

BHRRRC
2-8 Scrutton Street
London, EC2A 4RT
United Kingdom

2nd July 2021

Dear BHRRRC Colleagues,

We appreciate the opportunity to respond here to your request for context on the recent report by International Working Group for Indigenous Affairs (IWGIA) and Indigenous Peoples Rights International (IPRI) regarding the application of indigenous peoples free, prior and informed consent (FPIC) in the mining sector.

We respect the effort and expertise invested in this report, and by BHRRRC to elevate, addressing barriers and shortcomings to achievement of the free, prior and informed consent of Indigenous peoples prior to impacts on their lands. We agree that the world is not yet achieving the intentions of the United Nations Guiding Principles on Business & Human Rights on this important topic and we endeavor that the Initiative for Responsible Mining Assurance (IRMA) provides strategic tools for diverse stakeholders to work together to deliver the intentions of FPIC. Thank you for the opportunity to respond to comments.

We agree with the report's recommendations for companies regarding policy commitments to respect Indigenous communities' rights at all levels and throughout their value and supply chains, including holding good-faith consultations, respecting national and international human rights standards, building long-term good-faith relationships with Indigenous Peoples, and employing participatory human rights impact assessments and dispute resolution mechanisms.

The International Working Group for Indigenous Affairs (IWGIA) and Indigenous Peoples Rights International (IPRI) report correctly identifies IRMA's commitment to equity in multistakeholder leadership. This governance model creates the fundamental tenets of IRMA that we believe directly serve accountability to indigenous peoples:

- **Audits are publicly noticed before they happen**, so that all interested stakeholders might participate and inform the veracity and depth of the assessment.
- **IRMA audits of operating mines require on-site review of operations.**
- **Audit reports are required to be transparently released** so that any stakeholder may access and review these detailed 100+ page reports.
- **An IRMA audit yields an unprecedented detailed report on environmental and social performance** that allows communities to better understand potential harm and a trusted basis for information from which they may negotiate for improved practice. It also supports downstream purchasers committed to the due diligence of understanding negative impacts in their supply chain and actively engaging to reduce that harm. Too many voluntary initiatives have metrics that speak broadly to good intentions but are so vague they fail to differentiate between industry leaders and those creating grave risk for communities and the environment on which they depend.
- **IRMA hosts an Issues Resolution System** that is open to all and seeks to provide a prompt independent response to concerns of any stakeholder.

The IWGIA and IPRI report recognizes that IRMA has the most advanced standard in the

extractive sector with regard to indigenous peoples' rights. The report also notes that a specific IRMA protocol is lacking for existing mines, where no FPIC is required, but FPIC will only be required in case of substantial changes to the *modus operandi*. We acknowledge this criticism and offer the following context and responses:

- While the IRMA Standard for Responsible Mining covers expectations for responsible practices from the earliest phase, before a mine is built, through mine closure and reclamation to return the land to appropriate post-mining use, in practice, audits of mines are undertaken on existing active mining operations. Audits are completed every 3 years with a surveillance audit in between. While some shortcomings in performance can be remedied with responsive action (e.g., a water quality problem, or a worker health and safety risk) if an existing mine did not have the "prior" consent of that region's indigenous people, it cannot turn the clock back and achieve "prior consent." We seek to best address this limit in a manner which acknowledges the lack of consent and creates an appropriate response.
- IRMA will soon offer one practical and proactive response to this challenge: a new draft standard for exploration and development phases, the "IRMA Ready" Standard. This draft Standard, which will undergo a 60-day period of public consultation before it is finalized, specifically addresses the phases of mine proposal and planning before a mine begins operation and considers FPIC from indigenous peoples to be a critical requirement (necessary for achievement of any IRMA performance award level of IRMA 50 and higher, including certification).
- Similarly, the current IRMA Standard for Responsible Mining (released June 2018), states that mines constructed from late 2019 and later (after release of the IRMA Standard for application) are required to demonstrate that they have obtained FPIC. IRMA's Standard is now a globally available metric of best practices in responsible mining, and therein it is clear that achieving and maintaining the consent of indigenous peoples prior to mining is a critical requirement.
- However, as the IWGIA and IPRI report notes, for mines constructed and operating prior to 2019, the requirements in the Standard's do not fully respond to the IRMA's Scope of Application for the FPIC Chapter, which states:

At existing mines, where FPIC was not obtained in the past, operating companies will be expected to demonstrate that they are operating in a manner that seeks to achieve the objectives of this chapter. For example, companies may demonstrate that they have the free, informed consent of indigenous peoples for current operations by providing evidence of signed or otherwise verified agreements, or, in the absence of agreements, demonstrate that they have a process in place to respond to past and present community concerns and to remedy and/or compensate for past impacts on indigenous people's rights and interests.

While the content above indicates that existing mines are expected to demonstrate that they are operating in a manner that seeks to achieve the objectives of this chapter, the requirements in sections 2.2.4 and 2.2.5 don't offer clear indicators for measure of a mine's real-time present support of their indigenous community(ies).

Later this year, IRMA will be embarking on a revision to its 2018 Standard, so the time is appropriate for IRMA to revisit the question of if and how aspects of FPIC might be measured at existing mines. Our own multi-stakeholder membership, as well as diverse stakeholders globally, will be included in the discussions so that our revised standard reflects best practices in FPIC and application for the mining sector.

In addition to the IRMA Mining Standard's Chapter 2.2 on Free, Prior and Informed Consent, the Mining Standard includes detailed chapters on Human Rights Due Diligence (Chapter 1.3), Complaints and Grievance Mechanism and Access to Remedy (Chapter 1.4), and Cultural Heritage (Chapter 3.7). As mentioned above, we are also about to release the draft IRMA Ready Standard (for before a mine is operating) for public consultation, and are currently in public consultation on the IRMA draft Mineral Processing Standard (for mineral processing after material leaves the mine). We will also soon finalize the IRMA Chain of Custody Standard. This will support tracking of materials and verifying of claims on responsible sourcing downstream of the mine as materials go into end products.

IRMA's governance model, commitment to a comprehensive high-bar standard describing best-practices, use of public notice and engagement of stakeholders in audits, and transparent release of detailed audit reports all provide important information about mine performance in a context which can improve trust. This information can be a powerful tool as one component in an Indigenous community's evaluation of a mining project and their decision of if/how to convey consent for extraction in their region.

We hope to be a further resource to you and other advocates working to improve human rights, the protection of Indigenous culture and heritage, and protection of the land on which communities depend.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Aimee Boulanger'. The signature is fluid and cursive, with the first name 'Aimee' being more prominent and the last name 'Boulanger' following in a similar style.

Aimee Boulanger
Executive Director