

Independent review of global best practices to inform an international standard on mine tailings storage facilities

A. Context and importance of independence

Context for the review

[ICMM](#), [PRI](#) and [UNEP](#) share a commitment to the adoption of global best practices on tailings storage facilities. ICMM has committed to developing an international standard for tailings storage facilities for its member companies. The standard will be informed by and developed through an independent review of current global best practices in the mining industry, and beyond, and adherence to the standard will become part of the membership requirements of ICMM. The review will be co-convened by ICMM, PRI and UNEP. While the standard would become an ICMM company member commitment, the co-convening partners will encourage others to join in advocating for it to be adopted more broadly.

Ensuring process independence and integrity

How do we engage external parties in a manner that underscores the independence and integrity of the review process, and supports the delivery of a pragmatic, progressive, workable outcome that members will be willing to implement?

Working assumptions:

1. ICMM members are committed to a step change in performance (design, operation and closure) to restore the confidence of key stakeholders, including investors and host communities.
2. To be a credible process it needs to be multi stakeholder. A wholly industry-owned process will not be regarded as credible and will therefore serve no purpose.
3. Governance of the process is key to ensure independence as ICMM will have to fund the review, and its members will be involved in providing input,
4. The appointment of a Chair that is regarded as objective and impartial to oversee the work of an expert panel is a critical success factor.
5. The co-convenors are committed to engaging representatives from civil society, communities, industry, investors, and multilateral organisations, as well as engineers and subject matter experts, to determine the detailed scope of the review. Instilling confidence in stakeholders by considering their views is a critical success factor.
6. Providing a timely solution that member companies can move to implement is very important, so the stakeholder engagement parameters will benefit from risk prioritisation and a specified list of achievable outcomes.
7. The co-convenors are equally invested in achieving a workable outcome, to avoid inhibiting uptake and implementation by ICMM members or others within the industry.

B. Considerations for good governance of the review

1. **Oversight by a limited number of co-convening parties with an equal say:** ICMM will co-convene the review with two independent institutional partners: the Principles for Responsible Investment (PRI) and UN Environment Programme (UNEP). Key decisions relating to the overall process will need to be by mutual agreement between the three co-convenors. For example, all parties would need to be supportive of the choice for an independent Chair for the expert panel.
2. **Autonomy of the Chair to effectively lead the review:** The Chair will work with the co-convenors to appoint the expert panel and determine how the review will be conducted, based on a scope of work to be agreed with the co-convenors.
3. **Active engagement of a diverse set of stakeholders:** The co-convenors will agree on how to actively engage a diverse set of stakeholders (for example in an advisory capacity), but within defined Terms of Reference to be agreed by the co-convenors at a very early stage. The input of stakeholders will be advisory – in the first instance, to the co-convenors in determining the scope of the review, and subsequently to the Chair and expert panel in the conduct of the review.
4. **Technical input from tailings experts in mining companies:** The Chair and expert panel will also have access to technical expertise on tailings from across ICMM members. This group could be used as a resource to either solicit information on current management and governance practices, or as a sounding board for initial ideas that the expert panel may wish to test. Their involvement would be demand-driven rather than supply-driven.

C. Summary of proposed governance structure and key roles for each entity

1. Co-convenors.

Representatives: ICMM, PRI and UNEP

Roles:

- Define the governance of the review, including agreement on:
 1. Terms of reference for Chair
 2. Terms of reference for Advisory Group
 3. Schedule
- Select chair
- Select the expert panel
- Monitor progress
- Review and comment on the international standard to be developed, to ensure it is fit for purpose
- Review and comment on the draft report and recommendations

Likely time commitment: 2 x 1-day physical meetings, interviews of candidates for chair if needed, plus some time to review and comment on TOR and reports (10 - 15 days in total).

2. Chair

Senior, respected person who will be seen as independent. S/he will likely be a former employee of multilateral organisation, a former government minister, or some other person with demonstrated experience of chairing diverse groups to develop policy or standards, ideally complemented with senior (board level) experience in the private sector.

Roles (within agreed terms of reference per above):

- Select experts in accordance with qualification criteria
- Engage with Advisory Group to obtain their input prior to commencing work
- Determine review scope and work programme with experts
- Oversee report compilation
- Consult with Advisory Group on report and recommendations
- Run public online consultations and/or regional consultations as appropriate
- Consult with Co-Convenors on report and recommendations
- Finalise and present report

Likely time commitment: 90 – 140 days, spread over about 8 months.

Administrative and logistical support will be provided to the Chair.

3. Advisory Group

Representatives of important stakeholder groups tasked with providing advice to the Chair and expert panel comprising no more than 15 people representing the following categories:

- Human rights
- Community NGO
- Indigenous Peoples
- Labour
- Environmental NGOs
- Investors
- Insurers
- Multilateral Development Banks
- Tailings experts
- Mining associations
- Oversight institutions for global codes or standards

Roles:

Provide consultative input to the Chair and expert panel in an advisory capacity at key points in the process.

Likely time commitment: 10 days including feedback etc and including 2 meetings (possibly 3 if iteration needed)

4. Expert Panel

Representatives: no more than 7 technical experts with diverse range of disciplines (such as safety/risk analysis, tailings, organisational behaviour, (ex) regulator, community/social expert), selected in accordance with a pre-determined minimum list of qualifications.

Roles:

Execute agreed work programme and support chair in report compilation and responding to consultations

Likely time commitment: 45 to 60 days per expert over 6 to 8 months. A legal expert will either be on the panel or will provide advice to the panel.

5. Technical experts on tailings within ICMM members

Technical experts on tailings within ICMM member companies.

Roles:

This group could be used as a resource for the chair and panel of experts to either solicit information on current management and governance practices, or as a sounding board for initial ideas that the expert panel may wish to test.

Likely time commitment: As needs basis

D. Objective and scope of the review

Objective

To review current global best practices in the mining industry, and beyond, and based on this information develop an international standard that creates a step change for the industry in the safety and security of tailings storage facilities (TSFs).

Scope

Building on existing global best practices, the overall scope of the review will be determined by the need to inform the development of a standard that addresses, but is not limited to, the following:

- A global and transparent consequence-based TSF classification system with appropriate requirements for each level of classification.
- A system for credible, independent reviews of tailings storage facilities.
- Requirements for emergency planning and preparedness.

The first output of the review is an international standard that can practically be implemented to achieve the objective of the review. The review will also consider governance options to ensure uptake of and compliance with the standard. This output must enjoy the support of the three co-convenors.

The second output of the review is a report that outlines broader recommendations for the industry. The analysis of the behavioural, cultural, and structural factors listed below, which may not lead to specific provisions in the international standard, will inform these broader recommendations. The Chair is empowered to independently propose recommendations, and the parties subject to the recommendations will respond to them as appropriate

The detailed scope of the review will be refined through a process of engagement with representatives from communities, civil society, industry, investors, and multilateral organisations. However, it could focus on the following aspects:

Classification of TSFs:

- What classification systems already exist for TSFs and what are the perceived strengths and weaknesses of each?
- What relative weights is afforded to the consequences of failure in each of these classification systems and how does that translate into requirements for emergency planning and preparedness
- What are the public reporting/disclosure requirements associated with each classification system, to regulators and other stakeholders (including local communities and investors)?
- Broadly speaking, how effective have these classification systems been in preventing the failure of TSFs or mitigating their effects?
- What would a consequence-based TSF classification system look like, that could be practically applied irrespective of geographic location or the existing requirements of classification systems, and would be resilient to climate change?
- What would the requirements for independent review (see below) or emergency planning and preparedness look like for each classification category?

Independent review of TSFs:

- What independent review processes already exist for TSFs (e.g. independent tailings review boards, independent geotechnical review boards, engineers of record) and under what circumstances are these applied?
- What testing, monitoring and inspection regimes apply to TSFs, how do these relate to the design of the TSF (e.g. upstream, downstream, centreline), and to the requirements for independent review?
- What are the perceived strengths and weaknesses of existing independent review processes and testing and inspection regimes?
- What would the requirements for independent review look like for each classification category (see above)?

Behavioural, cultural, and structural factors:

- What are the cultural, behavioural and incentive barriers within companies that block better management of TSFs?
- What structures and mechanisms for learning and accountability exist in our own industry (e.g. TSM) and other industries (oil and gas, nuclear) and what could we learn from them?
- What are the formal and continuing education requirements, as well as training, that are available for those who manage TSFs, both within companies and externally?
- What are the structural causes of and possible remedies for the shortage of experts (inadequate indemnification, consultant industry consolidation)?
- How could companies better engage with communities about the possible consequences of failure, to encourage better preparedness?

- Since the release of ICMM's position statement on tailings governance, what changes have been instituted relating to the governance of tailings storage facilities, and is change management being better managed?
- How can company tailings experts be more “empowered through internal governance structures, and should a more rigorous “competent persons” approach be considered, similar to ore reserves sign off?
- What changes should be considered to enable significant risks relating to tailings storage facilities to be elevated to senior management, e.g. Executive Committee level?

Beyond the scope of the present review:

- The review (and associated standard) will not cover detailed technical design criteria for tailings dams which are already covered by organisations such as the International Commission on Large Dams (ICOLD).
- The review will not look to exclude certain technologies such as upstream TSFs from future use. However, it will extend to the considerations that should determine the choice of such technologies or their suitability
- Riverine, deep sea and non-tailings related storage of materials will not be included in this review.
- Standards for rehabilitation of affected areas will not be part of the review or the standard to be developed.

E. Timeframe for the review

Once the Chair and expert members of the panel have been appointed, the expectation is that the main deliverable of the review will be completed within 6 months. However, there may be additional work as part of a second phase to support implementation

Annex 1: Role Specification for the Chair

The Chair should be a senior, respected person who will be seen as independent. S/he will likely be a former employee of multilateral organisation, a former government minister, or some other person with demonstrated experience of chairing diverse groups to develop policy or standards, ideally complemented with senior (board level) experience in the private sector.

Roles of the Chair (within agreed terms of reference per above):

- Select experts in accordance with qualification criteria
- Engage with Advisory Group to obtain their input prior to commencing work
- Determine review scope and work programme with experts
- Oversee report compilation
- Consult with the Advisory Group and others at key points in the process and on the draft report and recommendations
- Consult with Co-Convenors on report and recommendations
- Finalise and present report

The qualification criteria for the Chair are the following:

1. With some technical background in or demonstrated exposure to oil and gas, nuclear, hydropower, or other capital-intensive industries with significant safety issues to manage
2. Understanding of the concerns of, and credibility with, broad constituency (communities, indigenous peoples, etc)
3. Not currently or recently connected to mining, which would be seen as compromising independence; although prior mining sector experience would be helpful.
4. Understanding of, or ideally experience working with, business/investor community
5. Experience in forging policies across multiple disciplines (through, for example, multilateral or governmental processes)
6. Ideally, but not essentially, with prior experience running a similar high-level independent review process (e.g. Rana Plaza, Bangladesh)

The Chair will need to be available till the end of 2019. As mentioned in Section C 2 above, the likely time commitment is 90 days, spread over about 8 months.

Interested and qualified individuals should contact Aidan Davy, COO of ICMM, at aidan.davy@icmm.com, with a copy to John Howchin, Secretary General, The Council on Ethics for Sweden's AP Funds, at john.howchin@councilonethics.org, and Elisa Tonda, Head, Consumption and Production Unit, Economy Division, at elisa.tonda@un.org.