibility of state military or law enforcement authorities.
 - Adequate and effective training of security personnel should be in place on the relevant Principles and the company’s own policies regarding appropriate conduct and the local use of force.
- Additional considerations:
 - The presence of security providers should be addressed in human rights impact assessments, including potential impacts on women.
 - Any new or expanded presence of armed security or the military (and the location of any associated camps) in Indigenous territories must be addressed as part of FPIC processes (see criterion 9.4).
- For more guidance on conflict-affected and high-risk areas, consult available references including the [Voluntary Principles on Security and Human Rights](#), and the [International Code of Conduct for Private Security Service Providers \(ICoC\)](#).

Review:

- Have you conducted a human rights due diligence process?
- Did you consider women’s rights as part of that process?
- Where Indigenous Peoples are present, do you have policies and processes in place to respect their rights, including Free Prior and Informed Consent (FPIC) as appropriate?
- Do you consult with affected communities on any potential impacts on their cultural and sacred heritage?
- If your activities will cause physical displacement, have you developed a Resettlement Action Plan?
- Have you taken steps to prevent and address any adverse impacts on local community livelihoods?
- Do you operate in or source directly from conflict-affected or high-risk areas?

Do you engage public or private security providers?

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