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### **Overview comments**

The proposal to rate 30 of the world's largest mining companies has some merit. That the organisation doing the rating will not accept funding from industry lessens the risk that there will be significant pressure to rate certain companies more highly.

There are many other ratings schemes for companies, many of which include mining/extractives in their coverage, and cover a great deal more companies. RMI appears to be focusing just on mining in order to have more mining indicators. In seeking to rate just 30 companies, it is focusing on the big end of the industry. It would be interesting to know what proportion of industry production by value/volume, market capitalisation or whatever will be covered by the RMI.

A lot of the ratings schemes are operated for a profit, seeking to sell a product to investors who want to screen their investments in various ways. The RMI says it is addressing more stakeholders than just investors; that's good.

The Global Reporting Initiative has as a major strength that its governance structure makes it a multi-stakeholder organization. The Responsible Mining Foundation does include organised labour in its governance structure, but overall it is not a multi-stakeholder organization; it is more of a not-for-profit, public interest organization run by experts.

The range of issues covered is reasonably broad, though the depth is not. That is, the proposed Index does cover a good range of issues that are relevant, but what the Index seeks in terms of company practice is left vague, informed by general descriptions of what is considered good practice.

As a relative ranking, the concern is that companies can rank highly while still engaging in poor practices, so long as they are better than their peers. A company can therefore be rewarded while engaging in poor or bad practice, so long as its overall effort is better than others.

This problem is exacerbated by the ranking being at a company level rather than site-based. Company practices can and do vary enormously from site to site – sometimes because of the managerial structure of the company allowing great latitude to local managers, and sometimes as a result of local laws, customs and business practice. Wage levels are only one obvious feature that varies enormously due to these factors.

While there are five indicators that claim to be site-based, and will involve five sites per company, it appears that many of the other indicators concern site-level activities and it is difficult to see how companies could state their practice with respect to all their sites.

The broadest concern is with the methodology of relying heavily on public domain data searches and company responses to a survey (page 21).

Public domain data is essentially “after the fact” and also only in response to major problems. An obvious example is that a company may have a significant health and safety problem at a site, but until there is an episode involving multiple fatalities the issue will not be in the public domain. I have also noticed that issues with respect to mining operations in Latin America will often not be reported in the English-language media outside of Latin America unless they are deemed issues big enough to affect the share price of a large company. If they are reported at all, human and environmental impacts stories are often confined to local media. (So any public domain searches will have to be across multiple languages. And even that does not address the problem that the media is heavily restricted in large parts of the world.)

Company responses to surveys are already legendary for both their obfuscation and for their ability to “spin a positive story”. Many companies produce glowing sustainability reports that win awards, while still having poor practices in many areas. Company statements that they respect the right of workers to join trade union and bargain collectively are common, but those same companies may actively resist union organising efforts. They may even lobby governments to change laws to make it harder for unions to represent their members. This is a common situation for mining companies in Australia.

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### **Specific comments**

These focus on concerns rather than complimenting what is OK or good.

Page 2 – Materiality is defined as that which affects company performance. “Performance” may include more than financial results; presumably it includes things that might affect their ranking in the index. This is broader than the conventional definition of materiality in the financial accounting world, but still quite different to that used by the Global Reporting Initiative, where materiality is (in rough terms) what impacts on stakeholders.

Scope – page 12. The RMI is clear that it covers coal, but it does not define mining. It says it covers most minerals and metals. This appears to exclude oil and gas extraction, though this is not stated. The RMI should be clear about whether it covers oil and gas and, if it doesn’t, why that decision has been made.

Page 13 – the criteria for selecting the 30 companies is novel. While the focus on poorer countries is very relevant, it may produce unusual results. Presumably the very large Brazilian company Vale would be included, but companies like BHP Billiton and Rio Tinto, which actually have the majority of their operations in highly developed countries (while still have significant operations in developing countries) may be excluded.

Page 14 – the use of other known standards / principles is good.

Page 18 – it is acknowledged that measuring “effectiveness” is difficult. I would say this is especially so when the methodology does not seek to have a measurement capability. Relying on company responses to a survey and public domain data searches cannot measure effectiveness.

Page 18 – “controversies” will only be considered where there is verifiable evidence, and only where the impact is attributable to company activity. On the first issue, this means the RMI is leaving it to others to provide evidence, and assumes no problem in the absence of that evidence. This approach will cover a lot of company sins. On the second issue, I think this may not be consistent with the UN Guiding Principles on Business and Human Rights. Companies may derive benefits from the poor practices of others, even though it is not an overt action of their own. They have a duty to act even where they are not directly responsible.

Scoring, weighting, aggregation – page 20 – this is left remarkably vague. The reader is given no idea how that values will be attributed to each indicator and how those will be added up / weighted to give a final result. This lacks transparency.

Page 24 – the list of 5 mine site indicators. This will require assessment at 5 sites for each of the companies –so maybe 150 sites altogether. But again the RMI will rely on company responses and public domain data searches. I am also sceptical that many of the other indicators actually involve a lot of site application, and may therefore vary a lot from site to site, making a company level statement or assessment too abstract.

Page 25 – contract disclosure. It is still rare for companies and governments to do this sort of disclosure in many countries. If a company claims that it prefers disclosure but the govt does not allow it, how is this rated?

Further, the terminology here – contracts that grant it access to the extraction of minerals – may mean that contracts with indigenous peoples where they have legal rights that require such contracts (eg native title laws in Australia) should be disclosed. But I am aware that in Australia and in many other countries such contracts with indigenous people may be rarely disclosed. I think they should be, but it is a common view by indigenous peoples (in Australia at least, and I have heard the same for Canada) that they do not want their contracts exposed to public scrutiny.

Full indicators and context from page 30 – in general the text here gives a good rationale for good practices and disclosure, but there are no minimum standards. The text generally does not provide guidance on how an issue might be measured, nor how its effectiveness assessed.

Page 37 – tax transparency. This is the focus of the EITI and is good. There is recent law in the EU to this effect too, but the Trump administration in the USA has ceased application of section 1504 of the Dodd Frank Act on this issue. I would say that most mining companies do not do this, though it is starting to happen as a result of the EU law and the EITI.

Page 44 – stakeholder engagement – here as in many sections there is good text on why this should happen, but apart from brief references to other documents there is no guidance on what constitutes effective or adequate stakeholder engagement. Virtually all companies say they do this, but most don't do it well.

Page 45 – while one of these indicators is listed as a mine site level indicator, all the others are also only able to be described at a site level. Company practices on these matters will vary a lot from site to site and country to country.

Page 49 – FPIC – interesting that the text here talks about extending it beyond indigenous peoples

Page 51 – artisanal and small scale mining – this is not a feature in Australia, but my understanding is that unions tend to regard ASM as having very large occupational health and safety issues, among many other problems, including unmanaged environmental impacts.

Page 52 – human rights. The strong linkage to the UNGP is fine, but again the general issue of how practice in this area is monitored and measured. In Australia we have employment laws that are regularly cited as being in breach of ILO core labour standards. Mining companies make full use of these laws, while claiming to respect human rights.

Page 54 – same as above re the grievance mechanism

Page 55 – the living wage – the difficulties in measuring a living wage are acknowledged. However, my concern here is that the increasing reference to living wages in ranking and certification systems is actually “lowering the bar” for companies. When we say that a company should pay a living wage, we may be saying that a company can reduce wages that are currently well-above a basic living wage. And they can do so while scoring a high ranking or certification!

Page 55 – OHS – here and elsewhere the terminology re employees, contractors and workers needs tidying up. Wherever possible use the word “worker” as this covers a person on the mine site regardless of their legal employment status

pages 56-57 – freedom of association and collective bargaining – the text here is OK, but the usual problem re monitoring and measurement applies. Also, the guidance needs to go beyond “respecting a right” to at least not resisting union organizing efforts. Companies may claim to “respect” a right to join a union and bargain, but may not only actively campaign against a union collective agreement, but may even make use of employment laws that make it difficult for workers to bargain collectively eg restricting union access to members on their sites, preventing union meetings on the site, etc.

page 61 – tailings management – the generic text here doesn’t really say what is acceptable practice that would rank highly. I suspect a company could practice riverine tailings disposal and still argue that it was engaging in best practice for the local circumstances.

Page 62 – the air and water indicators are all really site level indicators – not just the one labeled MS 4.

Pages 60 – 66 – the Environmental Stewardship section – I suspect that many green groups will see the indicators here as very light and not detailed or rigorous.