

IRMA Draft Submission
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Human Rights Watch welcomes the opportunity to review the draft IRMA Standard for Responsible Mining. Below are recommendations based on research conducted by Human Rights Watch in various countries. Human Rights Watch has carried out extensive research on business and human rights issues, including on human rights and mining in India¹, Papua New Guinea², the Philippines³, Sierra Leone⁴, Uganda, Ghana⁵, Mozambique, Zimbabwe⁶, Zambia⁷, Mali⁸, Nigeria⁹, and the Democratic Republic of Congo¹⁰. The following comments on selected sections of the current draft IRMA standard draw on our research findings.

Chapter 2.1.6. Child Labor

The draft IRMA standard should clearly reference the International Labor Organization (ILO) Conventions No. 138 on Minimum Age and No. 182 on the Worst Forms of Child Labor. It should also explain that most child labor in mining such as work underground, work with dangerous tools, and work in an unhealthy environment that exposes children to hazardous substances (as defined in ILO Recommendation No. 190 on the Worst Forms of Child Labor) is hazardous and thus prohibited under the ILO Convention No. 182 for anyone under the age of 18.

¹ Human Rights Watch, *India - Out of Control*, June 2012, <http://www.hrw.org/reports/2012/06/14/out-control-0>

² Human Rights Watch, *Papua New Guinea - Gold's Costly Dividend*, February 2011, <http://www.hrw.org/reports/2011/02/01/gold-s-costly-dividend-0>

³ Human Rights Watch, <http://www.hrw.org/asia/philippines>

⁴ Human Rights Watch, *Sierra Leone - Whose Development*, February 2014, <http://www.hrw.org/reports/2014/02/19/whose-development-0>

⁵ Human Rights Watch, *Uganda - How can we survive here*, February 2014, <http://www.hrw.org/reports/2014/02/03/how-can-we-survive-here-0>

⁶ Human Rights Watch, *Zimbabwe - Troubled Water*, November 2013, <http://www.hrw.org/reports/2013/11/19/troubled-water-0>

⁷ Human Rights Watch, *Zambia - You'll be fired if you refuse*, November 2011, <http://www.hrw.org/reports/2011/11/04/you-ll-be-fired-if-you-refuse>

⁸ Human Rights Watch, *Mali - A poisonous mix*, December 2011, <http://www.hrw.org/reports/2011/12/06/poisonous-mix>

⁹ Human Rights Watch, *A Heavy Price: Lead Poisoning and Gold Mining in Nigeria's Zamfara State*, January 2012, <http://mm.hrw.org/content/heavy-price-lead-poisoning-and-gold-mining-nigerias-zamfara-state>

¹⁰ Human Rights Watch, *Democratic Republic of Congo - The Curse of Gold*, June 2005, <http://www.hrw.org/reports/2005/06/01/curse-gold-0>

Chapter 2.4 Human Rights Due Diligence and Compliance

Human rights impact assessments should also be required to take into account the specific impacts on women, children, the elderly, persons with disabilities, and marginalized sectors of society or the community. They should draw on disaggregated data to ensure analysis of the different impacts on marginalized groups. The standard should also require staff carrying out human rights impact assessments to have expertise in relevant international human rights law and practice. Further all potential environmental impacts and any other necessary technical analysis should be disclosed, to ensure that human rights impact assessments can address how these issues will impact human rights protections.

Chapter 2.5 Mining and Conflict-Affected or High-Risk Areas

In cases where a company has unintentionally or unknowingly contributed to violent conflict or human rights abuses, in addition to ceasing the offending actions, provision of remedies, and improving due diligence, the company should publish full details of all fees, 'taxes', compensation payments, community development funding and any other kinds of financial support that it was required to or did pay to the government or armed group involved in a conflict or abuses.

Chapter 2.6 Security and Human Rights

Risk assessments should pay particular attention to the impact of mining on women, including the potential for sexual violence, and to measures that would be effective in mitigating those risks. Such measures could include training security personnel on prevention and response to sexual violence and the participation of female security personnel among security staff. The annual reports should not only monitor and put on file complaints, but should also make public the number and nature of complaints received, as well as the time required to resolve each case, and their outcomes.

Chapter 2.10 Free, Prior and Informed Consent (FPIC)

As currently drafted, the standard is limited in that it only requires a company to initiate FPIC scoping prior to any land disturbance. This should be amended to:

- (a) Explicitly require companies not to undertake any activities until it has FPIC have been obtained. Exploration or any other activities should not continue while the FPIC process is ongoing; and
- (b) Require a company to initiate FPIC scoping (and obtain FPIC) prior to undertaking any activities that may affect the lands, territories, livelihoods, culture, religion or other resources and property of indigenous peoples (including, for example, non-invasive exploration).

Rather than requiring the company to determine whether there are capacity issues, the standard should require the company to finance independent legal advice for indigenous peoples unless the affected peoples explicitly decline. A community's consent cannot be "informed" if the sole source of information is the company that wants to exploit resources on their land. The company should also involve national human rights commissions and independent NGOs.

The standard should require companies to identify any indigenous people that own, occupies, or otherwise uses land and territory before undertaking any activity, and identify any representative institutions of those peoples.

The requirement to determine, in collaboration with indigenous peoples, whether the affected peoples may be in need of other technical expertise and to identify social, cultural, economic, environmental, human rights and/or other assessments needed to determine the range of potential impacts is important. Participatory impact assessments are a key tool in this respect. The requirement should specify that all of this information is essential prior to consent being given.

The emphasis on the FPIC process being gender and age inclusive, and involving a broad cross-section of members of the indigenous peoples, and the peoples' own representative institutions is essential. In addition, the requirement should specify the need for public meetings, to provide one more avenue through which individuals that may be excluded from the process can participate.

Chapter 2.12 Resettlement

The standard rightly mentions that there should be opportunities for the communities to improve their standard of living. However, these opportunities are not explicitly articulated in the "requirements" table; explicit requirements regarding minimum living standards should be laid down and drawn from human rights standards.

Further, the chapter focuses mainly on livelihoods, but fails to give equal attention to the rights to housing, education, health and development by considering that all persons, groups and communities have the right to suitable resettlement. This includes the right to alternative land of better or equal quality; housing that satisfies the criteria for adequacy (accessibility, affordability, habitability, security of tenure, cultural adequacy, suitability of location); and access to essential services such as health and education. The standard should specifically require companies to ensure that resettlement does not have an exacerbated adverse impact on marginalized individuals, including amongst others women and persons with disabilities. The standard should also require companies to identify and respect all property rights over land and territories, including traditional and collective or community rights.

It should be ensured that stakeholder engagement is not limited to the resettlement design process, but also during the resettlement process itself, which can often take months or years. Local government officials and independent experts should be present during the actual resettlement too in order to ensure that no force, violence or intimidation is involved. Adequate and fair compensation for all losses and damages, including to property, social infrastructure, and all relevant conditions for resettlement should be prepared and ready by the time of resettlement to minimize disruption to affected persons, groups, and communities.

The section lacks any reference to grievance mechanisms and access to remedies. Complaints or grievance procedures should be in place before the actual resettlement starts. This should also include access to timely remedies.

Documents such as environmental assessments, periodic environmental monitoring reports, resettlement action plans, and updates on implementation should be made widely accessible, including by providing short summaries in non-technical language, translating the summaries and the full reports into local languages, posting them on the internet, and providing copies in public buildings such as local schools in directly affected communities.

Certification

The current certification system is not clearly explained in the standard, although referred to in the chapters. Given the importance of the matter, a more detailed elaboration of the actual process should be presented in the form of a separate chapter. From the available information it does not become clear whether the auditors would conduct on-site visits of all facilities and sites belonging to a company.