

**ANALYSIS OF IMPLEMENTATION
OF KEY GOVERNANCE AND SOCIAL CRITERIA FROM ASI CERTIFIED
ENTITIES**

Study prepared for the Aluminium Stewardship Initiative (ASI) by:

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Executive Summary

This desktop report provides an analysis of the implementation of key governance and social criteria of the ASI Performance Standard by 74 ASI Certified Entities. Certifications were issued from March 2018 to February 2021.

Overall, the examined Entities have consistently applied the criteria 2.4 (responsible sourcing), 2.7 (mergers & acquisitions), 2.8 (closure, decommissioning and divestment) and 9.1 (human rights due diligence). With a slight exception of criteria 2.4 and 9.1.b, the total conformance rate is extremely high.

The information provided in the public summary reports is generally sufficient to demonstrate conformance with the criteria. In most cases, the public headline statements also contain a summary of the evidence reviewed. However, the information provided in the public headline statements is too limited to be able to make own judgements as to implementation. For reports issued after May 2020, the quality and level of detail significantly improved in varying degrees depending on the criteria. The highest improvement concerned criteria 2.4 and 9.1.b (68% and 76% of all cases after May 2020).

A few cases of minor non-conformances were reported for the different criteria:

Criterion 2.4 (responsible sources):	11 Entities (15%)
Criterion 3.4 (complaint resolution mechanisms):	4 Entities (5%)
Criterion 9.1.a (human rights policy):	1 Entity (1%)
Criterion 9.1.b (due diligence process):	10 Entities (14%)

All Entities were fully conformant with respect to the other criteria.

A few Entities reported non-applicability of the following criteria:

Criterion 2.7 (mergers and acquisitions):	3 Entities (4%)
Criterion 9.3 (Indigenous peoples' rights):	65 Entities (88%)
Criterion 9.4 (FPIC):	65 Entities (88%)

As regards human rights due diligence, one Entity was rated minor non-conformant with criterion 9.1.a, because its human rights policies do not include a specific commitment stating the Entity's respect for human rights. The ten minor non-conformances with respect to criterion 9.1.b can be classified into two groups. Four Entities had issues with respect to their due diligence process. Audit reports marked incomplete or missing documentation as the cause of non-conformance for this group. The other group of six Entities showed deficiencies relating to the implementation of the due diligence process concerning security and/or catering service providers.

In general, it can be noted that minor non-conformances appear in nearly all countries/regions.

With respect to criterion 3.4 on complaint resolution mechanisms, the four cases of minor non-conformance were all based on the grounds of ineffective implementation of a control, process or procedure and one in addition for missed or unknown legal requirements and another one in addition for inadequate training. Two of these ratings concern insufficient or non-communication of existing complaints mechanisms to relevant stakeholders. The research shows that are several Entities who were rated conformant although their complaint resolution mechanisms have similar shortcomings.

There seems to be limited certainty among Entities and auditors as to the meaning of the principles mentioned in criterion 3.4 for an adequate complaint resolution process, *i.e.* accessible, transparent, understandable, culturally sensitive, gender sensitive and adequate to address stakeholder complaints. There is no further explanation or interpretation provided in the Guidance to the ASI Performance Standard or in another ASI document.

22% of all Entities possess complaint resolution mechanisms that are well-explained and detailed addressing most of the issues suggested by the Guidance. These Entities either belong to big multi-national companies or have at least a considerable size with over 2000 employees.

These cases clearly meet the criteria accessible, transparent, understandable and adequate to address stakeholder complaints. However, they generally don't undertake specific efforts to be culturally and gender sensitive. Depending on whether or not one requires special action to conform with the principles of culture and gender sensitivity, Entities are or are not conformant with these principles.

The other Entities fulfil the principles accessible, transparent, understandable and adequate to address stakeholder complaints to different degrees. The brevity of information provided by most Entities raises doubts as to how seriously they encourage aggrieved stakeholders to lodge their complaints and to remedy harm done.

Only nine Entities included criteria 9.3 (on respect for the rights of Indigenous peoples) and 9.4 (on free, prior and informed consent/FPIC) as applicable within their scope. All other Entities declared the criteria not applicable for them (or stated no Indigenous peoples were found in the area of operation). Research on the Entities' operations, including those in Brazil, China, Russia and the USA, confirmed that those Entities who had declared criteria 9.3 and 9.4 non-applicable for them have (or seem to have) rightly done so.

Despite having adopted policies and processes to respect the rights of Indigenous peoples, five Entities of the nine Entities who declared the criteria applicable to them stated that no Indigenous peoples were found or impacted by Entity-led operations. Seven Entities reported on ongoing processes and specific activities to respect the rights and interests of Indigenous peoples. Of these Entities, six have standing or project-specific consultation mechanisms with Indigenous communities.

The audit reports seem to be right in rating the nine Entities' practice on criterion 9.3 as conformant. Some Entities are investing more than others in its relations with Indigenous peoples. An Entity's investment in implementing Indigenous peoples-related policies also depends on its proximity and the impact that the operation has for Indigenous peoples in the

vicinity. A high-level assessment of the Entities' practices leads to the conclusion that those Entities who have the closest and most serious contact with Indigenous peoples have also invested most. Correspondingly, Entities who do not have Indigenous peoples in the vicinity of their operations keep their commitment in support of Indigenous peoples' rights mainly declaratory and on a general policy-level. Both seems to be appropriate, also in the light of the fact that the Guidance is not binding and leaves room for interpretation how the various points are to be considered.

Seven of the nine Entities stated that they were not involved in specific FPIC processes (criterion 9.4) because no Indigenous peoples were impacted by their operations. At the same time, all nine Entities stated that they had adopted policies and processes in relation to FPIC or were seeking FPIC when required to do so by national or international law.

Only two Entities reported on ongoing FPIC/consultation processes. It is difficult to assess on the basis of the audit reports and publicly available information in how far the mentioned consultation processes fully comply with the requirements of FPIC. FPIC is a difficult concept and includes many particulars that do not match the relatively short and more generic reporting template of the audit reports.

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1. Introduction

This study provides an analysis of the implementation of key governance and social criteria of the ASI Performance Standard by 74 ASI Certified Entities. Certifications were issued from March 2018 to February 2021. The desktop study provides input for the ASI Monitoring and Evaluation program and is to contribute to the ongoing Standards consultation process.

In focus are key governance and social criteria relating to responsible sourcing and human rights due diligence, in accordance with UN Guiding Principles on Business and Human Rights (UNGPs). Moreover, the study examines reports on key criteria relating to complaint resolution mechanisms and corporate-community relations, with special emphasis on Indigenous peoples.

ASI intends to review the implementation of the following criteria of its Performance Standard:

- Criterion 2.7 (mergers and acquisitions)
- Criterion 2.8 (closure, decommissioning and divestment)
- Criterion 3.4 (stakeholder complaints, grievances and requests for information)
- Criterion 9.1 (human rights due diligence)
- Criterion 9.3 (rights of Indigenous peoples)
- Criterion 9.4 (free, prior and informed consent/FPIC)

The study has the following objectives:

Objective 1

General overview of implementation and consistency (criteria 2.4, 2.7, 2.8 and 9.1):

To provide a “snapshot” of the overall global implementation of these criteria among applicable ASI Certified Entities, present from public headline summary and detailed audit report data:

- Incidence of implementation by location (country)
- Incidence of implementation by supply chain activity
- Incidence of conformance ratings
- High-level evaluation of consistency of implementation of these criteria
- Evaluation of whether the information disclosed in the public summary report is sufficient to demonstrate conformance with the criterion and whether it contains a summary of the evidence reviewed;

For this item, the analysis differentiates between reports published before and after 1 May 2020, to see to what extent a mandatory training for all auditors on public headline statement quality had an effect.

Objective 2

Implementation of complaint resolution mechanisms (criterion 3.4):

To review the publicly available data, including information which may be available from the Entities' websites or on the internet and the public summary reports and full audit reports to evaluate whether complaint resolution mechanisms are accessible, transparent, understandable, culturally sensitive, gender sensitive and adequate to address stakeholder complaints.

Objective 3

UNGPs and Indigenous peoples (criteria 9.1, 9.3 and 9.4):

To compile a summary of, and commentary on, the nature of non-conformances among applicable ASI Certified Entities.

Objective 4

Implementation of Indigenous peoples and FPIC (criteria 9.3 and 9.4):

Triangulated with publicly available information on the location of Indigenous peoples communities and with some support from the ASI Indigenous Peoples Advisory Forum (IPAF) on the location of Indigenous peoples:

- to ascertain how many Facilities include criterion 9.3 as applicable within the scope, in cases where ASI Certified Facilities are co-located with Indigenous peoples communities;
- to provide a high-level assessment, in cases where criterion 9.3 is applicable, of whether the findings indicate the rights and interests of Indigenous peoples have been respected;
- to ascertain, in cases where Facilities are identified as being within the vicinity of Indigenous Peoples, how many Facilities include criterion 9.4 as applicable within their scope;
- to review, in cases where criterion 9.4 was applicable, whether it was indicated that FPIC was provided by Indigenous peoples.

The assignments contained in these objectives form the basis for the structure of this study. At the end, key findings are presented and recommendations are made for ASI with respect to the general improvement of data quality and reporting standards; conceptual issues relating to particular criteria; and related training and capacity building.

2. Methodology and Limitations

The general overview of implementation and consistency with respect to criteria 2.4, 2.7, 2.8 and 9.1 (objective 1) is based on an analysis and, to a certain degree, comparison of the public summary reports and full audit reports. The reports were examined with respect to the location(s) of the Entity and with respect to the supply chain activity concerned.

It has not been easy to distill trends or patterns of implementation from the data received. This is partly due to the fact that the audit reports do not differentiate between the performance of an Entity in different operational locations and between different supply chain activities. Based on the available information in the reports, certain categories were formed as much as this was possible to allow a comparative analysis and to indicate trends. These were not “hard” categories and related to the form of reporting and to specific subtopics or foci.

It was challenging to examine and to compare conformance with the criteria in more detail. This was not just because of the scant information on implementation contained in most summary and detailed reports. It was also because of a non-uniform usage of terms, different foci and different levels of details in description.

The criteria themselves are relatively brief. The Guidance to the Performance Standard provides more information on relevant aspects of criteria implementation. However, the Guidance is not binding. Entities are not obliged to report on the various aspects of the Guidance to a particular criterion. If an Entity or auditor merely asserts conformance but does not provide much detail, it cannot be simply concluded that this Entity is not serious in implementation of the criterion. Detailed reporting might be an indication that a criterion receives particular attention with an Entity but the conclusiveness of such finding is limited.

The analysis of the complaints resolution mechanisms (objective 2) was both based on the information contained in the audit reports on criterion 3.4 as well as taken from the Entities’ websites. This meant that primary focus of this criterion was on web-based complaint mechanisms or hotlines. Other forms of outreach (*e.g.* stakeholder meetings) were considered if they were mentioned in the audit reports.

Language barriers were a challenge in particular with respect to the Chinese Entities. Their websites are only bilingual to a certain extent. Moreover, registration was required to access certain means of communication such as WeChat. Therefore, the research concerning Chinese Entities was undertaken with the support of a sinologist.

Another limitation was the fact that neither the Performance Standard, nor its Guidance or other ASI document explain or further interpret the meaning of the principles mentioned in criterion 3.4 for an adequate complaints resolution process, *i.e.* accessible, transparent, understandable, culturally sensitive, gender sensitive and adequate to address stakeholder complaints. Besides the issue whether or not these criteria are too detailed for the reporting format anyhow, the unclarity as to the meaning seems to have been challenge for reporting on the criterion.

Similar challenges existed with respect to the research on Indigenous peoples (objective 4). The reporting format does not necessarily allow a conclusion on whether or not a particular consultation process did indeed conform to the requirements of FPIC. Despite the existence of an IPAF Factsheet on FPIC,¹ Entities and auditors do not always seem to be aware of the

¹ ASI Indigenous Peoples Advisory Forum, Fact Sheet 2, ‘Indigenous Peoples’ Free Prior and Informed Consent (FPIC)’, available at: <https://aluminium-stewardship.org/wp-content/uploads/2017/04/ASI-IPAF-Fact-Sheet-2-FPIC-2015.pdf>

difference between regular corporate-community consultations and FPIC processes involving Indigenous peoples and specific projects.

Publicly available information is limited on both particular locations and specific consultation processes. To determine whether or not an Entity has operations in the vicinity of Indigenous peoples, a number of helpful online resources were used. Besides Indigenous World 2021, a lead resource providing annual data on Indigenous peoples worldwide,² the research worked with the ASI Certification Map,³ Google Maps and Landmark.⁴ Moreover, the ASI Factsheet on Indigenous peoples⁵ offered useful information on the identification of Indigenous peoples in different regions of the world. The support of a sinologist and other China experts was used to conclude on the existence of any Indigenous peoples in the vicinity of Entities operating in China.

Even with these resources and support, determining the specific location of Indigenous peoples remains difficult without a field assessment or in-depth knowledge on the ground. Similarly, finding out about the details of particular FPIC processes requires inside information or direct contacts to participants or witnesses of the process. In this connection, IPAF played an important role in providing information relating to the FPIC/consultation processes in Australia and in making contact to Indigenous peoples' organizations in Russia.

3. General Overview of Implementation and Consistency

Overall, ASI Certified Entities have consistently applied the criteria 2.4 (responsible sourcing), 2.7 (mergers & acquisitions), 2.8 (closure, decommissioning and divestment) and 9.1 (human rights due diligence). With a slight exception of criteria 2.4 and 9.1.b, the total conformance rate is extremely high.

a. Incidence of implementation by location

Certified Entities operate in the following countries:

Australia: 3	Greece: 1	Saudi Arabia: 1
Austria: 6	Hungary: 2	Serbia: 1
Bahrain: 1	Iceland: 2	Slovakia: 1
Belgium: 1	Ireland: 1	Slovenia: 1
Brazil: 5	Italy: 4	South Korea: 1
Canada: 3	Luxemburg: 2	Spain: 7

² The Indigenous World is the Yearbook of the International Work Group for Indigenous Affairs (IWGIA), a global human rights organization dedicated to promoting, protecting and defending Indigenous Peoples' rights. In many places, IWGIA's publications are regarded as a central point of reference on indigenous affairs. Compare: Dahl, J., IGWA: A History, Copenhagen, 2009, p. 112; available at:

https://www.iwgia.org/images/publications/0015_IGIA_-_a_history.pdf

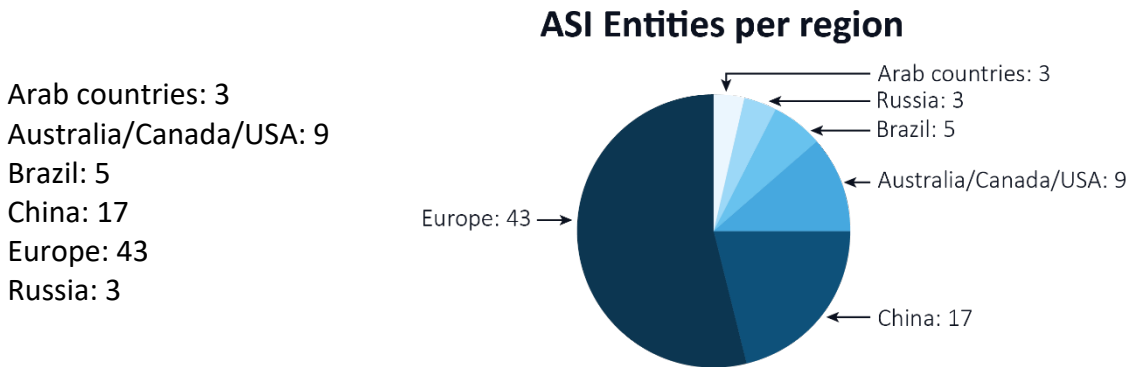
³ <https://aluminium-stewardship.org/asi-certification/map-of-asi-certifications/>

⁴ Global Platform for Indigenous and Community Lands, at: www.landmarkmap.org

⁵ ASI Indigenous Peoples Advisory Forum, Fact Sheet 1, Criteria for the Identification of Indigenous Peoples, Sept. 2015, available at: <https://aluminium-stewardship.org/wp-content/uploads/2017/04/ASI-IPAF-Fact-Sheet-1-Identifying-IPs-2015.pdf>

China: 17	New Zealand: 1	Sweden: 4
Czech Republic: 1	Netherlands: 2	Switzerland: 3
Denmark: 2	Norway: 6	Turkey: 1
Egypt: 1	Poland: 2	United Arab Emirates: 1
Finland:	Portugal: 1	United Kingdom: 4
France: 6	Romania: 1	United States: 3
Germany: 14	Russia: 3	

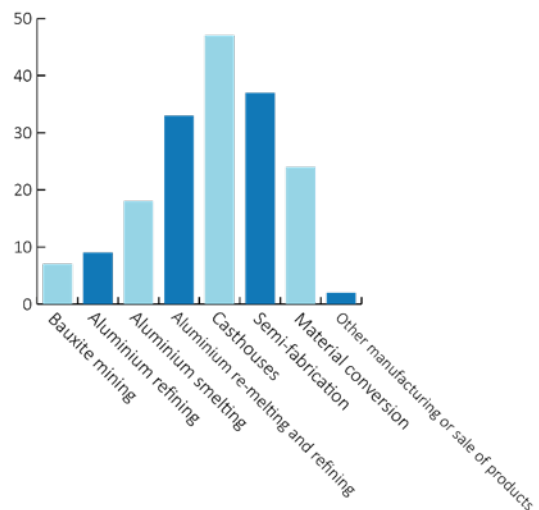
For reasons of clarity, these Entities have been grouped according to region. In the further analysis and graphs, all European countries are dealt with in one category. Other categories include China (plus South Korea), Arab countries, Brazil, Russia, and the non-European “Western” countries Canada, Australia and USA, the latter three countries in one category.



b. Incidence of implementation by supply chain activity

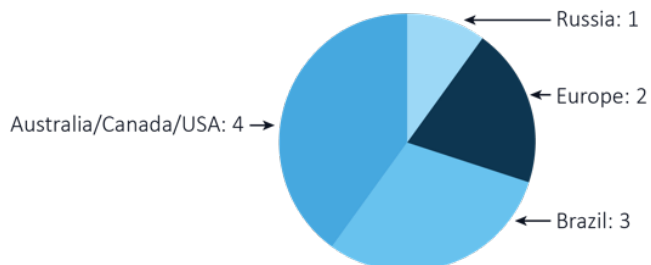
The following table shows the number of Entities carrying out the different supply chain activities:

Bauxite mining: 7
Aluminium refining: 9
Aluminium smelting: 18
Aluminium re-melting and refining: 33
Casthouses: 47
Semi-fabrication: 37
Material conversion: 24
Other manufacturing or sale of products: 2



Entities carry out their supply chain activities in the following countries:

i. Bauxite mining

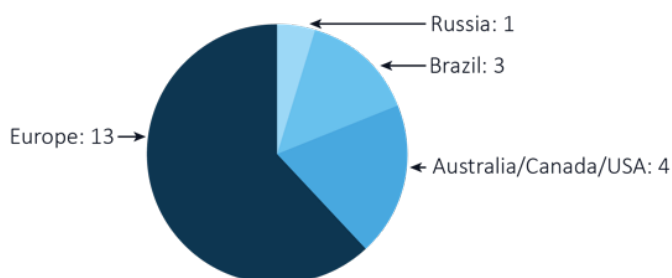


Australia: 3
 Brazil: 3

New Zealand: 1
 Norway: 1

Russia: 1
 Sweden: 1

ii. Aluminium refining

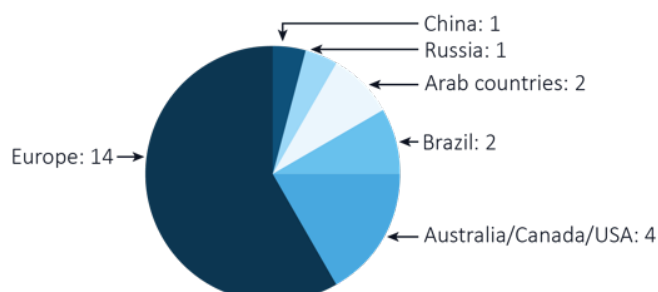


Australia: 2
 Brazil: 3
 Canada: 1

New Zealand: 1
 Norway: 11
 Russia: 1

Spain: 1
 Sweden: 1

iii. Aluminium smelting

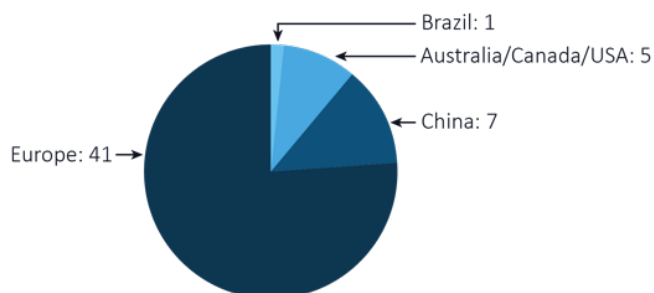


Bahrain: 1
 Brazil: 11
 Canada: 3
 China: 1
 France: 2

Germany: 2
 Luxemburg: 1
 Iceland: 2
 Norway: 3
 Russia: 1

Spain: 2
 Sweden: 1
 United Arab Emirates: 1
 United Kingdom: 1
 United States: 1

iv. Aluminium re-melting and refining

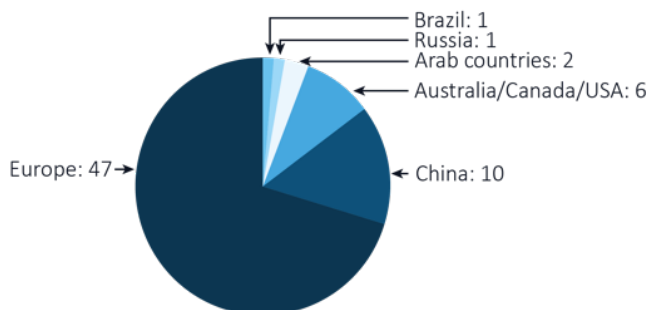


Australia: 1
Austria: 4
Belgium: 2
Brazil: 1
Canada: 1
China: 7
Denmark: 1
France: 3
Germany: 7

Greece: 1
Hungary: 1
Italy: 2
Luxemburg: 1
Netherlands: 1
New Zealand: 1
Norway: 5
Poland: 1
Portugal: 1

Romania: 1
Slovakia: 1
Slovenia: 1
Spain: 3
Sweden: 1
Switzerland: 1
United Kingdom: 3
United States: 2

v. Casthouses

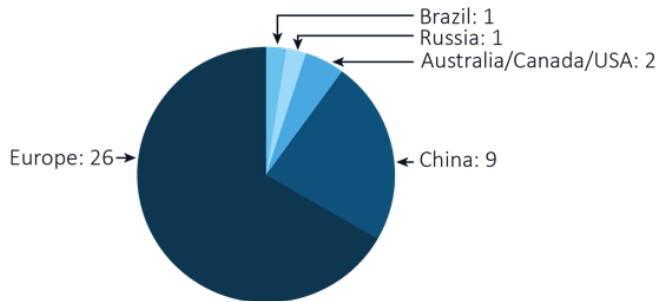


Australia: 1
Austria: 4
Bahrain: 1
Belgium: 2
Brazil: 1
Canada: 1
China: 10
Denmark: 1
France: 4
Germany: 8

Greece: 1
Hungary: 1
Iceland: 2
Italy: 1
Luxemburg: 1
Netherlands: 1
New Zealand: 1
Norway: 4
Poland: 1
Portugal: 1

Romania: 1
Russia: 1
Slovakia: 1
Slovenia: 1
Spain: 5
Sweden: 3
Switzerland: 1
United Arab Emirates: 1
United Kingdom: 3
United States: 3

vi. Semi-fabrication

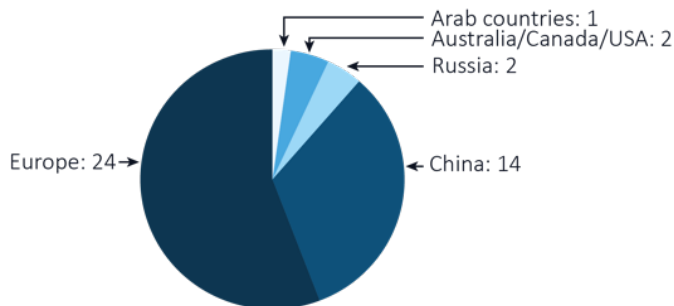


Austria: 2
 Belgium: 1
 Brazil: 1
 Canada: 1
 China: 9
 France: 2

Germany: 8
 Greece: 1
 Italy: 1
 Luxemburg: 1
 Netherlands: 1
 Norway: 1

Russia: 1
 Slovenia: 1
 Spain: 2
 Sweden: 2
 United Kingdom: 1
 United States: 1

vii. Material conversion

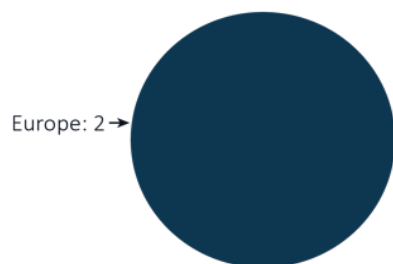


Austria: 3
 China: 13
 Czech Republic: 1
 Denmark: 1
 Egypt: 1
 Finland: 1
 France: 1
 Germany: 3

Hungary: 1
 Ireland: 1
 Italy: 2
 Netherlands: 1
 Poland: 1
 Russia: 2
 Serbia: 1

South Korea: 1
 Spain: 1
 Sweden: 1
 Switzerland: 2
 Turkey: 1
 United Kingdom: 2
 United States: 2

viii. Other manufacturing or sale of products



Austria: 1

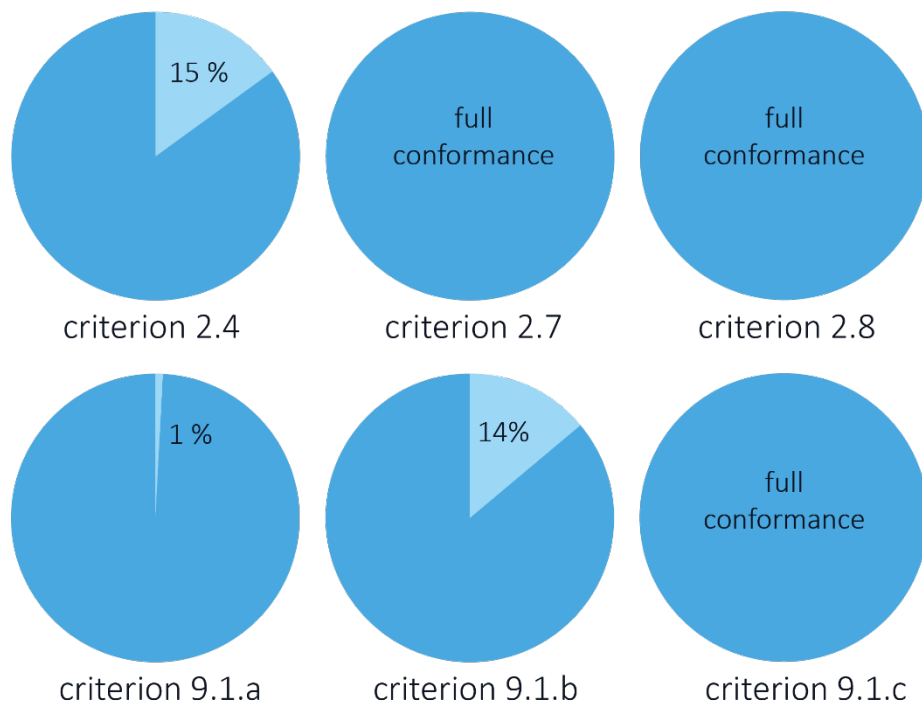
United Kingdom: 1

c. Incidence of conformance ratings

Concerning criterion 2.4 on responsible sourcing, auditors found eleven cases of minor non-conformance, *i.e.* 15 % of the total number of 74 ASI Certified Entities. All other Entities were conformant. With respect to criterion 2.7 on mergers and acquisitions, 4 % (*i.e.* three Entities) reported non-applicability of the criterion. The rest was found to be conformant. All Entities are conformant with respect to criterion 2.8 on closure, decommissioning and divestment.

Relating to human rights due diligence, one Entity (*i.e.* 1 %) was found to be minor non-conformant in respect of criterion 9.1.a (policy commitment to respect human rights). For criterion 9.1.b (human rights due diligence process) 14 % of all Certified Entities (*i.e.* ten Entities) were reported minor non-compliant, whereas all Entities were conformant with criterion 9.1.c (remediation).

Percentage of non-conformance



The cases of minor non-conformance concern Entities from the following countries/regions:⁶

Criterion 2.4:

Arab countries: 2	(67% of this group)
Australia/Canada/USA: 2	(22% of this group)
China: 1	(6% of this group)
Europe: 6	(14% of this group)

Criterion 9.1.a:

Arab countries: 1	(33% of this group)
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Criterion 9.1.b:

China: 7	(41% of this group)
Europe: 3	(7% of this group)

As regards **critterion 2.7** Entities declaring **non-applicability** are based in the following countries:

Australia/Canada/USA: 1	(11% of this group)
Europe: 2	(5% of this group)

⁶ Numbers can vary with respect to the total amount of minor non-conformant Entities and Entities located in particular countries/regions.

d. High-level evaluation of consistency of implementation

It is not easy to distill trends or patterns of implementation from the data received. For example, when looking at the incidence of conformance ratings, it is apparent that overall conformance is very high except for criteria 2.4 and 9.1.b. For these criteria, minor non-conformances were found for 15% and 14% respectively of all ASI Certified Entities, percentages still at the lower side of the scale.

In general, it can be noted that minor non-conformances appear in nearly all countries/regions, except Russia and Brazil. But is this a regional trend or rather a coincidence? It is questionable whether the small number of Entities operating in Russia and in Brazil is representative enough to draw a valid conclusion on regional conformance. This is even more so the case given that there are many Entities who operate in a number of different countries or continents. Was does it mean if a company operates in 13 European countries and also in Russia and in Egypt? What significance does it have that this mainly European Entity also counts for the regional groups of Russia and the Arab countries, raising their numbers from two to three Entities? The information in the audit reports does not necessarily differentiate between the performance of an Entity in different operational locations. In other words, such occurrence would be more coincidence than a hard trend.

As regards the minor non-conformance ratings it is noticeable that there is a relatively high number of Chinese Entities (41%) who had issues with criterion 9.1.b (due diligence process). At the same time, Chinese Entities rank very low with respect to the somewhat related criterion 2.4 (responsible sourcing), *i.e.* only 7%. This contrasts with 67% minor non-conformance rate for Entities operating in Arab countries, 22% in the group Australia, Canada and USA and 14% in Europe. However, as said, it is questionable how meaningful these percentage ratings are.

What can be concluded is that Entities located in Europe and other “Western” countries are also among the minor non-conformers. This is although they operate in individualist societies and legal systems familiar with and connected to human rights protection regimes including the UN Guiding Principles on Business and Human Rights. Chinese society, on the other hand, is comparatively more oriented towards collective harmony and is often criticized for human rights abuses. Chinese companies are said to not always be familiar with individualized rights and claims processes. Yet overall, Chinese Entities do not perform much worse than their Western counterparts. The mentioned 41 % of minor non-conformance with criterion 9.1.b alone is not sufficient to indicate a regional trend of lesser conformance of Chinese Entities with the chosen key governance and social criteria.

As explained in Chapter 2 above, the limited information provided and the non-uniform usage of terms, different foci and different levels of detail make it difficult and at times unsatisfactory to examine and to compare conformance with the criteria in more depth.

What conclusions can be drawn if the audit report for one Entity describes in much detail what it does, for example with respect to responsible sourcing, whereas another doesn't and just asserts performance? Maybe one could conclude that the Entity who provides more information on a particular criterion is more serious in its implementation? For example, that

an Entity whose report also mentions accompanying training measures when describing its human rights policy can be assumed to actually put the policy into practice? Since auditors are not obliged to report on all aspects of the Guidance, it is not possible to draw the opposite conclusion that those Entities for whom training activities are not specifically mentioned are not providing for any. Instead, much depends on the auditor's personal style and description.

Notwithstanding these considerations, there are certain similarities and reoccurring reporting patterns or foci. I tried to capture these in the following analysis. It is also apparent that auditors use the same or very similar formulations for their conformance statements relating to particular criteria. This concerns 76% of all Chinese Entities relating to criterion 2.7 (mergers and acquisitions) and 59% relating to criterion 2.8 (closure, decommissioning and divestment). With one exception, these Entities were all audited by the auditing firm DNV GL.

But what is to be taken from this finding on existing standard responses with only limited detail on the specifics of implementation? Maybe it could be concluded that these Entities do not have the most elaborate due diligence system. But this finding does not provide grounds for any assumption that the Entities are not conformant with the criteria or that the auditors did not carry out their job properly.

In the following, the criteria 2.4, 2.7, 2.8 and 9.1 are examined with respect to the location of the Entity and with respect to the supply chain activity concerned.⁷ As mentioned in Chapter 2, "soft" categories have been formed that relate to the form of reporting (*e.g.* mere assertion, relative detail, much detail) and to specific subtopics or foci (*e.g.* training provided or mention of action plans). Tables below show the countries/regions of Entities who report on particular categories on the left side. The right side indicates which supply chain activities are concerned. Percentage numbers relate to the number of listed Entities in relation to their regional group or the total number of supply chain activities.

i. Criterion 2.4

For 32 Entities (43%), audit reports assert and/or conclude without much detail that a responsible sourcing policy exists. 22 Entities (30%) provide more detailed information on their sourcing policies and procurement procedures which, as stated above, may possibly mean that responsible sourcing is indeed taken seriously by the respective Entities. 20 Entities (27%) mention corresponding training activities; 42 Entities (57%) remark on their ways to communicate the policy to their suppliers; and 13 Entities (18%) indicate they have monitoring processes in place.

⁷ The supply chain activity "Other manufacturing or sale of products" has not been included in the following survey due to its insignificant occurrence. Both Entities who conduct this activity also carry out other activities (*e.g.* material conversion) and are thus captured in the survey.

(1) Entities whose reports merely assert or briefly conclude on the existence of their responsible sourcing policy are located in the following countries/regions and undertake the following supply chain activities:

Country / Region	Numbers / %	Supply Chain Activity	Numbers / %
Arabian countries	2 Entities (67%)	Bauxite Mining	3 Entities (43%)
Austr./Canada/USA	2 Entities (22%)	Alumina Refining	2 Entities (22%)
Brazil	3 Entities (60%)	Aluminium Smelting	5 Entities (28%)
China	7 Entities (41%)	Re-melting/Refining	18 Entities (55%)
Europe	19 Entities (44%)	Casthouses	21 Entities (45%)
Russia	1 Entity (33%)	Semi-Fabrication	16 Entities (43%)
		Material Conversion	9 Entities (24%)

(2) Entities whose reports describe in detail their responsible sourcing procedures are located in the following countries/regions and conduct the following supply chain activities:

Country / Region	Numbers / %	Supply Chain Activity	Numbers / %
Arabian countries	2 Entities (67%)	Bauxite Mining	3 Entities (43%)
Austr./Canada/USA	4 Entities (44%)	Alumina Refining	3 Entities (33%)
Brazil	./.	Aluminium Smelting	6 Entities (33%)
China	1 Entity (6%)	Re-melting/Refining	7 Entities (21%)
Europe	16 Entities (37%)	Casthouses	14 Entities (30%)
Russia	./.	Semi-Fabrication	14 Entities (38%)
		Material Conversion	4 Entities (17%)

(3) Training activities are mentioned for Entities in the following countries/regions and who conduct the following supply chain activities:

Country / Region	Numbers / %	Supply Chain Activity	Numbers / %
Arabian countries	./.	Bauxite Mining	2 Entities (29%)
Austr./Canada/USA	2 Entities (22%)	Alumina Refining	2 Entities (22%)
Brazil	2 Entities (20%)	Aluminium Smelting	1 Entity (6%)
China	8 Entities (47%)	Re-melting/Refining	2 Entities (6%)
Europe	8 Entities (19%)	Casthouses	10 Entities (21%)
Russia	1 Entity (33%)	Semi-Fabrication	10 Entities (27%)
		Material Conversion	10 Entities (42%)

(4) Ways of communication are addressed by Entities located in the following countries/regions and carrying out the following supply chain activities:

Country / Region	Numbers / %	Supply Chain Activity	Numbers / %
Arabian countries	2 Entities (67%)	Bauxite Mining	4 Entities (57%)
Austr./Canada/USA	4 Entities (44%)	Alumina Refining	4 Entities (44%)
Brazil	3 Entities (60%)	Aluminium Smelting	10 Entities (56%)
China	7 Entities (41%)	Re-melting/Refining	17 Entities (52%)
Europe	29 Entities (67%)	Casthouses	28 Entities (60%)
Russia	1 Entity (33%)	Semi-Fabrication	26 Entities (70%)
		Material Conversion	12 Entities (50%)

(5) Entities with reporting on monitoring processes are located in the following countries/regions and conduct the following supply chain activities:

Country / Region	Numbers / %	Supply Chain Activity	Numbers / %
Arabian countries	2 Entities (67%)	Bauxite Mining	3 Entities (43%)
Austr./Canada/USA	2 Entities (22%)	Alumina Refining	3 Entities (33%)
Brazil	2 Entities (40%)	Aluminium Smelting	4 Entities (22%)
China	./.	Re-melting/Refining	6 Entities (18%)
Europe	8 Entities (19%)	Casthouses	9 Entities (19%)
Russia	2 Entities (67%)	Semi-Fabrication	10 Entities (27%)
		Material Conversion	2 Entities (8%)

ii. Criterion 2.7

As previously stated, all Entities were found to be conformant with the criterion, except for three Entities who found the criterion to be non-applicable to them. For 53 Entities, *i.e.* 72% of all Entities, findings in the audit reports mention the existence of a due diligence policy or process in the context of mergers and acquisitions. These processes are described in relative detail for 17 Entities (23%). At the same time, reporting details for 7 Entities (9%) do not provide any or no meaningful details on any M&A related due diligence. Some Entities refer to due diligence concerning closure, decommissioning and divestment; others focus on asset management and not on environmental, social or governance criteria that should stand at the centre of due diligence. Another group of 7 Entities (9%) does not mention a (own) due diligence policy or process but refer to the responsibility of their headquarters for mergers and acquisitions (and related due diligence). While most reported on an existing due diligence policy or process, 26 Entities (35%) stated that they either did not have any experience with or no intention to undertake a merger or acquisition in the foreseeable future.

(1) Entities with reporting on M&A related due diligence policies and/or processes are located in the following countries/regions and are involved in the following supply chain activities.

Country / Region	Numbers / %	Supply Chain Activity	Numbers / %
Arabian countries	2 Entities (67%)	Bauxite Mining	6 Entities (86%)
Austr./Canada/USA	6 Entities (67%)	Alumina Refining	7 Entities (78%)
Brazil	5 Entities (100%)	Aluminium Smelting	14 Entities (78%)
China	15 Entities (88%)	Re-melting/Refining	22 Entities (67%)
Europe	28 Entities (65%)	Casthouses	35 Entities (74%)
Russia	2 Entities (67%)	Semi-Fabrication	23 Entities (62%)
		Material Conversion	20 Entities (20%)

(2) Entities with reporting in relative detail are based in the following countries/regions and conduct the following supply chain activities:

Country / Region	Numbers / %	Supply Chain Activity	Numbers / %
Arabian countries	./.	Bauxite Mining	6 Entities (86%)
Austr./Canada/USA	1 Entity (11%)	Alumina Refining	7 Entities (78%)
Brazil	4 Entities (80%)	Aluminium Smelting	6 Entities (33%)
China	./.	Re-melting/Refining	6 Entities (18%)
Europe	8 Entities (19%)	Casthouses	11 Entities (23%)
Russia	2 Entities (67%)	Semi-Fabrication	7 Entities (19%)
		Material Conversion	3 Entities (13%)

(3) Entities whose reports do not provide any or any meaningful details on M&A related due diligence are based in the following countries/regions and conduct the following supply chain activities:

Country / Region	Numbers / %	Supply Chain Activity	Numbers / %
Arabian countries	./.	Bauxite Mining	./.
Austr./Canada/USA	1 Entity (11%)	Alumina Refining	./.
Brazil	./.	Aluminium Smelting	1 Entity (6%)
China	1 Entity (6%)	Re-melting/Refining	5 Entities (15%)
Europe	5 Entities (17%)	Casthouses	4 Entities (9%)
Russia	./.	Semi-Fabrication	2 Entities (5%)
		Material Conversion	1 Entity (4%)

(4) Entities referring to headquarters' policies and processes are located in the following countries/regions and carry out the following supply chain activities:

Country / Region	Numbers / %	Supply Chain Activity	Numbers / %
Arabian countries	./.	Bauxite Mining	./.
Austr./Canada/USA	1 Entity (11%)	Alumina Refining	./.
Brazil	./.	Aluminium Smelting	1 Entity (6%)
China	1 Entity (6%)	Re-melting/Refining	5 Entities (15%)
Europe	5 Entities (17%)	Casthouses	4 Entities (9%)
Russia	./.	Semi-Fabrication	2 Entities (5%)
		Material Conversion	1 Entity (4%)

(5) Entities without experience with or intention to undertake an M&A process are located in the following countries/regions and conduct the following supply chain activities:

Country / Region	Numbers / %	Supply Chain Activity	Numbers / %
Arabian countries	2 Entities (67%)	Bauxite Mining	4 Entities (57%)
Austr./Canada/USA	2 Entities (22%)	Alumina Refining	2 Entities (22%)
Brazil	./.	Aluminium Smelting	4 Entities (22%)
China	14 Entities (82%)	Re-melting/Refining	12 Entities (36%)
Europe	9 Entities (21%)	Casthouses	18 Entities (38%)
Russia	1 Entity (33%)	Semi-Fabrication	13 Entities (35%)
		Material Conversion	12 Entities (50%)

iii. Criterion 2.8

All Entities were found to be conformant with criterion 2.8. 52 Entities, *i.e.* 70% of all Entities, have guidance documents and/or processes available to review environmental, social and governance issues in the planning process for closure, decommissioning and divestment. Many Entities mention existing national legislation to which their policies or processes link to and relate or they explicitly state that such legislation is conformant with criterion 2.8. Seven Entities (9%) just mention existing and/or strict national legislation without explaining in how far this conforms with the criterion. Reports for 17 Entities (23%) describe their processes in relative detail and provide a bit more information than the majority of Entities whose reports just briefly mentions they have policies and processes relating to closure, decommissioning and divestment. The information provided by nine Entities (12%) is not very meaningful or robust to proof conformance with the criterion.

Reports for 40 Entities (54%) affirm that they either don't have any cases of closure, decommissioning and divestment ever, in recent years or since accession to ASI; or they state that they don't plan any of it in the foreseeable future. Of these Entities, eight Entities (20% of this group of Entities) do not mention they have a policy or processes for due diligence

relating to closure, decommissioning or divestment. Five Entities (7% of all Entities) refer to their headquarters responsibility without further explanation.

(1) Entities with existing policies and processes in line with criterion 2.8 are located in the following countries and conduct the following supply chain activities:

Country / Region	Numbers / %	Supply Chain Activity	Numbers / %
Arabian countries	1 Entity (33%)	Bauxite Mining	7 Entities (100%)
Austr./Canada/USA	8 Entities (89%)	Alumina Refining	7 Entities (78%)
Brazil	3 Entities (60%)	Aluminium Smelting	15 Entities (83%)
China	15 Entities (88%)	Re-melting/Refining	21 Entities (64%)
Europe	28 Entities (65%)	Casthouses	34 Entities (72%)
Russia	2 Entities (67%)	Semi-Fabrication	22 Entities (59%)
		Material Conversion	17 Entities (71%)

(2) Reports contain more detailed information on criterion 2.8 for Entities in the following locations and conducting the following supply chain activities:

Country / Region	Numbers / %	Supply Chain Activity	Numbers / %
Arabian countries	1 Entity (33%)	Bauxite Mining	5 Entities (71%)
Austr./Canada/USA	5 Entities (56%)	Alumina Refining	5 Entities (56%)
Brazil	1 Entity (20%)	Aluminium Smelting	8 Entities (44%)
China	./.	Re-melting/Refining	5 Entities (15%)
Europe	11 Entities (26%)	Casthouses	11 Entities (23%)
Russia	1 Entity (33%)	Semi-Fabrication	8 Entities (22%)
		Material Conversion	3 Entities (13%)

(3) Entities not providing meaningful or robust information relating to the criterion are located in the following countries and conduct the following supply chain activities:

Country / Region	Numbers / %	Supply Chain Activity	Numbers / %
Arabian countries	./.	Bauxite Mining	./.
Austr./Canada/USA	./.	Alumina Refining	2 Entities (22%)
Brazil	1 Entity (33%)	Aluminium Smelting	./.
China	./.	Re-melting/Refining	7 Entities (21%)
Europe	9 Entities (21%)	Casthouses	6 Entities (13%)
Russia	./.	Semi-Fabrication	6 Entities (16%)
		Material Conversion	2 Entities (8%)

(4) Entities without experience with or intention to undertake any closure, decommissioning or divestment activity are located in the following countries/regions and conduct the following supply chain activities:

Country / Region	Numbers / %	Supply Chain Activity	Numbers / %
Arabian countries	2 Entities (67%)	Bauxite Mining	1 Entity (14%)
Austr./Canada/USA	5 Entities (56%)	Alumina Refining	2 Entities (22%)
Brazil	./.	Aluminium Smelting	6 Entities (33%)
China	14 Entities (76%)	Re-melting/Refining	18 Entities (55%)
Europe	22 Entities (51%)	Casthouses	25 Entities (53%)
Russia	2 Entities (67%)	Semi-Fabrication	21 Entities (57%)
		Material Conversion	17 Entities (71%)

iv. Criterion 9.1.a

All Entities were conformant with the criterion except for one case of minor non-conformance. 40 Entities (54%) stated that they had a specific policy particularly focused on human rights. 17 Entities of this group reported on the contents of this policy in relative detail. 33 Entities (45%) included their commitment to human rights in their Code of Conduct, general policy on environmental, social and governance issues or responsible sourcing policy (and not in a specific human rights policy). Reports for 19 Entities (26%) mention that the latter had conducted or were conducting respective training activities.

(1) The Entities with a specific human rights policy are located in the following countries/regions and carry out the following supply chain activities:

Country / Region	Numbers / %	Supply Chain Activity	Numbers / %
Arabian countries	2 Entities (67%) ⁸	Bauxite Mining	4 Entities (57%)
Austr./Canada/USA	6 Entities (67%)	Alumina Refining	5 Entities (56%)
Brazil	4 Entities (80%)	Aluminium Smelting	15 Entities (83%)
China	13 Entities (76%)	Re-melting/Refining	14 Entities (42%)
Europe	19 Entities (44%)	Casthouses	25 Entities (53%)
Russia	3 Entities (100%)	Semi-Fabrication	16 Entities (43%)
		Material Conversion	13 Entities (54%)

⁸ This number includes Aluminium Bahrain that was found to be minor non-conformant because its human rights policies do not contain a specific commitment to respect human rights.

(2) Entities with reporting in more detail on their human rights policy are located in the following countries/regions and conduct the following supply chain activities:

Country / Region	Numbers / %	Supply Chain Activity	Numbers / %
Arabian countries	./.	Bauxite Mining	4 Entities (57%)
Austr./Canada/USA	4 Entities (44%)	Alumina Refining	5 Entities (56%)
Brazil	4 Entities (80%)	Aluminium Smelting	12 Entities (67%)
China	./.	Re-melting/Refining	7 Entities (21%)
Europe	19 Entities (44%)	Casthouses	13 Entities (28%)
Russia	3 Entities (100%)	Semi-Fabrication	4 Entities (11%)
		Material Conversion	1 Entity (4%)

(3) Entities who included their human rights commitment in their Code of Conduct, general policy on environmental, social or governance issues or responsible sourcing policy are located in the following countries and carry out the following supply chain activities:

Country / Region	Numbers / %	Supply Chain Activity	Numbers / %
Arabian countries	1 Entity (33%)	Bauxite Mining	2 Entities (29%)
Austr./Canada/USA	3 Entities (33%)	Alumina Refining	1 Entity (11%)
Brazil	1 Entity (20%)	Aluminium Smelting	4 Entities (22%)
China	3 Entities (18%)	Re-melting/Refining	17 Entities (52%)
Europe	25 Entities (58%)	Casthouses	20 Entities (43%)
Russia	./.	Semi-Fabrication	20 Entities (54%)
		Material Conversion	11 Entities (46%)

(4) Entities who included training activities in their reports are located in the following countries/regions and carry out the following supply chain activities:

Country / Region	Numbers / %	Supply Chain Activity	Numbers / %
Arabian countries	1 Entity (33%)	Bauxite Mining	1 Entity (14%)
Austr./Canada/USA	4 Entities (44%)	Alumina Refining	2 Entities (22%)
Brazil	./.	Aluminium Smelting	5 Entities (28%)
China	10 Entities (59%)	Re-melting/Refining	4 Entities (12%)
Europe	4 Entities (9%)	Casthouses	12 Entities (26%)
Russia	./.	Semi-Fabrication	8 Entities (22%)
		Material Conversion	11 Entities (46%)

v. Criterion 9.1.b

As stated above, 10 Entities were rated minor non-conformant with this criterion. All Entities carry out due diligence activities. Reports for all except for four Entities explicitly mention that their due diligence is risk-based. Five Entities (7%) merely assert without providing much detail that they operate a human rights due diligence process. 36 Entities (49%) provide some detail on their processes, while reports for 31 Entities (42%) describe their due diligence processes more substantively. This latter group includes the Entities who were rated minor non-conformant. Eleven Entities (15%) have reports that mention specific risk issues such as potential impact on vulnerable groups such as Indigenous peoples or youth; particular risks addressed by recent legislation such as modern slavery and conflict minerals; and work place risks. Ten Entities (14%) state that the main risks are linked to their supply chain or that their risk mapping covers the entire supply/value chain for its operations and their joint ventures.

(1) Entities for whom reports merely assert conformance with criterion 9.1.b are located in the following countries/regions and carry out the following supply chain activities:

Country / Region	Numbers / %	Supply Chain Activity	Numbers / %
Arabian countries	./.	Bauxite Mining	2 Entities (5%)
Austr./Canada/USA	2 Entities (22%)	Alumina Refining	1 Entities (11%)
Brazil	./.	Aluminium Smelting	1 Entities (6%)
China	1 Entity (6%)	Re-melting/Refining	3 Entities (9%)
Europe	2 Entities (5%)	Casthouses	2 Entities (4%)
Russia	./.	Semi-Fabrication	3 Entities (8%)
		Material Conversion	2 Entities (8%)

(2) Entities whose reports provide relative detail as to their due diligence processes are located in the following countries/regions and carry out the following supply chain activities:

Country / Region	Numbers / %	Supply Chain Activity	Numbers / %
Arabian countries	1 Entity (33%)	Bauxite Mining	2 Entities (29%)
Austr./Canada/USA	3 Entities (33%)	Alumina Refining	2 Entities (22%)
Brazil	3 Entities (60%)	Aluminium Smelting	5 Entities (28%)
China	8 Entities (47%)	Re-melting/Refining	16 Entities (48%)
Europe	21 Entities (49%)	Casthouses	25 Entities (53%)
Russia	./.	Semi-Fabrication	17 Entities (46%)
		Material Conversion	14 Entities (58%)

(3) Entities with substantive reporting in detail on their due diligence processes are located in the following countries/region and conduct the following supply chain activities:

Country / Region	Numbers / %	Supply Chain Activity	Numbers / %
Arabian countries	2 Entities (67%)	Bauxite Mining	4 Entities (57%)
Austr./Canada/USA	3 Entities (33%)	Alumina Refining	5 Entities (56%)
Brazil	1 Entity (20%)	Aluminium Smelting	12 Entities (67%)
China	8 Entities (47%)	Re-melting/Refining	11 Entities (33%)
Europe	19 Entities (44%)	Casthouses	18 Entities (38%)
Russia	3 Entities (100%)	Semi-Fabrication	15 Entities (32%)
		Material Conversion	8 Entities (33%)

(4) Entities who mention their focus on particular human rights risks are located in the following countries/regions and concern the following supply chain activities:

Country / Region	Numbers / %	Supply Chain Activity	Numbers / %
Arabian countries	./.	Bauxite Mining	1 Entities (14%)
Austr./Canada/USA	2 Entities (22%)	Alumina Refining	2 Entities (22%)
Brazil	./.	Aluminium Smelting	3 Entities (17%)
China	1 Entity (6%)	Re-melting/Refining	4 Entities (12%)
Europe	8 Entities (19%)	Casthouses	6 Entities (13%)
Russia	./.	Semi-Fabrication	2 Entities (5%)
		Material Conversion	4 Entities (17%)

(5) Entities whose reports emphasize supply chains in their risk management are located in the following countries/regions and carry out the following supply chain activities:

Country / Region	Numbers / %	Supply Chain Activity	Numbers / %
Arabian countries	./.	Bauxite Mining	1 Entity (14%)
Austr./Canada/USA	1 Entity (11%)	Alumina Refining	1 Entity (11%)
Brazil	2 Entities (40%)	Aluminium Smelting	4 Entities (22%)
China	4 Entities (24%)	Re-melting/Refining	5 Entities (15%)
Europe	4 Entities (9%)	Casthouses	5 Entities (11%)
Russia	./.	Semi-Fabrication	4 Entities (11%)
		Material Conversion	4 Entities (11%)

vi. Criterion 9.1.c

All Entities were found to be conformant with this criterion. 34 Entities (46%) reported on the existence of a complaints or reporting mechanism for human rights related grievances. Seven Entities (9%) have a whistleblowing mechanism and 18 Entities (24%) have a hotline. Audit reports for seven Entities (9%) mention a specific body or organ responsible for handling grievances.

Audit reports for 42 Entities (57%) did not focus on complaints or reporting mechanisms. Instead they provided information on the implementation of due diligence processes or merely confirmed that their actions had not caused any negative human rights impacts. Without providing detailed data, another group of 16 Entities (22%) mention action plans or “legitimate processes” though which they would cooperate in any remediation.

(1) Entities with complaints or reporting mechanisms are located in the following countries/regions and conduct the following supply chain activities:

Country / Region	Numbers / %	Supply Chain Activity	Numbers / %
Arabian countries	2 Entities (67%)	Bauxite Mining	4 Entities (57%)
Austr./Canada/USA	4 Entities (44%)	Alumina Refining	7 Entities (78%)
Brazil	3 Entities (60%)	Aluminium Smelting	7 Entities (39%)
China	15 Entities (88%)	Re-melting/Refining	13 Entities (39%)
Europe	10 Entities (23%)	Casthouses	21 Entities (45%)
Russia	2 Entities (67%)	Semi-Fabrication	18 Entities (49%)
		Material Conversion	17 Entities (71%)

(2) Entities with whistleblowing mechanisms are located in the following countries/regions and conduct the following supply chain activities:

Country / Region	Numbers / %	Supply Chain Activity	Numbers / %
Arabian countries	./.	Bauxite Mining	3 Entities (43%)
Austr./Canada/USA	2 Entities (22%)	Alumina Refining	3 Entities (33%)
Brazil	1 Entity (20%)	Aluminium Smelting	3 Entities (17%)
China	./.	Re-melting/Refining	4 Entities (12%)
Europe	4 Entities (2%)	Casthouses	5 Entities (11%)
Russia	./.	Semi-Fabrication	5 Entities (14%)
		Material Conversion	2 Entities (8%)

(3) Entities with a hotline are located in the following countries/regions and conduct the following supply chain activities:

Country / Region	Numbers / %	Supply Chain Activity	Numbers / %
Arabian countries	2 Entities (67%)	Bauxite Mining	2 Entities (29%)
Austr./Canada/USA	./.	Alumina Refining	3 Entities (33%)
Brazil	1 Entity (20%)	Aluminium Smelting	5 Entities (28%)
China	11 Entities (65%)	Re-melting/Refining	6 Entities (18%)
Europe	4 Entities (9%)	Casthouses	12 Entities (26%)
Russia	2 Entities (67%)	Semi-Fabrication	8 Entities (22%)
		Material Conversion	10 Entities (42%)

(4) Entities with mention of a specific body or organ responsible for remediation are located in the following countries/regions and conduct the following supply chain activities:

Country / Region	Numbers / %	Supply Chain Activity	Numbers / %
Arabian countries	./.	Bauxite Mining	2 Entities (29%)
Austr./Canada/USA	2 Entities (22%)	Alumina Refining	3 Entities (33%)
Brazil	1 Entity (20%)	Aluminium Smelting	3 Entities (17%)
China	1 Entity (6%)	Re-melting/Refining	4 Entities (12%)
Europe	3 Entities (7%)	Casthouses	4 Entities (9%)
Russia	./.	Semi-Fabrication	5 Entities (14%)
		Material Conversion	3 Entities (13%)

(5) Entities who focused on human rights due diligence processes or merely stated that their actions did not have any negative human rights impacts are located in the following countries/regions and conduct the following supply chain activities:

Country / Region	Numbers / %	Supply Chain Activity	Numbers / %
Arabian countries	./.	Bauxite Mining	4 Entities (57%)
Austr./Canada/USA	5 Entities (56%)	Alumina Refining	4 Entities (44%)
Brazil	3 Entities (60%)	Aluminium Smelting	10 Entities (56%)
China	2 Entities (12%)	Re-melting/Refining	18 Entities (55%)
Europe	33 Entities (77%)	Casthouses	25 Entities (53%)
Russia	1 Entity (33%)	Semi-Fabrication	19 Entities (51%)
		Material Conversion	7 Entities (29%)

(6) Entities with action plans or “legitimate processes” are located in the following countries/regions and conduct the following supply chain activities:

Country / Region	Numbers / %	Supply Chain Activity	Numbers / %
Arabian countries	./.	Bauxite Mining	3 Entities (43%)
Austr./Canada/USA	3 Entities (33%)	Alumina Refining	4 Entities (44%)
Brazil	1 Entity (20%)	Aluminium Smelting	9 Entities (50%)
China	4 Entities (24%)	Re-melting/Refining	5 Entities (15%)
Europe	8 Entities (19%)	Casthouses	11 Entities (23%)
Russia	1 Entity (33%)	Semi-Fabrication	3 Entities (8%)
		Material Conversion	3 Entities (13%)

vii. Consistent application

As said, overall the criteria have been applied consistently, both with respect to the locations as well as the supply chain activities. There are certain variations that can be noted in the analysis of implementation of the different criteria. Among them are the following:

- The percentages of reporting on training activities for responsible sourcing (criterion 2.4) are lower for the supply chain activities aluminium smelting and aluminium re-melting and refining (*i.e.* 6% versus above 20% for the other supply chain activities). This may or may not be an indication that responsible sourcing policies play a less important role for the supply chain activities in the middle of the supply chain than they do for the beginning (mining with 29%) and the end (material conversion with 42%).
- China is the only country/region without any reports on monitoring systems for responsible sourcing while the percentages for the other regions range from 19% to 67%. This may or may not indicate that monitoring is less part of responsible sourcing in China than in other parts of the world.
- Detailed reporting on due diligence policies relating to mergers and acquisitions and to closure, decommissioning and closure (criteria 2.7 and 2.8) is significantly higher for bauxite mining (86% and 71%) than for other supply chain activities. This may or may not mean that mergers and acquisition as well as closure, decommissioning and divestment is more significant for mining with its significant human rights impact.
- In comparison with other countries/regions, European Entities relatively often failed to provide meaningful or robust information to support their claims to carry out due diligence in the context of mergers and acquisitions and closure, decommissioning and divestment (17% and 21%). This may indicate that many European Entities are smaller companies who might be less familiar with corporate processes like mergers and acquisitions. This seems to correlate with the fact that a high percentage of Entities engaging in material conversion stated they don't have any experience and no intention to undertake a merger or acquisition or to close, decommission or divest from their business (50% and 71%).

- There are no Entities from China or Arab speaking countries for whom auditors report in detail on their human rights policy (criterion 9.1.a). At the same time, the percentage is the highest for Chinese Entities with respect to reported training activities for their human rights policy (59%). This may or may not indicate that human rights related training is more important than the policy as such.
- The percentage of Russian Entities with substantive reporting on the due diligence processes is significantly higher than that of Entities from other regions (100% versus 20%-67% for the other countries/regions). This may or may not mean that Russian Entities take due diligence processes particularly seriously.
- Entities located in Western countries have focused more on specific human rights risks than Entities from other countries/regions (22% for Australia, Canada and the USA and 19% for Europe versus 6% for Chinese Entities and none for the rest). This seems to mirror the importance of due diligence legislation in Western countries adopted in recent years.
- In terms of remediation, most Chinese Entities have focused on complaints and reporting mechanisms (88% versus 23% European Entities), while many European Entities understood criteria 9.1.c to relate to the implementation of human rights due diligence processes or the de facto impact of their activities (77% versus 12% Chinese Entities. This is a case of inconsistent application of a criterion.
- Entities in Arab countries and in China do not have any whistleblowing mechanisms but the majority of them has a hotline (67% and 65%). This might be taken as a regional trend in terms of design of complaints and reporting mechanisms.

Considering the reservations as to the meaning and representativeness of the categories and percentage numbers, these variations are not substantial enough and the conclusions to be drawn from them not certain enough to assume any significant inconsistency in application of the examined criteria.

e. Evaluation of sufficiency of evidence provided

Is the information provided in the public summary reports sufficient to demonstrate conformance with the criteria? Do the public headline statements contain a summary of the evidence reviewed? Is there a difference between the reports published before May 2020 and those afterwards?

The overall answer is positive. Even if the statements only consist of one or two sentences in many cases, readers get a general idea on what grounds auditors rated the Entities conformant with the respective criterion. In most cases, the main evidence used by the auditors is cited as well. However, the caveats made in the introductory remarks of the preceding section as to the conclusions to be drawn from the audit findings in respect of actual hard implementation are also relevant in this context. The information provided in the public headline statements is too limited to be able to make own judgements as to implementation. For reports issued after May 2020, the quality and level of detail significantly improved in varying degrees depending on the criteria.

For Criterion 2.4 (responsible sourcing) nearly two thirds of the reports (32 cases) issued before May 2020 provide summary information on the core elements of their responsible sourcing strategies (including evidence) in appropriate detail. Reports of the remaining third (16 Entities) are less satisfactory in that they just provide brief information on their responsible sourcing policy (as the main point of evidence) without any further explanation, except for a link to the document(s). In two cases, the public headline statements are insufficient since they only make a general assertion of implementation without even providing a link or citing the relevant document. The level of detail provided in the reports after May 2020 is significantly higher in 68% of all cases after this date (17 Entities). At the same time, the relative number of cases with just brief information remains at a third of all cases.

For criterion 2.7 (mergers and acquisitions) public summary statements are mostly brief in reports issued before May 2020. In six cases, Entities just assert they have an “adequate procedure” or the like, using standard formulations and not citing evidence. This seems to be insufficient to show conformance. Approx. 75% of Entities (38 cases) provide more detailed answers, not always indicating the relevant evidence. Of these Entities, 13 include in their brief statements that they do not have any experience, or are not planning, any merger or acquisition. Reports after May 2020 are more substantive for seven Entities (28%). The quality of the rest is comparable to the reports before May 2020. In one case, the Entity merely makes a general statement that it “has a process in place to review environmental, social and governance criteria in the due diligence process for Mergers and Acquisitions” without providing any further information. This could be judged as insufficient to demonstrate conformance with the criterion.

The situation is similar for criterion 2.8 (closure, decommissioning and divestment). Before May 2020, 40 Entities (80%) have more or less detailed statements explaining the grounds of their conformance and most mention the main evidence. 19 of them are very brief and frequently explain that no closure, decommissioning or divestment is planned or experienced. Reports for 10 Entities (20%) only include mere assertions and generalized formulations; they are deemed to be insufficient. Reporting after May 2020 significantly improved for 13 Entities (52% of all reports afterwards), while the remaining cases were predominantly very brief and included statements that no closure, decommissioning or divestment was planned or experienced.

Reporting on human rights due diligence (criterion 9.1) was generally of a higher quality, maybe because the topic is easier to describe and concerns more Entities than do criteria 2.7 and 2.8. For criterion 9.1.a (human rights policy) public summary statements demonstrated conformance for 45 Entities (90%). Seven Entities of these just mentioned their human rights policy briefly but provided a link. Five Entities (10%) also just made brief mention of their policy but did not (even) provide a link. These Entities are deemed to have insufficiently reported. After May 2020, reporting becomes noticeably more substantive for 15 Entities (*i.e.* 60%).

In reports before May 2020, 36 Entities (72%) demonstrated their conformance with criterion 9.1.b (due diligence process) with limited detail. 14 Entities (28%) failed to do so mainly

because they only used standardized formulations such as: “The Entity has defined a Human Rights Due Diligence process, demonstrating the identification, prevention and mitigation of potential and actual human rights risks”, without providing some detail on their evidentiary basis. In reports after May 2020, public headline statements are significantly more detailed and informative for 19 Entities (76%), whereas the quality of reporting stayed the same for the remaining six Entities.

For criterion 9.1.c (remediation), pre-March 2020 reports demonstrated conformance in 37 cases (74%), with two Entities providing excellent detailed information. In 13 cases (26%) reporting is deemed insufficient in the light of its brevity, generality and lack of evidence presented. 20% of cases, *i.e.* five Entities, had considerably better public summary statements after May 2020, while the quality of reports for 14 Entities (56%) stayed the same as in the previous reports. Six Entities (24%) failed to provide sufficient information to demonstrate conformance. Many of this group just stated that their operations did not have any human rights impact without giving further explanation how this finding came about.

4. Implementation of Complaint Resolution Mechanisms

a. Minor non-conformances and general practice

95% percent of all Entities were rated conformant with criterion 3.4 on stakeholder complaints, grievances and requests for information. Only four Entities were rated minor non-conformant - all on the grounds of ineffective implementation of a control, process or procedure and one in addition for missed or unknown legal requirements and another one in addition for inadequate training.⁹ Two of these ratings are based on insufficient or non-communication of existing complaints mechanisms to relevant stakeholders. Two Entities publish their Codes of Ethics which mention penalty and reporting systems for violations of the code. Minor non-conformances for both Entities are ascribed for only offering a general contact form on their website without clarifying what kind of grievances could be lodged and what information is required. Another Entity was rated minor non-conformant because it did not (yet) publicly communicate information on its grievance mechanism on its website.

The research shows that there are several Entities who were rated conformant although their complaint resolution mechanisms have similar shortcomings. At least 17 Entities (24% of the conformant Entities) were rated conformant although they also only provided a contact form or contact information without indicating the existence of and/or requirements for a complaint resolution mechanism. Nearly half of these Entities are located in China.

b. Unclear meaning of the principles for criterion 3.4

There seems to be limited certainty among Entities and auditors as to the meaning of the principles mentioned in criterion 3.4 for an adequate complaint resolution process, *i.e.* accessible, transparent, understandable, culturally sensitive, gender sensitive and adequate

⁹ In addition, one Entity was found to also have provided inadequate training and another Entity to have missed a legal requirement.

to address stakeholder complaints. There is no further explanation or interpretation provided in the Guidance to the ASI Performance Standard or in another ASI document.

The non-binding Guidance places emphasis on dialogue-based processes tailored to suit the industry, country and culture for which the complaint resolution process is designed.¹⁰ Documented procedures should indicate clearly how complaints, grievances and/or request for information are addressed. The Guidance lists various points in detail that complaint resolution mechanisms should consider and make public through various communication channels.¹¹ Suggested means of communication are stakeholder meetings, newsletters and websites.

The present research mainly focuses on the information provided on the Entities' websites. Other forms of outreach (*e.g.* stakeholder meetings) are considered if the audit reports did so. Consultation processes with Indigenous peoples (in the course of which complaints could be made, too) are dealt with in Chapter 6 below.

c. Best practice

16 Entities, *i.e.* 22% of all Entities, possess complaint resolution mechanisms that are well-explained and detailed addressing most of the issues suggested by the Guidance. These Entities belong to the seven ASI Members who are either big multi-national companies or have at least a considerable size with over 2000 employees.

All of these Entities provide easy access to the complaint resolution mechanisms in several languages. All have whistleblower services and 24-hour hotlines for employees and other stakeholders. All describe their principles, such as confidentiality, non-retaliation, fairness and objectivity, and provide information at least in some detail on their decision-making processes and investigation procedures. Timelines are generally not provided.¹² Whistleblowers are generally not required to provide supporting documentation with their (initial) report. However, some Entities encourage them to do so or require that the report must contain sufficient information to form a reasonable basis for investigation. Most Entities indicate they set up special bodies or programs to deal with complaints and apply a multi-level examination of the cases.

¹⁰ Compare: ASI Performance Standard V2, Guidance, Dec. 2017, p. 25, available at: <https://aluminium-stewardship.org/asi-standards/asi-performance-standard/>

¹¹ The Guidance lists the following points in this context, *i.e.* who stakeholders can contact to raise questions or get more information; who is responsible for receiving and registering complaints and grievances; how they are addressed and by whom; what are the indicative timeframes for the various phases of complaint resolution; how some matters may proceed through escalated channels; what provisions exist for appeals; how the process aims to be sensitive to gender and take into account cultural aspects that are relevant to the organisation's operations; how the process will apply to contractors or other agents acting on the organisation's behalf; how records will be maintained; and how processes and outcomes will be reported and evaluated. *Ibid.*

¹² One Entity encourages claimants to log into their complaints process again after two weeks from lodging the claim to answer potential questions of the investigation.

d. Cultural and gender sensitivity

These best practice cases clearly meet the criteria accessible, transparent, understandable and adequate to address stakeholder complaints. What they generally don't do is to include specific ways of communication or address particular cultural issues to reach communities that might be affected by the Entities' operations. This could include explanation of complaint resolution mechanisms using easy language or images and in an Indigenous or local language.¹³

Neither do the systems address gender issues in a special way, *e.g.* by offering particular points of contact or procedures in cases of sexual harassment. In most Codes of Ethics sexual harassment would be included by the general prohibition of discrimination and harassment at the workplace. Other, non-workplace related gender issues, *e.g.* relating to land rights of women in mining areas, do not seem to have been considered.

Depending on whether or not one requires special action to conform with the principles of culture and gender sensitivity, the Entities are or are not conformant with these principles. It is needless to say that this observation is the same for those Entities who do not form best practice.

e. Mixed performance of majority

The remaining Entities fulfil the principles accessible, transparent, understandable and adequate to address stakeholder complaints to different degrees.

Entities' websites offer access to the complaint resolution mechanisms through particular pages or contact forms, providing phone numbers, email addresses or other communication channels. These are more or less easily found. Most webpages are at least bilingual using the main business languages of the respective Entity.¹⁴ The main points of access are via the sustainability or governance pages of the websites, or directly linked to the contact area or contact form. In a less accessible way, some Entities provide the relevant information, including a link to lodge a complaint or a phone number for the helpline, only through their Code of Ethics or other document. In most cases, phone numbers or mail links are provided on the relevant webpages or documents. A few Entities also provide line cards with all relevant information presented together with supporting information. There are, however, also less helpful Entities who do not provide the relevant contact information directly with the explanation on the complaint resolution mechanism. Two Entities do not provide access via their website but through stakeholder meetings and other ways of analogue communication.

Except for the mentioned best practice cases, Entities do not display detailed information on the complaint resolution process as such on their websites. Several Entities indicate that they have a special body or program set up to deal with a complaint or request for help. But they

¹³ Few companies have Code of Ethics that use (at least some) icons and images to improve understanding of the normative document.

¹⁴ In a few cases, the information provided in the different languages is not the same. One Entity based in an Arab speaking country, for example, only provides information on its hotline and Code of Ethics in English, not in Arabic.

do not provide more information on the relevant processes, procedures and timelines. Some Entities use external, third party support for handling their complaints management. Most Entities assure confidentiality, even if they do not provide mechanisms that would seem to ensure this. In one case, the Entity allows anonymous complaints to be made but actively encourages stakeholders not to do so because a non-anonymous complaint would have more meaning.

f. Chinese Entities and their complaints resolution mechanisms

This incidence shows there are cultural differences with respect to complaint resolution mechanisms. This is most notable with respect to the 16 Entities located in China, the country with the highest number of certified Entities.¹⁵ Their webpages were checked with the language support by a Chinese speaker.¹⁶

As noted in recent research on the implementation of supply chain due diligence relating to conflict minerals, Chinese companies generally do not detail their internal processes on their webpages.¹⁷ In fact, company webpages seem to have lesser importance for Chinese companies than, for example, for Western companies. In the strictly controlled internet environment in China, it is more difficult to set up and to maintain sophisticated webpages than in Western countries.¹⁸ Other means of communication, for example WeChat have a more important role than the website as such.¹⁹ It happens frequently that Chinese company websites cannot be accessed at all times, in particular from non-Chinese servers.²⁰

The scarcity of the information provided by Chinese Entities may also result from a Chinese corporate environment that does not entail a free individual complaints culture. While employees and other stakeholders are encouraged to report or complain about breaches of labour and social security laws, they need to do so with the competent public labour agency.²¹ In a similar vein, trade unions are to protect workers' rights in China, but they must be state sanctioned. Workers do not have the right to organize their own independent trade unions.²²

The way how complaints mechanisms, better helplines or outside contact, are provided is generally more limited in China. Looking at many websites, it can be observed that Chinese

¹⁵ As explained in section 3.a above, a South Korean Entity is counted to the "Chinese group". This is why the number of "Chinese Entities" generally amounts to 17 in this research. However, in this context focus is only on those Entities that actually have their seat in China.

¹⁶ Analyzing Chinese webpages is hardly possible for non-Chinese speakers since the extent and quality of English translations is often limited.

¹⁷ Global Witness, "Digging for Disclosure: A review of publicly-available supply chain due diligence information by Chinese metals processing companies", March 2012, p. 19, available at:

<https://www.globalwitness.org/en/campaigns/natural-resource-governance/digging-disclosure/>

¹⁸ Interview with a China expert and sinologist, 17 June 2021.

¹⁹ Interview with GIZ staff based in China, 9 June 2021.

²⁰ Global Witness, see note 37, p. 18.

²¹ Simmons&Simmons, "Whistleblowing in the People's Republic of China: A high level outline of employment protection in the People's Republic of China", 1 May 2015, available at: <https://www.simmons-simmons.com/en/publications/ck0aq3zhunhvq0b85qvlmon08/24-whistleblowing-in-the-peoples-republic-of-china>

²² World Politics Review, "China's Complicated Relationship with Workers' Rights", 25 January 2017, available at: <https://www.worldpoliticsreview.com/insights/21000/china-s-complicated-relationship-with-workers-rights>

Entities are trying to conform with the standard. However, most hotlines or feedback forms do not clearly state they are to be used for non-product-related complaints or grievances, let alone linked to violations of a Code of Conduct.²³ In one case, wording is used that indicates the possibility to complain but it is “wrapped” in non-offensive language such as “sunny” or “sunshine” control.²⁴ In another case, stakeholders are invited to state their opinion on the leadership and to make proposals for change directly in the “leader’s letterbox”. This might reflect a different approach to build trust in business relations in China than exists in Western countries.²⁵

In its recent review of publicly-available supply chain due diligence information by Chinese metals processing companies, Global Witness concluded that “when public reporting on due diligence is absent or insufficiently detailed, it raises significant questions about what steps companies are taking in practice to mitigate harms in the supply chain, or indeed, if they are taking any at all.”²⁶ It is true that due diligence information is not the same as information on complaint resolution mechanisms. It would appear that safeguarding responsible mining practices in the entire supply chain is more difficult than establishing a complaint resolution mechanism in line with the principles of criterion 3.4.

g. Concluding remarks

However, the question may be allowed whether or not Chinese – as well as the other Entities – are taking their duty under the UN Guiding Principles on Business and Human Rights seriously enough to also remedy human rights violations if they occurred. This certainly also depends on the supply chain activity involved. For example, human rights risks generally would seem to be higher in bauxite mining than in semi-fabrication, requiring more sophisticated complaint resolution mechanisms for the former than for the latter. The design of the mechanism also depends on the size of the company.

Assessing these factors would exceed the scope of the present evaluation. However, the brevity of information provided by most Entities possibly supports a finding of a recent Guidebook by the Global Compact Network Germany: “For many [companies], human rights grievance mechanisms are associated with complex procedures and financial risks that are difficult to gauge. Few companies currently recognize the opportunities associated with grievance mechanisms as efficient channels of communication.”²⁷

²³ In fact, Chinese Entities generally do not have or not publish a Code of Conduct on their website. Instead they have rather mission statements or sections on corporate culture outlining the positive values and strengths of the company.

²⁴ This is the translation of the term used by Suntown Technology Group Corporation for the Entity’s complaints mechanism via We Chat. It guarantees strict confidentiality.

²⁵ Compare: E. Meyer, *The Culture Map: breaking through the invisible boundaries of global business*, Public Affairs, New York, 2014, pp. 168-171, on differences between cognitive and affective trust. While the US has a long tradition from separating the practical from the emotional, Chinese managers connect the two forms of trust and build trust on the basis of relationships (not primarily specific tasks).

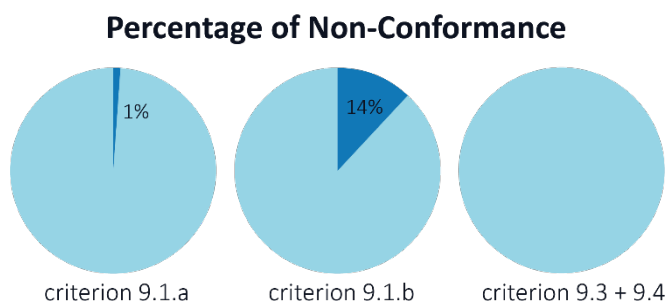
²⁶ Global Witness, see note 37, p. 27.

²⁷ Global Compact Network Germany, *Worth Listening: Understanding and implementing human rights grievance management. A business guide*, November 2019, p. 4, available at:

https://www.globalcompact.de/migrated_files/wAssets/docs/Menschenrechte/Publikationen/DGCN_GM-guide_EN_20191125_WEB.pdf

5. Analysis of conformance gaps on UN Guiding Principles on Business and Human Rights and concerning Indigenous Peoples

The overall conformance of all 74 ASI Certified Entities with criterion 9.1 on human rights due diligence is relatively high. Only one minor non-compliance was found in respect to criterion 9.1.a requiring a policy commitment respecting human rights. For criterion 9.1.b on the human rights due diligence process minor non-compliances were reported for ten Entities, whereas all Entities are compliant with respect to criterion 9.1.c on remediation. This marks 1,3 % of all 74 cases as minor non-conformance with criterion 9.1.a and 14 % with criterion 9.1.b. No non-conformances were identified relating to criteria 9.3 and 9.4 on Indigenous peoples and on Free Prior Informed Consent (FPIC).

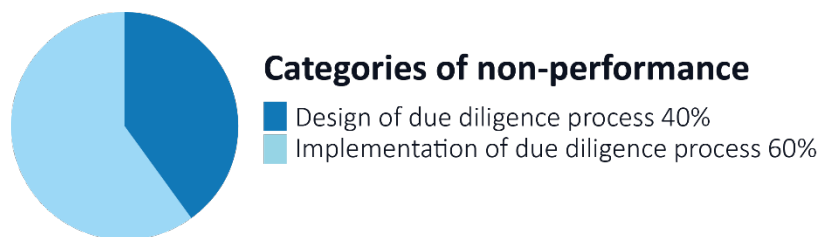


a. Criterion 9.1.a

One Entity was rated minor non-conformant with criterion 9.1.a because its human rights policies do not include a specific commitment stating the Entity's respect for human rights. It does, however, have a number of human rights policies covering specific rights issues and declaring its commitment to the principles contained in the Universal Declaration on Human Rights and the United Nations 'Protect, Respect and Remedy' Framework for Human Rights. Based on the available information, the Entity is taking its human rights obligations seriously. Its rating as minor non-conformant with criterion 9.1.a seems to be adequate.

b. Criterion 9.1.b

The ten minor non-conformances with respect to criterion 9.1.b can be classified into two groups. Four Entities had issues with respect to their due diligence process. Audit reports marked incomplete or missing documentation as the cause of non-conformance for this group. The other group of six Entities showed deficiencies relating to the implementation of the due diligence process concerning security and/or catering service providers. While all cases appear to be relatively similar, different causes of non-conformance are noted. Mostly ineffective implementation of control, process or procedure is used to describe the deficiency. In some cases, inadequate training, non-compliance with the applicable law, and departure from procedure or defined process were listed as cause of non-conformance.



Deficiencies relating to the design of the due diligence process (first group) concerned in one case the lack of a due diligence process as such. One Entity adopted a Corporate Code of Conduct and Ethics Policy that covers a policy-level commitment to respect human rights and issued a Modern Slavery statement. However, the Entity has not yet undertaken a due diligence process that seeks to identify, prevent, mitigate and account for how it addresses its actual and potential impacts on human rights. At the same time, the company completed relevant audits and demonstrated legal compliance on human rights requirements according to German law.

Other cases of minor non-compliance involve shortcomings in the respective due diligence processes. For example, one Entity was found to observe relevant local laws, *i.a.* on labour rights, but not cover more broadly in its due diligence process potential human rights issues and risks in its area of influence. Another Entity's due diligence system fails to describe the frequency and scope of the process. A third Entity is implementing due diligence and conducted various risk assessments, controls, supplier reviews and audits. If necessary, a mitigation plan is activated and followed up. The criticism concerns the level of human-rights-related detail in some assessment, audit and review documents for suppliers. In these documents human rights risks only feature in a very general way which is inadequate, particularly for the first level assessment of a supplier and for risky suppliers.

As regards implementing due diligence process (second group), the following deficiencies were noted with respect to security and/or catering providers: they were not part of the due diligence process; oversight was inefficient, they worked too long hours; working hours and wages were not disclosed or providers did not complete the due diligence information.

All these cases seem to be correctly rated as minor non-conformant. Many companies have only recently started introducing human rights due diligence systems. It is conceivable that some companies are having difficulties in designing them appropriately. It is also conceivable that in due diligence processes non-essential services like security providers or catering stand less in the focus than core business or high-risk operations. At the same time, human rights apply to all and fair working conditions are a key concern for business and human rights. Exploitation of service providers must not be tolerated. The rating with minor non-conformance for the second group is only appropriate, as long as no systemic pattern of exploitation of service providers is found. The audit reports do not provide indications to this effect.

6. Implementation of Criteria relating to Indigenous peoples' Rights

Criteria 9.3 and 9.4 concern the rights of Indigenous peoples. There is no international consensus on the definition of the term. The ASI Guidance on the Performance Standard refers to an understanding of the term used in the UN context,²⁸ consisting of the following elements:

- Self-identification as Indigenous peoples
- Historical continuity with pre-colonial and/or pre-settler societies
- Strong link to territories and surrounding natural resources
- Distinct social, economic or political systems
- Distinct language, culture and beliefs
- Non-dominant groups of society
- Resolved to maintain and reproduce ancestral environments and systems as distinctive peoples and communities.

Indigenous peoples are distinguished from national minorities on the grounds that their claims to peoplehood are based on their distinct cultures and ways of life directly linked to their lands, territories and resources as well as self-governance.²⁹

Only 13 Entities included criteria 9.3 (on respect for the rights of Indigenous peoples) and 9.4 (on FPIC) as applicable within their scope. All other Entities declared the criteria not applicable for them. Four reports of the 13 Entities (who included the criteria) rate conformance with the criteria arguing that no Indigenous peoples were found in the area of operation. For reasons of consistency, these four Entities are added to the majority group of Entities who declared the criteria not applicable to them.³⁰ Entities without applicability of criteria 9.3 and 9.4 are operating in the following countries/continents:

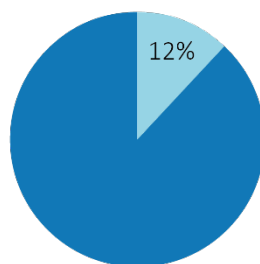
- Bahrain: 1
- Brazil: 4
- China: 16
- Egypt: 1
- Europe: 39
- Russia: 3
- Saudi Arabia: 1
- South Korea: 1
- United Arab Emirates: 1
- USA: 2

²⁸ ASI Performance Standard V2, Guidance, see note 10 above, p. 70.

²⁹ ASI Indigenous Peoples Advisory Forum, Fact Sheet 1, Criteria for the Identification of Indigenous Peoples, see note 5 above, p. 2, available at: <https://aluminium-stewardship.org/wp-content/uploads/2017/04/ASI-IPAF-Fact-Sheet-1-Identifying-IPs-2015.pdf>

³⁰ The four Entities are located in Northern Italy (two), Austria and in Brazil. The audit report on the Brazilian Entity referenced a consultation with the Director of Human Rights and some public media research indicating that no Indigenous peoples live in the region of operation and are not impacted by the Entity. A double-check on Google Maps and on Landmark confirms this statement.

Entities with applicability of criteria 9.3 + 9.4



a. Location of Indigenous peoples

According to Indigenous World 2021, a lead resource providing annual information on Indigenous peoples worldwide,³¹ Indigenous peoples are found in the following countries of this list: Brazil, China, Russia and the USA. The online resource does not contain information on the presence and treatment of Indigenous peoples in the other countries/continents of the list. With the slight exception of some Scandinavian countries (Europe), Indigenous peoples are not an issue for the latter group of countries. It can thus be assumed that the audit reports are correct when stating that no Indigenous peoples are found in the respective Entity's area of operation in these countries.³² Audit reports on Entities operating in these countries without mention in The Indigenous World and who declared criteria 9.3 and 9.4 not applicable to them will thus not be further explored below. Research on any presence of Indigenous peoples in the vicinity of Entity's operations will focus on the first group of countries in the list, *i.e.* Brazil, China, Russia and the USA.

i. **Entities in Brazil**

Brazil has a considerable Indigenous population of 305 different peoples mostly living in the Amazon region.³³ The country ratified ILO Convention No. 169 on the Rights of Indigenous and Tribal Peoples in 2002. At the same time, Brazil made negative headlines in recent years on Government-backed land grabbing of Indigenous territories for agricultural and mining purposes.³⁴

³¹ For more information, see note 2 above.

³² This includes one smelter in Norway which is located in the cultural region inhabited (also) by the Sami peoples. The audit report states that there are no settlements of Indigenous people in or around affected by the smelter. The Sami people present in the area are said to be fully integrated in the community. A check on the location on Google Maps does not lead to doubts regarding this finding. All other Entities located in Norway and Sweden are not located within the Sami cultural region.

³³ The Indigenous World 2021, International Work Group for Indigenous Affairs, Copenhagen, April 2021, p. 337, available at: <https://iwgia.org/doclink/iwgia-book-the-Indigenous-world-2021-eng/eyJ0eXAiOiJKV1QiLCJhbGciOiJIUzI1NiJ9.eyJzdWIiOiJpd2dpYS1ib29rLXRozS1pbmRpZ2Vub3VzLXdvcmxkLTlwMjEtZW5nliwiaWF0IjoxNjE4OTE0NDcyLCJleHAiOiJlE2MTkwMDA4NzJ9.16jl03Uv-9UUBvfvf4xV5yXkXCPIT46vbfKaGwvYvbvA>

³⁴ <https://www.dw.com/en/brazils-bolsonaro-proposes-bill-allowing-mining-on-indigenous-land/a-52273665>; <https://www.hrw.org/news/2021/04/12/brazil-remove-miners-indigenous-amazon-territory>; <https://www.greenpeace.org/usa/news/brazil-set-to-vote-on-controversial-land-grabbing-bill/>.

Having researched the three Brazilian Entities who assessed 'non-applicable' for criteria 9.3 and 9.4 with the online resources ASI Certification Map, Google Maps and Landmark, no Indigenous peoples could be found in the vicinity of the operations. The assessment thus seems to be correct.

ii. Entities in China

China considers itself a unified country with a diverse ethnic make-up whose nationalities are all equal under the Constitution. Altogether 55 minority nationalities are recognized who count for 8.5 % of the countries' overall population. Minority nationalities often live in autonomous areas with their own minority-friendly governance systems. Among the rights enjoyed in autonomous areas is the right to practice the own language and culture. The biggest and most important autonomous regions are found in the North West, North and South West of the country, mainly in Tibet, Inner Mongolia and in Xinjing.³⁵

While China voted in favour of the UN Declaration on the Rights of Indigenous Peoples (UNDRIP), it does not consider its minority nationalities to be Indigenous peoples who afford special protection under human rights law. Minority groups in China rarely participate in international meetings relating to Indigenous peoples' issues and none expressed self-identification as Indigenous.³⁶ In its essence, China is not a settler country where outside migrants have taken over governance from an Indigenous population who lived there before their arrival. In general, both the Han majority as well as the non-Han minorities are 'indigenous' in the sense of being native to the territory they inhabit. At the same time, the Han majority tends to regard minority communities as 'tribal', 'backward' or 'non-civilized'.³⁷ Moreover, China does have various human rights issues relating to its minority nationalities and other groups.

Many minority nationalities are socially marginalized in Chinese society. In terms of industrial investments, it is often farmers and peri-urban dwellers whose rights are not observed, e.g. when new industrial parks are established by the competent public authorities. They might belong both to the Han majority or to ethnic minorities.³⁸ Another disenfranchised group is the category of migrant workers. As unskilled workforce they are commuting into urban areas to perform a variety of non-qualified labour. The Chinese household registration system 'hukou' discriminates them with respect to labour rights and social services provided by cities provide for the urban population.³⁹ Largely unable to obtain urban residence permits, they often live and work in precarious and marginalized conditions. While this group consists both of majority and minority Chinese, the percentage of minority groups might be higher than of the privileged majority.⁴⁰

³⁵ The Indigenous World 2021, see note 57, p. 195.

³⁶ The Indigenous World 2014, International Work Group for Indigenous Affairs, Copenhagen, May 2014, p. 240, available at: https://www.iwgia.org/images/publications/0671_I2014eb.pdf ; see also: Tan Chee-Beng, "The Concept of Indigenous Peoples and Its Application in China", in: Erni, C. (ed.), *The Concept of Indigenous Peoples in Asia: A Resource Book*, Copenhagen, 2008, p. 251, available at: https://www.iwgia.org/images/publications/Concept_of_Indigenous_Peoples_in_Asia_-_Digital.pdf

³⁷ Tan Chee-Beng, *ibid.*, p. 245-46.

³⁸ Interview with Ernst & Young partner with long work experience in China, 9 June 2021.

³⁹ For an overview, see: <https://nhglobalpartners.com/the-chinese-hukou-system-explained/>

⁴⁰ Interview with GIZ staff based in China, 9 June 2021.

In the light of these findings, it is questionable in how far ASI should regard Chinese minority nationalities as falling within the scope of criteria 9.3 and 9.4 on Indigenous rights and FPIC. With respect to the identification of Indigenous peoples on the project level, the ASI Indigenous Peoples Advisory Forum (IPAF) advised that human rights due diligence should focus on (1) groups recognized by the State as indigenous, (2) un-recognized groups that self-identify as indigenous and (3) groups with similar characteristics to Indigenous peoples but who do not necessarily self-identify as indigenous.⁴¹ It might be conceivable to regard Chinese national minorities as falling into the third category. However, Chinese groups are neither contained on the non-exhaustive list of groups from Asian countries participating in consultations with the UN Special Rapporteur on the rights of Indigenous peoples in 2013, nor is there a factsheet on Indigenous peoples in China developed by the International Fund for Agricultural Development (IFAD) as exists for other countries in Asia and the Pacific.⁴² There is arguable reason for Entities and auditors to rate these criteria as non-applicable within the Chinese context.

Irrespective of these considerations, an examination of the locations of the ASI Certified Entities in China on the ASI Certification Map, Google Maps, Landmark and Asian Metals Map⁴³ suggests that the audit reports are correct in that they marked for the 16 Entities in China the criteria 9.3. and 9.4 as non-applicable. All of their locations are in the central and eastern parts of the country which are generally more developed and densely populated and where only few minority nationalities live. The maps do not show any minority in the vicinity of the Entities' locations. There is only one Chinese Entity who is situated within an autonomous area and who marked 'applicable' for the two Indigenous peoples-related criteria. Its practices under criteria 9.3 and 9.4 have been analyzed in the research below.

iii. Entities in Russia

Three Certified Entities are operating in Russia on nine operations in total. They are located both in and around big(ger) cities, *i.e.* Moscow, St. Petersburg, Krasnoyarsk and Samara, as well as in rural areas in the proximity of small towns in Northwest Russia and in Siberia. Russia has neither endorsed UNDRIP, nor ratified ILO Convention No. 169. While it is a multi-ethnic state with more than 160 different peoples, Russia only recognizes 47 as 'Indigenous Minority Peoples'. A Federal Law prescribes that these groups must be less than 50,000 members who perpetuate some aspects of their traditional ways of life and who still live on their ancestral lands.⁴⁴ Those recognized live in the North, Siberia and Far East of the country. There are other larger groups such as the Komi and the Sakha (Yakuts) who are seeking recognition, without success until to date.⁴⁵

⁴¹ ASI Indigenous Peoples Advisory Forum, Fact Sheet 1, see note 5 above, p. 14.

⁴² *Ibid.*, p. 7.

⁴³ <http://www.asianmetal.com/map/indexEnV6.shtml>

⁴⁴ 1999 Federal Law on Guarantees of the Rights of the Indigenous Minority Peoples of the Russian Federation, referenced in: The Indigenous World 2021, see note 33 above, p. 546.

⁴⁵ See also: ASI Indigenous Peoples Advisory Forum, Fact Sheet 1, see note 5 above, p. 8.

4,4 % of the Russian territory is land designated for the use of Indigenous communities in Russia.⁴⁶ Data could not be found on the percentage of Indigenous land not formally recognized by the State.⁴⁷ Generally, it can be stated that ethnic Russians live mostly in urban areas, whereas Indigenous groups are mainly rural dwellers, often living a nomadic or seminomadic lifestyle.⁴⁸ Having examined the operations on Google Maps, the ASI Certification Map and on Landmark does not lead to the conclusion that Indigenous peoples live in the vicinity of the operations. This includes one Bauxite mine located in an industrial area close to the small town Jemwa in the Republic Komi. The Komi peoples are among those peoples who identify as Indigenous but are not recognized by the Russian State.⁴⁹ At the same time, the assessment remains difficult without a field assessment or in-depth knowledge on the ground.

iv. Entities in the USA

The USA has a significant population of Indigenous peoples mostly referred to as Native Americans or American Indians. The US Government voted against UNDRIP and is no party to the ILO Convention No. 169. However, in 2010 it declared its support to UNDRIP as a moral guidance. Over 570 tribal entities are Government-recognized as American Indian or Alaska Native tribes who mostly have their own national homelands.⁵⁰

The Entities' operations in the USA are situated either in the middle of cities or in the proximity of smaller towns in the States Indiana, Kentucky, Pennsylvania, Texas and West Virginia.⁵¹ A comparison of the operations with the map of Indian lands of recognized tribes issued by the US Government shows that none of the operations are near any (remaining) Indigenous lands.⁵²

⁴⁶ Rights and Resource Initiative, 'Who Owns the World's Land?: A global baseline of formally recognized Indigenous and community land rights', Sept. 2015, p.8, available at: https://rightsandresources.org/wp-content/uploads/GlobalBaseline_web.pdf; see also: Kondrashev, A., Ronzhina O. and Zenkina, A., 'The Territory of Traditional Nature Use as a Specific Territorial Unit in the System of Territorial Division of the North, Siberia and the Russian Far East', *Journal of Siberian Federal University, Humanities and Social Sciences* 10, 2018, pp. 1572-1592, available at:

https://www.researchgate.net/publication/329215224_The_Territory_of_Traditional_Nature_Use_as_a_Specific_Territorial_Unit_in_the_System_of_Territorial_Division_of_the_North_Siberia_and_the_Russian_Far_East

⁴⁷ Country Report on Russia, Landmark Map, Global Platform of Indigenous and Community Lands, available at: http://www.landmarkmap.org/map/#x=-102.46&y=13.47&l=3&a=community_FormalDoc%2Ccommunity_NoDoc%2Ccommunity_FormalClaim%2Ccommunity_Occupied%2CIndigenous_FormalDoc%2CIndigenous_NoDoc%2CIndigenous_FormalClaim%2CIndigenous_Occupied

⁴⁸ *Ibid*; see also: Cultural Survival, 'Who are the Indigenous peoples of Russia?', Feb. 2014, available at: <https://www.culturalsurvival.org/news/who-are-Indigenous-peoples-russia>

⁴⁹ For more information on the Komi, see: <https://theculturetrip.com/europe/russia/articles/an-introduction-to-the-komi-people/>, https://en.wikipedia.org/wiki/Komi_peoples

⁵⁰ The Indigenous World 2021, see note 33 above, p. 570.

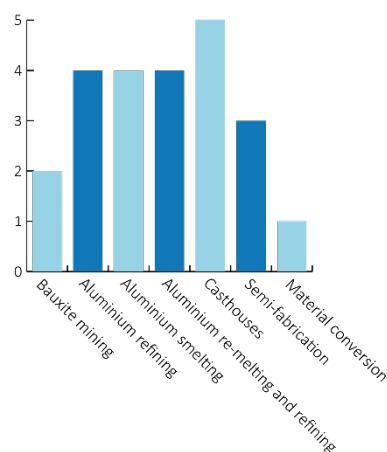
⁵¹ This includes three sites in Indiana and West Virginia for which the Entity had reported "conformant", *i.e.* applicable but reported that there were no Indigenous peoples in the vicinity of the operations.

⁵² Department of the Interior, Bureau of Indian Affairs, Indian Lands of Federally Recognized Tribes of the United States, June 2016; available at: <https://www.bia.gov/sites/bia.gov/files/assets/public/webteam/pdf/idc1-028635.pdf>

b. Conformance with criteria 9.3 and 9.4

Audit reports for nine Entities found that criteria 9.3 and 9.4 were applicable and that the Entities were conformant with them.⁵³ These Entities are operating in the following countries: Australia (3⁵⁴), Brazil (1), Canada (3), China (1), USA (1), New Zealand (1). The following supply chain activities are concerned in relation to Indigenous peoples:

- Bauxite mining: 2
- Aluminium refining: 4
- Aluminium smelting: 4
- Aluminium re-melting and refining: 4
- Casthouses: 5
- Semi-fabrication: 3
- Material conversion: 1



c. Implementation of criterion 9.3

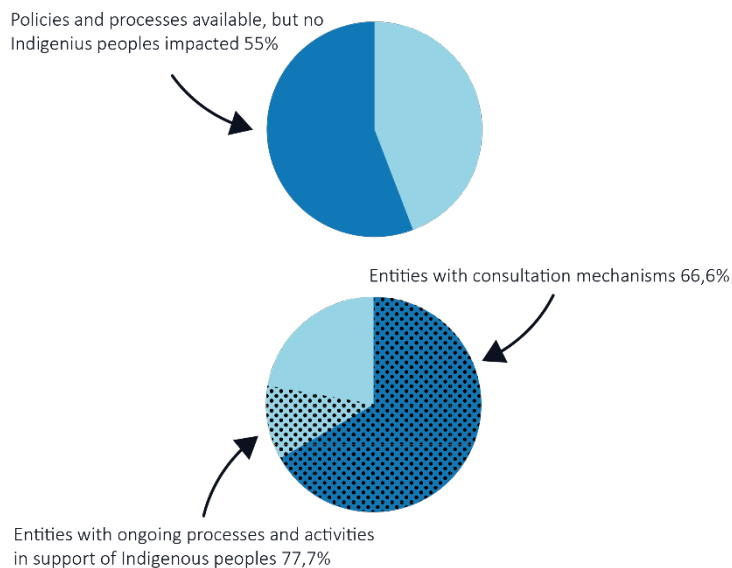
As regards the implementation of criterion 9.3, reports describe in relative detail the internal policies and activities of two Entities to ensure respect for the rights and interests of Indigenous peoples consistent with international standards. This included information on policies and processes on the global level as well as with respect to the regional and operational level. For seven other Entities mention is made to their standards and processes in respect of Indigenous peoples more generally and in less detail. This included in part mere reference to company policies and processes as well as a brief description of specific partnerships and consultation processes.

Despite having adopted policies and processes to respect the rights of Indigenous peoples, five Entities of the nine Entities stated that no Indigenous peoples were found or impacted by Entity-led operations. Seven Entities reported on ongoing processes and specific activities to respect the rights and interests of Indigenous peoples. Of these Entities, six have standing or project-specific consultation mechanisms with Indigenous communities. A brief summary of Entities' practice with respect to their policies, processes and activities follows. References to company names, particular locations and related literature have been deleted in this generic report to ensure confidentiality.

⁵³ Of the 74 cases, altogether 13 Entities reported that criteria 9.3 and 9.4 apply to them. However, four of these stated that no Indigenous peoples were found in their area of operation/influence. They also did not mention any Indigenous-related policy. This is why these four Entities were added to the group of Entities who reported non-applicability, see note 30 above.

⁵⁴ One double mention of Australia and New Zealand.

Respect for rights of Indigenous peoples



The most special case and best practice relating to Indigenous rights is an Indigenous-owned company in Australia. According to its website, it sees itself more as an instrument of social change than a mining operation and has worked to empower local Indigenous communities since the beginning. Capacity-building for Indigenous peoples in various ways stands at the heart of the Entity's business.⁵⁵ This includes training programmes for the Indigenous employees with respect to language, literacy and numeracy skills as well as safe driving. The activities are embedded in real-life mining scenarios and on-the-job-learning. Aiming to empower the Indigenous workforce to manage the business independently, Indigenous staff is receiving stable employment, while the non-Indigenous personnel is only employed as consultants.

One ASI Member is a case of international best practice with respect to its internal policies and standards as well as CSR activities in support of Indigenous peoples and local communities.⁵⁶ On a global level, the company has adopted a Code of Conduct and a series of Community Management Guides that state its respect for the rights of Indigenous peoples. The company also includes a community component in its Health, Safety, Environment and Community Standards and has a Community and Social Performance Standard. The latter provides a framework of mandatory requirements for all its businesses and sets out in detail what operations need to comply with to build enduring relationships that secure community and stakeholder support. The standard sets out a series of performance and control requirements with respect to planning, implementation, operation and monitoring. This includes the obligation to act in accordance with the UNDRIP, to strive for FPIC and to develop specific agreements with recognized Indigenous groups.

⁵⁵ The audit report does not contain specific information on the Entity's policies and programs to respect the rights of Indigenous peoples. Details are provided on the Entity's website.

⁵⁶ This finding refers to the certified Entities. Other operations of the company have faced severe criticism also with respect to the company's treatment of Indigenous peoples. For further detail, see below pp. 51-52.

Its Canada-based Entity declared its commitment to these Codes and to the rights of First Nations as enshrined in the Canadian Constitution. It also signed an Agreement-in-Principle of General Nature provides that heritage sites will become biodiversity areas and will be protected by regulations.

In its operations in Québec and in British Columbia the Entity has direct contact with Indigenous peoples. The Entity maintains a Joint Committee with the relevant First Nation where relevant issues relating to territory management or cultural and sacred heritage are directly addressed on a bipartite model. Any project or works are the subject of consultation and consent which can also include a declaration of non-opposition from the community.

In response to flooding problems, the Entity initiated a Shoreline Protection Programme aiming to mitigate the impact of shoreline erosion. The Programme was preceded by a large public consultation process and includes a Sustainable Management Council established in 2018 within which the First Nations, local government, civil society collaborate closely.

In British Columbia, the Entity's operations affect the territories of different First Nations with whom the company works at building beneficial relationships. With one First Nation, the Entity signed a Legacy Agreement with which a collaborative working arrangement was established for 30 years covering topics such as procurement, environmental protocols and employment. The partnership includes a training and resource centre to foster professional skills of the Indigenous community and others.

According to the company's website, cooperation also exists with another First Nation on initiatives ranging from land and forest management to competitive contracting and reservoir stewardship projects. In 2017, the First Nation opened the Remote Industry Training Centre with Entity support, to build a workforce to work on projects across a range of industries. There are also protocol agreements with two other Indigenous communities.

In addition, the Entity set up a Community Fund to promote socio-economic development for the affected regions. With over 10 million C\$ annually, the Fund supports programmes and initiatives in relevant areas such as education, environment, health and community livelihoods.

The Australia-based facility of the company also impacts Indigenous peoples at several operations. Where relevant, the Entity signed Traditional Owners Agreements with local Indigenous communities present in the operational area. Traditional Owners Fora serve as formal platforms for engaging with traditional owners.

Entity's Operations in far North Queensland are governed by three Indigenous Land Use Agreements intended to ensure Indigenous participation in decision-making on how the benefits of mining are used to support current and future generations. On its website, the Entity states that its obligations under these agreements can be tracked in a compliance register. It also supports a Community Fund, a formalized partnership programme to foster long-term socio-economic development for the affected communities.

At other operations, Cultural Heritage Management Plans are applied at operation level, aiming to protect the local cultural heritage. They serve as agreements with the relevant local traditional landowners and form part of stakeholder engagement with the Indigenous communities.

The above-said makes these Entities international lead practice with respect to dealing with Indigenous peoples. However, several other Entities have also developed processes and procedures for community relations and Indigenous peoples.

One Entity has a Code of Conduct which states its commitment to respecting and promoting human rights of all individuals potentially affected by its operations. It also has a specific Human Rights Policy that explicitly refers to the rights of Indigenous peoples. By acquiring a long bauxite pipeline in Brazil, the Entity inherited from its predecessor company unresolved issues concerning the consent of some Indigenous families to the pipeline construction. Until today, the predecessor pays compensation payments for members of a number of those families who were considered particularly impacted by the pipeline location. The payments were to end with the adoption of a mutually agreeable economic development plan. This never happened and the case went before the courts. While the predecessor remains the legal party, the ASI Entity is seeking constructive dialogue with the relevant community to improve relations and to reputational damage. The Entity also runs a number of community investment projects along the pipeline as part of its licensing agreement.

A further ASI Member also has both a Code of Conduct and an Indigenous Peoples Policy. In the Code of Conduct, the company stresses its commitment to human rights and to seek transparent and open dialogue with its community stakeholders, built on a culture of trust. In the Policy, this is further spelt out with respect to Indigenous peoples whose rights the company states to respect if they are acknowledged by the Government. The Entity also declares its intention to support, wherever possible, its support for new activities from affected communities through dialogue, search for common interest solutions and formal agreements.

Its Canada-based Entity is located in the traditional lands of a First Nation. A native reserve is located 65 km from the operation. According to an impact assessment for shoreline remediation project, no Indigenous patrimonial sites are affected by the operations. The Entity supports the Indigenous culture and communities in various projects through a company Foundation. This includes participating in the development partnership concerning a World Biosphere Reserve and support to a research station located in the reserve.

Even though there are no Indigenous peoples living in the areas of its operation, the Australia-based Entity is also active in fostering its relations with Indigenous peoples. It is developing a Reconciliation Action Plan, a detailed framework to lead the Aboriginal and Torres Strait Islander engagement and reconciliation. In addition, the Entity has a 5-year mine site consultation process and a community consultation policy that prescribes the process for community consultation at the two operations in question.

Two native reserves are located near the operations of another Entity based in Canada. While the Entity does not have a general policy on Indigenous peoples, it upholds permanent

communication channels with the relevant band council. Relations are based on an exchange of letters and a protocol. While there have not been any recent projects affecting Indigenous land or other resources, the Entity consults with the council with respect to social development initiatives relating to issues such as employability and economic opportunities. Beyond monetary investments, the Entity also gets involved through direct volunteer work by its employees.

Two other Entities have ethical policies in support of Indigenous rights: An Entity based in the USA has a Social and Ethical Management Standard that includes a section on Indigenous peoples rights. It notes that the corporation does not operate on any Native American reservation or tribal land, but supports creating a culture of respect for the Indigenous people of the world. It observes all applicable regulations regarding Native American rights within its local communities and aims to abide to recommendations of relevant actors such as the Indiana Native American Indian Affairs Commission or the US Agency of International Development regarding FPIC, resettlement and cultural and sacred heritage.

An Entity located in an autonomous province in China has an internal procedure for “Indigenous People protection and Free, Prior and Informed Consent” (FPIC). The Entity states its commitment to consult and cooperate in good faith with the Indigenous peoples concerned through their own representative institutions in order to obtain their free and informed consent prior to the approval of any project affecting their lands or territories and other resources. The Entity is located in an industrial park that was planned by local government and confirmed that no Indigenous peoples were found to be present.

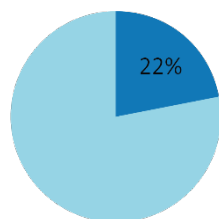
In the light of the above, the audit reports seem to be right in rating the nine Entities’ practice on criterion 9.3 as conformant. Some Entities are investing more than others in its relations with Indigenous peoples. Not all Entities have disclosed information on resources to implement its policies and procedures effectively. Audit reports for most Entities do not provide sufficiently detailed information in how far the “points to consider” contained in the ASI Guidance on the Performance Standard have indeed been considered or even implemented.⁵⁷ This relates for example to the issue of drawing on expert assistance, in conjunction with concerned Indigenous peoples, to develop policies, training, strategies, plans and actions. Another example is sufficient resource allocation to cover company and Indigenous peoples’ capacity building needs.

It is reasonable that an Entities’ investment in implementing Indigenous peoples-related policies also depends on their proximity and the impact that the operation has for Indigenous peoples in the vicinity. A high-level assessment of the Entities’ practices leads to the conclusion that those Entities who have the closest and most serious contact with Indigenous peoples have also invested most. Correspondingly, Entities who do not have Indigenous peoples in the vicinity of their operations keep their commitment in support of Indigenous peoples’ rights mainly declaratory and on a general policy-level. Both seems to be appropriate, also in the light of the fact that the Guidance is not binding and leaves room for interpretation how the various points are to be considered.

⁵⁷ ASI Performance Standard V2, Guidance, see above note 10, pp. 73-74.

d. Implementation of criterion 9.4

Of the nine Entities who reported on criteria 9.4 as applicable within their scope of activities, seven Entities stated that they were not involved in specific FPIC processes because no Indigenous peoples were impacted by their operations.⁵⁸ At the same time, all nine Entities stated that they had adopted policies and processes in relation to FPIC or were seeking FPIC when required to do so by national or international law.



Entities with FPIC processes

Ongoing projects requiring FPIC were only reported by two Entities who belong to the ASI Member whose practices relating to criterion 9.3 were denoted best practice in the preceding section.⁵⁹

The Canada-based Entity has an ongoing consultation process concerning a tunnel project for a power operation in British Columbia. The project has been object of a comprehensive public permission process involving various provincial agencies. Even though the project is said not to modify the Entity's footprint significantly, it also included extensive consultations with the affected First Nations of the watershed, aiming to ensure respect for their cultures and traditions. The Entity has set up a multi-party Public Advisory Committee, which serves as a source of community information on our operations, and conversely, ensures that community voices are heard and considered in the Entity's decision-making.

The Australia-based Entity is also conducting recent/ongoing consultations with Indigenous peoples on three operations. Obtaining FPIC is relevant for the extension of one mine site, the future closure of another mine and with respect to the expansion of a waste disposal dam. Without giving much detail, the audit reports state that consultations were carried out and documented in accordance with the company's Communities and Social Performance Standard.

⁵⁸ The discrepancy between nine Entities having Indigenous peoples and FPIC within the scope of their activities and only two Entities reporting on specific FPIC processes may be explained by the fact that FPIC is only required when new projects or major changes to existing projects may have significant impacts on Indigenous peoples living in the area. In relation to criterion 9.3, four Entities reported that their activities impacted on Indigenous peoples. Besides the two Entities with specific FPIC activities, this was one Entity who inherited unresolved compensation issues from its predecessor company and who is not required to undergo an FPIC process because it did not start new projects or significantly change existing operations. The fourth Entity is Indigenous-owned allowing the assumption that an FPIC process was carried out before starting its operations.

⁵⁹ As described in the previous section, there are a number of other consultation processes with Indigenous peoples conducted by several other Entities. They are not FPIC processes and thus not dealt with here.

The Entity applies innovative technology for participation purposes. For one project, it uses virtual reality to enrich the understanding of communities about the operations and to improve project planning.

It is difficult to assess on the basis of the audit reports and publicly available information in how far the mentioned consultation processes fully comply with the requirements of FPIC. FPIC is a difficult concept and includes many particulars that do not match the relatively short and more generic reporting template of the audit reports.

As clarified in the ASI Guidance on the Performance Standard and in the IPAF Factsheet on FPIC, there is no universally accepted definition or a one-size-fits-all formulation of the concept.⁶⁰ However, it is clear that FPIC is not a one-off exercise but a continuous undertaking. It is both an outcome and a process intended to give Indigenous peoples the opportunity to agree or to reject new projects or major changes to existing projects that affect their lands, territories or other resources. FPIC requires good faith negotiations that need to conform to a variety of process-related criteria including sufficient time and resources and respect for Indigenous peoples' decision-making processes.⁶¹ FPIC processes should also involve compensation payments and, where obtained, complemented with binding project-level agreements regulating issues such as impacts, risks, benefits, etc.

The audit reports do not provide in sufficient detail to judge whether or not the mentioned consultation processes fully comply with all FPIC requirements. With respect to the observance of criteria 9.4, they refer to documentation, observation and testimonial as type of evidence. Among the documents listed are the general policy documents and guides and the framework agreements with the relevant indigenous communities, as well as concrete project documents mostly presented as evidence for criteria 9.3. In addition, there are a few more additional project documents that were cited as documentary proof for FPIC. None of them seems to contain a full documentation of an FPIC process. It is also conceivable that regular consultation processes between the Entities and the concerned communities are referred to as FPIC or at least used as evidence that project-specific FPIC was undertaken.⁶²

The question remains in how far the two Entities complied with implementing FPIC on the ground. The auditors confirm that they did and acted in conformance with the company's Community and Social Performance Standard and on the basis of relevant agreements with Indigenous peoples and traditional owners. At the same time, reports exist with respect to the

⁶⁰ ASI Performance Standard V2, Guidance, see above note 20, p. 75; ASI Indigenous Peoples Advisory Forum, Fact Sheet 2, 'Indigenous Peoples' Free Prior and Informed Consent (FPIC)', see note 1 above, p. 3.

⁶¹ The Guidance stipulates for example that good faith negotiation involves on the part of all parties: (1) willingness to engage in a process and availability to meet at reasonable times and frequency; (2) provision of information necessary for informed negotiation; (3) exploration of key issues of importance; (4) use of mutually acceptable procedures for negotiation; (5) willingness to change initial position and modify offers where possible; and (5) provision of sufficient time for decision making. The Guidance also emphasizes that good faith includes respect for the particularities and independence of Indigenous peoples' decision making processes and that FPIC is culture-specific and not a corporate pre-defined process. Compare: ASI Performance Standard V2, Guidance, pp. 75-76.

⁶² The company's Community and Social Performance standard is an interesting example to show the limited guidance on and differentiation with respect to FPIC. The standard is a detailed seven-page document on corporate-community relations with a detailed section on consultation and engagement processes (1.3) but with only one general reference to FPIC in a different section on Indigenous peoples (1.13.b).

implementation of the relevant Australian Indigenous Land Use Agreements stating that the company did not meet the expectations of Traditional Owners with respect to mine site rehabilitation. With respect to iron ore mining (not bauxite) in First Nation's territory in Canada, the company was accused of having moved forward with operations without properly consulting or gaining consent of the Indigenous owners. It also has been noted that Impact and Benefits Agreements between companies and communities do not necessarily mean that the conditions of FPIC were applied. These findings do not seem specific enough or do not sufficiently relate to the concrete operations to invalidate the findings of the auditors that the two Entities in Canada and Australia conformed with criteria 9.4.

With possible exception of one First Nation with whom a Legacy Agreement was signed in 2011, consultation processes did not address the legacy issues evolving from the original establishment of the sites in the 1950s or 1960s. At that time, Indigenous rights were not observed and impacted Indigenous communities had no chance to object to the use of their lands.⁶³ It is difficult for later FPIC processes to 'heal' the original wound.

7. Key Findings and Recommendations

Overall, the examined Entities have consistently applied the criteria 2.4 (responsible sourcing), 2.7 (mergers & acquisitions), 2.8 (closure, decommissioning and divestment) and 9.1 (human rights due diligence) consistently. There are, however, certain variations that can be noted in the analysis of implementation with respect to different countries/regions and different supply chain activities.

The information provided in the public summary reports is generally sufficient to demonstrate conformance with the criteria. In most cases, the public headline statements also contain a summary of the evidence reviewed. For reports issued after May 2020, the quality and level of detail significantly improved in varying degrees depending on the criteria. The highest improvement concerned criteria 2.4 and 9.1.b (68% and 76% of all cases after May 2020).

A few cases of minor non-conformances were reported for the different criteria:

Criterion 2.4 (responsible sources):	11 Entities (15%)
Criterion 3.4 (complaint resolution mechanisms):	4 Entities (5%)
Criterion 9.1.a (human rights policy):	1 Entity (1%)
Criterion 9.1.b (due diligence process):	10 Entities (14%)

All Entities were fully conformant with respect to the other criteria. In general, it can be noted that minor non-conformances appear in nearly all countries/regions.

A few Entities reported non-applicability of the following criteria:

⁶³ O'Faircheallaigh, C., *Negotiations in the Indigenous World. Aboriginal Peoples and the Extractive Industry in Australia and Canada*, New York and Abingdon, 2016, p. 39.

Criterion 2.7 (mergers and acquisitions):	3 Entities (4%)
Criterion 9.3 (Indigenous peoples' rights):	65 Entities (88%)
Criterion 9.4 (FPIC):	65 Entities (88%)

As regards human rights due diligence, one Entity was rated minor non-conformant with criterion 9.1.a, because its human rights policies do not include a specific commitment stating the Entity's respect for human rights. Ten minor non-conformances with respect to criterion 9.1.b relate to shortcomings concerning the design of the due diligence process as well as to deficiencies relating to the implementation of the process in respect of security and/or catering service providers.

With respect to criterion 3.4 on complaint resolution mechanisms, the four cases of minor non-conformance were all based on the grounds of ineffective implementation of a control, process or procedure and one in addition for missed or unknown legal requirements and another one in addition for inadequate training.

There seems to be limited certainty among Entities and auditors as to the meaning of the principles mentioned in criterion 3.4 for an adequate complaint resolution process. Entities fulfil the principles accessible, transparent, understandable and adequate to address stakeholder complaints to different degrees. No Entity indicated that it took special action to conform with the principles of culture and gender sensitivity of the complaint resolution mechanism.

Only nine Entities included criteria 9.3 (respect for the rights of Indigenous peoples) and 9.4 (FPIC) as applicable within their scope. All other Entities declared the criteria not applicable for them (or stated no Indigenous peoples were found in the area of operation). Research on the Entities' operations, including those in Brazil, China, Russia and the USA, confirmed that those Entities who had declared criteria 9.3 and 9.4 non-applicable for them have (or seem to have) rightly done so.

Some Entities are investing more than others in its relations with Indigenous peoples. A high-level assessment of the Entities' practices leads to the conclusion that those Entities who have the closest and most serious contact with Indigenous peoples have also invested most.

Seven of the nine Entities stated that they were not involved in specific FPIC processes because no Indigenous peoples were impacted by their operations. At the same time, all nine Entities stated that they had adopted policies and processes in relation to FPIC or were seeking FPIC when required to do so by national or international law. Only two Entities reported on ongoing FPIC/consultation processes. Based on the available information it remains unclear in how far the mentioned consultation processes fully comply with the requirements of FPIC.

Recommendations

The following recommendations are made to ASI with respect to the general improvement of data quality and reporting standards; with respect to conceptual issues relating to particular criteria; and with respect to training and capacity building.

General improvement of data quality and reporting standards:

- Consider improving data capture, analysis and comparison by introducing more specific reporting requirements based on specific key terms, activities and points to consider contained in the Guidance to the Performance Standard. Special focus should be placed on the elements, design and implementation of a responsible sourcing policy (criterion 2.4), of adequate complaint resolution mechanisms (criterion 3.4) and of policies and processes to respect the rights of Indigenous peoples (criteria 9.3 and 9.4).
- Consider developing reporting schemes that differentiate performance geographically and by supply chain activities in a broader Certification scope.

Conceptual issues for specific criteria:

- *Criterion 2.4:* Determine whether or not an effective responsible sourcing policy should include due diligence measures for suppliers beyond the first tier.
- *Criterion 3.4:* Clarify and explain the meaning of the principles for complaint resolution mechanisms, *i.e.* accessible, transparent, understandable, culturally sensitive, gender sensitive and adequate to address stakeholder complaints.
- *Criterion 9.3:* Reflect and confirm to what extent general CSR-measures building capacities for Indigenous peoples count for implementation of the criterion, if they are not directly linked to Certified operations of the Entity.
- *Criterion 9.3:* Determine ASI's stance towards the existence of Indigenous peoples in China.
- *Criteria 9.3 and 9.4:* Develop more detailed points to consider for determining how close Indigenous peoples must be situated to Entities' operations so that their concerns are to be considered for the fulfillment of the criteria.

Training and capacity-building

- *Criterion 3.4:* Train auditors with respect to the principles for an adequate complaint resolution process, including training on cultural and gender sensitivity.
- *Criterion 9.4:* Train auditors as to the particulars of FPIC processes, including methodological issues and procedural requirements.
- *Criteria 9.3 and 9.4:* Strengthen the capacity of IPAF to give advice on issues relating to Indigenous peoples and to network with Indigenous peoples' organizations in critical countries with oppressed Indigenous communities and national minorities.