



Centre for Environmental Rights

Advancing Environmental Rights in South Africa

Responsible Mining Foundation

By email: consultations@responsibleminingindex.org

24 March 2017

Dear Sir/Madam

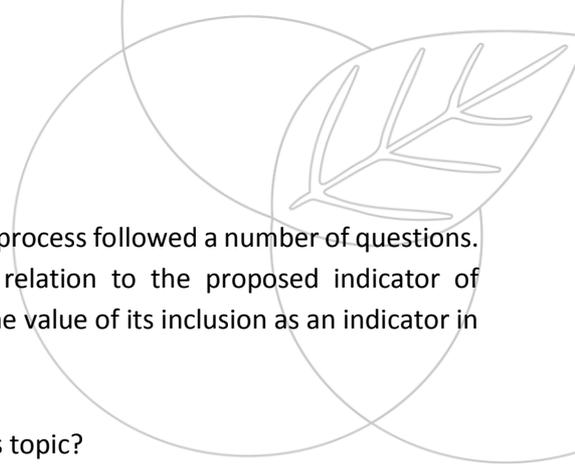
SUBMISSIONS ON THE RESPONSIBLE MINING INDEX DRAFT METHODOLOGY

1. The Centre for Environmental Rights (CER) is a non-profit company and law clinic based in Cape Town, South Africa. The CER's mission is to advance the realisation of environmental rights as guaranteed in the South African Constitution. We are activist lawyers who help communities and civil society organisations in South Africa by advocating and litigating for environmental justice. You can see more about our programmes and work at www.cer.org.za.
2. Please see below our comments on the Responsible Mining Index Draft Methodology ('Draft RMI Methodology' or 'the Index').

Omission of legal compliance as an "Environmental Responsibility" indicator

3. The Draft RMI Methodology's "Environmental Indicators" deal only with the environmental performance of mining companies, and fail to address the core issue of companies' environmental compliance with the legal rules and regulations governing the mining industry in the countries in which they operate.
4. The improvement of companies' performance in respect of managing their environmental impacts (for example by implementing water management systems and applying a "mitigation hierarchy approach for biodiversity management") is important. However, it is often the case that mining companies report extensively on such performance initiatives and improvements as a strategy to deflect criticism of environmental impacts, while simultaneously concealing significant and far-reaching non-compliances with environmental laws. If mining companies conduct their operations in compliance with the legal requirements regulating their industry, it naturally follows that their environmental performance will also improve.
5. For this reason, we recommend that "Compliance with environmental laws and regulations" should be added to the RMI Methodology as an independent Environmental Responsibility indicator, and that legal compliance and the disclosure of non-compliances to stakeholders should be incorporated into all of the other Environmental Responsibility indicators.

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6. According to the RMI Draft Methodology, the indicator development process followed a number of questions. Below, we demonstrate that the answers to these questions in relation to the proposed indicator of “Compliance with environmental laws and regulations” all point to the value of its inclusion as an indicator in the RMI Methodology.

6.1 What does society at large expect from mining companies on this topic?

Given the considerable environmental impacts of the industry, legal compliance by mining companies is a key expectation on the part of governments, affected communities and the broader public. For this reason, it is essential that companies comply with the law in the first place, and account to all stakeholders in instances where they fail to comply with the law. Environmental legal non-compliances are also exceptionally good indicators of a company’s general attitude to responsible mining, and of its approach to risk.

6.2 How does this indicator relate to the goal of the Responsible Mining Index?

The goal of the Responsible Mining Index is “to encourage continuous improvement in responsible mining by transparently ranking the performance of some of the world’s largest mining companies on economic, environmental, social and governance (EESG) issues, and highlighting leading practice”. Enjoining companies to comply with the legal requirements which govern EESG issues in their jurisdictions is clearly in line with this goal. Legal compliance is a prerequisite for responsible performance.

6.3 What information is needed to measure this indicator?

Information needed to measure this indicator includes details of complaints about non-compliance with environmental laws, monitoring and compliance inspections by environmental regulators, findings of non-compliance with environmental laws, civil fines and penalties for non-compliances, and criminal sanctions and prosecutions for non-compliances.

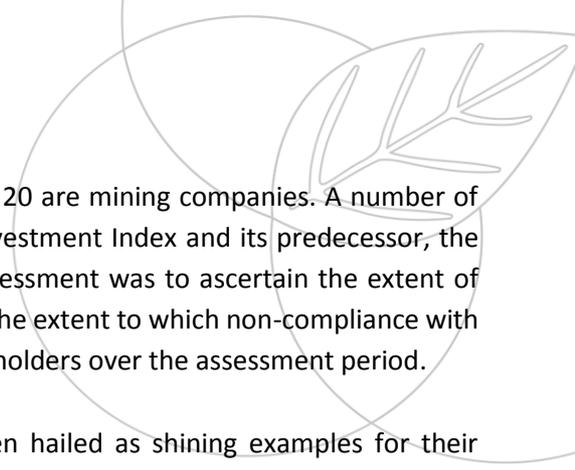
6.4 What might the evidence look like?

Mining companies should report on the information listed above in their annual reports. In countries in which compliance monitoring and enforcement statistics are published by regulatory authorities, this information can be compared with company disclosures. Access to information requests can also be made to regulatory bodies in relation to this information.

6.5 If already measured elsewhere, can an existing indicator be used?

Legal compliance can and should be incorporated into all of the existing indicators, but it is sufficiently important to warrant its inclusion as an independent indicator in itself.

7. The CER’s work in relation to companies in South Africa is illustrative of the fact that failure to include environmental compliance as an express indicator would undermine the value of the Index. We refer in particular to the findings of our 2015 and 2016 reports, *Full Disclosure: the truth about corporate environmental compliance in South Africa* (please see www.fulldisclosure.cer.org.za/2015/ and www.fulldisclosure.cer.org.za). In *Full Disclosure*, the CER conducted a baseline assessment of 30 listed South



African companies with significant environmental impacts, of which 20 are mining companies. A number of the companies assessed have appeared on the FTSE Responsible Investment Index and its predecessor, the JSE's Socially Responsible Investment Index. The purpose of the assessment was to ascertain the extent of compliance by these companies with environmental laws, as well as the extent to which non-compliance with environmental laws was disclosed by these companies to their shareholders over the assessment period.

8. Our findings were that many companies which have regularly been hailed as shining examples for their approach to managing environmental, social and governance factors had in fact committed serious breaches of environmental laws during the assessment period. In many cases, the information provided by these companies to their shareholders about their environmental impacts and non-compliances is either misleading, or so minimal as to make it impossible to verify claimed commitments to sound environmental management.
9. In order to avoid this kind of non-disclosure and deception about environmental compliance, at a minimum, the "Compliance with environmental laws and regulations" indicator should require that the company discloses details of monitoring and compliance inspections by environmental regulators, findings of non-compliance with environmental laws, regulations or conditions of permits, civil penalties and sanctions for non-compliance, and criminal sanctions and prosecutions for non-compliances.
10. In addition to being recognised as an independent indicator, legal compliance and disclosure of non-compliance should also be incorporated into the following environmental indicators:
 - F.4 Water: This indicator should include that a mining company has all of the necessary legal authorisations for its water use and that it complies with the conditions of these authorisations. It should also include that companies report on incidents resulting in water pollution specifically.
 - F.6 Biodiversity: This indicator should include that a mining company does not apply for prospecting or mining rights in areas which are legally protected in the country in which it operates.
 - F.7: GHG Emissions and Energy Efficiency: This indicator should include that a mining company complies with all legal minimum emission standard limits in national legislation.

Additional comments

11. We would like to register our concern about the fact that the methodology appears to rely almost exclusively on feedback from the mining companies themselves for the information that will be used to compile the Index. In our experience of such practice in South Africa (for example, the FTSE Responsible Investment Index and its predecessor, the JSE's Socially Responsible Investment Index, rely on participant's own assessment of their ESG performance), relying on self-assessment inevitably means that important issues, many of which are actually in the public domain, are concealed or are not adequately taken into account. This ultimately means that the results of such indices are skewed in favour of companies which are particularly adept at manipulating their responses to questions about their ESG impacts.
12. We also note that the environmental indicators all require that companies have systems in place to conduct environmental impact assessments and to manage environmental impacts of mining. However, it is essential that these indicators also require companies to report on the efficacy of these systems and to disclose the occurrence of environmental incidents and legal non-compliances on a regular basis.

13. We would like to commend the Draft RMI Methodology for acknowledging the importance of phasing out coal-mining in the current climate.

14. Thank you for the opportunity to submit these comments. Please do not hesitate to contact us should you have any queries.

Yours faithfully

CENTRE FOR ENVIRONMENTAL RIGHTS

per:



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