

**September 2015**

## **Submission on the Corporate Human Rights Benchmark**

### ***Framework paper and draft list of indicators for public consultation***

#### **Introduction**

The International Council on Mining and Metals (ICMM) welcomes the call for comments on the corporate human rights benchmark.

ICMM is an organisation of 23 leading mining and metals companies and 35 associations that collaborate to promote responsible mining, with a shared commitment to respect people and the environment. Part of this commitment includes the requirement that members implement and measure performance against our 10 sustainable development principles including the need to *uphold fundamental human rights and respect cultures, customs and values in dealings with employees and others who are affected by our activities* (Principle 3).

This submission includes some general comments before addressing the specific questions posed in the feedback template (see Annex I).

#### **Extending the requirements of the UN Guiding Principles**

At times the draft indicators go beyond what is expected from the UN Guiding Principles (UN GPs). An obvious example of this is the blurring of the lines between the duty of governments and the responsibility of business. Though the notion of 'leverage' is addressed in the UN GPs, the requirement of draft indicator A.1.1 goes far beyond this (companies to commit to promoting the protection of human rights by governments and/or to take certain public policy positions).

'Promoting' human rights is different from the 'do no harm' requirement of the UN GPs and should not be the starting point for this benchmark. Score 1 relates to a 'commitment in principle' - how would companies demonstrate this and the benchmark verify it? As part of company engagement with governments, they are likely to have discussions seeking to influence them on a range of issues, but this needs to be done in a very sensitive way and is beyond the commitment to 'respect human rights'.

There is further blurring of the lines in indicator D.1.4 which is discussed in the specific comments section below.

#### **Assumption that everything be refracted through a human rights lens**

Companies will be managing and reporting on a number of the issues highlighted in the benchmark without necessarily framing them in human rights terms (for example, health and safety). Assuming that these should be refracted through a human rights lens does not reflect the reality of how they are managed in companies. For example, (and particularly in relation to indicator C.2.2) the risks anticipated for the sector (including environmental protection and health and safety) will be prioritized as part of a broader materiality assessment and not necessarily through processes to 'assess and prioritise actual and potential human rights impacts and risks'. The prescriptive nature of the information being sought fails to acknowledge whether or not information is material to the business or to its stakeholders.

Similarly, indicator C.2.3 assumes that companies would have a separate process for engaging with stakeholders on human rights when in reality this would be integrated into broader engagement activities. Greater clarity needs to be provided on how these existing processes will be taken into account as many companies will be addressing human rights through an integrated, rather than standalone approach.

Greater clarity is also needed on the alignment of reporting requirements of Shift, GRI, the Dow Jones Sustainability Index etc.

### **No consideration given to company's materiality assessment processes**

The need to report on everything considered as important in the benchmark is not balanced with consideration of company's existing materiality processes. A more practical approach (which would be better aligned with the Shift framework) would be for businesses to identify their salient human rights risks and report, over time, on how they are managing these risks.

### **Indicators could result in subjective assessment of a company's ranking**

We would urge you to consider carefully the language used in the indicators to ensure they are objective. There are several indicators which include words such as 'comprehensive', 'effective, organized and aligned', 'understandable format' etc. which will force the individual/organization conducting the benchmark to make value judgements.

Similarly, a number of the indicators will be open to interpretation. For example, company's human rights policies are likely to refer to the ILO Declaration on Fundamental Principles and Rights at Work but may not refer to the specifics. Similarly, Indigenous policies may not reference FPIC explicitly as this is only one element of engagement with Indigenous Peoples.

### **The adverse events section (D.2) is not fit for purpose**

As currently framed, this section lacks clarity on how companies will be scored around their reporting on adverse events, particularly as no examples of the "sub-indicators" are provided. While EIRIS provides useful ESG analysis, they do not have the legitimacy to determine whether there are "enough details to substantiate and link the Company or its business relationships to the allegations". It is also not clear the weighting that will be given to the different indicators (severity, legal/regulatory etc.) or how severity will be calculated. EIRIS also do not have the expertise to determine whether "it seems likely that such deaths or injuries were only avoided by chance".

For high severity risks, it is critical that these are substantiated (for example through national human rights institutions or by legal/regulatory bodies) before being considered. The current wording around medium severity risks implies that companies could be negatively scored based on news stories which have not been substantiated. There may be reasons unconnected to a company's impacts which make them targets for negative stories where no human rights may have been breached. There needs to be a better means of substantiating claims.

### **Conclusion**

Finally, we note that three sectors have been chosen for the initial analysis. We assume that there will be an even number of companies from each sector included in the benchmark. If this is not the case, it would be useful to know the justification for those companies being selected.

We thank the benchmark organizations for considering inputs from a wide range of stakeholders and urge you to balance pragmatism with the need to advance practice in this area. In this regard, it is easy for interested stakeholders to demand a range of information from reporting entities, but consideration should be given to the practical limitations companies face around fully disclosing all aspects of reporting on their human rights activities.

We are willing to discuss any element of this submission at your convenience.

For ICMM, the key point of contact will be as follows:

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## Annex I: Responses to the specific questions posed in the feedback template

### (I) BROAD CRITICAL ISSUES

#### 1. Have we got the principles behind the weighting of the measurement themes correct to ensure a balance between policy and performance? If no, what needs changing?

- Given the weaknesses with the current section on ‘adverse impacts’, this should not be 20% of the overall benchmark.
- The policy indicators for management systems are overly detailed. They should be simplified and subject to a relevance test.
- The reporting/transparency section is duplicative (see below).

#### 2. Have we covered the Key Sector Risks that we should be considering for the Extractive, Agriculture and Apparel Sectors?

As noted above, not every issue listed (e.g. health and safety, environmental protection) will be addressed through a process of human rights due diligence, but through other processes (for example, integrated risk assessments). The benchmark needs to better consider the other processes through which issues are being managed and not assume they should all be refracted through a human rights lens.

#### 3. Is the Benchmark fit for purpose for all stakeholders?

The exact audience for this benchmark is unclear. The information would be onerous even for the primary audience (the benchmark team) to get through. It is unclear exactly what will be achieved by collecting all of this information.

### (II) FEEDBACK ON MEASUREMENT THEMES AND INDICATORS

#### A. MEASUREMENT THEME: Leadership - 10%

- On A.2.1, given ICMM’s mandate, we see value in companies differentiating themselves as a leadership group as opposed to as individual companies
- On example is ‘leaving such bodies’, is it not better to be influencing trade associations/industry bodies from within as opposed to leaving them completely?
- Voluntary membership of leadership associations that are setting benchmarks and seeking to improve performance should be considered

#### B. MEASUREMENT THEME: Governance - 10%

##### B.1 Policy Commitments (5%)

- On B1.1 only voluntary codes should be referenced and not regulatory requirements such as the OECD Guidelines which are really not voluntary.
- On B.1.2, the extractives specific scoring (for a score of 2) companies may not be explicit in committing to exceeding the requirements of applicable laws, but their own policies may go far beyond these. How will the benchmark judge what the higher standard is? Additionally, for a score of 2, the indicator assumes that companies only operate in regions of weak legal/regulatory frameworks. The score of 2 is not appropriate in contexts where health and safety frameworks are robust.
- On B.1.3., the extractives specific scoring, ILO convention 169 and UNDRIP apply to states and only have implications for companies where they have been adopted into national legislation. Companies could not deliver on them, absent adoption at this level. For a score of 2, there needs to be clarity on what ‘international standards on

Indigenous Peoples' are being referred to. Many of them approach FPIC differently and will apply to states and not companies. We suggest you refer to ICMM's Position Statement on Indigenous Peoples for an industry definition.

### ***B.2 Board Level Accountability (5%)***

- On B2.3, How would you verify the Board being able to describe the human rights experience of a Board member? The question needs to be reworded to be more practical i.e. the Board is appraised of human rights risks and issues by subject experts within the company, at least on an annual basis.
- On B2.2, Greater clarity is needed on how companies would score if human rights is one of several elements considered by the board, but not reported on separately, for example some companies would have sustainability committees of the Board which governs all of the company's sustainability issues (including human rights). Would this get companies a score of 2?
- On B2.4 human rights risks are likely to be reported and discussed as part of a broader consideration of company's material risks. It is unclear if this integration would be acceptable
- On B.2.5, examples of what these incentives/targets look like would be helpful. There is unlikely to be much reporting on this currently.

## **C. MEASUREMENT THEME: Management Systems - 30%**

### ***C.1. Embedding policy (5%)***

- Greater clarity on what is expected would be useful. For example, if the policy applies to the whole company, would this count?
- The expectation of C.1.2 is unclear and should be reworded. Particularly for a score of 2, what evidence will be used to determine 'ongoing alignment'? How exactly do you show "alignment in practice with most important functions"?
- C.1.4 seems duplicative of B.2.5. Would management incentives for meeting health and safety targets meet the intent of this question? (and given that health and safety is considered a human rights issue elsewhere in the document)
- On C.1.6 who determines "relevant workers"?

### ***C.2. Human Rights due Diligence (15%)***

- C.2.5 is confusing. This is lifted from the UNGPs, but greater thought needs to be given to what the reporting expectation is.
- On C2.2, companies will have enterprise wide risk management processes which enable them to determine materiality of risks. The risk matrix is likely to include human rights but there may not be separate processes for human rights risks. Clarity needs to be provided on whether this integrated approach would meet the requirements of the indicator.
- C2.3 EX is a long and confusing statement. Clarity needs to be provided on what information is being referred to.

### ***C.3. Remedies and Grievance Mechanisms (10%)***

- The indicators consistently require a company to require its business partners to comply with its human rights policies and standards as opposed to focussing on leverage and influence as outlined in the UN GPs.
- C3.1 EX is an over-reach if it suggesting resource companies should support JV partners and contractors to facilitate compliance and develop complaints mechanisms.
- On C.3.2, the required information for score 1 is not a measure of effectiveness.

**D. MEASUREMENT THEME: Performance - 40%**

**D.1. KPIs & Good Practices (20%)**

- The score of 2 for D1.3 (diminishing percentage of temporary workers) does not account for the mining lifecycle where there is likely to be a large temporary workforce during construction
- On D1.4, for a score of 2, it suggests that if an underage employee was found by the company, they should continue to employ them/break the law through the child 'transitioning' to education
- This requirement needs to refer to employing people in accordance with the law of the country rather than using 'school age' employees which may be legal.
- On D.1.5, the information on being employed at night is far too detailed for a human rights policy and should be covered under general commitments around child labour.
- No employees (no matter what age) should have their health and safety compromised.
- Definition is needed for 'young people'.

**D.2. Adverse Events (20%)**

- As above, much greater clarity needed on this section. We have a serious concern about basing significant proportion of the score on unsubstantiated allegations.
- Over what period will this information be gathered? Annually? If so, will historical grievances which have been addressed by the company be excluded from the analysis?

**E. MEASUREMENT THEME: Reporting and Transparency - 10%**

- Given that the benchmark by its very nature will be assessing reporting and transparency, this section seems duplicative.
- Several of the indicators are similar with minor differences (e.g. having a policy in place versus reporting on it or a commitment versus a process). See for example: E.1.1 and B.1.1, E.1.2 and C.1.7, E.1.4 and C.2.2
- Score 2 is duplicative on A3.1 and B1.1
- On E.1.2, reporting on number of hours trained is not a useful measure of performance. It is also unlikely that business will keep track of 'hours' of training.
- On E.1.7, 'reporting on some ILO standards' is not specific enough