



COMMENTS ON THE MINING CERTIFICATION EVALUATION PROJECT (MCEP) WORKING PAPER 1

The Chamber of Mines of South Africa welcomes the opportunity to comment on the working paper. We commend the editors and working group for having prepared an excellent document, and indeed for the initiative they have taken in carrying out the project. We welcome the fact that the ICMM principles have been used as the basis for the criteria. However, there are some important matters of principle that we cannot support as the document stands. We trust that our comments can be accommodated, thereby extending support for the project.

Our comments on the document follow. Please keep us updated on project developments.

General and Major Comments

1. We are concerned that there does not appear to be much communication between the MCEP and the initiative to develop a GRI mining sector supplement (the latter merits only a footnote – no. 96 on p 49), though we note that there is some overlap in steering committee membership. We consider it essential that there be consistency in the outcomes of the two projects.
2. We are not convinced that it is possible to develop a set of global criteria for certifying mines. There are so many differences between regulatory systems, cultures, commodities and types of mine that the MCEP risks either a lowest common denominator approach or setting de facto global standards. The former would be pointless and the latter involves stepping into politically dangerous territory.
3. There is an implicit assumption in several places in the document that international standards will be more stringent than local or national standards (e.g. “an internationally recognised EMS standard” prescribed in criterion 6 b) i (p 33)). This is not always the case. It is necessary in such cases for the most appropriate standard to apply, i.e. probably the stricter one.
4. We do not agree (section 7.3, p 22, is the first instance where this appears) that some technologies are never permissible. While riverine tailings disposal may, in the majority of instances, impose unacceptable impacts on the environment, it is quite a leap to say that the practice is always wrong, in all circumstances, for all time, anywhere on earth. Instead, in such instances, a scientific risk assessment process should be followed.
5. The discussion of the complex issue of “free, prior and informed consent” in section 8.4 (pp 26 – 27) is helpful but does not resolve all of the issues. Furthermore, the recognition in the section of the complexities involved (see particularly the second paragraph) is not carried through to the criteria, where issues tend to be addressed in rather dogmatic terms. We fully agree with the statement that the issue “is a complex topic” and that further guidance is required. We consider that the following questions must be answered by the project before it can go further:
 - How many people must accept or reject a project? Criterion 3 e) ii and endnote 53 imply that it is more than “some individuals”, but additional guidance is necessary. The South African view is that a point is reached when there is “sufficient consensus”. This eventually implies a political decision is taken in the long-term interests of the broadest group.

- What size and structure must a group of affected people have to qualify for the right to give their consent before a project can go ahead?
 - What is a community? It should also not be implied that communities always have a shared view on issues. The biggest problems arise when there is neither agreement on a single view nor a clear and uncontested “voice” for the community.
 - When do national needs and priorities supersede those of a community? A fundamental issue with regard to mining is that a mine can only be built where a mineral is found. Because minerals are regarded in many countries, including South Africa, as the nation’s endowment, the right to develop them is held by the government. Therefore it may be the case that the national interest is considered to override that of a community. Clearly, this principle may be abused by authoritarian regimes, but ought not to be by democracies. Thus this question is very important.
6. We are concerned that many of the criteria referring to the rights of indigenous peoples infringe on matters of national sovereignty. If the MCEP is to attain the global acceptance it ultimately seeks (Questions for reflection, p 6), then it must take account of the different understandings of the rights of indigenous peoples around the world. If the MCEP is seen to be a political instrument for indigenous peoples against democratically elected governments then it will not achieve global recognition. Further, the use of the term often implies that these are people who are a minority and have had rights removed from them. In Africa, the “indigenous” people are by and large in the majority and once again in power. For this reason, we consider the ILO definition to be inadequate for Africa.
 7. Following from the previous two comments, we do not support the notion that indigenous peoples or communities should in general determine exploration, mining or resettlement in all cases. Indigenous people and affected communities must be consulted but should not have the right of veto over exploration and mining. If cast in the terms put forward in the draft, then the proposed certification scheme may have no application in democratic countries in which the government has the authority to grant exploration and mining rights having regard to the public interest. This point is particularly acute in relation to section 8.2 (p 25).
 8. The major issue considered at the 2002 World Summit on Sustainable Development was poverty eradication, and yet this issue is not included in the working group’s vision (box 8.1, p 24). We strongly recommend that a reference to poverty be made in the vision, as references to quality of life and human rights are insufficient – as a reading of the Johannesburg Plan of Implementation shows. This principle should also permeate the entire document.
 9. The assessment and scoring protocol (section 7.4, pp 22 – 23) will be key to the success of the MCEP. We recommend that scaled or rated assessments, with weighting, be used to assess and score mines. A compliance/non-compliance audit would help neither mine management nor stakeholders to assess performance. Very few individual criteria will require yes/no answers; they will normally require some sort of score. If a scoring system is used then certification should not depend on receiving 100%. The international cyanide code grappled with this issue and the code’s scoring regime may be useful. A phased approach should also be considered, especially with regard to SMEs and developing countries.
 10. The possibility of using the MCEP to differentiate between products is mooted in sections 4 and 5.3 (pp 13, 16). Because of their physical and chemical characteristics, we do not consider that metal products are amenable to differentiation. Additionally, certification could easily be used as a non-tariff barrier. This is a particular concern from the perspective of a developing country. We

therefore strongly recommend that the project be restricted to certification of mine sites only.

Specific Comments

11. The executive summary (p 4) should include a brief explanation of what is meant by certification so that the uninitiated reader can get a better idea of why a certification scheme is being proposed and what its purposes and consequences might be. The second paragraph in section 6.1 (p 18) could be included for this purpose.
12. The reference to “other organisations” in the vision is too vague. The categories of organisation intended should be listed.
13. “Employees and contractors” have a far greater stake in a mine than all other stakeholders. They should therefore be first on the list in section 8.1 (p 24).
14. Criterion 3 a) iii (p 30) weakens the ICMM principle of not using child labour by merely requiring that a mine does not exploit child labour. The language in this sub-element was debated at length within ICMM, and it was decided to reject the use of child labour as a matter of principle. We are opposed to child labour and therefore to the wording used in the criterion. Applying “exploit” to child labour only might imply that it is permissible to exploit adult labour!
15. We do not support the addition of the words “avoid or” to principle 3 e) (p 31). The first step of minimisation is avoidance, so the words are unnecessary. There is already a reference to the need to avoid involuntary resettlement in the sub-element.
16. We do not accept the second sentence of criterion 3 e) i (p 31) – see comment 7 above. Involuntary resettlement should clearly be avoided as far as possible, but it is sometimes, regrettably, necessary. We are developing guidelines based on the World Bank policy and procedure (Operational Policy 4.12 and Annex A) to assist member companies in this regard.
17. The words “of indigenous people” should be deleted from criterion 3 e) iii. All people, not only indigenous people, should, where possible, be offered the option to return to their land.
18. We support the addition of the words “human rights” to principle 3 f). However, the rights of indigenous people “to ancestral lands and resources” (criterion 3 f) ii, p 31) need to be defined by an entity, presumably the applicable national government. Words to this effect should be included in the criterion.
19. Our “South African Guideline on Cyanide Management for Gold Mining” (<http://www.bullion.org.za/Departments/Environment/Cyanide.pdf>) contains guidelines for risk communication to the public and could be referenced by the criteria for sub-element 4 c) (p 31).
20. Words have been omitted from sub-element 5 b) (p 32). It should read “Take all practical and reasonable measures to eliminate ...”. While it may be argued that the underlined words are superfluous, they were included by ICMM following much debate and should therefore be included. If it is considered by the MCEP that the words should be deleted, then this should be explicitly indicated. If the sub-element is edited, we would argue for “Take all reasonably practicable measures ...” as that would be in line with ILO Convention 176. The fact that these words have been deleted begs the question of whether words have been deleted from other sub-elements.

21. The words "... operations, assessed risks and ..." should be added to criterion 5 b) iv (p 32). Risk assessment is as important as hazard identification.
22. Criterion 5 e) i (p 33) might be interpreted to mean that the mine site operator must have its own procedures for treating and compensating people who suffer injury or illness resulting from workplace incidents, exposures or conditions. The mine site operator may be obliged to follow the requirements of laws governing compensation for occupational injuries and diseases. It is therefore suggested that the words "follows appropriate" be substituted for "has".
23. Reintegration is part of principle 5 e), but not of criterion 5 e) i. This gap should be addressed.
24. The word "indigenous" should be replaced by "local" in criteria 6 c) ii and 7 c) iv (pp 33 and 34). It is not only indigenous people who have local knowledge and expertise.
25. Criterion 6 d) iv (p 33) must be deleted. Riverine tailings disposal falls into the same category as submarine tailings disposal and in-situ leaching and should therefore be included in criterion 6 d) v.
26. In order to cover the possibility that a mine may have commenced its operations prior to the declaration of an area as a protected area and may be taking steps to prevent any adverse impact on such an area, it is suggested that criterion 7 a) i (p 34) be qualified by the addition of words along the following lines: "except in circumstances where the area was designated after commencement of operations at the site and appropriate measures are being taken to prevent such impacts".
27. Criterion 9 a) ii (p 35) must be deleted for the reasons given in comment 7 above.
28. Criterion 9 e) ii (p 35) is unnecessary and should be deleted. Its provisions are covered by other criteria under this principle.
29. We are surprised that sub-element 10 b) (p 35) is not considered appropriate to mine sites. We would have thought that it was very appropriate.
30. In endnote 40 (p 45), "developing" should be replaced by "some" or even "many". It denigrates many developing countries and implies that developed countries have a perfect record, which is not the case.
31. The Aarhus Convention is a UN Economic Commission for Europe (UNECE) convention – see <http://www.unece.org/env/pp/welcome.html> – and must be referenced as such (endnote 62, p 46). It is not a convention of the entire United Nations.
32. We appreciate that the endnotes should not be exhaustive. However, it might be appropriate to reference the South African tailings management standards in endnote 73 (p 47):
 - The Engineering Design, Operation and Closure of Metalliferous, Diamond and Coal Residue Deposits (Chamber of Mines of South Africa, 1996)
 - Code of Practice: Mine Residue (South African Bureau of Standards (now Standards South Africa) 0286:1998)
 - Guideline for the Compilation of a Mandatory Code of Practice on Mine Residue Deposits (Department of Minerals and Energy, South Africa, 2000)
33. The word "criteria" is used throughout the document, even when the context requires the singular form, "criterion".