



Initiative for Responsible
Mining Assurance

Excerpt from the DRAFT Standard for Responsible Mining and Mineral Processing 2.0

Chapter 2.2 – Indigenous Peoples and Free, Prior and Informed Consent (FPIC)

Context & Disclaimer on IRMA DRAFT Standard 2.0

IRMA DRAFT Standard for Responsible Mining and Minerals Processing 2.0 is being released for public consultation, inviting the world to join in a conversation around expectations that drive value for greater environmental and social responsibility in mining and mineral processing.

This draft document invites a global conversation to improve and update the 2018 IRMA Standard for Responsible Mining Version 1.0. It is not a finished document, nor seeking final review, but rather is structured to invite a full range of questions, comments and recommendations to improve the IRMA Standard.

This IRMA DRAFT Standard for Responsible Mining and Minerals Processing (v.2.0) has been prepared and updated by the IRMA Secretariat based on learnings from the implementation of the Standard (v.1.0), experience from the first mines independently audited, evolving expectations for best practices in mining to reduce harm, comments and recommendations received from stakeholders and Indigenous rights holders, and the input of subject-specific expert Working Groups convened by IRMA in 2022.

IRMA's Standard has a global reputation for comprehensive in-depth coverage addressing the range of impacts, as well as opportunities for improved benefit sharing, associated with industrial scale mining. This consultation draft proposes a number of new requirements; some may wonder whether IRMA's Standard already includes too many requirements. The proposed additions are suggested for a range of reasons (explained in the text following), including improving auditability by separating multiple expectations that were previously bundled into a single requirement, addressing issues that previously weren't sufficiently covered (e.g. gender, greenhouse gas emissions), and providing more opportunities for mining companies to receive recognition for efforts to improve social and environmental protection.

Please note, expert Working Groups were created to catalyze suggestions for solutions on issues we knew most needed attention in this update process. They were not tasked to come to consensus nor make formal recommendations. Their expertise has made this consultation document wiser and more focused, but work still lies ahead to resolve challenging issues. We encourage all readers to share perspectives to improve how the IRMA system can serve as a tool to promote greater environmental and social responsibility, and create value for improved practices, where mining and minerals processing happens.

The DRAFT Standard 2.0 is thus shared in its current form to begin to catalyze global conversation and stakeholder input. It does not represent content that has been endorsed by IRMA's multistakeholder Board of Directors. IRMA's Board leaders seek the wisdom and guidance of all readers to answer the questions in this document and inform this opportunity to improve the IRMA Standard for Responsible Mining.

IRMA is dedicated to a participatory process including public consultation with a wide range of affected people globally and seeks feedback, comments, questions, and recommendations for improvement of this Standard. IRMA believes that diverse participation and input is a crucial and determining factor in the effectiveness of a Standard that is used to improve environmental and social performance in a sector. To this end, every submission received will be reviewed and considered.

The DRAFT Standard 2.0 is based on content already in practice in the IRMA Standard for Responsible Mining Version 1.0 (2018) for mines in production, combined with the content drafted in the IRMA Standard for Responsible Mineral Development and Exploration (the 'IRMA-Ready' Standard – Draft v1.0 December 2021) and in the IRMA Standard for Responsible Minerals Processing (Draft v1.0 June 2021).

Chapter Structure

BACKGROUND

Each chapter has a short introduction to the issue covered in the chapter, which may include an explanation of why the issue is important, a description of key issues of concern, and the identification of key aspects of recognized or emerging best practice that the standard aims to reflect.

OBJECTIVES/INTENT STATEMENT

A description of the key objectives that the chapter is intended to contribute to or meet.

SCOPE OF APPLICATION

A description of the conditions under which the chapter may or may not be relevant for particular mines or mineral processing sites. If the entity can provide evidence that a chapter is not relevant, that chapter will not need to be included in the scope of the IRMA assessment. A requirement is 'not relevant' if the issue to which a requirement relates is not applicable at the site. For example, requirements related to the use of cyanide would not be relevant at a site at which cyanide is never used.

TERMS USED IN THIS CHAPTER

This is a list of the terms used in the chapter ■ Each term is separated with ■

Terms listed here are identified in the chapter with a dashed underline. And they are defined in the [Glossary of Terms](#) at the end of the chapter.

Chapter Requirements

X.X.X. These are criteria headings

X.X.X.X. And these are the requirements that must be met for an IRMA assessment to be issued and subsequently maintained by a site. Most criteria have more than one requirement. All requirements must be met in order to comply fully with the criterion.

- a. Some requirements consist of hierarchical elements:
 - i. At more than one level.
 - ii. Operations may be required to meet all elements in a list, or one or more of the elements of such a list, as specified.

NOTES

Any additional notes related to the chapter and its requirements are explained here.

GLOSSARY OF TERMS USED IN THIS CHAPTER

Terms used in the chapter are defined here.

ANNEXES AND TABLES

Annexes or Tables are found here.

IRMA Critical Requirements

The 2018 IRMA Standard for Responsible Mining v. 1.0 includes a set of requirements identified as being critical requirements. Operations being audited in the IRMA system must at least substantially meet these critical requirements in order to be recognized as achieving the achievement level of IRMA 50 and higher, and any critical requirements not fully met would need to have a corrective action plan in place describing how the requirement will be fully met within specified time frames.

The 2023 updates to the 2018 Standard may edit some critical requirements in the process of revising and therefore there will be a further review specific to the language and implications of critical requirements that follows the overall Standard review.

Associated Documents

This document is an extract of the full DRAFT IRMA FOR RESPONSIBLE MINING AND MINERAL PROCESSING (Version 2.0) – DRAFT VERSION 1.0, released in October 2023 for a public-comment period. The English-language full version should be taken as the definitive version. IRMA reserves the right to publish corrigenda on its web page, and readers of this document should consult the corresponding web page for corrections or clarifications.

Readers should note that in addition to the DRAFT Standard, there are additional policies and guidance materials maintained in other IRMA documents, such as IRMA’s Principles of Engagement and Membership Principles, IRMA Guidance Documents for the Standard or specific chapters in the Standard, IRMA Claims and Communications Policy and other resources. These can be found on the IRMA website in the Resources section. Learn more at responsiblemining.net

Comment on the IRMA Standard

Comments on the IRMA Standard and system are always welcome.

They may be emailed to IRMA at: comments@responsiblemining.net

Additional information about IRMA is available on our website: responsiblemining.net

Chapter 2.2

Indigenous Peoples and Free, Prior and Informed Consent (FPIC)

NOTES ON THIS CHAPTER: We are proposing that the name of this chapter be revised from ‘Free, Prior and Informed Consent’ to ‘Indigenous Peoples and Free, Prior and Informed Consent (FPIC).’ The previous titled implied that the chapter was only about FPIC, and while the majority of the chapter does cover FPIC-related expectations it does also include ongoing engagement and other requirements beyond FPIC.

Proposed additions and changes:

- The changes to this chapter have been informed by discussions with IRMA’s Expert Working Group on Free, Prior and Informed Consent (FPIC). The proposed addition of remedy (or equivalent) agreements that address past impacts, a requirement for community validation of agreements, need for specific reference to a grievance mechanism, and more detail on expectations regarding Indigenous Peoples living in voluntary isolation were all added as a result of those discussions and input from working group members.
- Other changes, such as capitalizing Indigenous Peoples throughout the chapter (and Standard) and moving the reference to Indigenous Peoples living in voluntary isolation from the Cultural Heritage chapter (3.7) to this one, are editorial changes proposed by the IRMA Secretariat.

Glossary:

- We are proposing new/revised definitions for several glossary terms. The ‘Terms Used In This Chapter’ box shows which terms are new, and the proposed definitions can be found in the glossary at the end of the chapter requirements. The full glossary is at the end of the document. Feedback on definitions is welcome.

PARTICIPATE IN AN EXPERT WORKING GROUP ON THIS CHAPTER

If you are interested in participating in an Expert Working Group on Indigenous Peoples and Free, Prior and Informed Consent, please contact IRMA’s Standards Director, Pierre De Pasquale (pdepasquale@responsiblemining.net).

CONSULTATION QUESTION 2.2-1

Background: It is unlikely that any community, anywhere, whether it be Indigenous or non-Indigenous, will unanimously support or unanimously oppose a large-scale industrial development such as a mine or processing facility. However, the working assumption within this chapter is that FPIC can still be achieved even if there is dissent from or dissatisfaction expressed by individuals within a community as long as the decision to grant consent is made by Indigenous Peoples’ own representative decision-making institutions, after a process that adheres to the principles of FPIC.

One challenge that is likely to be faced by auditors, however, is what to do if a company has obtained consent from a decision-making institution that is recognized by some of the Indigenous Peoples, but others in the community do not view those decision-making institutions as being representative. For example, this may happen in parts of the world where a governance structure was, at some point in time, imposed on the Indigenous Peoples by a colonial government of the country where the project is located. These governance structures may now have been in place for decades or even more than a century, and they may involve the Indigenous Peoples “choosing” or electing the representatives, but those elected may not be universally viewed by all affected Indigenous Peoples as legitimate representatives of their communities because that is not how leaders were traditionally chosen. There may be pre-existing (and sometimes competing) traditional decision-making structures, such as councils of elders, that are viewed by some as the sole legitimate representative structure.

In other cases, for a host of historic and political reasons, an “historically imposed” governance structure may be the only functional representative institution, and while all members of a community may not view it as legitimate, there is no traditional governance structure that is intact, and communities have not had the capacity to design a collectively recognized and agreed governance structure.

This latter situation has been recognized by the UN Expert Mechanism on the Rights of Indigenous Peoples: “Failure to engage with legitimate representatives of Indigenous Peoples can undermine any consent received. In the Declaration it is clear that States and third parties should consult and cooperate with Indigenous Peoples ‘through their own representative institutions’ (arts. 19 and 32) and ‘in accordance with their own procedures’ (art. 18). Yet, identifying the legitimate representatives of Indigenous Peoples can be challenging. States should be mindful of situations where Indigenous Peoples’ decision-making institutions have been undermined by colonialism and where communities have been dispersed, dispossessed of land or relocated, including to urban areas. . . It is important for States or third parties to ensure that institutions supporting Indigenous Peoples and claiming to represent them are so mandated.”¹

Question: How might IRMA revise its standard to address the situations where 1) there is more than one decision-making structure that is considered legitimate by members of an affected population of Indigenous Peoples; or 2) where there is only one structure, but it is not considered legitimate by all members of the affected population of Indigenous Peoples.

CONSULTATION QUESTION 2.2-2

Background: In IRMA’s Expert Working Group on FPIC there was a suggestion to expand the requirement for FPIC beyond Indigenous Peoples, to others, such as traditional or other communities that have prior legal or customary rights to land, vulnerable land connected peoples, etc. In one of the FPIC working group discussions we provided examples of other standards that have extended the concept of FPIC to others (e.g., the World Bank’s inclusion of “Sub-Saharan African Historically Underserved Traditional Local Communities,” and the requirements in the Forest Stewardship Council and Roundtable for Sustainable Palm Oil standards.²

There was no consensus within the Expert Working Group on how to proceed. There was recognition that FPIC is an internationally recognized right of Indigenous Peoples that is grounded in a set of other fundamental rights of Indigenous Peoples, such as their right to self-determination, the right to control and use ancestral lands and resources, the right to non-discrimination, the right to effective participation in public life, etc. Some suggested that if human rights of non-Indigenous communities have been affected, that these could and should be recognized and addressed as part of an entity’s human rights due diligence (in IRMA Chapter 1.3 – ‘Human Rights Due Diligence’). Others thought that a subset of the FPIC principles could be applied to such communities (and perhaps included in IRMA Chapter 2.3 – ‘Obtaining Community Support and Delivering Benefits’).

Question: Do you think IRMA should expand the requirement for FPIC, or some subset of FPIC principles, beyond Indigenous Peoples? Put differently, do you think IRMA should require that entities obtain the FPIC of non-Indigenous Peoples prior to initiating a project? What is the basis for this opinion? And if you think that FPIC or a subset of FPIC requirements should apply beyond Indigenous Peoples, to whom should they apply and why (e.g., those with customary land rights, vulnerable land-connected peoples, historically underserved traditional local communities), and what sorts of requirements would you propose be included?

¹ United Nations Human Rights Council, Free, Prior and Informed Consent: A Human Rights-Based Approach: Study of the Expert Mechanism on the Rights of Indigenous Peoples, 10 August 2018. <https://un-declaration.narf.org/wp-content/uploads/Free-prior-and-informed-consent-a-human-rights-based-approach-1.pdf>

² Work Bank Environmental and Social Framework, Standard ESS. <https://thedocs.worldbank.org/en/doc/837721522762050108-0290022018/original/ESFFramework.pdf#page=89&zoom=80>

Forest Stewardship Council, Principle 4. <https://connect.fsc.org/document-centre/documents/resource/392>

Roundtable for Sustainable Palm Oil. Principles 4. <https://rspo.org/wp-content/uploads/rspo-principles-criteria-for-production-of-sustainable-palm-oil-2018revised-01-february-2020-with-updated-supply-chain-requirements-for-mills.pdf>

BACKGROUND

For more than a quarter century, the international community has recognized that heightened attention needs to be paid to the collective and individual rights of Indigenous Peoples and their members.³ It is important to note that, while certain rights may require specific attention in the context of industrial-scale mineral development, the full range of human rights as they relate to Indigenous Peoples may be at stake in any given context and must be analyzed as such. That said, the following rights of Indigenous Peoples are especially but not exclusively relevant in relation to industrial-scale mineral development:⁴

- The right to self-determination, by virtue of which Indigenous Peoples freely determine their political status and pursue their economic, social, and cultural development;
- Rights to property, culture, religion, and non-discrimination in relation to lands, territories, and natural resources, including sacred places and objects;
- Rights to health and physical well-being in relation to a clean and healthy environment;
- Rights to set and pursue their own priorities for development; and
- The right to make authoritative decisions about external projects or investments.

States must and corporations should respect these rights. Corporations may demonstrate such respect by obtaining the free, prior and informed consent (FPIC) of Indigenous Peoples and providing culturally appropriate alternatives and adequate compensation and benefits for undertakings that affect Indigenous Peoples' rights.⁵

Key elements of the requirement for consent of Indigenous Peoples have been recognized by international law since 1989, when the General Conference of the International Labour Organization (ILO) adopted Convention 169 on Indigenous and Tribal Peoples.⁶ Since 1989, FPIC has been widely recognized by international bodies, tribunals, and instruments, including private sector bodies, and it is also increasingly reflected in national laws, jurisprudence, and policies.⁷

OBJECTIVES/INTENT OF THIS CHAPTER

To demonstrate respect for the dignity, aspirations, cultures, livelihoods, and rights (including the right to free, prior and informed consent) of Indigenous Peoples.

TERMS USED IN THIS CHAPTER

Affected Community ■ Collaboration ■ Consultation ■ Cultural Heritage **NEW** ■ Customary Rights **NEW** ■ Customary Rights **NEW** ■ Culturally Appropriate **NEW** ■ Entity **NEW** ■ Exploration **NEW** ■ Free, Prior and Informed Consent (FPIC) ■ Grievance ■ Grievance Mechanism ■ Host Country Law ■ Indigenous Peoples ■ Indigenous Peoples Living in Initial Contact **NEW** ■ Indigenous Peoples Living in Voluntary Isolation **NEW** ■ Indigenous Peoples' Rights **NEW** ■ Livelihood ■ Mineral Processing **NEW** ■ Mining **NEW** ■ Operation **NEW** ■ Potentially Affected Indigenous Peoples ■ Project **NEW** ■ Marginalized Groups ■ Mining-Related Activities ■ Remediation/Remedy ■ Rights Holder ■ Site **NEW** ■ Stakeholder ■ Vulnerable Groups

These terms appear in the text with a dashed underline. For definitions see the Glossary of Terms at the end of this chapter.

³ United Nations. 2008. Guidelines on Indigenous Peoples' Issues. www.un.org/esa/socdev/unpfii/documents/UNDG_guidelines_EN.pdf

⁴ Anaya, J. 2013. Extractive Industries and Indigenous Peoples. Report of the Special Rapporteur on the Rights of Indigenous Peoples. UN Doc. A/HRC/24/41. Para. 28. Available at: unsr.jamesanaya.org/study/report-a-hrc-24-41-extractive-industries-and-indigenous-peoples-report-of-the-special-rapporteur-on-the-rights-of-indigenous-peoples

⁵ IFC. 2012. Performance Standard 7 Indigenous Peoples. Objectives and Paras. 9 and 14. Available at: <https://www.ifc.org/en/insights-reports/2012/ifc-performance-standards>

⁶ ILO. Indigenous and Tribal Peoples Convention, 1989 (No. 169). Available at: https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO:12100:P12100_ILO_CODE:C169

⁷ For a detailed discussion of recent international jurisprudence related to FPIC see: Gilbert, J. and Doyle, C. 2011. "A New Dawn over the Land: Shedding Light on Collective Ownership and Consent." pp. 24-42. Available at: <https://repository.uel.ac.uk/item/86165>

NOTE ON OBJECTIVES: REVISED. Simplified, and clarified that FPIC is a right rather than the previous wording in the 2018 Mining Standard that an objective was “creating conditions that allow for Indigenous Peoples’ free, prior and informed consent and decision-making regarding mining development.”

SCOPE OF APPLICATION

RELEVANCE: This chapter is assumed applicable to all exploration, mining and mineral processing projects and operations, and if an entity believes it is not relevant then it needs to provide evidence to that effect to IRMA auditors. This may be done, for example, through documented investigations and consultations with experts that demonstrate there are no Indigenous Peoples whose legal or customary rights or interests have been or may be affected by the entity’s past, present or proposed mining-related activities (which include exploration, mining, and mineral processing). Examples of rights or interests may include impacts on lands, territories, and resources which Indigenous Peoples have traditionally owned, occupied, or otherwise used or acquired; preservation of livelihoods, food security, cultural or spiritual activities or places; and the right to not be relocated/resettled without having first given their free, prior and informed consent (FPIC).

OVERLAP WITH HOST COUNTRY LAWS: The state always holds the primary duty to protect Indigenous Peoples’ rights.⁸ Nothing in this chapter is intended to reduce the primary responsibility of the state to consult with Indigenous Peoples in order to obtain their FPIC and protect their rights. IRMA recognizes that in the exercise of their right to self-determination, some Indigenous Peoples may wish to engage with entities such as exploration or mining companies even if the state failed to fulfill its obligations. It is important to note, in such engagements, the need for the entity to adhere to Indigenous Peoples’ own laws/enactments, protocols, or policies where these exist (see requirement 2.2.4.1). Also, all entities need to conduct due diligence to understand if the state carried out this duty prior to granting land access or concession rights (2.2.2), and share this with the Indigenous Peoples so that they can make an informed decision regarding whether or not to proceed with discussions with the entity.

As per Chapter 1.1, if host country laws related to FPIC exist, entities must abide by those laws. Where host country laws require or enable agreements between entities and Indigenous Peoples it may not be necessary for entities to run a parallel FPIC process based on the requirements of this chapter. It would, however, be necessary for entities to demonstrate to IRMA auditors that the process whereby the agreement was reached conformed with or exceeded IRMA FPIC requirements and met the general intent of this chapter (for example, there was no express or implied threat to invoke compulsory powers if agreement could not be reached, and Indigenous communities were informed at the outset that the entity would not pursue proposed activities in the absence of the Indigenous Peoples’ consent). If gaps exist between national laws and the IRMA chapter, the entity would be expected to implement measures, to the extent possible, to fill those gaps.

NOTE ON SCOPE OF APPLICATION: We removed references to new and existing mines as we are no longer using that means of differentiation in the standard. We have included normative requirements below to address expectations if FPIC was not obtained in the past.

This proposed version of the IRMA Standard is meant to apply to exploration, mining, and mineral processing projects and operations (see definitions of project and operation), but not all requirements will be relevant in all cases. We have provided some high-level information below, but the IRMA Secretariat will produce a detailed Scope of Application for each chapter that will indicate relevancy on a requirement-by-requirement basis (and will provide some normative language where the expectations may slightly differ for proposed projects versus operations, or for mining versus mineral processing, etc.).

⁸ See e.g., Rights of Indigenous Peoples, A/HRC/45/34, 18 June 2020, para. 61-2. <https://www.ohchr.org/en/documents/thematic-reports/ahrc4534-rights-indigenous-peoples-report-special-rapporteur-rights> (“It is necessary to ... focus on the international human rights obligations that States must observe at all times. Any restrictions on these rights, such as a decision to proceed without the free, prior and informed consent of an Indigenous people, imposes on the State a burden to prove the permissibility of the said restrictions under the international criteria of legality, necessity and proportionality in relation to a valid public purpose. 62. The Special Rapporteur, in common with previous mandate holders, has highlighted the need for review mechanisms through a judicial or other impartial and competent body in order to ensure that any decision by a State entity that does not have the consent of the Indigenous Peoples affected complies with these criteria and does not affect the physical and cultural survival of the Indigenous Peoples concerned. If these requirements are not met, it ought to be concluded that the measure or activity should not proceed without Indigenous consent”).

CRITICAL REQUIREMENTS IN THIS CHAPTER

Proposed activities only proceed with the FPIC of all affected communities of Indigenous Peoples (2.2.4.3).

NOTE ON CRITICAL REQUIREMENTS: The 2018 IRMA Standard includes a set of requirements identified as being critical. Projects/operations being audited in the IRMA system must at least substantially meet all critical requirements in order to be recognized at the achievement level of IRMA 50 and higher, and any critical requirements not fully met need a corrective action plan for meeting them within specified time frames.

INPUT WELCOME: The proposed revisions to the 2018 Standard have led to new content, as well as edits of some critical requirements in the process. Therefore, there will be a further review of the language and implications of critical requirements prior to the release of a final v.2.0 of the IRMA Standard. During this consultation period we welcome input on any existing critical requirement, as well as suggestions for others you think should be deemed critical. A rationale for any suggested changes or additions would be appreciated.

Free, Prior and Informed Consent (FPIC) Requirements

2.2.1. Policy Commitment

2.2.1.1. An Indigenous Peoples' policy (or equivalent) is in place that includes a statement of the entity's respect for Indigenous Peoples' rights as set out in international law and policy frameworks including those affirmed in the United Nations Declaration on the Rights of Indigenous Peoples.⁹ The policy:

- a. Is approved at the most senior level of the entity; and
- b. Is publicly available and communicated to Indigenous Peoples who may be or are affected by the entity's mining-related activities.

NOTE for 2.2.1.1. REVISED. Requirements 2.2.1.1 and 2.2.1.2 from the 2018 Mining Standard have been combined here to reflect consistency with other IRMA chapters. We added sub-requirements a and c to align with elements in policy requirements in other chapters.

2.2.2. Due Diligence Related to State Obligations

2.2.2.1. The entity conducts due diligence to determine if the host government carried out an adequate consultation process aimed at obtaining Indigenous Peoples' FPIC prior to granting access to mineral resources or lands for mineral development.

2.2.2.2. The entity makes available to affected Indigenous Peoples:¹⁰

- a. Key findings of the due diligence assessment; and
- b. A justification for proceeding with the project/operation, if findings reveal that the host government failed to fulfill its duty to obtain the FPIC of Indigenous Peoples prior to granting access to mineral resources or lands for mineral development.

NOTE for 2.2.2.2: REVISED. The language has been improved for clarity purposes, and the expectations have been separated out to make it clear that there are two elements: 1) carrying out the due diligence assessment, and 2) making the findings available to relevant stakeholders.

⁹ *Id.* para. 48 (explaining that “the conceptualization and application of Indigenous prior consultation and consent should be based not only on the Indigenous and Tribal Peoples Convention and the guidelines developed by ILO in that regard, but also on a much broader, and subsequent, body of law consisting of various instruments, resolutions, declarations – in particular the United Nations Declaration on the Rights of Indigenous Peoples, jurisprudence and authoritative interpretations developed by international and regional human rights mechanisms”).

¹⁰ In this case, ‘relevant stakeholders’ are considered to be those directly involved in FPIC processes; namely, Indigenous Peoples and their advisors.

Additionally, previously the requirement was to make the findings publicly available, but we are proposing to change this to providing the due diligence to affected Indigenous Peoples from whom the entity is seeking FPIC. A public statement could create conflict between the entity and the government, or the government and Indigenous Peoples, which is not the intent of the due diligence. But this information is important for Indigenous Peoples as they decide whether or not they wish to proceed with an FPIC process.

2.2.3. Identification of and Engagement with Indigenous Peoples

NOTE FOR 2.2.3: This criterion was previously called ‘Free, Prior and Informed Consent Scoping.’ It has been changed because many of the elements below are not limited solely to informing FPIC. They will be necessary for longer-term engagement with Indigenous Peoples, more generally. For example, 2.2.3.1.c, below, refers to mapping and analysis of Indigenous Peoples communities. Understanding community dynamics and potentially affected vulnerable groups and individuals will be important to inform engagement strategies beyond any FPIC process.

2.2.3.1. The entity:

- a. Identifies Indigenous Peoples whose traditionally owned, occupied, or otherwise used or acquired lands, territories, and resources have been or may be affected by the entity’s mining-related activities; ¹¹
- b. Consults with relevant Indigenous Peoples’ organizations or bodies, if they exist, and external experts¹² and published sources to determine:
 - i. If there are any Indigenous Peoples who have not been identified by the entity; and
 - ii. If there are any Indigenous Peoples living in voluntary isolation or in initial contact who may be present in the area of the proposed or actual mineral development;¹³ and
- c. Carries out stakeholder/rights holder mapping and analysis (as per Chapter 1.2, requirement 1.2.1.1).

NOTE for 2.2.3.1: REVISED. This combines the previous 2.2.3.1 and two **NEW** components.

Sub-requirement (b) is being proposed to ensure that external sources are consulted in the identification process, including any relevant Indigenous Peoples organization or bodies (e.g., associations or councils of Indigenous Peoples or Indigenous rights organizations active in the region of the proposed projects/operations), external experts (e.g., academics or governmental or non-governmental practitioners with cultural, anthropological, and/or human rights expertise in the region where proposed projects/operations are located), and published sources to determine if there may be populations of Indigenous Peoples who may not have been identified by the entity. This includes identification of Indigenous Peoples living in voluntary isolation (sometimes referred to as “uncontacted peoples”) and those living in initial contact (those who have very little interaction with the majority non-Indigenous society). This is of utmost concern given that the rights and survival of these peoples could be threatened given their situations of extreme vulnerability.¹⁴

While not globally pervasive, there are regions of the world where Indigenous Peoples continue to live in voluntary isolation or have little interaction with non-Indigenous society. For example, in 2013 it was reported that on the South American continent there were Indigenous Peoples in voluntary isolation or initial contact in Bolivia, Brazil, Colombia, Ecuador, Paraguay, Peru, and Venezuela, and also indications of their presence in

¹¹ It is important to note that this is not restricted to lands, territories or resources (e.g., waters, forests, plants, animals, minerals) owned/possessed pursuant to title/rights issued under domestic law, nor is it restricted to those that are actually and presently possessed/occupied or used.

¹² E.g., academics or practitioners (may be governmental or non-governmental) with cultural, anthropological, and/or human rights expertise in the region where projects are located.

¹³ The most credible source of information will be Indigenous Peoples in the area; however, contact must not be made with those living in voluntary isolation. Other sources should also be consulted in case there are different communities of Indigenous Peoples that may be affected (i.e., consulting a single community may not result in identification of all potential Indigenous Peoples who might be affected). Other sources could include government studies, academics, other regional Indigenous Peoples’ communities, representative bodies or organizations, etc.

¹⁴ “The Right to Live in Voluntary Isolation: Indigenous Peoples of the Amazon in the Age of COVID-19” (20 May 2020). Unrepresented Nations and Peoples Organization (ONPO), available at: <https://unpo.org/article/21899>.

Guyana and Suriname, near their respective borders with Brazil.¹⁵ In 2022, it was estimated that there were 185 distinct groups of Indigenous Peoples living in voluntary isolation in South America.¹⁶ Other uncontacted peoples have been reported in India and New Guinea,¹⁷ and it has been suggested that there may be others in Malaysia and Central Africa.¹⁸ (The requirement to determine where there may be Indigenous Peoples living in voluntary isolation was only mentioned in a footnote to requirement 3.7.2.1 in the 2018 Mining Standard).

Sub-requirement (c) is being proposed to make it clear that, as per Chapter 1.2, which outlines expectations with respect to stakeholder and rights holder engagement, a mapping and analysis of potentially affected Indigenous Peoples is also required to understand the characteristics and vulnerabilities of potentially affected groups and individuals, and dynamics within those communities.

2.2.3.2. If the presence of Indigenous Peoples living in voluntary isolation or initial contact in the area is identified:

- a. The entity does not initiate contact with any potentially affected Indigenous Peoples living in voluntary isolation or initial contact; and
- b. The entity consults with relevant Indigenous Peoples' organizations or bodies, if they exist, and external experts¹⁹ to determine if the entity's past, present or proposed activities are affecting or may affect the rights or wellbeing of those living in voluntary isolation or initial contact, and:
 - i. If proposed activities may affect any Indigenous Peoples living in voluntary isolation, the entity redesigns the project to avoid all such impacts, or, if avoidance is not possible, ceases to pursue the proposed activities; and/or
 - ii. If past or existing impacts on Indigenous Peoples living in voluntary isolation are identified, the entity consults with representative bodies for Indigenous Peoples, and external experts to determine the appropriate remedial actions; and/or
 - iii. If past or proposed activities may affect any Indigenous Peoples living in initial contact, the entity consults with representative bodies for Indigenous Peoples, and cultural, anthropological, and/or human rights experts to determine whether and how engagement with these groups is appropriate; if it is determined that engagement is not appropriate, the entity proceeds with these groups as though they were Indigenous Peoples in voluntary isolation.

NOTE for 2.2.3.2: This is a **NEW** requirement being proposed to address the situation where mines may or have affected Indigenous Peoples who are living in voluntary isolation (sometimes referred to as "uncontacted peoples") and initial contact. Some elements of this requirement were covered in requirement 3.7.5.5 in the 2018 Mining Standard (Chapter '3.7 Cultural Heritage').

2.2.3.3. If Indigenous Peoples (other than those in voluntary isolation) have engagement protocols in place, the entity follows the protocols. If no engagement protocols exist, the entity mutually agrees and documents, in a manner agreed to by Indigenous Peoples' representatives, the engagement process to be followed. If there is more than one distinct group of Indigenous Peoples (e.g., nation, population) that may be affected by the

¹⁵ Indigenous Peoples in Voluntary Isolation and Initial Contact in the Americas. Inter-American Commission on Human Rights (IACHR). 30 December 2013. Available at: <https://www.oas.org/en/iachr/indigenous/docs/pdf/Report-Indigenous-Peoples-Voluntary-Isolation.pdf>

¹⁶ "Declaration of the International Working Group GTI-PIACI Emphasized the Urgent Need to Protect Peoples Living in Voluntary Isolation. 19 December 2022. Available at: <https://www.landlifelife.org/declaration-of-the-international-working-group-gti-piaci-emphasizes-the-urgent-need-to-protect-peoples-living-in-voluntary-isolation-1335/>

¹⁷ Granico, Tarsicio. N.D. "Guardians of the forests...or refugees? Indigenous Peoples in voluntary isolation in the Amazon" 2023. Available at: https://wwf.panda.org/discover/knowledge_hub/where_we_work/amazon/amazon_views/guardians_of_the_forests_or_refugees_indigenous_peoples_in_voluntary_isolation_in_the_amazon/

¹⁸ Shelton, D., Vaz, A. Huertas Castillo, B. et al. Indigenous Peoples in Voluntary Isolation and Initial Contact, p. 52. International Working Group for Indigenous Affairs (IWGIA) and Instituto de Promoción Estudios Sociales (IPES), 2013. Available at https://www.iwgia.org/images/publications/0617_ENGELSK-AISLADOS_opt.pdf

¹⁹ E.g., academics or practitioners (may be governmental or non-governmental) with cultural, anthropological, and/or human rights expertise in the region where projects are located.

entity's mining-related activities, they may be included in a coordinated process or in separate engagement processes, as decided by the Indigenous Peoples.

NOTE for 2.2.3.3. REVISED. In the 2018 Mining Standard, this was previously partially covered in 2.2.3.2.a. It has been separated out into its own requirement to make it clear that determining the appropriate engagement protocol is something that should be done early in the process. We added, as well, that following existing engagement protocols that have been developed by Indigenous Peoples is expected best practice, if such protocols exist. Previously this was only mentioned in IRMA guidance.

2.2.3.4. In a culturally appropriate manner, the entity discloses to affected and potentially affected Indigenous Peoples (other than those living in voluntary isolation):

- a. Information about proposed, ongoing and past mining-related activities, as relevant; and
- b. The right of Indigenous Peoples to FPIC.

NOTE for 2.2.3.4. In the 2018 Mining Standard, this was 2.2.3.1.b. There are two expectations here, and so they have been separated into sub-requirements.

2.2.3.5. Through collaboration with Indigenous Peoples' representatives and other relevant members of affected and potentially affected Indigenous Peoples, the entity:

- a. Identifies Indigenous Peoples' rights (including customary rights) and interests that may be affected by proposed activities, are being affected by ongoing activities, and/or have been affected by past activities and have not yet been remediated;
- b. Identifies additional studies or assessments needed to determine the range and degree of potential or actual impacts on Indigenous Peoples' rights or interests; and
- c. Identifies if there are capacity issues that may prevent:
 - i. Full and informed participation of Indigenous Peoples' representatives in the FPIC process; and
 - ii. Participation of potentially marginalized or vulnerable groups²⁰ or individuals from the community in ongoing engagement processes.²¹

NOTE for 2.2.3.5. REVISED. In the 2018 IRMA Standard, identifying and addressing participatory impediments were both part of requirement 2.2.3.2. The content of that requirement has now been divided into two requirements: 2.2.3.5, which focuses on identifying the various issues that need to be addressed so that Indigenous Peoples can participate fully in a process of FPIC (i.e., with the information needed and the capacity to do so), and 2.2.3.6, which is focused on addressing any gaps that need to be filled.

CONSULTATION QUESTION 2.2-3:

Background: There has been some confusion as to what exactly meant by the word interests in the phrase 'rights and interests.' Many United Nations reports and other documents refer to interests in various ways in relation to Indigenous Peoples, such as 'environmental and social concerns and interests,' 'rights, interests

²⁰ Identification of potentially marginalized or vulnerable groups requiring specific focus depends on the context. Entities should draw on stakeholder mapping, stakeholder interviews, project documentation, as well as site observations to determine whether all relevant stakeholders have been identified and included. For this requirement in particular, special attention should be paid to traditional participatory structures and power dynamics and those whose voices may not be heard within those structures.

²¹ Indigenous Peoples' customary approaches to engagement may not always include participation of women, vulnerable groups or marginalized groups within Indigenous communities. The UN Rapporteur on Indigenous Peoples has written that: "Indigenous Peoples should be encouraged to include appropriate gender balance within their representative and decision-making institutions. However, such gender balance should not be dictated or imposed upon Indigenous Peoples by states or companies, any more than Indigenous Peoples should impose gender balance on them."

Women, men youth, elders, etc. may have different needs, priorities and interests that should be considered and factored into the company's understanding of the project's full impacts, and its own subsequent decision-making processes. It is recommended that any efforts undertaken by the company to find other ways of facilitating involvement of women, vulnerable or marginalized Indigenous Peoples be carried out in coordination with and/or through mutual agreement with the Indigenous Peoples' representative institutions (as suggested by the UN Rapporteur, above, under no conditions should a company impose such processes on Indigenous Peoples).

and concerns of Indigenous Peoples, 'Indigenous land rights and interests,' and 'strategic interests.' The term 'interests' is also used in relation to other sectors, e.g., industry and community, often in relation to land.

Black's law dictionary has a long definition of 'interest,' but it relates only to interest in property.²² We have not been able to find any definition or even an explanation of what the term interests might encapsulate in relation to Indigenous Peoples.

We are considering the following definition based on our research and general understanding of the term:

Interest:

A subject of concern; an advantage or benefit; an object or right in property in which one has a stake, share, or involvement; a specified common concern, especially in politics or business.

Question: Are you aware of any sources that provide a definition or at least an explanation of what might constitute the interests of Indigenous Peoples? Is this something that IRMA should be concerned about? Or are the interests of Indigenous Peoples simply something that will be expressed during discussions with the entity, and therefore not something that needs to be defined by IRMA?

2.2.3.6. The entity collaborates with Indigenous Peoples' representatives to design and implement plans to address any information gaps and capacity needs identified in 2.2.3.5, including providing funding or other support that enables Indigenous Peoples to address capacity issues in their preferred manner.

NOTE for 2.2.3.6. This was previously 2.2.3.4.e in the 2018 Mining Standard. See note for 2.2.3.5.

2.2.4. Processes for Reaching Agreements on Past Impacts and Seeking Free, Prior and Informed Consent for Proposed Activities²³

NOTE for 2.2.4: This criterion has been renamed. It was called 'Determine FPIC Processes' in the 2018 Mining Standard. The new criterion also replaces a criterion called 'Implement FPIC Process' (the requirements from that criterion have been incorporated here).

2.2.4.1. At operations where the FPIC of Indigenous Peoples was not previously obtained (by either the entity or a prior owner/operator) for activities that affected or are continuing to affect the rights or interests of those Indigenous Peoples:

- a. The entity, in collaboration with affected Indigenous Peoples, develops, documents, and implements a mutually agreed remediation (or equivalent) process to obtain agreement on actions that will be taken provide remedy (e.g., mitigation, compensation, provision of benefits, etc.) for any past or ongoing unremediated impacts identified as per 2.2.3.5.a;
- b. If there are impacts on specific people, the process includes input from and remedy for these directly affected individuals; and
- c. The entity engages in the process, in good faith, until a remedy agreement (or equivalent) on actions to remedy any past and present unremediated impacts is reached.

NOTE for 2.2.4.1. 2.2.4.1 is NEW. In the 2018 Mining Standard, the Scope of Application section of Chapter 2.2 states that, "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

²² Black's law definition of interest: In property. The most general term that can be employed to denote a property in lands or chattels. In its application to lands or things real, it is frequently used in connection with the terms "estate," "right," and "title," and, according to Lord Coke, it properly includes them all. . . More particularly it means a right to have the advantage accruing from anything; any right in the nature of property, but less than title; a partial or undivided right; a title to a share. The terms "interest" and "title" are not synonymous. [Edited for ease of reading]

²³ This may be carried out concurrent with 2.2.3. Also, there may be a desire to establish different FPIC processes for different stages of development (e.g., exploration, mining, mineral processing, closure) or based on various triggers (e.g., major expansion of existing facilities, construction of new facilities, etc.). For example, a process to obtain FPIC during the exploration stage may be less onerous than a process established to obtain FPIC for a mining operation, as the mining stage will likely have greater potential impacts on Indigenous Peoples' rights and interests, require more assessment, more dialogue around impact mitigation, remediation compensation, project benefits, etc.

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 Peoples' rights and interests."

Because this information was contained in the Scope of Application and was not an actual requirement in the standard, it created the potential for inconsistent auditing and interpretation and what some stakeholders and rights holders considered to be a loophole in the IRMA Standard.²⁴

The proposed 2.2.4.1 creates a normative requirement to describe the process that must be followed if FPIC was not obtained previously to initiating mining-related activities. While not FPIC, per se, because prior consent was not given for the activities, the requirement for agreement on remedy is now specifically part of this chapter. This proposal is the outcome of discussions of the Expert Working Group convened to discuss this chapter, and it is important to note that the signing of a remedy agreement is not the same as free, prior and informed consent, or even consent for ongoing activities, unless that is explicitly stated in the agreement.

The signing of remedy agreements has been proposed by others. For example, the Accountability Framework in their 2010 Operational Guidance on Free, Prior and Informed Consent states that "Where a company has caused or contributed to the appropriation of or harm to the lands, territories, or resources of IP/LC without first securing FPIC, a remediation process is required to address these past harms."²⁵

CONSULTATION QUESTION 2.2-4: Until the IRMA Board approves changes to the standard (based on input gathered through global stakeholder consultations) IRMA is not making changes to critical requirements (for more on critical requirements see the note that accompanies 'Critical Requirements In This Chapter,' above). However, we would be interested in knowing if you believe this new requirement should be critical. Why or why not?

CONSULTATION QUESTION 2.2-5: There may be situations in which Indigenous Peoples do not wish to enter into or continue an agreement-making process. If this is the case, should the entity just score 'does not meet' (i.e., zero) on this requirement? Or could they get 'partially meets' or 'substantially meets' if they've made a good-faith effort even if no process is initiated due to Indigenous Peoples' decision not to participate or if Indigenous Peoples decide to terminate discussions?

2.2.4.2. In situations where proposed mining-related activities (for new projects or at existing operations) may result in new or increased impacts on the rights or interests of Indigenous Peoples, a process to obtain the FPIC of Indigenous Peoples²⁶ for the proposed activities is undertaken, according to the following:

- a. If there is more than one distinct group of Indigenous Peoples (e.g., nation, population, community) whose rights may be affected by the entity's mining-related activities, each is included in an FPIC process;²⁷
- b. If the Indigenous Peoples have a protocol in place for seeking their FPIC for proposed activities, the entity abides by the protocol unless changes are agreed by the Indigenous Peoples;

²⁴ International Work Group for Indigenous Affairs and Indigenous Peoples Rights International. 2021. The UN Guiding Principles on Business and Human Rights and Indigenous Peoples: Progress achieved, the implementation gap and challenges for the next Decade. p. 23. <https://www.iwgia.org/en/resources/publications/305-books/4419-the-un-guiding-principles-on-business-human-rights-and-indigenous-peoples-%E2%80%93-progress-achieved,-the-implementation-gap-and-challenges-for-the-next-decade.html>

²⁵ Accountability Framework. 2019 (rev.2020). Operational Guidance on Free, Prior and Informed Consent. https://accountability-framework.org/fileadmin/uploads/afi/Documents/Operational_Guidance/OG_FPIC-2020-5.pdf

²⁶ If there is more than one distinct Indigenous Peoples' group (e.g., nation, population) that may be affected by the entity's mining-related activities, they may be included in coordinated or separate FPIC processes, as desired by the Indigenous Peoples.

²⁷ They may be included in coordinated or separate FPIC processes, as desired by the Indigenous Peoples.

- c. If no protocol exists, the entity supports Indigenous Peoples to develop, document, and implement a process that aligns with the principles of FPIC;²⁸ and
- d. In all cases, the FPIC process, at minimum:
 - i. Specifies the decision-making processes of the respective parties;
 - i. Outlines any Indigenous Peoples' customs and protocols to be respected;
 - ii. Includes discussions on potential impacts of proposed mining-related activities, actions that could be taken to prevent, minimize, restore and compensate for impacts on Indigenous Peoples rights and environmental, social, cultural and economic impacts, and actions that could be taken to provide sustained benefits to Indigenous Peoples; and
 - iii. Includes the conditions under which the entity may (or may not) request renewal of discussions if the process fails to result in consent for proposed activities.

NOTE FOR 2.2.4.2. REVISED. This requirement combines 2.2.4.1 (now 2.2.4.2.a) and 2.2.4.2 from the 2018 Mining Standard. Documenting the process used to be in 2.2.5.1 but is now incorporated here.

2.2.4.2.b and c reflect what was previously 2.2.4.2 in the 2018 Standard. However, we have revised it to say that rather than jointly determine an FPIC process that the entity "support" the Indigenous Peoples to determine their own agreed FPIC process. This may be, for example, providing funding for Indigenous Peoples to access facilitators to aid them in establishing a process by which they can, as a community, come to agreement on a process to be followed that accords with their customary decision-making processes or creates an agreed new decision-making process, or it could simply be that the entity recognizes that development of such a process may take time.

2.2.4.2.d is **NEW**. We are proposing that the FPIC discussions need to include negotiations on the mitigation of impacts and provision of benefits. While the Indigenous Peoples should lead in terms of the content of these discussions, it seems productive to include a minimum set of expectations here. Input on this is welcome.

And we are proposing that these discussions also outline if and how the entity can request to renew FPIC discussions if they fail to obtain consent for their initial proposal. There may be cases when Indigenous Peoples say no, and that is the end of the discussion. There may also be cases when they say no to a certain proposal, but are open to further discussions if significant enough changes can be made to proposal. These conditions should be established early in the process, so that the entity does not continue to approach Indigenous Peoples for discussions if the Indigenous Peoples are not interested in such discussions. This is related to requirement 2.2.4.3.b, below.

2.2.4.3. (Critical Requirement)

Proposed activities only proceed with the FPIC of all affected communities of Indigenous Peoples. If Indigenous Peoples' representatives clearly communicate that they do not consent to proposed activities, or that they do not wish to initiate or continue with FPIC-related discussions:²⁹

- a. The entity ceases to pursue the proposed activities; and
- b. Further discussions are only renewed in accordance with conditions agreed in 2.2.4.2.d.iv.

²⁸ The entity could support the development of the FPIC process by providing funding or other resources to provide Indigenous Peoples with the technical or legal support that may be necessary for them to develop an FPIC process. Support could also be shown by respecting the Indigenous Peoples' timeline for developing its own protocol.

The process could include the following elements: Identify the decision-makers and parties to the negotiation; Specify the decision-making processes of the respective parties; Identify the role, if any, of outside counsel, advisors, facilitators or mediators; Come to a common understanding of any applicable laws or principles to guide the FPIC process; Agree on time periods and scheduling; Identify any Indigenous Peoples' customs and protocols to be respected; Agree on measures to create an environment without coercion or duress; Determine how the affected Indigenous Peoples will participate in the analysis of impacts and risk; Determine formats and protocols for sharing information. (Source: The Accountability Framework. 2019. Operational Guidance on Free, Prior and Informed Consent. https://accountability-framework.org/fileadmin/uploads/afi/Documents/Operational_Guidance/OG_FPIC-2020-5.pdf)

²⁹ This communication may occur prior to, during, or as an outcome of the FPIC process. If consent has already been provided through an FPIC process, then it is expected that any agreements signed would also outline the conditions under which future FPIC discussions may or may not take place.

NOTE FOR 2.2.4.3. This combines concepts from 2.2.2.2, 2.2.2.3 and 2.2.2.4 from the 2018 Mining Standard, which were found in the General Requirements criterion. We are proposing to delete that criterion, and so have moved these elements here. This concept was also included, but stated in a slightly different way, in 2.2.6.1 of the 2018 Mining Standard.

This one requirement now consolidates the expectation that new (proposed) activities should only proceed with consent of Indigenous Peoples.

The requirement is critical, which means that in the IRMA system a site that does not obtain the consent of Indigenous Peoples for proposed activities cannot reach the higher achievement levels in IRMA (unless, for example, a mine proposed an expansion, the Indigenous Peoples did not provide consent and, as a result, the entity decided to not move ahead with the proposed expansion activities). See note on ‘Critical Requirements in this Chapter,’ above.

2.2.4.4. The entity offers to provide funding to Indigenous Peoples to select and hire technical and/or legal advisors to support them during a remediation (or equivalent) process or FPIC process (2.2.4.1 and 2.2.4.2, respectively). Any funding is provided in a manner agreed to by Indigenous Peoples.

NOTE FOR 2.2.4.4. REVISED. The concept of identifying capacity issues and providing funding or other means to address capacity issues was in the 2018 Mining Standard (requirement 2.2.3.2.d). This requirement makes it clear that “informed” consent means that Indigenous Peoples have the technical capacity needed to understand and evaluate proposals, and if such capacity does not exist, it is incumbent on the entity proposing the development to help address that need.

Previously, this support was specifically stated in relation to the FPIC process, and we are proposing that it also be extended to the remediation process in 2.2.4.1.

We have also specified that funding must be offered by the entity (bearing in mind that Indigenous Peoples may refuse), and if accepted by the Indigenous Peoples and that it must be provided in a manner agreed to by them (i.e., to avoid entity offering to directly hire lawyers or technical experts rather than provide funding for Indigenous Peoples to do so themselves).

2.2.4.5. The entity informs members of the affected Indigenous Peoples’ communities of the remediation (or equivalent) process or FPIC process that is to be followed, unless the Indigenous Peoples’ representatives explicitly request otherwise.

NOTE FOR 2.2.4.5. REVISED. This was 2.2.4.3 in the 2018 Mining Standard. The original requirement expected that this information be made publicly available. We are proposing to change it to a requirement that members of Indigenous Peoples communities be informed of the FPIC or remediation process, so that they are aware that these processes are occurring and can be in touch with their representatives if they have input and concerns that they want to be reflected in the discussions.

Public disclosure of the process that was followed and the outcomes of the process are addressed in 2.2.5.7.

2.2.4.6. If the processes in 2.2.4.1 and 2.2.4.2 result in a remediation agreement (or equivalent) for addressing past and present impacts, or FPIC for proposed activities:

- a. A draft agreement is prepared that includes the terms and conditions reached during negotiations, including, if relevant:
 - i. Agreed actions to be taken to prevent, mitigate, and compensate for potential and actual adverse impacts on the Indigenous Peoples’ right and interests;
 - ii. Agreed actions to be taken to deliver positive benefits to Indigenous Peoples;
 - iii. Terms related to the monitoring of commitments; and

- iv. How the parties will resolve any future disputes;³⁰
- b. Affected community members are provided an opportunity to verify that the agreement's terms and conditions reflect what was understood by them during negotiations; and
- c. The agreement is signed or otherwise validated by representatives of the Indigenous Peoples and the entity.

NOTE FOR 2.2.4.6. REVISED. This was previously requirement 2.2.5.3., which stated that entities had to sign and make public (if accepted by Indigenous Peoples) a binding agreement outlining the terms and conditions reached.

In 2.2.4.6 we expanded the language to be more specific about the content of the agreement (2.2.4.6.a.i to iv) and added sub-requirement (b) based on Expert Working Group discussions. Sub-requirements (c) reflects that the agreement be binding by having it be signed/validated. We moved the requirement for making the agreement public (if agreed by the Indigenous Peoples) to 2.2.4.7.

2.2.4.7. The entity publicly reports, in a manner agreed by the Indigenous Peoples, the agreement-making or FPIC process that was followed, and the outcome of those processes. Any agreements reached are made public unless otherwise decided by the Indigenous Peoples.

NOTE for 2.2.4.7. The content here is not new. It reflects previous expectations in 2.2.5.1 and 2.2.5.2 of the 2018 Mining Standard. We altered the language slightly to refer to 'agreement-making' processes, which include agreements for remedy related to past impacts and FPIC.

2.2.5. Implementation Plan and Monitoring of Agreements

NOTE for 2.2.5: This criterion is **NEW**. It includes requirements from a criterion in the 2018 Mining Standard that is proposed for deletion (2.2.7 'Implementation and Ongoing Engagement').

2.2.5.1. An Indigenous Peoples' Development Plan (or equivalent) guides the implementation of the agreement reached in 2.2.4.6. The plan:

- a. Is developed by competent professionals;
- b. Outlines the agreed specific actions to minimize, mitigate, or compensate for potential and actual adverse environmental and social impacts on Indigenous Peoples' right and interests, and actions to optimize positive benefits;
- c. Includes appropriate performance criteria and indicators agreed with Indigenous Peoples³¹ to enable evaluation of the effectiveness of actions over time as well as a plan to conduct monitoring and evaluation;
- d. Assigns implementation of actions, or oversight of implementation, to responsible staff;³²
- e. Includes an implementation schedule; and
- f. Includes estimates of human resources and budget required and a financing plan to ensure that funding is available for the effective implementation of the plan.

NOTE for 2.2.5.1. NEW. Previously, there was no requirement for an actual plan that outlined the actions to be taken by the entity to honor the agreements with Indigenous Peoples. This requirement is similar to what

³⁰ This should identify a mechanism or a process to be followed if, for example, there are breaches of the agreement or commitments in the agreement, or differences of opinions regarding the interpretation and application of the FPIC agreement. The process could include one or more of the following steps: dialogue, mediation, independent arbitration, adjudication via an international for a for grievances, etc.

³¹ Appropriate performance criteria and indicators must include those required by host country law (e.g., regulator maximum concentrations of certain chemicals in air or water), and, as relevant, those associated with external standard (e.g., IRMA water quality criteria in Chapter 4.2), those agreed with stakeholders, or indicators that are tied to an identified baseline (e.g., annual GHG emissions don't exceed emissions baseline measured in 2002).

³² If work is carried out by third party contractors, there needs to be a staff employee responsible for overseeing quality of work, timelines, etc.

is required in IFC Performance Standard 7-Indigenous Peoples,³³ and the sub-requirements align with management plan expectations in other IRMA chapters.

In addition to developing an actual plan to carry out the agreed actions, we are also proposing that a monitoring and evaluation plan be developed. Although not specifically required in IFC's Performance Standard, the guidance notes for that Performance Standard do include an Annex that includes suggested elements related to an "Indigenous Peoples Development Plan," including monitoring, evaluation and reporting.³⁴ Reporting in the IRMA chapter is covered in 2.2.6.2.

2.2.5.2. The entity tracks and documents the status of the commitments made in the agreement (see 2.2.4.6.a).

NOTE for 2.2.5.2. This was included in 2.2.7.1 of the 2018 Mining Standard. It was separated out because this is the entity's responsibility, while collaboration on monitoring the agreement (now 2.2.5.3, below) with Indigenous Peoples.

2.2.5.3. The entity collaborates with Indigenous Peoples to monitor:

- a. The commitments made in the agreement (see 2.2.4.6.a); and
- b. The implementation and effectiveness of actions included in the Indigenous Peoples Development Plan (see 2.2.5.1).

NOTE for 2.2.5.3. This was included in 2.2.7.1 of the 2018 Mining Standard. It has been expanded to include monitoring of commitments made in the agreement as well as monitoring the implementation of the management plan.

2.2.6. Ongoing Engagement

NOTE for 2.2.6: This criterion is **NEW**. It includes requirements from a criterion in the 2018 Mining Standard that is proposed for deletion (2.2.7. Implementation and Ongoing Engagement).

2.2.6.1. The entity collaborates with Indigenous Peoples to develop and implement a mechanism or mechanisms through which complaints or grievances related to the entity's actions and activities can be heard and addressed. At least one mechanism is in place that allows for complaints to be filed by individual members of affected Indigenous Peoples communities, and community members are aware of this mechanism.³⁵

NOTE for 2.2.6.1. This is **NEW**. It was added based on discussions by the Expert Working Group, because even though IRMA has a chapter on Grievance Mechanism it was felt there may be the need for specific mechanism(s) to address Indigenous Peoples concerns – and that such mechanisms need to be designed and implemented in collaboration with Indigenous Peoples specifically. There was also concern that one mechanism may not be sufficient, especially in situations where Indigenous Peoples' communities are not entirely cohesive or united in their beliefs and perspectives. In such cases, there must be an accessible mechanism that allows any person to contact the company to express concerns or complaints.

CONSULTATION QUESTION 1.4-2 (repeated from Chapter 1.4 – 'Complaints and Grievance Mechanism and Access to Remedy')

Background: Chapter 1.4 - 'Complaints and Grievance Mechanism and Access to Remedy' includes a range of requirements surrounding the existence of an accessible and effective operational-level grievance mechanism. It is not possible to score well on Chapter 1.4 if the mechanism does not have certain quality-related characteristics. Other chapters (i.e., human rights, gender, resettlement, security, ASM) also have

³³ See para. 8 and related guidance notes, and also Annex A of: IFC. 2012. Guidance Note for Performance Standard 7 – Indigenous Peoples. Available at: <https://www.ifc.org/en/insights-reports/2012/ifc-performance-standards>

³⁴ Ibid. See Annex A, provision (i) Monitoring, Evaluation and Reporting.

³⁵ If a mechanism established as per Chapter 1.4 fulfills this requirement, then no additional mechanisms need be developed unless deemed necessary by the Indigenous Peoples.

requirements relating to the existence of a grievance mechanism;³⁶ however, the requirements in each of those chapters ask only that a mechanism is in place that allows grievances to be filed and addressed, but they do not speak to the overall quality of that mechanism. This is an approach proposed by IRMA to avoid too much repetition across chapters. However, this creates a situation in which an entity could theoretically score 'fully meets' on the grievance-related requirement in an individual chapter (which in most cases only asks that stakeholders have "access to" a grievance mechanism), even if the grievance mechanism as a whole is not an effective one (as reflected in the overall score for Chapter 1.4).

Question: Should an entity's score on grievance-related requirements within individual non-grievance-specific chapters be restrained or linked to the overall score that the entity gets on the grievance chapter (Chapter 1.4) as a whole?

For example, if a site scores 80% on Chapter 1.4, the most the site could receive for a grievance requirement in the other chapters would be a 'substantially meets,' but if a site scores 100% on Chapter 1.4 then, assuming the mechanism can handle grievances specific to the other chapters, they could possibly get a 'fully meets' rating on those grievance requirements.

2.2.6.2. Ongoing engagement with Indigenous Peoples:

- a. Includes the regular sharing of information and consultation with a diversity of members and representatives of affected communities of Indigenous Peoples on the entity's mining-related activities;
- b. Includes regular updates on the status of commitments made in any agreements and the implementation and effectiveness of actions included in the Indigenous Peoples Development Plan; and
- c. Continues throughout all stages of the project's/operation's life cycle.

NOTE for 2.2.6.2. This was 2.2.7.2 in the 2018 Mining Standard. The original requirement simply stated that engagement needed to occur throughout the life cycle. We are proposing to add sub-requirements (a) and (b) to indicate the various types of information should be shared on a regular basis.

We have added clarification, as well, that information sharing and engagement is with Indigenous Peoples communities generally, not just Indigenous Peoples representatives. This aligns with other standards such as IFC Performance Standard 7, which requires that ongoing engagement not only involve Indigenous Peoples' representative bodies but also "Be inclusive of both women and men and of various age groups in a culturally appropriate manner."³⁷

NOTES

FPIC, in the context of this standard, requires that engagement with Indigenous Peoples be free from external manipulation, coercion and intimidation; that potentially affected Indigenous Peoples be notified that their consent will be sought, and that notification occur sufficiently in advance of commencement of any mining-related activities; that there be full disclosure of information regarding all aspects of the proposed mining project in a manner that is accessible and understandable to the Indigenous Peoples; and that Indigenous Peoples can fully approve, partially or conditionally approve, or reject a project or activity, and companies will abide by the decision.

The chapter uses the term Indigenous Peoples, recognizing that there may be peoples for whom this chapter applies who prefer to use other terms such as tribal, aboriginal, First Nations, *Adivasi*, etc., but who have the right to FPIC according to international and/or host country laws. For the purposes of interpreting this standard IRMA uses a definition presented in and the Glossary of Terms Used in this Chapter, below, which is from guidance published by the United Nations Permanent Forum on Indigenous Peoples.

³⁶ See: Chapter 1.3, requirement 1.3.3.3; proposed Chapter 1.X, requirement 1.X.3.2; Chapter 2.4, requirement 2.4.3.3; Chapter 3.5, requirement 3.5.6.3; and Chapter 3.6, requirement 3.6.2.1.d.

³⁷ IFC. 2012. Guidance Note for Performance Standard 7 – Indigenous Peoples. Paragraph 9. Available at: <https://www.ifc.org/en/insights-reports/2012/ifc-performance-standards>

CROSS REFERENCES TO OTHER CHAPTERS

This table will be added when the new content for all chapters is finalized and approved.

GLOSSARY OF TERMS USED IN THIS CHAPTER

PROPOSED NEW DEFINITIONS

Culturally Appropriate

Refers to methods, formats, languages, and timing (e.g., of communications, interactions, and provision of information) being aligned with the cultural norms, practices, and traditions of affected communities, rights holders, and stakeholders.

Customary Rights

Rights that arise from a behavior or act that is repeated over time under the belief that it is obligatory, and due to repetition and acceptance acquire the force of law within a geography or society. Such rights may be based on patterns of long-standing land and resource usage in accordance with Indigenous Peoples' and local communities' customary laws, values, customs, and traditions. Such rights apply to the lands, resources, and territories that Indigenous Peoples and local communities have traditionally owned, occupied, or otherwise used. They do not apply to lands, territories, and resources that these groups have acquired in other ways, such as by purchase or part of a compensation package. These rights are a collective human right of Indigenous Peoples and local communities that exists whether or not a title from the State has been issued.

Source: Accountability Framework. <https://accountability-framework.org/the-framework/contents/definitions/>

Entity

A company, corporation, partnership, individual, or other type of organization that is effectively in control of managing an exploration, mining or mineral processing project or operation.

Exploration

A process or range of activities undertaken to find commercially viable concentrations of minerals to mine and to define the available mineral reserve and resource. May occur concurrent with and on the same site as existing mining operations.

Indigenous Peoples Living in Initial Contact

Indigenous Peoples or segments of Indigenous Peoples who maintain intermittent or sporadic contact with the majority non-Indigenous population, generally used in reference to peoples or segments of peoples who have initiated a process of contact recently. However, "initial" should not necessarily be understood as a temporal term, but as a reference to the scant extent of contact and interaction with the majority non-Indigenous society. Indigenous Peoples in initial contact are peoples who were previously in voluntary isolation and who for some reason, voluntary or otherwise, came into contact with members of the surrounding population, and although they maintain a certain level of contact, they are not fully familiar with nor do they share the patterns and codes of social relations of the majority population.

Source: Inter-American Commission on Human Rights. Rapporteurship on the Rights of Indigenous Peoples.

"Indigenous Peoples in voluntary isolation and initial contact in the Americas: Recommendations for the full respect of their human rights." <https://www.oas.org/en/iachr/indigenous/docs/pdf/Report-Indigenous-Peoples-Voluntary-Isolation.pdf>

Indigenous Peoples Living in Voluntary Isolation

Indigenous Peoples or segments of Indigenous Peoples who do not maintain sustained contacts with the majority non-Indigenous population, and who generally reject any type of contact with any person who is not part of their own people. They may also be peoples or segments of peoples previously contacted and who, after

intermittent contact with the non-Indigenous societies, have returned to a situation of isolation and break the relations of contact that they may have had with those societies.

Source: Inter-American Commission on Human Rights. Rapporteurship on the Rights of Indigenous Peoples.

“Indigenous Peoples in voluntary isolation and initial contact in the Americas: Recommendations for the full respect of their human rights.” <https://www.oas.org/en/iachr/indigenous/docs/pdf/Report-Indigenous-Peoples-Voluntary-Isolation.pdf>

Indigenous Peoples’ Rights

These include traditional rights, which are defined as “Rights which result from a long series of habitual or customary actions, constantly repeated, which have, by such repetition and by uninterrupted acquiescence, acquired the force of a law within a geographical or sociological unit.” It also encompasses the rights of Indigenous and Tribal Peoples established by the United Nations Declarations of the Rights of Indigenous Peoples (UNDRIP).

Source: Adapted from Forest Stewardship Council.

Mineral Processing

Activities undertaken to separate valuable and non-valuable minerals and convert the former into an intermediate or final form required by downstream users. In IRMA this includes all forms of physical, chemical, biological and other processes used in the separation and purification of the minerals.

Mining

Activities undertaken to extract minerals, metals and other geologic materials from the earth. Includes extraction of minerals in solid (e.g., rock or ore) and liquid (e.g., brine or solution) forms.

Operation

The set of activities being undertaken for the purpose of extracting and/or processing mineral resources, including the running and management of facilities and infrastructure required to support the activities, and the ongoing legal, environmental, social and governance activities necessary to maintain the business endeavor.

Potentially Affected Indigenous Peoples

Indigenous Peoples who have traditionally owned, occupied, or otherwise used or acquired lands, territories, and/or resources that may be affected by mining-related activities.

Project

The development phases before a mining or mineral processing operation can begin (e.g., exploration, pre-feasibility, feasibility, conceptual design, planning, permitting). Includes all desk-top and field-based activities, including exploration activities, needed to inform and develop a project proposal, support the environmental and social impact assessment of a proposal, generate information necessary to fulfill regulatory and permitting requirements, engage with stakeholders and rights holders, and maintain the entity’s business endeavor.

EXISTING DEFINITIONS

Affected Community

A community that is subject to risks or impacts from a project/operation.

REVISED. Changed wording from project to project/operation.

Collaboration

The process of shared decision-making in which all stakeholders constructively explore their differences and develop a joint strategy for action. It is based on the premise that, through dialogue, the provision of appropriate information, collectively defined goals, and the willingness and commitment to find a solution acceptable to all parties, it is possible to overcome the initially limited perspectives of what is achievable and to reach a decision

which best meets the interests of the various stakeholders. At this level, responsibility for decision-making is shared between stakeholders.

Consultation

An exchange of information between a company and its stakeholders that provides an opportunity for stakeholders to raise concerns and comment on the impacts and merits of a proposal or activity before a decision is made. In principle, the company should take into account the concerns and views expressed by stakeholders in the final decision.

Free, Prior and Informed Consent (FPIC)

A process and an outcome that is based on: engagement that is free from external manipulation, coercion and intimidation; notification, sufficiently in advance of commencement of any activities, that consent will be sought; full disclosure of information regarding all aspects of a proposed project or activity in a manner that is accessible and understandable to the people whose consent is being sought; acknowledgment that the people whose consent is being sought can collectively approve or reject a project or activity, and that the entities seeking consent will abide by the decision.

Grievance

A perceived injustice evoking an individual's or a group's sense of entitlement, which may be based on law, contract, explicit or implicit promises, customary practice, or general notions of fairness of aggrieved communities. For the purposes of the IRMA Standard, the words grievances and complaints will be used interchangeably.

REVISED. Added that IRMA Standard uses grievances and complaints interchangeably.

Grievance Mechanism

Any routinized, state-based or non-state-based, judicial or non-judicial process through which project- or operation-related complaints or grievances, including business-related human rights abuses stakeholder complaints, and/or labor grievances, can be raised and remedy can be sought. An operational- or project-level grievance mechanism is a formalized means through which individuals or groups can raise concerns about the impact of a specific project/operation on them—and can seek remedy.

REVISED. Changed wording from mining project to project- or operation-related, and added operation-level grievance mechanism to this definition.

Host Country Law

May also be referred to as national law, if such a phrase is used in reference to the laws of the country in which the project or operation is located. Host country law includes all applicable requirements, including but not limited to laws, rules, regulations, and permit requirements, from any governmental or regulatory entity, including but not limited to applicable requirements at the federal/national, state, provincial, county or town/municipal levels, or their equivalents in the country where the project or operation is located. The primacy of host country laws, such as federal versus provincial, is determined by the laws of the host country.

REVISED. Changed wording from mining project to project or operation.

Indigenous Peoples

An official definition of “indigenous” has not been adopted by the United Nations system due to the diversity of the world's Indigenous Peoples. Instead, a modern and inclusive understanding of “indigenous” includes peoples who: identify themselves and are recognized and accepted by their community as Indigenous; demonstrate historical continuity with pre-colonial and/or pre-settler societies; have strong links to territories and surrounding natural resources; have distinct social, economic or political systems; maintain distinct languages, cultures and beliefs; form non-dominant groups of society; and resolve to maintain and reproduce their ancestral environments and systems as distinctive peoples and communities. In some regions, there may be a

preference to use other terms such as: Tribes, First Peoples, First Nations, Aboriginals, Adivasi and Janajati. All such terms fall within this modern understanding of “Indigenous.”

Source: Adapted from United Nations Permanent Forum on Indigenous Issues, Fifth Session, “Fact Sheet 1: Indigenous Peoples and Identity.”

REVISED. Removed the term “ethnic groups” as this is broadly applicable to other populations that are not considered Indigenous Peoples and could make it challenging to audit.

Mining-Related Activities

Any activities carried out during any phase of the mineral development life cycle for the purpose of locating, extracting and/or producing mineral or metal products. Includes physical activities (e.g., land disturbance and clearing, road building, sampling, drilling, airborne surveys, field studies, construction, ore removal, brine extraction, beneficiation, mineral or brine processing, transport of materials and wastes, waste management, monitoring, reclamation, etc.) and non-physical activities (e.g., project or operational planning, permitting, stakeholder engagement, etc.).

REVISED. Added reference to mineral development life cycle, project/operation, brine.

Remediation/Remedy (including in relation to human rights impacts or grievances)

Remediation and remedy refer to both the processes of providing remedy for an adverse impact and the substantive outcomes that can counteract, or make good, the adverse impact. These outcomes may take a range of forms, such as apologies, restitution, rehabilitation, financial or non-financial compensation, and punitive sanctions (whether criminal or administrative, such as fines), as well as the prevention of further harm through, for example, injunctions or guarantees of non-repetition.

REVISED. Added reference to grievances.

Rights Holder

Rights holders are individuals or social groups that have particular entitlements in relation to specific duty bearers (e.g., state or non-state actors that have a particular obligation or responsibility to respect, promote and realize human rights and abstain from human rights violations). In general terms, all human beings are rights-holders under the Universal Declaration of Human Rights. In particular contexts, there are often specific social groups whose human rights are not fully realized, respected or protected.

Stakeholders

Individuals or groups who are directly or indirectly affected by a project/operation, such as rights holders, as well as those who may have interests in a project/operation and/or the ability to influence its outcome, either positively or negatively.

REVISED. Changed wording from persons to individuals, and from project to project/operation.

Vulnerable Group

A group whose resource endowment is inadequate to provide sufficient income from any available source, or that has some specific characteristics that make it more susceptible to health impacts or lack of economic opportunities due to social biases or cultural norms (e.g., may include households headed by women or children, people with disabilities, the extremely poor, the elderly, at-risk children and youth, ex-combatants, internally displaced people and returning refugees, HIV/AIDS-affected individuals and households, religious and ethnic minorities, migrant workers, and groups that suffer social and economic discrimination, including Indigenous Peoples, minorities, lesbian, gay, bisexual, transgender, queer or questioning (LGBTQ+) and gender-diverse individuals, and in some societies, women).

Sources: Adapted from IFC. 2002. Handbook for Preparing a Resettlement Action Plan, FAO, and World Bank: “Vulnerable Groups.”

REVISED. Proposing to add reference to LGBTQ+ and gender-diverse individuals in the list of examples.

CONSULTATION QUESTION 1.X-2 (From proposed Chapter 1.X on Gender Equality and Protection): References to women and gender-diverse individuals as potentially “vulnerable” or as “vulnerable groups” may sound disempowering and/or otherwise not aligned with the objectives of this chapter to advance gender equality. Are there other widely recognized terms or phrases we could use that recognize the potential susceptibility of women and gender-diverse individuals to adverse impacts such as health impacts or lack of economic opportunities due to social biases or cultural norms?