

June 17, 2024

Galina Angarova
Executive Director
SIRGE Coalition

Dear Galina,

Thank you for the feedback the SIRGE Coalition provided to the IRMA Secretariat on April 29, 2024, regarding the independent audit for Albemarle.

IRMA's Issues Resolution System is designed to understand the issues that are brought to IRMA's attention and get them resolved in an efficient, accountable and fair manner. Because the issues you raised were foremost with the audit process, we shared your letter with ERM CVS who have provided a written response. We wanted to provide a supplementary response from IRMA directly as well, to explain the steps the IRMA Secretariat will take regarding the important points you raises as they relate to the IRMA Standard and the policies and procedures governing the assurance process.

1. Lack of transparency on the early corrective action period

The optional early corrective action period in IRMA's system is designed to create a space for sites to receive an initial score from auditors and to have the opportunity to make improvements prior to disclosing the results. And we can see already that this is driving improved practices at mine sites in real time.

We should highlight that independent auditors neither recommend corrective actions to sites nor guarantee the efficacy of proposed corrective actions. This is a fundamental expectation for independent third-party auditing, to maintain clear separation between auditing and consulting/advisory services. What auditors can share are where they found gaps between company practices compared to full conformity with the rigorous requirements in the IRMA Standard. With that information, we hope that the mining company, and those with interest/concern about their operations, including Indigenous rights holders, workers, labor unions, government, NGOs, customers and others may look at those gaps and be in direct communication about the areas where each most wants to see improvements. We know for some affected communities the issue of greatest important might be blowing dust, for another it might be a water issue. IRMA's goal is to bring transparency to each specific mine site's areas of strength as well as gaps at the site, and make that a tool for Indigenous rights holders and others to speak directly with a company about improved practices.

You will, however, find public transparency for corrective actions related to the 40 requirements IRMA deems "critical" for mine sites who receive an achievement level of IRMA 50 or IRMA 75. If there are any critical requirements where a site only "substantially" met one or more critical requirement, they must prepare a corrective action plan for how they will move to "fully meets" by the surveillance audit (within 18 months), and this which is shared along with the public report. You can find the corrective action plans in Appendix B in the audit packet.

With that said, we acknowledge your request for increased transparency on what early corrective actions were implemented (and those that were not). We will share this recommendation with the Assurance Committee of the Board, and together explore this and other opportunities to increase trust with civil society at each step in the process.

2. Publishing civil society feedback on audit findings

You raised concerns and suggestions related to how IRMA publicly shares the responses to audit reports that we receive from civil society and labor. We agree with you on this and we now publish the complaints we receive on our website with a description of their status. We will be updating the relevant pages with the response from ERM CVS and this response. We hope this additional transparency will further increase trust with civil society and demonstrate IRMA's commitment to accountability to each of our six governing houses. We welcome your feedback on how this is working and if you see further improvements that would make the system more accessible to those who use it.

3. Regarding requirement 1.1.1.1, what is the rationale for providing a score of “substantially meets” if it is a critical requirement?

IRMA's Standard identifies 40 requirements as being “critical.” Critical requirements are those that IRMA's Board of Directors has identified that a mine site claiming to be following good practices in mining should be meeting. For a mine to achieve IRMA 100, the mine must fully meet all critical requirements and, achieve an overall score of at least 90% in each of the four IRMA principles. Mines achieving IRMA 50 or IRMA 75 must *substantially meet* all critical requirements, and develop corrective actions plans that outline how they will fully meet the requirements within specified time frames (usually by the surveillance audit check-in, which happens 18 months after the initial audit, and before the next full audit review happens at the three-year point). In addition to at least substantially meeting the critical requirements, and having a plan to get to fully meets within 18 months, the mines which achieve IRMA75 mines must also reach an overall score of at least 75% in each of the four IRMA principles. IRMA50 mines must also achieve an overall score of at least 50% in each of four principles.

For more information we refer you to IRMA's rating system on pages 15-16 of the Guidance.¹ We welcome feedback on how to make the rating system easier to understand. We knew the IRMA system needed to have more than just pass-fail in order to create value for mines at any level to come in and be incentivized to reduce harm and continue to improve. IRMA's scoring system is somewhat complex – but it's for the reason of helping everyone to have specific information on how each requirement is/isn't met, and that being useful information to drive improvement. We welcome suggestions on ways to simplify without losing transparency and substance for Indigenous rights holders, workers, customers, investors and mining companies seeking guidance on what they can change to move to best practices.

4. Regarding requirement 1.1.1.1, how did Albemarle achieve a score [for this requirement] of “substantially meets” given there are pending enforcement actions against them?

For performance-based requirements like this one, “substantially meets” means the mine is not yet fully meeting the expectation. The audit refers to both the tax disputes and the dispute regarding Albemarle's water license (see page 23). We ask auditors to be aware of enforcement and legal context, and document this when possible, however they shouldn't presume the outcome of ongoing legal reviews. If there are other legal cases that were not identified, or if there is evidence that demonstrates the company is not following legally required laws and regulations, we would want to see this information shared directly with the audit firm ERM CVS. This can be shared with an audit firm at any time in the audit cycle, including in between the regular 3-year full audits and the surveillance check-in between.

5. Regarding requirement 1.1.4.1

Requirement 1.1.4.1 was assessed as follows:

“Supporting evidence indicates that key contractors are aware of the organization's intended adherence to IRMA principles. However, contractors first need to understand the system implemented by the organization to document and track IRMA compliance by their contractors. The organization is still in the process of implementing an IRMA principles

¹ Available here: <https://responsiblemining.net/wp-content/uploads/2023/07/IRMA-Standard-Guidance-Updated-2023-June-corrected.pdf>

compliance tracking system for their contractors. It must be fully implemented to conform to this IRMA criteria” (p.23-24).

In this instance, the partial compliance is related to the finding that Albemarle is “in the process of implementing an IRMA principles compliance tracking system for their contractors,” but that that tracking system is not yet complete. This rating reflects that in-process status. We will continue to work with the approved audit firms to communicate audit findings clearly and, where possible, avoid ambiguities.

6. Regarding requirement 1.2.2.1: when does this requirement start to apply?

Existing mines need to demonstrate that they engage with stakeholders on an ongoing basis. In this case, it is from the moment in time when Albemarle acquired Rockwood. Please let us know if you'd like more insight on this, and if you have suggestions for what you think would be a more appropriate point of measure on this. For more information on this particular requirement, please take a look at the introductory section to Chapter 1.2 in the [Guidance](#) (this section begins on page 23).

7. Regarding requirement 1.2.1.3.

Requirement 1.2.1.3 focuses on whether the company consulted with stakeholders to design the engagement process and what efforts were taken to remove barriers to engagement. In this case, we recognize the rationale for this score did not specifically refer to an FPIC process, although it did reference the *convenios* that had been agreed with Indigenous Peoples. The auditors did find:

“However, the site does not have a formal stakeholder engagement plan beyond the provisions of the *convenios*, nor do they demonstrate anywhere how they have ensured that vulnerable populations are able to participate in establishing or influencing the SPA [sic] or MTP. Some community members indicated that alternate forms of engagement are required in addition to the MTP and CPA, as several community leaders indicated these bodies did not represent their interests (despite having been elected). The organization does not explicitly make efforts to engage communities beyond the 18 with which they have signed *convenios*; however, these communities are considered by the site as not directly impacted by the project.”

We recognize that there is an opportunity to build capacities within the audit teams regarding what is FPIC, how is it different from prior consultation (as required by ILO169), what are best practices in terms assessing the implementation of FPIC (as both *a process and as an outcome*), and how to document areas of agreement and disagreement within affected communities. Your input with your letter, and the engagement of other Indigenous rights holders, is already changing and improving IRMA's audit process and informing the updated training for auditors.

8. Regarding the application of Chile's regulations on FPIC to Albemarle

As you are right to point out in your letter, the primary duty to respect FPIC lies with State's as per the UN Declaration on the Rights of Indigenous Peoples, ILO Convention 169, and relevant human rights jurisprudence. The IRMA Standard seeks to align with this international legal norm.

In this case, the audit found that the Chilean state did not implement an FPIC process prior to awarding the original mining permit. In circumstances where a State has not fulfilled its duty under international law, the IRMA Standard is clear that the mining company still has a responsibility to respect FPIC. And this was the basis for why Albemarle was evaluated against the requirements in Chapter 2.2. This was the audit finding for requirement 2.2.2.1:

“The organization conducted due diligence and determined that FPIC was not implemented by government before obtaining mineral rights. (Chile was not a signatory to ILO169 in 2009 when the original EIA was done.) In 2009, there was a state-led indigenous consultation process as part of 'citizen participation,' but there was no option under Chilean law for a direct project community consultation process. However, the organization engaged with relevant indigenous communities to create an FPIC compatible process over a period of two years (ending in 2016) to ensure the indigenous communities' consent to current operations. The organization did not make any public statement to explain the original decision to proceed despite the government not having conducted FPIC prior to granting the concession.” (p.44)

Further, the IRMA Standard follows the *UN Declaration on the Rights of Indigenous Peoples* and recognizes that an FPIC processes are to be carried out in coordination with Indigenous Peoples' representative institutions. This is why the auditors relied on evidence of agreements with the *Consejo de Pueblos Atacameños* (CPA) and the 18 impacted communities (see 2.2.3.2). The audit did find that "some communities expressed that they were not adequately represented by the CPA or MTP [permanent working table]." (p.46)

Again, we agree that there is great opportunity to build capacities within the audit teams regarding best practices in terms assessing the implementation of Indigenous rights protections like the right to FPIC. We know this requirement is one of the most important for civil society and one of the more difficult for auditors to assess. We have dedicated additional time to this Chapter in the recent auditor trainings and will be developing a standalone, dedicated learning module that will supplement the general auditor training program. We would welcome your involvement as the draft module comes together if there is willingness from the SIRGE Coalition to collaborate.

Conclusion

We know that IRMA's accountability to Indigenous rights holders, workers, and NGOs is of value not only to civil society and labor, but also to the companies audited, their investors, and the companies who use the materials mined. And the value they might receive is reduced if the quality of the process doesn't create confidence for groups like SIRGE. We hope we have identified and responded to each of the concerns you raised. If not, please let us know. This complaint can also be further elevated in the IRMA Issues Resolution System. We appreciate the time that SIRGE made to critique the IRMA system and we hope that you see tangible ways that we're working to improve the process to ensure its accountability and value to your constituency.

Yours sincerely,



Aimee Boulanger
Executive Director

