



From Commitment to Action: A Critical Review of ICMM's Implementation of UNDRIP and FPIC for Indigenous Peoples' Rights

Executive Summary

This report critically examines the International Council on Mining and Metals (ICMM) Indigenous Peoples and Mining Position Statement released on August 8, 2024, in relation to its respect for the rights of Indigenous Peoples, particularly focusing on its alignment with the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP), the United Nations Guiding Principles on Business and Human Rights (UNGPs), the International Labor Organization's Indigenous and Tribal Peoples Convention (ILO 169), and the International Finance Corporation Performance Standard 7: Indigenous Peoples (IFC PS7). While the ICMM Position Statement acknowledges the importance of Indigenous Peoples' rights, particularly through the principle of Free, Prior, and Informed Consent (FPIC), several significant weaknesses in its implementation undermine its effectiveness. This report offers a detailed analysis and recommendations to ensure that the ICMM's approach fully aligns with international standards and the inherent rights of Indigenous Peoples.

Introduction

The ICMM's Position Statement on Indigenous Peoples expresses a commitment to upholding the rights of Indigenous Peoples as enshrined in UNDRIP, UNGPs, ILO 169, and IFC PS7. However, the effectiveness of this commitment depends on the rigorous and clear implementation of FPIC and the protection of vulnerable Indigenous Peoples, including Indigenous Peoples in Voluntary Isolation (IPVI) and Initial Contact. This report identifies several critical weaknesses in the current approach and provides recommendations that align with relevant articles of these international instruments to better protect the rights of Indigenous Peoples.

Critical Analysis of the ICMM Position Statement

1. Historical Context and Progress Since 2013

The International Council on Mining and Metals' (ICMM) 2013 Position Statement on Indigenous Peoples represented an effort to align ICMM's practices with international standards. The 2013 Position Statement emphasized the need for ICMM member companies to "respect the rights, interests, aspirations, cultures, and natural resource-based livelihoods of Indigenous Peoples." It encouraged these companies to engage with Indigenous Peoples "in a fair, timely, and culturally appropriate way throughout the project lifecycle," ensuring that Indigenous

Peoples were informed and consulted before any project began.¹ This approach was intended to incorporate the principles of Free, Prior, and Informed Consent (FPIC) as a fundamental aspect of project development.

However, both the 2013 Statement and the 2024 Statement fall short of addressing several critical issues, as detailed in this analysis. Specifically, the 2013 Statement introduced certain flexibilities that undermined the core principle of FPIC by allowing for circumstances where "full consent" from Indigenous Peoples might not be obtained.² This flexibility poses considerable legal, reputational, and operational risks, especially as global expectations regarding the rights of Indigenous Peoples have become more stringent. The current ICMM Position Statement must address these ambiguities by making it unequivocally clear that no project should proceed without obtaining full FPIC, thereby ensuring that the rights of Indigenous Peoples are fully protected.

Additionally, both statements recognize the need for due diligence but fail to adequately address the time-intensive nature of securing FPIC. While the 2013 Statement encouraged companies to work toward obtaining the consent of Indigenous Peoples, it did not emphasize the importance of allocating sufficient time and resources for this process.³ Effective due diligence requires ICMM member companies to understand that FPIC is not merely a procedural formality but a substantive process that demands thorough and early engagement with Indigenous Peoples. The "Prior" in FPIC necessitates that consultation processes begin well before project approvals are sought and are given the necessary time to be meaningful and effective.

Reflecting on the 2013 and 2024 ICMM Position Statements, while these documents established a foundation for engaging with Indigenous Peoples, there remains a pressing need for more explicit commitments and detailed guidelines. These must be articulated to ensure that ICMM's practices align with evolving international standards and fully respect the inherent rights of Indigenous Peoples.⁴

2. ICMM Undermines the Principle of FPIC

A key issue with the 2024 ICMM Position Statement is its ambiguity in applying Free, Prior, and Informed Consent (FPIC). The Statement introduces a concerning level of flexibility, stating that "there may be circumstances where full consent is not obtained."⁵ This flexibility undermines the core principle of FPIC, which is essential for safeguarding Indigenous Peoples' rights.

UNDRIP Article 32(2) requires that States "consult and cooperate in good faith with the Indigenous Peoples concerned through their own representative institutions to obtain their free and informed consent prior to the approval of any project affecting their lands, territories, or

¹ Int'l Council on Mining & Metals, Indigenous Peoples and Mining Position Statement (2013), <https://www.icmm.com/indigenouspeoples> (last visited Aug. 12, 2024).

² Id.

³ Id.

⁴ Id.

⁵ International Council on Mining and Metals (ICMM), Indigenous Peoples and Mining Position Statement, Commitment 4 (2024), <https://www.icmm.com/en-gb/our-principles/position-statements/indigenous-peoples> (last visited Aug. 8, 2024).

resources."⁶ ILO 169 Article 6 similarly mandates consultation in good faith with the aim of achieving consent.⁷ IFC PS7 further specifies that FPIC is necessary for project approval, emphasizing the need for continuous and transparent engagement.⁸

The ICMM's Position Statement, by allowing projects to proceed without full consent from Indigenous Peoples, directly contradicts these requirements. This approach not only fails to align with UNDRIP but also with the UNGPs, which emphasize that businesses must respect human rights and avoid infringing on the rights of others.⁹ Furthermore, UNGP Principle 23(b) states that where national law conflicts with international human rights obligations, businesses should "seek ways to honor the principles of internationally recognized human rights."¹⁰ The flexibility mentioned in the ICMM document risks perpetuating a historical pattern where Indigenous Peoples' self-determination is overridden in favor of resource extraction.

To adhere to the principles outlined in UNDRIP, ILO 169, IFC PS7, and the UNGPs, the ICMM must clearly state that no project can proceed without the full, free, prior, and informed consent of the affected Indigenous Peoples. This position must be absolute: if Indigenous Peoples withhold their consent, the project must not move forward. This aligns with the requirement that consent includes the right to say "no," a decision that must be respected and upheld by the member company. The ICMM's current stance, as reflected in the statement that there may be projects that move forward where "full consent is not obtained," is incompatible with the obligations set forth in these international instruments and must be revised to ensure full compliance with international standards.

3. Inadequate Application of Updated Commitments to Existing Projects

The Statement explicitly notes that "commitments will not apply retrospectively for existing projects,"¹¹ which effectively allows ongoing impacts from projects initiated without proper FPIC to continue unchecked. This position does not address the ongoing consequences for Indigenous Peoples affected by past projects that did not adhere to FPIC. By not applying these commitments retrospectively, the Statement leaves unresolved the ongoing effects of these past projects, which continue to affect the rights and well-being of Indigenous Peoples.

This stance directly conflicts with UNDRIP Article 28, which affirms the right of Indigenous Peoples "to redress, by means that can include restitution or, when this is not possible, just, fair and equitable compensation, for the lands, territories, and resources which they have traditionally owned or otherwise occupied or used, and which have been confiscated, taken, occupied, used or damaged without their free, prior, and informed consent."¹² ILO 169 Article 15 also emphasizes

⁶ United Nations Declaration on the Rights of Indigenous Peoples, G.A. Res. 61/295, U.N. Doc. A/RES/61/295, at Art. 32(2) (Sept. 13, 2007).

⁷ Indigenous and Tribal Peoples Convention, International Labour Organization (No. 169), Art. 6 (1989).

⁸ International Finance Corporation, Performance Standard 7: Indigenous Peoples, para. 13 (2012).

⁹ U.N. Human Rights Council, Guiding Principles on Business and Human Rights, U.N. Doc. HR/PUB/11/04, Principle 11 (2011).

¹⁰ *Id.* at Principle 23(b).

¹¹ ICMM, *supra* note 1, at Commitment 4.

¹² United Nations Declaration on the Rights of Indigenous Peoples, *supra* note 2, at Art. 28.

the rights of Indigenous Peoples to participate in the use, management, and conservation of these resources.¹³

Furthermore, the UNGPs reinforce the obligation of companies to address adverse human rights impacts, regardless of when they occurred. UNGP Principle 13(b) explicitly states that businesses must "seek to prevent or mitigate adverse human rights impacts that are directly linked to their operations, products, or services by their business relationships," even if they have not directly contributed to those impacts.¹⁴ This principle underscores the need for businesses to be accountable for the full scope of their operations, including the ongoing and cumulative effects of past projects. By not applying its commitments retrospectively, the ICMM does not meet this obligation, allowing the negative impacts on Indigenous Peoples from past projects to persist unaddressed.

To align with the principles of UNDRIP, ILO 169, IFC PS7, and the UNGPs, the ICMM should extend its commitments to include ongoing projects that were initiated without proper FPIC. This would require revisiting and renegotiating agreements with affected Indigenous Peoples to ensure that their rights are respected in line with current international standards. Not doing so not only contradict the principles enshrined in these instruments but also risks perpetuating a legacy of exploitation and harm against Indigenous Peoples. True respect for Indigenous Peoples' rights requires addressing both past and present injustices, ensuring that the harm caused by previous actions is rectified through appropriate remedies and fair compensation.

4. Potential Conflict Between State and Corporate Responsibilities

The ICMM Position Statement presents a significant challenge by potentially undermining the core principles established in the UN Guiding Principles on Business and Human Rights (UNGPs), particularly regarding the separation of State and corporate responsibilities in human rights matters. Specifically, the Position Statement's acknowledgment that "decisions about whether projects can initially proceed are State decisions" risks subordinating the rights of Indigenous Peoples to the authority of State actions.¹⁵ In such contexts, it is crucial that companies do not assume the authority to determine the status or rights of Indigenous Peoples. Instead, they must ensure that their efforts to engage with Indigenous Peoples fully respect and align with international standards, such as those outlined in the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP). These efforts should prioritize Indigenous Peoples' own identification of their rights and protections for their lands, territories, and resources. The Position Statement's reliance on State decisions without sufficient corporate responsibility to independently verify and uphold Indigenous Peoples rights could lead to significant and irreparable human rights violations and environmental harms.

UNDRIP Article 19 mandates that States "shall consult and cooperate in good faith with the Indigenous Peoples concerned through their own representative institutions in order to obtain their free, prior, and informed consent before adopting and implementing legislative or

¹³ ILO 169, *supra* note 3, at Art. 15.

¹⁴ UNGP, *supra* note 5, at Principle 13(b).

¹⁵ ICMM, *supra* note 1, at Commitment 5.

administrative measures that may affect them."¹⁶ ILO 169 Articles 6 and 7 emphasize the need for consultation and participation of Indigenous Peoples in decision-making processes affecting them.¹⁷

The UNGPs further reinforce this duty by establishing that businesses have an independent responsibility to respect human rights. UNGP Principle 11 explicitly states that "business enterprises should respect human rights. This means that they should avoid infringing on the human rights of others and should address adverse human rights impacts with which they are involved."¹⁸ This principle applies even when State laws or practices fall short of international standards. UNGP Principle 23(b) also emphasizes that where national law conflicts with international human rights obligations, businesses should "seek ways to honor the principles of internationally recognized human rights."¹⁹

Given these obligations, the ICMM must provide clear and unequivocal guidance to its member companies on how to navigate situations where State decisions conflict with UNDRIP principles. The ICMM should assert that in cases of such conflict, companies must uphold the higher standard of Indigenous Peoples' rights as outlined in UNDRIP, ensuring that projects do not proceed without obtaining FPIC, regardless of State approvals. This approach is essential to prevent the undermining of Indigenous Peoples' rights and to ensure that businesses do not become complicit in human rights violations due to reliance on State decisions that do not meet international standards.

By not addressing this potential conflict adequately, the ICMM risks allowing its members to proceed with projects that violate the rights of Indigenous Peoples, thereby undermining the very principles of FPIC and self-determination that UNDRIP seeks to protect. The ICMM must, therefore, strengthen its Position Statement to provide clear directives that prioritize the rights of Indigenous Peoples over conflicting State decisions, ensuring that its members adhere to international human rights standards in all their operations.

5. Insufficient Focus on Vulnerable Populations

The ICMM's Position Statement acknowledges the need to engage with vulnerable populations, including Indigenous women and those in voluntary isolation and initial contact, but it critically falls short by not providing specific, actionable guidelines to ensure their full and equitable participation in consultation and decision-making processes. While the Position Statement acknowledges Indigenous Peoples in voluntary isolation and initial contact as vulnerable groups, it fails to address the recognized international standard that these Indigenous Peoples should not be engaged and contact with them should be strictly avoided.

UNDRIP Article 22 emphasizes that "particular attention shall be paid to the rights and special needs of Indigenous elders, women, youth, children, and persons with disabilities" in the

¹⁶ United Nations Declaration on the Rights of Indigenous Peoples, *supra* note 2, at Art. 19.

¹⁷ ILO 169, *supra* note 3, at Arts. 6–7.

¹⁸ UNGP, *supra* note 5, at Principle 11.

¹⁹ *Id.* at Principle 23(b).

implementation of the Declaration.²⁰ Additionally, UNDRIP Article 21 highlights the need to "improve the economic and social conditions of Indigenous Peoples, particularly their women, children, elders, and persons with disabilities."²¹ ILO 169 Article 20 further supports this, calling for special measures to ensure Indigenous Peoples can enjoy equal opportunities and treatment.²²

The UNGPs also support this view. UNGP Principle 18 stresses the importance of conducting human rights due diligence in a manner that involves meaningful consultation with potentially affected groups, particularly those who are vulnerable or marginalized.²³ The Principle further advises that businesses must take into account the "differing risks that may be faced by women and men," recognizing that gender-specific impacts require gender-specific responses.²⁴ IFC PS7 also highlights the need for special attention to vulnerable groups, ensuring their participation in decision-making and addressing their specific concerns.²⁵

The ICMM's Commitment 3 states that members should "agree on appropriate engagement processes with potentially affected Indigenous Peoples... to enable their inclusive, equitable, and meaningful participation."²⁶ However, without clear and detailed guidelines on how to engage vulnerable populations effectively, this commitment remains insufficient. To rectify this, the ICMM must develop comprehensive and detailed guidelines that ensure vulnerable Indigenous Peoples, such as Indigenous women, and elders are fully and properly integrated into all engagement processes. These guidelines should include specific measures to overcome the barriers these groups face, such as language differences, cultural sensitivities, and the need for accessible and culturally appropriate consultation methods. The ICMM should mandate that enhanced due diligence by member companies requires engagement with vulnerable populations, such as Indigenous women and elders, excluding Indigenous Peoples in Voluntary Isolation and Initial Contact. This mandate would align ICMM's practices with the requirements of UNDRIP, ILO 169, IFC PS7, and the UNGPs, ensuring that the voices of these vulnerable groups are meaningfully included in all aspects of project planning and implementation.

The ICMM can leverage its position as a standard-setter to significantly influence its member companies. While the ICMM may not establish the mechanisms itself, it can and should set the requirements and expectations for its member companies to establish mechanisms for ongoing monitoring and evaluation of the participation of vulnerable groups, ensuring that their inclusion is substantive rather than symbolic. These mechanisms should involve regular feedback from the communities themselves, ensuring that consultation processes remain responsive to their needs and concerns. The ICMM's role is to ensure that these mechanisms are in place and effectively monitored, allowing it to maintain its role while ensuring that its standards are enforced on the ground. By taking these steps, the ICMM can guide its member companies from a broad acknowledgment of the need to engage with vulnerable populations to a concrete, actionable commitment that truly respects and upholds the rights of Indigenous Peoples, particularly those most at risk of marginalization.

²⁰ United Nations Declaration on the Rights of Indigenous Peoples, *supra* note 2, at Art. 22.

²¹ *Id.* at Art. 21.

²² ILO 169, *supra* note 3, at Art. 20.

²³ UNGP, *supra* note 5, at Principle 18.

²⁴ *Id.*

²⁵ IFC PS7, *supra* note 4, at para. 13.

²⁶ ICMM, *supra* note 1, at Commitment 3.

6. Insufficient Protection of Indigenous Peoples in Voluntary Isolation and Initial Contact

The ICMM Position Statement recognizes Indigenous Peoples in voluntary isolation (IPVIs) and those in initial contact as part of vulnerable populations; however, it critically fails to address the unique protections required for these groups. International law establishes a clear “no-contact” norm for IPVIs, stipulating that States, businesses, and third parties must avoid any actions or interactions that infringe upon their rights. Free, prior, and informed consent from IPVIs cannot be obtained without violating their rights to self-determination, health, life, culture, and traditional territories.

The American Declaration on the Rights of Indigenous Peoples affirms that IPVIs "have the right to remain in that condition [of isolation] and to live freely in accordance with their cultures."²⁷ The UN Draft Guidelines on the Protection of Indigenous Peoples in Voluntary Isolation and Initial Contact, and the Inter-American Commission on Human Rights (IACHR) Recommendations, both emphasize the necessity of a no-contact approach to protect these vulnerable groups.²⁸

A second category, Indigenous Peoples in "initial contact," refers to those who were previously isolated and have recently established contact with outsiders, whether voluntarily or through coercion. These Indigenous Peoples often lack familiarity with dominant societal norms and practices and remain highly vulnerable to disease, dispossession, and other forms of threat. The status of being in "initial contact" persists as long as these Indigenous Peoples remain susceptible to these risks, which are exacerbated by any contact with outside groups.

ICMM Commitment 3 should be amended to clearly state that no engagement or contact should be made with IPVIs or Indigenous Peoples in initial contact, in accordance with international norms. The ICMM must adopt a clear position against any projects or activities that could result in contact with these populations, ensuring that their rights to remain in isolation are fully respected. This aligns with UNDRIP, the American Declaration, and the IACHR recommendations, and is essential for protecting the most vulnerable Indigenous Peoples from the devastating impacts of contact with outsiders.

7. Lack of Clear Accountability and Monitoring Mechanisms

The ICMM Position Statement underscores the importance of ongoing monitoring, as articulated in Commitment 7, which states that members will "work with Indigenous Peoples to agree on appropriate processes for monitoring and evaluating the effectiveness of agreed engagement and management processes in line with any agreements reached."²⁹ However, this commitment lacks explicit detail on the mechanisms for ensuring compliance with FPIC and other crucial

²⁷ American Declaration on the Rights of Indigenous Peoples, Organization of American States, Art. XXVI(2) (2016).

²⁸ UN Draft Guidelines on the Protection of Indigenous Peoples in Voluntary Isolation and Initial Contact in the Amazon Basin and El Chaco, U.N. Doc. HR/PUB/11/4 (2012); Inter-American Commission on Human Rights (IACHR), Recommendations for the Full Respect of Indigenous Peoples in Voluntary Isolation and Initial Contact in the Americas (2013).

²⁹ ICMM, *supra* note 1, at Commitment 7.

obligations. The absence of robust, independent monitoring frameworks raises significant concerns about the protection of Indigenous Peoples' rights throughout the lifecycle of mining projects.

UNDRIP Article 27 mandates the establishment of "fair, independent, impartial, open, and transparent processes to recognize and adjudicate the rights of Indigenous Peoples."³⁰ This provision emphasizes the necessity of unbiased and transparent systems to safeguard Indigenous Peoples' rights effectively. Similarly, UNGP Principle 20 highlights the importance of businesses tracking the effectiveness of their responses to human rights impacts through "qualitative and quantitative indicators and feedback from both internal and external sources, including affected stakeholders."³¹ The current vagueness in ICMM's Commitment 7 regarding the specifics of monitoring and enforcement undermines these international standards.

To bridge this gap, the ICMM should require clear, enforceable monitoring and accountability mechanisms. This includes establishing independent oversight bodies vested with the authority to assess compliance with FPIC principles and to take corrective actions when necessary. Such bodies should operate transparently and include Indigenous Peoples in their processes to ensure that monitoring is both credible and reflective of the affected communities' perspectives.

By omitting robust redress and remediation guidelines, the ICMM Position Statement risks enabling a cycle of impunity, where violations of FPIC and breaches of agreements with Indigenous Peoples are neither addressed nor rectified. This lack of enforceable consequences allows companies to continue operations without accountability, thereby perpetuating a pattern of recurring violations. Over time, this cycle not only erodes the rights of Indigenous Peoples but also undermines the credibility of both corporate commitments and international standards such as FPIC. The principles of Indigenous sovereignty and self-determination, which the ICMM purports to uphold, are critically weakened in the absence of effective remedial mechanisms. To fulfill the obligations articulated in UNDRIP Article 28, ILO 169 Article 12, IFC PS7, and UNGP Principle 29, the ICMM must establish clear and enforceable redress mechanisms. The lack of specific guidelines for redress and remediation in cases where FPIC is not respected, or agreements are violated limits the enforceability of Indigenous Peoples' rights and could affect the ICMM's credibility.

8. Insufficient Redress and Remediation Mechanisms

Another significant gap in the ICMM Position Statement is its lack of specific guidelines for redress and remediation in cases where FPIC is not respected, or agreements are violated. This absence severely weakens the enforceability of Indigenous Peoples' rights and undermines the ICMM's credibility. UNDRIP Article 28 guarantees the right of Indigenous Peoples "to redress, by means that can include restitution or, when this is not possible, just, fair and equitable compensation, for the lands, territories, and resources which they have traditionally owned or otherwise occupied or used, and which have been confiscated, taken, occupied, used or damaged without their free, prior, and informed consent."³² Additionally, ILO 169 Article 12 emphasizes

³⁰ United Nations Declaration on the Rights of Indigenous Peoples, *supra* note 2, at Art. 27.

³¹ UNGP, *supra* note 5, at Principle 20.

³² United Nations Declaration on the Rights of Indigenous Peoples, *supra* note 2, at Art. 28.

the importance of establishing measures to ensure redress for the violations of Indigenous Peoples' rights.³³

The UNGPs also emphasize the responsibility of businesses to address adverse human rights impacts. UNGP Principle 29 explicitly calls for businesses to "provide for or cooperate in remediation through legitimate processes" when they have caused or contributed to adverse human rights impacts.³⁴ IFC PS7 also outlines the need for effective grievance mechanisms that are accessible to affected Indigenous Peoples and can address their concerns in a timely and fair manner.³⁵

ICMM Commitment 9 states that companies should "provide, or cooperate in, remediation where a company's activities are found to have caused or contributed to infringement of the rights of Indigenous Peoples. Companies will establish or participate in, and make available, effective grievance mechanisms (including, where appropriate, independent mechanisms) to resolve disagreements and facilitate remediation."³⁶ While this commitment acknowledges the need for remediation, it does not provide the detailed, actionable guidelines necessary to ensure that these mechanisms are effective and accessible to Indigenous Peoples.

The ICMM should establish specific, accessible, and independent guidelines for redress mechanisms for member companies that allow Indigenous Peoples to challenge violations of FPIC and seek remediation. These mechanisms should be well-resourced by the company, ensuring they can provide timely and effective remedies. Furthermore, these mechanisms must have the authority to halt projects or provide compensation where necessary, thus ensuring that the rights of Indigenous Peoples are protected and respected.

By not including robust redress and remediation guidelines, the ICMM Position Statement risks enabling a cycle of impunity, where violations of FPIC and breaches of agreements with Indigenous Peoples are neither addressed nor rectified. This lack of enforceable consequences allows companies to continue operations without accountability, thereby perpetuating a pattern of recurring violations. Over time, this cycle not only erodes the rights of Indigenous Peoples but also undermines the credibility of both corporate commitments and international standards such as FPIC. The principles of Indigenous sovereignty and self-determination, which the ICMM purports to uphold, are critically weakened in the absence of effective remedial mechanisms. To fulfill the obligations articulated in UNDRIP Article 28, ILO 169 Article 12, IFC PS7, and UNGP Principle 29, the ICMM must establish clear and enforceable redress mechanisms. The lack of specific guidelines for redress and remediation in cases where FPIC is not respected or agreements are violated limits the enforceability of Indigenous Peoples' rights and could affect the ICMM's credibility.

³³ ILO 169, *supra* note 3, at Art. 12.

³⁴ UNGP, *supra* note 5, at Principle 29.

³⁵ IFC PS7, *supra* note 4, at para. 13.

³⁶ ICMM, *supra* note 1, at Commitment 9.

9. Inadequate Protection of Indigenous Cultural Heritage

In addition to these weaknesses, the ICMM's guidance on cultural heritage does not meet international standards. While the Position Statement acknowledges the importance of respecting Indigenous cultural heritage, it lacks specific commitments to prevent harm to critical cultural sites. UNDRIP Articles 11 and 12 emphasize the rights of Indigenous Peoples to practice and revitalize their cultural traditions and customs, including the protection of their sacred sites.³⁷ Article 11 explicitly states that "Indigenous Peoples have the right to practice and revitalize their cultural traditions and customs. This includes the right to maintain, protect, and develop the past, present, and future manifestations of their cultures, such as archaeological and historical sites, artifacts, designs, ceremonies, technologies, and visual and performing arts and literature."³⁸ Article 12 further reinforces this by stating that "Indigenous Peoples have the right to manifest, practice, develop, and teach their spiritual and religious traditions, customs, and ceremonies; the right to maintain, protect, and have access in privacy to their religious and cultural sites."³⁹

ICMM Commitment 8, which states that companies should "respect and celebrate cultural heritage, both tangible and intangible, and the historical and ongoing spiritual connections of Indigenous Peoples to such heritage,"⁴⁰ falls short by not detailing how these protections will be enforced by member companies. The ICMM should commit to a higher standard of cultural heritage protection, ensuring that any potential impact on such sites is avoided wherever possible. When avoidance is not feasible, it is imperative that consent be obtained with the full participation and agreement of the affected Indigenous Peoples.

The lack of specific commitments and actionable guidelines in the ICMM Position Statement means that critical cultural sites may be at risk of harm or destruction. To rectify this, the ICMM must establish clear protocols for identifying, protecting, and managing cultural heritage sites in consultation with Indigenous Peoples. These protocols should include thorough cultural impact assessments conducted in collaboration with Indigenous experts and communities, ensuring that all cultural heritage considerations are fully integrated into project planning and implementation.

Furthermore, these protocols should mandate that any decisions regarding cultural heritage sites are made with the free, prior, and informed consent of the Indigenous Peoples involved, in line with UNDRIP Articles 11 and 12. By strengthening its commitments to cultural heritage protection, the ICMM can better align with international standards and ensure that the rights of Indigenous Peoples are fully respected and upheld. This approach not only safeguards cultural heritage but also fosters trust and cooperation between mining companies and Indigenous communities, contributing to more sustainable and respectful resource development practices.

Conclusion

The ICMM's Position Statement shows a minimal effort to align with the principles of UNDRIP, ILO 169, IFC PS7, and the UNGPs; significant improvements are necessary to truly uphold these

³⁷ United Nations Declaration on the Rights of Indigenous Peoples, *supra* note 2, at Arts. 11, 12.

³⁸ *Id.* at Art. 11.

³⁹ *Id.* at Art. 12.

⁴⁰ ICMM, *supra* note 1, at Commitment 8.

international standards. The ICMM must eliminate ambiguity in the application of FPIC, apply these updated commitments retrospectively, address potential conflicts between State and corporate responsibilities, ensure the participation of vulnerable Indigenous Peoples, make no contact with Indigenous Peoples in Voluntary Isolation and Initial Contact, establish robust monitoring mechanisms, implement clear redress and remediation processes, and enhance the protection of Indigenous cultural heritage. Only by addressing these critical areas can the ICMM ensure that its practices genuinely respect and uphold the rights of Indigenous Peoples, fostering sustainable and equitable development.