

24 March 2017

The Corporate Human Rights Benchmark is pleased to respond to the Responsible Mining Index consultation on its draft methodology – and to congratulate the Foundation. We know what a big step this is and congratulate and support you for getting to this point. In the spirit of consultation and working collaboratively to collectively improve our efforts to promote responsible mining, we have provided the following comments. We would be pleased to discuss them further and provide any further assistance we can in furthering RMI’s work.

### Comments

#### Definitions:

- **FPIC** is considered a right for indigenous peoples, not just a principle. In addition, it is not really appropriate to say “such as”. Recognising that other community groups are now claiming a right to FPIC, it is nonetheless a recognised right for IPs and should at a minimum say “in particular” rather than “such as.” In addition, you might want to use more of the specific wording from UNDRIP in your definition.
- **Due Diligence** – be careful as this definition of due diligence is narrower than the definition under the UNGPs which takes an even broader approach and includes tracking and communicating about due diligence results. If you are going to use the narrower (and perhaps more well accepted breadth of definition), you may want to at least note that there is a difference when it comes to “human rights due diligence”.
- **Living wage** – see the new work from ISEAL on this as they are likely to have a fuller and more accurate definition
- **Mitigation hierarchy** – prevention deserves a place next to avoidance (and connotes more active steps than just avoidance)
- **Remedy** – if you are referring to human rights, then we would suggest using the UNGP definition – see UNGP 25:

*Access to effective remedy has both procedural and substantive aspects. The remedies provided by the grievance mechanisms discussed in this section may take a range of substantive forms the aim of which, generally speaking, will be to counteract or make good any human rights harms that have occurred. Remedy may include apologies, restitution, rehabilitation, financial or non-financial compensation and punitive sanctions (whether criminal or administrative, such as fines), as well as the prevention of harm through, for example, injunctions or guarantees of non-repetition. Procedures for the provision of remedy should be impartial, protected from corruption and free from political or other attempts to influence the outcome.*

- **Responsible Business Conduct** – is about more than just avoiding adverse impacts. If there are adverse impacts, they must be managed and remedied. See your other definitions – for example on due diligence and management systems; at the moment these do not all fit together coherently.

- **Salience** – you risk creating confusion here as you are using the term differently than the organisation that has been driving the development of the term, based on the UNGPs. See the UNGP Reporting Framework for an explanation.

**B.2.1.** – You have included human rights in the Index and specifically refer to the UNGPs. But you have not made an explicit linkage in the methodology between “social” performance and human rights. The pieces are therefore not linked up. You might consider defining social performance to explicitly include human rights issues or refer to environmental, social and human rights performance.

**B.3.1.** – As this is an extractive sector index, it is surprising not to see any reference to specific parts of the EITI standard here – although recognising there are extensive references to EITI in the reference section.

**D.6.1.** – see above on the definition of FPIC. As it is a right, companies should “respect” the rights of IP to FPIC rather than just “support.” “Support” does not have a defined meaning in human rights law and could be interpreted (or misinterpreted) to cover a wide range of measures.

**D.7.2.** – The phrasing of this indicator does not capture many of the important dimensions around resettlement that are in the textual discussion. Recognising that it would be difficult to capture them all, the indicator nonetheless seems very passive about what is expected – only that mining companies “evaluate” whether living standards are improved or restored. There is a middle bit of the indicator that is missing about actually carrying out (or supporting the government to carry out) resettlement with the objective of improving or restoring, before getting to evaluation.

**D.9.1.** It is good to see the “and” here to indicate that enhancing community well-being does not substitute for respecting human rights. Suggested reworking: **The company seeks to enhance community wellbeing and commits to respecting human rights, for example through alignment with in line with the UN Guiding Principles on Business and Human Rights.**

**D.9.2 & D.9.3** – With only three indicators on human rights, it seems quite imbalanced to have two of the three focused on reporting. The indicators are missing the three main steps of the UNGP – putting in place a policy commitment, human rights due diligence and providing for or cooperating in remedy. By focusing so much on reporting, the indicators miss the main steps companies must put in place to be able to report. Would suggest that if you are having only three indicators on human rights that you focus on these three main dimensions (see UNGP 15).

**D.9.3** – terminology – human rights “violations” are a result of government actions; “human rights abuse” or “adverse impacts” are from company actions. (Note that the VPs pre-date the distinctions introduced by the UNGPs so may not use this same distinction in terminology). This sounds like companies should publicly report back to the government on the government’s own violations which may be difficult and not appropriate in all circumstances. In addition, again, this indicator is missing the key parts of the UNGPs. Companies should “know and show” what they are doing across their human rights impacts and are called up to report their most severe impacts, which may or may not include human rights defenders. In addition, given the vulnerability of human rights defenders to violence or oppression, at the hands of companies and/or governments, calling for publicly reporting about them may actually put them in further danger. Identified risks to human rights defenders should be part of a systematic human rights due diligence process and should be dealt with according to the seriousness of the concern (which may be very serious), but dealt with

appropriately to protect the defenders – which may or may not be through publicly identifying and reporting on them.

**D.10** – The VP are about how companies manage both their own private security and relations with public security. By focusing on human rights “abuses”, this misses the reference to working with public security. It would be useful to refer to and use some of the terminology of the VPs (bearing in mind the point on terminology highlighted above) – for example, the VP refers to security arrangements rather than security management; better to align terminology if you are seeking to align with the initiative. The VP are not only about minimising risk, but also about preventing risk. In addition, the description of what the VPs cover seems like of scrambling of the issues covered. Suggest a more systematic summary. Suggest reaching out to the VP Secretariat to discuss suggested wording for the indicator.

**D.10.2** - Large scale mining companies should always have systems in place to manage all risks to all workers. It is good to see a reference here to workers and not just employees. Companies do not always see that it is their responsibility to address security of surrounding communities. So that should be the emphasis of this indicator. These should not be only for conflict-affected and high-risk areas. It would then be important to reference IFC PS 4. You should also refer to [http://www.ifc.org/wps/wcm/connect/topics\\_ext\\_content/ifc\\_external\\_corporate\\_site/ifc+sustainability/learning+and+adapting/knowledge+products/publications/publications\\_handbook\\_securityforces](http://www.ifc.org/wps/wcm/connect/topics_ext_content/ifc_external_corporate_site/ifc+sustainability/learning+and+adapting/knowledge+products/publications/publications_handbook_securityforces)

**D.11.** – Is there a need to specify that these are “formal”? That risks emphasising the wrong dimension. It would be preferable to emphasise that the mechanisms are “legitimate” or “effective” as used in the UNGPs. In particular, it would be very important to see in the commentary a reference to the effectiveness criteria in UNGP 31. In addition, if you are picking out such few aspects of remedy, reporting may not be the most important point. A better focus here would be on involving users in the design and performance. Also important re-wording: Claimant’s access to effective remedy, rather than effective access to remedy.

**E.2.1.** – Shouldn’t this be a commitment to providing safe and healthy working conditions rather than promoting it? Mining is a dangerous industry and this should be reflected in the indicators.

**E.6.1** – is quite weak. Instead company should prohibit these practices *and* take active steps to prevent them.