**February 2016**

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

**Introduction**

The International Council on Mining and Metals (ICMM) welcomes the opportunity to provide comments on the revised corporate human rights benchmark.

ICMM is an organisation of 23 leading mining and metals companies and 34 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 some specific questions by section (see Annex 1).

Overall the revised benchmark is an improvement. We can see that the team have addressed feedback on the previous version and resolved some of the most fundamental concerns. In particular efforts have been made to avoid conflating the responsibilities of companies and governments and there is better alignment with the UN Guiding Principles on Business and Human Rights (UNGPs). We also very much welcome the addition of crediting company efforts on transparency and disclosure.

One of the strengths of the UNGPs process was that business was actively engaged in the development and final agreement of the framework. We strongly urge the CHRB to take more time in the development of the methodology, in particular to address the following three areas where significant concerns remain.

**Section E: Serious Allegations**

Whilst we welcome some of the additional information provided in the revised version (for example on the difference between Level 1 and 2 allegations) overall the concerns we raised in our September 2015 submission remain. Principally on how the credibility of allegations will be established and evidence required, and on scoring and weighting. See specific comments in Annex 1.

**Information required to demonstrate that indictors are met**

The fact that the benchmark relies on publicly available information poses significant burdens on company’s public reporting and may not fully respect materiality processes. In addition, much of the information referenced in the indicators may be internal to the companies’ risk assessment processes, and not suitable for publication. There would be value in the benchmark accepting additional information to support answers which is kept confidential above and beyond public documents.

It is still unclear how some of the due diligence information will be assessed. Will company claims that systems are in place be accepted or will detailed examples be required? We also continue to question the assumption that all salient issues (e.g. health and safety, environmental protection) will be refracted through a human rights lens. As we highlighted in our previous submission this does not reflect the reality of how they are managed in companies.

**Business partners**

The definition of ‘business partner’ is overly broad and requires further clarity. There still appears to over-reach in terms of expectations around leverage/ influence of business partners. Whilst we acknowledge the importance of these relationships, and their potential to adversely affect human rights, this is likely to pose a challenge to many of our local partners, particularly in emerging markets, who may not have the sophisticated management and communication processes required by these indicators. In addition further clarity on expectations of on-site contractors and operating partners throughout the methodology would be helpful.

We thank the benchmark organisations for considering further inputs from a wide range of stakeholders. We are willing to discuss any element of this submission at your convenience.

For ICMM the key contact will be as follows:

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**Annex I: Specific comments by section**

**A. GOVERNANCE AND POLICIES**

* ‘Policy commitment’ should be defined broadly and not only refer to what is in a company’s human rights policy. It might include other relevant policies and standards (e.g. health and safety, labour rights etc.)
* On A.1.8, the emphasis on policies regarding human rights defenders is likely to be difficult given the relatively early-stage nature of discussions about this topic.
* Some requirements have not been universally adopted or may be contentious. E.g. ILO Convention 169 (A.1.3) Voluntary Guidelines on Responsible Governance of Tenure (A.1.5), FPIC and international law and standards on IPs (A.1.3).

**B. EMBEDDING RESPECT AND HUMAN RIGHTS DUE DILIGENCE**

* ‘Operating partners’ needs to be clearly defined. Although the revised version defines business partners and business relationships, it doesn’t use these terms in the indicators.
* Many indicators require evidence of how processes involve contractors. It is unclear whether the fact that policies cover all employees and contractors is sufficient or if further evidence is required.
* On B.1.4.A, no industry locks for this indicator listed for extractives.
* On B.1.4.b, which business relationships are included should be defined by companies.
* On B.1. 5, training public security personnel goes beyond scope of VPs and unlikely to be feasible.
* On B.1.6, requirement for external monitors goes beyond scope of UNGPs
* B.2.5 is confusing – how can companies deliver on this?

**C. REMEDIES AND GRIEVANCE MECHANISMS**

* C.2 is confusing, for example how will ‘high risk locations’ be measured?
* Is there demonstrated benefit to contractors having own mechanisms as opposed to encouraging communities to use company led mechanisms?

**D. PERFORMANCE: COMPANY HUMAN RIGHTS PRACTICES**

* On D.1.2, who will determine whether IPs have legitimate land tenure rights?

**E. PERFORMANCE: SERIOUS ALLEGATIONS**

* Concerns remain on what type of third party information will be used to identify and assess allegations. Reliance on media and campaign information is likely to disadvantage large companies with a higher public profile.
* This section should further define who is in scope in relation to serious allegations, (e.g. the company, independent affiliates, any entity in which it owns an interest etc.).
* It appears that only detailed responses to every aspect of the allegation and corrective actions will be considered. However, if allegations are false, misleading or repetitive companies may not issue a point-by-point response. This would appear to count negatively in the benchmark.
* On security violations, does ‘linked to a company’ mean ‘directly linked’ within the meaning of the VPs?
* Clarification on scoring is required as to whether points will be subtracted for serious allegations rather than added to ensure that companies without serious allegations are not disadvantaged.
* Whilst we welcome the greater alignment between the revised methodology and the UNGPs, one important point the UNGPs makes on remediation appears to be missing. This is that expectations around appropriate action and remediation do depend on a business deciding that there are valid, substantiated claims against them and that they are not expected to take action for every claim even if false/vexatious. For example E.1.3 does not reference ‘**where business enterprises identify** that they have caused or contributed to an adverse human rights impact…’ (UNGP 22).
* On the scoring for E.1.3, if engagement is to be an expectation (even if the business does not identify a valid claim) then UNGP 22 should be quoted in full and credit given in the scoring to engagement even if it doesn’t acknowledge the validity of the claim.