

**Comments on Mining Certification Evaluation Project (MCEP)**  
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*Overall*

The draft working paper does a reasonable job of setting the stage for additional exploratory work on mine certification. To my knowledge, this is the first comprehensive attempt at assigning criteria to principles that, by and large, are fuzzy at best. I especially welcome the inclusion of such concepts as free, prior and informed consent for communities and recognition that some practices (such as riverine and in some cases submarine tailings disposal) would not qualify for certification.

The paper should reference other work that has been done in the field of defining standards for the mining industry. It is not clear to me why the ICMM principles have been adopted as the underlying framework, except that the industry may be less likely to adopt the proposed metrics otherwise. At the very least, the paper should acknowledge the existence of these other initiatives (UNEP cyanide code, Mineral Policy Center's Steps to Sustainability, etc.) before settling on the ICMM principles. Also, the World Bank released the results of its extractive industries review, providing a wealth of additional recommendations that should be incorporated.

The paper adopts the FSC model after a brief discussion of its history. There is very little acknowledgement of its weaknesses, let alone the lessons learned. I realize that this is the preferred WWF route and perhaps not easy to criticize. However, one of the key problems with the FSC has been the fact that the principles and criteria are not well defined and thus, impossible to measure (e.g. "High Conservation Value Forests"). In addition, with the exception of a reference to "indigenous peoples" the FSC principles fail to address the social dimension adequately. There are many other criticisms (by both forestry industry representatives and NGOs) which should not be glossed over if this model is meant to guide development of a mine certification system.

The paper is weakest when it claims to be the result of a "multi-stakeholder" process. In reviewing the participants in Box 2.1, it is clear that participation in this initiative has consisted of 6 representatives from the mining industry, 2 Australian NGO representatives, a representative of the Australian government, a representative of an investor's group, a representative from an Australian union, 2 researchers, and a consultant. While one could consider this "multi-stakeholder" because more than 2 sectors are involved, I find it somewhat misleading. There are many NGOs and community groups not represented. In addition, the process has not been international, as it has taken place solely in Australia with Australian groups and some international mining companies. I consider the EIR to have been "multi-stakeholder," but I suspect that claiming the same for this process will generate much criticism even among groups in the Asia-Pacific region, many of whom are not represented. I believe the group would do best to acknowledge that although attempts were made to include representatives from different sectors, its membership was limited to a select group of individuals in Australia.

The paper is intended to feed into a broader stakeholder process, but should not pretend to have created such a process.

The paper alternatively refers to “indigenous peoples” and “affected communities”. The two are not the same, which is acknowledged on page 25. However, the criteria sometimes specify only “indigenous peoples” or “affected communities.” In general, when referring to such criteria relating to free, prior informed consent, consultation, land rights, etc, the principles should apply to both indigenous and non-indigenous communities affected (or potentially affected) by mining.

I also found that in sticking with the ICMM principles, the criteria tend to overlap and do not follow a logical order. It would be much easier if these were organized according to categories: social, environmental, governance, for example. As it is, consultation is addressed in principles 10, 9, and 4. This makes it repetitive and will make implementation of the criteria a nightmare. It would be better to group the issues more logically, even if it means reorganizing the ICMM principles. A parenthetical note can indicate which ICMM principle the criteria refer to.

### *Specifics*

Pages 12-13: The last paragraph under “Project Scope” is very important. In addition to making it bold, I would also increase the font size to draw the reader’s attention to it. I’d also include this same paragraph (bolded) in the Executive Summary. The same goes for Figure 3.1. It could also be replicated in the Executive Summary. These elements stress that the paper and its subsequent products are the results of a discreet WWF-Australia initiative intended to inform a larger debate. This is a very important point and could serve to minimize criticism from those who were not at the table.

### Page 24, Box 8.1

Compared to the criteria in this section, I found the vision articulated in Box 8.1 to be quite weak. What does it mean that “Ecological impacts are minimized” or “Transparency and disclosure is enhanced.” What degree of minimization or enhancement would be acceptable? Similarly, “encouraging” continual improvement in mine site performance is rather passive and not specific. Arguably, many mining companies could say they already meet this vision. A more specific articulation of the vision would act as a better link to the criteria, such as “Mining does not interfere with the ability of ecosystems to provide key goods and services.” Or “Stakeholders have access to sufficient information to make informed decisions regarding mine development.”

### Page 26, criteria 8.4 (a) and (b)

Who/what determines which communities “could be potentially impacted”? A key element missing from the criteria is independent evaluation of EIAs to determine whether companies have taken into account key stakeholders, how “potentially affected communities” have been identified, whether the potential for environmental impacts has been minimized, etc. I realize that this might be a procedural issue for the certification body to address, but there should be a section somewhere that addresses the need for

independent evaluation of company information. The same goes for criteria (b) in this section: Who informs affected communities?

Page 29, criteria 1 (c) ii

What is meant by “expeditiously”? Why not a metric that states that the MSO doesn’t have more than 2 repeat non-compliances on the same problem, or something similar. It’s not clear if this level of detail will be developed in the next phase of the project, but terms such as this need definition for consistent monitoring.

Criteria 2 (a) (i)

The policies mentioned in this paragraph should also include targets and benchmarks.

Criteria 2 (a) (ii)

This criterion should also specify that the MSO reports on their policies and progress towards implementing them in annual reports, not just through separate “sustainability” or environment reports. Currently most mining companies separate their environmental information from the financial data included in annual reports. Including environmental/social commitments in annual reports would be an indicator that the company takes the issues at least as seriously as financial performance.

Page 30 Criterion 2 (e) (ii)

What constitutes “adequate training”?

Page 31 Criterion 4 (a) (i)

This criterion should also include some requirement for the MSO to consider and modify plans, operation, and management of a mine site if engagement with stakeholders warrants it. In other words, it’s not just about telling stakeholders what will be done at the site, but being sensitive to their concerns and needs and modifying plans or management of the mine in accordance with these needs.

Criterion 4 (b) (i)

The information provided should also acknowledge the degree of uncertainty or the unknowns regarding the risks. Risk assessment can be rather fuzzy and is often dependent upon the probability that the company has attached to particular events occurring. For example, a company may provide information to a community stating that the risks arising from a given practice are minimal, but that all depends on the assumptions made and the probability that a hazard will occur from the given practice. Stakeholders need to know what the underlying assumptions, limitations, and uncertainties are in order to properly evaluate the information given to them.

Page 33, Criterion 3 (iii)

I think this should be restated as: “Perpetual treatment of water supply is not the anticipated solution for acid mine drainage problems.” Otherwise, the measures to minimize acid mine drainage could include perpetual water treatment, which I don’t think fits anyone’s description of best practice.

Page 34 Criterion 7 (i)

Replace “or other legally designated protected areas where mining is prohibited.” With “or IUCN I-IV protected areas.” Mining is not prohibited in all IUCN I-IV (or even in World Heritage Sites), but this is an attempt to go beyond what is legally required. I do not believe a mine proposed within (or negatively impacting upon) an area protected for conservation purposes meets a definition of “best practice.”

Criterion 7 (b)

The data need to be independently reviewed. I would suggest that the MSO regularly subjects the data it collects and analysis of biodiversity impacts to scientific peer review (this could be measured by articles placed in conservation journals).

Criterion 7 (c) (iii)

Should read: “The MSO develops management plans that are consistent with **conservation** outcomes sought through regional planning processes.”

Overall on criterion 7: There needs to be a criterion that says something to the effect that the MSO seeks to identify and assess areas of high conservation value that may be sufficiently sensitive to mining as to warrant a “no go” decision. In other words, there are places that are environmentally and socially sensitive to mining, where the risks posed by mining may be unacceptable to communities and society at large. We’ve written about how to identify these additional “no go” areas in the recently released report *Mining and Critical Ecosystems: Mapping the Risks*, which Michael Rae was given an advanced copy of.

Page 34, Criterion 8 (b)

Add the following:

- ii. “The MSO publicly reports its energy use and other materials, including hazardous substances.”
- iii. “The MSO sets targets for reducing energy consumption and the safe use of hazardous substances.”

Page 35, Criterion 9 (a) (iii)

“The MSO **ensures**...” The MSO can’t provide independent training, although it can facilitate communities having access to it.

Criterion 9 (e) (v)

It will be critical to define what is “their region of influence,” as well as to periodically revisit the definition throughout the mine life. Too often, companies have defined the zone of influence to be comprised solely of the lease area, when communities outside the lease area are impacted by pollution and other negative impacts.

Page 36, Criterion 10

There needs to be an additional criterion that says something along the lines of: “The MSO encourages independent review of its operations by stakeholders and affected communities, including the establishment of a community oversight board.”