

12 July 2021

Dear Andrea and Ana,

Response to Business and Human Rights Resource Centre: Concerns raised relating to the right to free, prior and informed consent

Thank you for the opportunity to provide a response to a recently released report by the International Work Group for Indigenous Affairs (IWGIA) & Indigenous Peoples Rights International (IPRI), *The UN Guiding Principles on Business & Human Rights and Indigenous Peoples. Progress achieved, the implementation gap and challenges for the next Decade*. This report raised concerns about how some companies are falling short in respecting the right to free, prior, and informed consent, including within the mining industry. It references the International Council on Mining and Metals (ICMM) and three of our 28 company members.

ICMM supports our members to build constructive relationships with Indigenous Peoples. We welcome the report's recognition of ICMM's [Indigenous Peoples and Mining Position statement](#) as a significant step forward for the industry. This position statement forms part of a broader set of commitments that member companies adhere to when they join ICMM.

ICMM's [Mining Principles](#) define good practice environmental, social and governance requirements for the mining and metals industry. The Mining Principles include robust performance expectations relating to human rights and Indigenous Peoples, and social performance. Most relevant to the issues raised in this report are the commitments to:

- Work to obtain the free, prior and informed consent of Indigenous Peoples where significant adverse impacts are likely to occur, as a result of relocation, disturbance of lands and territories or of critical cultural heritage, and capture the outcomes of engagement and consent processes in agreements, and
- Respect the rights, interests, aspirations, culture and natural resource-based livelihoods of Indigenous Peoples in project design, development and operation; apply the mitigation hierarchy to address adverse impacts; and deliver sustainable benefits for Indigenous Peoples.
- Support the UN Guiding Principles on Business and Human Rights by developing a policy commitment to respect human rights, undertaking human rights due diligence and providing for, or cooperating in processes to enable the remediation of adverse human rights impacts that members' have caused or contributed to.

The report highlights that it is important for companies to have robust policies in place that set out their commitments and approach to free prior and informed consent, and to engaging with Indigenous communities. The report suggests that Rio Tinto, BHP and Freeport McMoRan, the three ICMM member companies mentioned, do not have public policy commitments, and/ or do not adequately reference commitment to ICMM's position statement. This is incorrect. Rio Tinto sets out their commitment in their [Communities and Social Performance Standard \(Dec 2014\)](#) which defines the way the company engages communities, and outlines the steps it takes to identify and manage social, economic, environmental, cultural and human rights impacts throughout the project life cycle (see

section 1.13). Freeport McMoRan outlines its commitment and its approach clearly in its [Social Performance Policy \(Dec 2020\)](#) and BHP's approach to working with Indigenous Peoples is publicly detailed in their [Human Rights Policy Statement](#), the [Our Requirements for Community Standard](#) and BHP's [Indigenous Peoples Policy Statement](#).

However, the report rightly points out that policy adoption alone is insufficient. Our members recognise that engagement with Indigenous Peoples and free prior and informed consent is a challenging area that they do not always get right, seen most recently in the tragic events at Juukan Gorge. This is why at ICMM we work together to strengthen management approaches, from peer learning and sharing of best practice, to engagement with experts and development of [guidance](#) and resources to support members and the wider industry.

The most recent evolution of ICMM's Mining Principles also strengthen how members companies report on their implementation of member commitments. Company members commit to self-assessment and periodic independent third-party validation of the Mining Principles at the asset level. If these assessments indicate that performance is below the expected level, the validation services provider will likely recommend corrective actions, if necessary, to ensure the effective implementation of the Mining Principles. Over time, these site-level assessments, independently assured, will provide greater insight into the implementation of ICMM's commitments at the (over 650) assets in more than 50 countries operated by our members.

We know our work is not done until the lived reality of Indigenous Peoples everywhere reflects the spirit of our commitments. To that end, we sincerely welcome the constructive ideas and inputs of others for what more we can do as an industry on these matters.

Thank you for drawing our attention to this report which raises important issues for companies, including in the mining industry, to address.

Yours sincerely,

Nicky Black, Director Social and Economic Development