



## Responsible Jewellery Council (RJC)

### RJC Code of Practices Review

#### Report on second public comment period and stakeholder consultation – 4 June 2013 – 2 August 2013

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#### **1. Background**

From 4 June 2013 – 2 August 2013, the RJC sought feedback on the final draft of the proposed revisions to the RJC Code of Practices (COP) and the accompanying redrafted Standards Guidance from all interested stakeholders. The draft revisions have been developed from two previous comment rounds and RJC Standards Committee discussions of comments received.

In the final consultation draft, the COP has been re-arranged into a new structure that aims to better highlight the major issues being addressed for the jewellery supply chain. Under the proposed re-structure, there are 6 main sections with a total of 40 individual provisions, as per below:

**Table 1 - Overview of the restructured Code of Practices**

2013 Code of Practices – Proposed New Structure	Reference in 2009 Code of Practices
<b>1. General Requirements</b>	
1. Legal Compliance	4.1 Legal Compliance
2. Policy and Implementation	4.2 Policy, and added <b>New Provision</b> on implementation
3. Reporting	4.6 Sustainability Reporting, and added <b>New Provision</b>

4. Financial Accounts	Formerly part of 1.2 Money Laundering and Finance of Terrorism
<b>2. Responsible Supply Chains and Human Rights</b>	
5. Business Partners	4.3 Business Partners
6. Human Rights	2.1 Human Rights + <b>New Provision</b> on Conflict-Affected Areas
7. Sourcing from Artisanal and Small-Scale Mining	<b>New Provision</b>
8. Community Development	2.11 Community Engagement and Development
9. Bribery and Facilitation Payments	1.1 Bribery and Facilitation Payments
10. Money Laundering and Finance of Terrorism	1.2 Money Laundering and Finance of Terrorism
11. Security	2.12 Use of Security Personnel, new Provision
12. Provenance Claims	<b>New Provision</b>
<b>3. Labour Rights and Working Conditions</b>	
13. General Employment Terms	2.10 General Employment Terms
14. Working Hours	2.8 Working Hours
15. Remuneration	2.9 Remuneration
16. Discipline and Grievance Procedures	2.7 Discipline and Grievance Procedures
17. Child Labour	2.2 Child Labour and Young Persons
18. Forced Labour	2.3 Forced Labour
19. Freedom of Association and Collective Bargaining	2.4 Freedom of Association and Collective Bargaining
20. Non-Discrimination	2.5 Discrimination
<b>4. Health, Safety and Environment</b>	
21. Health & Safety	2.6 Health & Safety
22. Environmental Management	3.1 Environmental Protection
23. Hazardous Substances	3.2 Hazardous Substances
24. Wastes and Emissions	3.3 Waste and Emissions
25. Use of Natural Resources	3.4 Use of Energy and Natural Resources
<b>5. Diamonds, Gold and Platinum Group Metals Products</b>	
26. Product Disclosure	1.5 Product Integrity
27. Kimberly Process Certification Scheme and World Diamond Council System of Warranties	1.3 Kimberley Process
28. Grading and Appraisal	<b>New Provision</b>
<b>6. Responsible Mining Sector</b>	
29. Extractive Industries Transparency Initiative	1.6 Extractive Industries Transparency Initiative
30. Community Engagement	2.11 Community Engagement and Development
31. Indigenous Peoples and Free Prior Informed Consent	2.13 Indigenous Peoples. <b>New Provision</b> on FPIC added, applicable to new / major changes to mining projects.
32. Impact Assessment	4.4 Impact Assessment

33. Artisanal and Small-Scale Mining	2.14 Artisanal and Small-scale Mining
34. Resettlement	Formerly part of 2.11 Community Engagement and Development
35. Emergency Response	New Provision
36. Biodiversity	3.5 Biodiversity
37. Tailings and Waste Rock	3.3.4 Tailings and waste rock management
38. Cyanide	Formerly in 3.2.3 Hazardous Substances
39. Mercury	New Provision
40. Mine Rehabilitation and Closure	4.5 Mine Closure Planning

For the final comment round, the RJC also published all of the supporting Guidance material as revised drafts for stakeholder feedback. Guidance chapters for all of the above provisions were updated and restructured according to the above regrouping of the COP. The Guidance chapters bring together key definitions, a background on each topic, a summary of key frameworks, regulations and initiatives relating to the topic, a suggested implementation approach, and a list of key references and further sources of information.

As this was the final of three comment periods, beyond what is formally required by the ISEAL Standards-setting Code, the RJC's stakeholder outreach was designed to be cost-effective. Live webinars were conducted and recorded for later viewing, and bilateral discussions also arranged with previous submitters and identified topic experts to discuss the proposed revisions.

RJC publishes the comment report as part of its commitment to open and transparent standards development processes.

## **2. This Report**

This Report summarises the submissions received during the comment period for 4 June 2013 – 2 August 2013. A copy of the report is available at: <http://www.responsiblejewellery.com/standards-development/code-of-practices-review/>.

## **3. Summary of Input Method**

A broad range of stakeholders were notified by email and through discussions lists of the opportunity to comment on the RJC discussion paper. Webinars were conducted to provide further information, which were attended by over 100 people. Interested stakeholders could also respond by fax, post or in an email, and were invited to discuss issues of interest by phone with the RJC team.

In total, more than 200 individual comment points from 16 submitters were received in emails and by phone, and as stand-alone submissions from submitters (see Appendix 1 for a list).

#### 4. Comments received

##### 4.1 Summary of Key Points

RJC greatly appreciates the time and insightful contributions from all submitters. Considering the submissions overall:

- Comments were received on all areas of the Code of Practices and Standards Guidance identified in Table 1, apart from on Provision 2 Policy and Implementation, 4 Financial Accounts, 20 Non-Discrimination, 23 Hazardous Substances, 35 Emergency Response and 38 Cyanide.
- Comments were received from a range of stakeholders, including industry, civil society, and other interested parties.
- Some of the main issues raised included:

##### **General/Introduction**

- Certification Scope: being clearer on Scope issues in the COP introduction
- India: further clarification in Guidance on key implementation questions raised in India

##### **1). General Requirements**

- Reporting: emergence of other sustainability reporting frameworks alongside GRI

##### **2). Responsible Supply Chains and Human Rights**

- Human Rights: further aligning the Guidance with the UN Guiding Principles on Business and Human Rights (UNGPs)
- Sourcing from ASM: clarifying the relationship between this separate provision and the UNGPs
- Provenance Claims: proposal to include a requirement for training, and clarifications in the Guidance on implementation

##### **3). Labour Rights and Working Conditions**

- Child Labour: tightening the remediation provisions
- Freedom of Association and Collective Bargaining: role of Workers Committees in India

##### **4). Health, Safety and Environment**

- Wastes and Emissions: the need to monitor wastes and trends so as to drive performance improvement.

##### **5). Diamonds, Gold and Platinum Group Metals**

- Kimberley Process Certification Scheme and World Diamond Council System of Warranties: concerns around the KPCS definition of conflict diamond.

##### **6). Responsible Mining Sector**

- Indigenous Peoples & FPIC: proposals to strengthen wording of the FPIC requirements.
- Biodiversity: role of 'net positive impact'
- Tailings and Waste Rock: proposals to further clarify requirements

- Mercury: further alignment with the Minamata Convention.

#### **4.2 General Feedback**

The comments in the table below cover general feedback on the COP. Most of the comments have been addressed through clarifications in the introductory sections to the COP and/or Standards Guidance, in the individual Guidance chapters, or in the RJC Assessment Manual.

Name	Date	Comments
<b>General Comments</b>		
Rio Tinto	2 August 2013	<p>As a member of the Responsible Jewellery Council (RJC), Rio Tinto wishes to thank the RJC staff for its tremendous efforts with the Code of Practices (COP) revision process. We appreciate the opportunity to provide comments on the draft RJC COP and Guidance Documents. For convenience we have incorporated the majority of the comments in the enclosed word versions of the draft guidance for respective COP provisions.</p> <p>In addition to the enclosed comments, we want to draw your attention to an issue that pertains to all the guidance documents, though with variable consistency. In the sections that include “points to consider” many times these appear to be written as the term applies, as ‘guidance,’ i.e., optional. However, many other “points to consider” appear to be written as mandatory requirements. We have highlighted a few examples in the enclosed comments.</p> <p>Traditionally, “guidance” documents do not mandate behavior or actions. Rather, expected actions or behavior are prescribed in the Code of Practice not the Guidance. While the current draft of the Guidance does not clarify this point, the Disclaimer in the existing 2009 Standards Guidance does clarify this distinction by specifically stating: “Standards Guidance does not create, establish, or recognise any legally enforceable obligations of the RJC and/or its Members or signatories to non-members.”</p> <p>We understand that a similar qualification will be included in the final version of the Guidance Documents. We also recommend a review of the “points to consider” with an effort to clarify the wording to avoid the appearance of mandatory requirements. This could include an explanation in each guidance document (in the section entitled “Suggested Implementation Approach”) highlighting the distinction between the COP requirement and the “Points to Consider.” This will help eliminate confusion both for members and auditors, as well as the general public.</p>

		<p>We are including comments addressing proposed revisions to the definitions in the COP Glossary. These comments suggest modifications to the scope of mining certification, particularly in the context of facilities that produce multiple metal products that may contain gold, but for which gold is not a primary product. As noted above, we are providing comments, some of which are minor, within the enclosed COP / Guidance Document listed below.</p> <ul style="list-style-type: none"> <li>• COP 3 – Reporting (comments on COP and Guidance)</li> <li>• COP 6 – Human Rights (comments on COP and Guidance)</li> <li>• COP 8 – Community Development (comments on Guidance)</li> <li>• COP 12 – Provenance (comments on COP, Guidance and Glossary)</li> <li>• COP 29 – Extractive Industries Transparency initiative (comments on Guidance)</li> <li>• COP 30 – Community Engagement (comments on Guidance)</li> <li>• COP 31 – Indigenous Peoples &amp; FPIC (comments on Guidance)</li> <li>• COP 32 – Impact Assessment (comments on COP and Guidance)</li> <li>• COP 34 – Resettlement (comments on Guidance)</li> <li>• COP 39 – Mercury (comments on Guidance)</li> </ul> <p>Please do not hesitate to contact us if you have questions or would like to discuss these comments in more detail.</p>
<b>Minor editorial/typographical Comments</b>		
Anonymous	2 July 2013	<p>15.1 Remuneration                  separate the words eitherthe – either the</p> <p>17.3 Child Labour, b                  Remove extra spaces following the semicolon after rest days                  Remove extra spaces following semicolon after work</p> <p>21.7 Health &amp; Safety                  Remove extra spaces following the word transporation</p> <p>32.2 Impact Assessment                  Remove the extra spaces following the work to</p> <p><b>Glossary –</b>          Biodiversity</p>

		<p>Separate the word includingterrestrial – including terrestrial Certification</p> <p>I would remove the comma after RJC</p> <p>Collective Bargaining Agreement</p> <p>Formatting – the definition is not bolded like the other definitions</p> <p>Collective Bargaining</p> <p>Remove one of the periods at the end of the sentence.</p>
<b>Introduction/Glossary</b>		
Human Rights Watch	1 July 2013	<p>The current certification system, as explained in the glossary, is weak and could result in certification of companies that violate provisions of the Code of Practices, for example in some of their facilities. In particular, mining facilities that currently use riverine tailings disposal are excluded from the member’s certification scope (with regards to provisions on riverine tailings). Harmful practices of mercury use, such as open burning of the amalgam, are also allowed to continue until the end of the certification period. Another problem is that the verification the actual audit is only carried out on a selected sample of facilities. In addition, auditors are accredited with the RJC, not an independent body, and their reports are not made public. The certification process should be revised to ensure that it applies to all businesses and facilities in which a company has a stake and should not make exceptions for particular facilities or provisions of the Code. It must ensure that all businesses, facilities, and sites that are certified are indeed in line with the Code of Practices. Given the importance of certification, this issue should not be covered in the glossary but in a separate section of the Code.</p>
RJC COP Review – India Committee	22 July 2013	<p><b>Code of Practices</b></p> <p><b>Section F: Application</b></p> <p><b>Proposed Provision:</b></p> <p>Records relating to implementation of provisions in the COP should be kept for a minimum of 3 years (the maximum Certification Period) or longer as required by Applicable Law.</p> <p><b>Comments / Feedback of RJC COP India Committee:</b></p> <p>It will be ensured that records that need to be preserved for a certain period as per law will be preserved. It will be difficult to maintain all other records for three years. We request that the provision should require that such records (other than those required by law) should be maintained for one year and not three years.</p> <p><b>Section G: Certification</b></p>

		<p><b>Proposed Provision:</b> For a Certification Period of three years, the Auditor may recommend a Surveillance Audit of the certified member be conducted within 12-24 months to verify that systems are working effectively during the Certification Period.</p> <p><b>Comments / Feedback of RJC COP India Committee:</b> Decision on surveillance audit should not be left to the judgment of auditor. Since the member has to bear the cost of audit, the need for surveillance audit must be based on transparent criteria.</p>
WWF	2 August 2013	<p>Principles:</p> <ul style="list-style-type: none"> <li>- RJC should use their Codes as tools to reinforce commitment to prevailing international standards rather than run the risk of replicating them.</li> <li>- While such a comprehensive set of COP has its merits. It covers so many things that are second hand and could be better cross referenced to their primary location. An overly comprehensive code dilutes the impact of managing really critical key issues – and will deter new member recruitment.</li> <li>- There is mention of the need for members to exercise due diligence over contractors, sub-contractors etc. working on their behalf and to make sure these entities are aware of the members commitments- but this needs strengthening.</li> </ul>
Rio Tinto	2 August 2013	Additional suggestions for the Glossary.
Solidaridad	5 August 2013	<p><b>Code of Practices</b></p> <p><b>Section G: Certification</b> RJC could gain credibility by becoming more transparent about the impact of its standard and system. Especially since RJC is not a multi-stakeholder organization, it is likely to be questioned on its methods, and even its intent. By including some additional self-reporting obligations on a small set of key KPIs, RJC could collect and collate data, allowing it to show its impact to interested stakeholders. Selection of a few relevant KPIs to collect data on could be done in dialogue with key stakeholders, to ensure it meets their information needs. The number of KPIs should be small, to keep things manageable for both members and secretariat. Example: Better Cotton Initiative collects data on 6 main KPIs (like pesticide use, water use) and reports on it in a collated way to show the organisation’s impact:</p>



	<p><a href="http://www.bettercotton.org/files/Annual_Report_Final_LowRes_v3.pdf">http://www.bettercotton.org/files/Annual_Report_Final_LowRes_v3.pdf</a> (data is based largely on self-assessment, a percentage of which is verified by third party auditors)</p> <p><b>Proposed Provision:</b> For a Certification Period of 3 years, the Auditor may recommend a Surveillance Audit of the Certified Member be conducted within 12-24 months to verify that systems are working effectively during the Certification Period.</p> <p><b>Comments Solidaridad:</b> Can the member decide not to allow this? This is what the current Standard wording suggest. Why is it the auditor's choice, not RJC's? It would be better for RJC itself to decide on surveillance audits (based on auditor's suggestion), with clear guidelines setting out the circumstances under which RJC may decline the recommendation. This should be part of a broader RJC quality assurance approach with a mix of measures, some of which are already in place:</p> <ul style="list-style-type: none"> <li>O Regular quality checks of documentation (audit reports can sometimes be unclear or incomplete, raising questions about both auditor and site performance)</li> <li>O Re-audits, partly based on risk level (location, operation, etc.) and random checks (on small % of certified operations)</li> <li>O Auditor training, as part of current accreditation system</li> <li>O Complaints mechanism (following UNGP guidance)</li> </ul> <p><b>Proposed Provision:</b> After a Certification Period of 3 years, a re-Certification Audit is required to renew Member Certification and the process recommences.</p> <p><b>Comments Solidaridad:</b> A 3 year period between audits is too long, even with surveillance audits as an option in the interim. A lot can change in 3 years. The period should be 2 years maximum for all members, particularly mining company members (greatest risk). There could be an option for cross-recognition for all or part of the requirements if some members feel that this is too burdensome in light of other regular third-party audits.</p>
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#### 4.3 Comments by Provision for Code of Practices and Standards Guidance

The comments in the table below are organised under the proposed revisions published in the final draft revision of the RJC Code of Practices and Standards Guidance documents. Most of the comments have been addressed directly or indirectly in the Guidance chapters. Some have been reviewed for potential changes to wording at the provision level – for 15 of the 40 provisions. A few comments are not able to be addressed through revisions, in most cases because the matter has been previously discussed and an alternative approach taken, or in a few cases, because of errors of fact. Wherever possible, these have been sought to be addressed through clarifications in the Guidance.

Name	Date	Comments
<b>1 General Requirements</b>		
WWF	2 August 2013	General Requirements (probably better described as corporate governance?)
<b>1. Legal Compliance</b>		
RJC COP Review – India Committee	22 July 2013	<p><b>Code of Practices</b></p> <p>1. The India Committee, in its representation dated 12th September 2012, had referred to the following issues and had requested that these be considered as “Minor Non-Conformances”:</p> <ul style="list-style-type: none"> <li>• Engagement of Safety Officer</li> <li>• Engagement of Welfare Officer</li> <li>• Provision of Ambulance Room / Trained Nurse / Doctor in premises</li> <li>• Provision of Canteen</li> <li>• Provision of Emergency Exits for each work area when the premise is on lease and/or there are limitations on the structural changes that can be done</li> <li>• Provision of Creche</li> </ul> <p>The India Committee requests that the Standard Guidance should specifically mention the above referred issues as examples of “Minor Non-Conformance” in the Indian context. This will make it clear to the auditors and auditees as to how to classify issues as “Minor Non-Conformance” and help resolve several issues that may come up during the audit.</p> <p>2. We need further clarification that “Minor Non-Conformances” do not need corrective actions since, by definition provided in the Standard Guidance, such non compliances to legal requirements do not result in an imminent risk to workers, the community or the environment. The auditor may list such minor non-</p>

		<p>conformances for record but no further action should be required.</p> <p>3. In the “Conclusion” section of our representation dated 12th September 2012, we had requested for the following:</p> <p>RJC Standards Committee should consider setting up an “India-specific Ombudsman” to evaluate audit findings that are classified as Major Non Conformances so that the auditees have an opportunity to represent the situation and get clarity on the Corrective Action Plan.</p> <p>The above steps will go a long way in ensuring sustainable compliance to the RJC COP and increased membership of RJC from Indian entities.</p> <p>We request that the RJC Standards Committee considers the above request so that any legal non compliance can be evaluated in the correct perspective and suitable decisions taken. The India Committee strongly feels that leaving the final decision to the auditors will lead to inconsistencies and the Auditees should have recourse to an agency that is familiar with the Indian national and local laws. In our opinion, the complaints mechanism of RJC will not be able to amicably resolve such issues.</p> <p>4. We had made the following request in our representation dated 13th September 2012:</p> <ul style="list-style-type: none"> <li>- Statutory approvals in India generally require interlinking approvals from multiple regulators/authorities/ govt. agencies and hence take time</li> <li>- Approval for certain matters take long time even up to 6-8 months in case of engagement of multiple authorities</li> </ul> <p>- As such, RJC Auditors should not insist on approval-in-hand and should accept pending applications for approval as valid. E.g. Application for change in factory approved plan under the Factories Act, 1948 should be accepted and actual approval memo should not be insisted upon.</p> <p>The Standards Committee has not addressed the above issue. We request that a suitable guidance be issued to address the above referred situation.</p>
Solidaridad	5 August 2013	<p><b>Code of Practices</b></p> <p>Stress – here or elsewhere in the Code – that the provisions in the Code constitute minimum, not</p>

		<p>maximum standards, and the code should not be used to prevent companies from exceeding these standards. This to further clarify the Code’s spirit of continuous improvement.</p> <p>Also include statement here on situations where applicable law and Code requirements differ. Example text from ETI Base Code: “The provisions of this code constitute minimum and not maximum standards, and this code should not be used to prevent companies from exceeding these standards. Companies applying this code are expected to comply with national and other applicable law and, where the provisions of law and this Base Code address the same subject, to apply that provision which affords the greater protection.”</p>
<b>2. Policy and Implementation</b>		
		No comments received.
<b>3. Reporting</b>		
Rio Tinto	2 August 2013	Editorial and additional reference suggestions for Standard Guidance.
WWF	2 August 2013	WWF fully support the commitment to GRI Guidelines – but in some cases the translation from the GRI to the Cop does not make it explicit about what is required (although GRI may do so) eg reporting to whom?
AngloGold Ashanti	3 August 2013	<p><b>Code of Practices</b></p> <p><b>COP 3.1: Communication to Stakeholders:</b> Members shall communicate to stakeholders at least annually on their business practices relevant to the RJC Code of Practices using the Global Reporting Initiative (GRI) Guidelines and, as appropriate, the GRI Mining and Metals Sector Supplement.</p> <p>Editorial and additional reference suggestions for Standard Guidance.</p>
<b>4. Financial Accounts</b>		
		No comments received.
<b>2 Responsible Supply Chains and Human Rights</b>		
<b>5. Business Partners</b>		
RJC COP Review – India Committee	22 July 2013	<p><b>Code of Practices</b></p> <p>5.2 - In our representation dated 12th September 2012, the following point had been put up for your consideration:</p> <p>Engagement of Contractors in Security / Housekeeping / Canteen etc. – These activities constitute non core activities and the companies employ specialised agencies for these services through documented contracts. The terms of such contracts specify that the contractors are responsible for legal compliances. In view of this, documents relating to contractor should not be insisted during the audit process – IC seeks guidance in this respect.</p>

**Comment [ASP1]:** The GRI guidelines are for all organisations, not just mining companies. GRI G4 states “GRI recommends the use of external assurance but it is not a requirement to be ‘in accordance’ with the Guidelines”. Guidance needs to be edited accordingly.

		<p>We request the Standards Committee to note the following:</p> <ul style="list-style-type: none"> <li>• Workers engaged for non core activities like security, housekeeping etc. form a very small percentage of the total workforce and are employed by contractors who provide such services to several entities</li> <li>• On the other hand, workers engaged for core activities form a large percentage of the total workforce and the contractor works exclusively for the entity</li> <li>• In view of the above, compliances to RJC COP as well as local legal requirements is feasible for contractors engaged in core activities while the same is not feasible for non core contractors</li> <li>• In our experience, auditors spend a lot of time and energy focusing on contractors carrying out non core activities and this results in several non conformances</li> <li>• As such, we request that the Standard Guidance for this clause makes it clear that the focus should be on contractors involved in core activities and this clause may not apply to contractors carrying out non core activities.</li> <li>• Alternatively, the Indian Law related to this subject – “The Contract Labour (Regulation and Abolition) Act, 1970” – specifies that contractors should maintain following records and the Standard Guidance should specify that only these records shall be maintained / verified during audit: <ul style="list-style-type: none"> <li>√ Muster Roll</li> <li>√ Register of Wages</li> <li>√ Register of Deductions</li> <li>√ Register of Overtime</li> <li>√ Register of Fines</li> <li>√ Register of Advances</li> </ul> </li> </ul>
Solidaridad	5 August 2013	<p><b>Code of Practices</b></p> <p>5.2 Contractors working on Members’ Facilities and Visitors to these Facilities shall be required to comply with the Member’s policies, systems and procedures relevant to the Code of Practices and, where necessary, shall be provided with the information and guidance to enable compliance.</p>
<b>6. Human Rights</b>		
IndustriALL Global Union; Construction, Forestry, Mining and	31 July 2013	<p>Human rights: The Code should require members to adhere to the standards laid down in the Voluntary Principles on Security and Human Rights, and only hire private security contractors who have Joined the Voluntary Principles on Security and Human Rights. It should also require companies to</p>

Energy Union (Australia); United Steelworkers (Canada); Earthworks (USA); MiningWatch Canada		Conduct human rights impact assessments of proposed projects in addition to environmental and social assessments.
IndustriALL Global Union; Construction, Forestry, Mining and Energy Union (Australia); United Steelworkers (Canada); Earthworks (USA); MiningWatch Canada	31 July 2013	6.2 Mining in conflict zones: RJC allows mining in conflict zones, and fails to require adequate due diligence to ensure that mining in these controversial locations does not contribute to conflict.
Rio Tinto	2 August 2013	<p><b>Code of Practices</b></p> <p><b>COP 6.1 (a): Written policy:</b> Members shall respect Human Rights and support implementation of Section II of the UN Guiding Principles on Business and Human Rights in ways appropriate to their size and circumstances, including as a minimum: a) A policy commitment to respect Human Rights.</p> <p><b>COP 6.1 (b): Carry out human rights due diligence:</b> b) A Human Rights due diligence process that seeks to identify prevent, mitigate and account for how they address their impacts on human rights.</p> <p><b>COP 6.1 (c): Remediation process:</b> c) Where Members identify that they have caused or contributed to adverse Human Rights impacts, they shall provide for or cooperate in legitimate processes to enable the remediation of those impacts.</p> <p><b>COP 6.2: Sourcing from Conflict-Affected Areas:</b> Members, if operating in, or sourcing Diamonds, Gold or Platinum Group Metals directly from, a Conflict-Affected Area, shall use the Human Rights due diligence process to assess the heightened Risks of adverse Human Rights impacts.</p> <p>d) Review the heightened Risks of adverse Human Rights impacts.</p> <p>e) Where Risks are identified, Members shall implement systems to manage and mitigate risks of causing or contributing to Conflict and adverse Human Rights impacts.</p> <p>Editorial and additional reference suggestions for Standard Guidance.</p>
Solidaridad	5 August 2013	<b>Standards Guidance</b>

**Comment [A2]:** Suggest the COP not be restricted to Section II, given Section III is about remedy and Section I is about making sure States have effective preventative systems in place. Think this could just say “and support implementation of the UN Guiding Principles”

**Comment [A3]:** The UNGPs also provide guidance around impacts directly linked to a business through its products, operations or services. By referring to Section II of the UNGPs the COP is implicitly saying that these provisions are relevant yet the focus here is on cause/contribute and provision above focuses on “significant business partners.” This could cause some confusion on what is expected of companies in relation to respecting human rights in the supply chain. Perhaps the points to consider could include and explanation / reference explaining what UNGPs say around impacts that are directly linked to the company?

**Comment [A4]:** It may not be clear why 6.2 is an additional provision when the HRDD is included above. What additional action is expected? Should points to consider be added to make it clearer what is expected after the heightened risks are assessed? Guidance be clearer here or above that human rights due diligence may entail integrating human rights considerations into social impact assessment or a stand-alone human rights impact assessment as appropriate.

		<p>This section should be clear in stating that sphere of influence should not be the first step in a Member’s risk analysis process (i.e. look at own operations and largest business partners only when analyzing risks). The UN Guiding Principles have shifted focus from businesses’ sphere of influence to likelihood of serious adverse impact on rightsholders. Meaning: lack of influence (e.g. "they are 2nd tier, I am only a small client, etc...") cannot be an excuse not to act. This is mentioned in the guidance, but could perhaps be a bit clearer.</p> <p>The level of influence should not be the first consideration, rather:</p> <ol style="list-style-type: none"> <li>1) Risk analysis: where can serious abuses take place? (rightsholder focus)</li> <li>2) Does the company (co-) bears responsibility for those? (connection to own operations, business partners , etc -- three scenarios of responsibility – cause/ contribute/linked to)</li> <li>3) What would appropriate action to remediate these abuses look like? The scope of the action a company should take depends on its influence, but the responsibility itself does not go away because the company has limited influence.</li> </ol> <p>Example from fashion supply chain: a clothing brand does business directly with textiles factories. These factories are part of a monitoring scheme, to ensure good working conditions. However, major human rights abuses happen further down the supply chain in cotton production, and in spinning mills that supply yarn to the textile factories. The clothing brand does not have direct influence over cotton producers or spinning mills, as it does not have a contract with them and may only indirectly buy a very small percentage of the production. But, it still bears the responsibility for finding ways to mitigate and remediate those risks. Stating that its influence beyond the first tier is small, and choosing to only focus on tier 1 because of that, is not enough. The brand needs to find other ways to meet its responsibility. For example: dialogue with the Bangladesh government on working conditions in the spinning mills, asking factories to only use certified cotton, investing (together with other brands) in sustainable cotton production, joining an organization that delivers training to spinning mills, etc.</p> <p>This is a new area and there is need for more clarity. RJC could guide its members by working on case studies/what good practice looks like for the industry.</p>
Adam Greene - US Council for	6 August 2013	<p><b>Standards Guidance</b></p> <ul style="list-style-type: none"> <li>• <b><i>COP 6.1 (c): Remediation process: c) Where Members identify that they have caused or contributed to</i></b></li> </ul>

International Business		<p><i>adverse Human Rights impacts, they shall provide for or cooperate in legitimate processes to enable the remediation of those impacts.</i></p> <p>The remediation process should be prioritised based on the scale and/or severity of the identified adverse human rights impacts.</p> <p><b>Points to consider:</b></p> <ul style="list-style-type: none"> <li>○ The remediation provision applies if your company has caused or contributed to an adverse human rights impact. The recognition of your involvement may have come from your own assessment or it may have been brought to your attention by others.</li> <li>○ Remediation can take many forms: acknowledgement and apology, undertaking steps to ensure the harm cannot recur, compensation (financial or other) for the harm, ceasing the activity or relationship, or some other form of remedy agreed by the parties.</li> <li>○ It may be appropriate for remediation to be provided by an entity other than the company, such as a government agency or court.</li> <li>○ Consider how to communicate progress and outcome of remediation processes, as part of <a href="#">Reporting</a>.</li> </ul> <ul style="list-style-type: none"> <li>● <b><i>COP 6.1 (d): Access to Remedy: To make it possible for grievances to be addressed early and remediated directly, Members should establish or participate in effective operational-level grievance mechanisms for individuals and communities who may be adversely impacted.</i></b></li> </ul> <p>The RJC Complaints Mechanism has been designed as a rights-compatible mechanism that is available to Members for this purpose. Alternatively, businesses may establish their own mechanism, based on engagement and dialogue, to make it possible for grievances to be remediated directly. Businesses should also cooperate with legitimate state-based and judicial mechanisms.</p> <p><b>Points to consider:</b></p> <ul style="list-style-type: none"> <li>● Members with Mining Facilities are required to have rights-compatible operational-level complaints or grievance mechanisms that are accessible to affected communities, under <a href="#">Community Engagement</a>. See the UN Guiding Principles on Business and Human Rights, section III on ‘Access to Remedy’ (particularly Principle 31), for additional guidance on appropriate remediation processes.</li> </ul>
<b>7. Sourcing from Artisanal and Small-Scale Mining</b>		
Human Rights Watch	1 July 2013	In the draft Code, Members that source directly from artisanal and small-scale mining (ASM) producers are



		<p>required to regularly assess risks of forced labor, worst forms of child labor, unsafe working conditions, uncontrolled mercury use, and other significant environmental impacts. They are also required to ‘use best endeavours to positively influence practices and reduce or avoid risks’.</p> <p>This provision should include more specific due diligence requirements. In particular the responsibilities to provide for or cooperate in remediation if adverse human rights or environmental impacts are being found, set out in section 6 should apply. A robust due diligence process should include an assessment and monitoring of risks ideally through independent monitors, the publication of the results of monitoring, and procedures to address adverse human rights impacts. Furthermore, the section should apply to members sourcing indirectly from ASM producers. Under the UN Guiding Principles for Business and Human Rights, companies are also obliged to assess risks for indirect human rights impacts.</p>
Solidaridad	5 August 2013	<p>It is good that the development potential of ASM is highlighted. Boycotting ASM would be a worst case scenario for the millions of people who depend on ASM for their livelihoods. However, we do strongly recommend that if companies are actually sourcing from ASM that the companies actively engage to help those miners step into a legal, formal economy. This provides the miners more rights and chance of economic stability. In addition, we have found that formalisation and legalisation have been major factors in determining whether miners are able to develop good environmental and social practices. Members can play a very important role in trying to facilitate this process.</p> <p><b>Standards Guidance</b></p> <p>Section D). If a Member is sourcing directly from ASM producers, the Member should confirm that the ASM producers are operating legally, or make best efforts to support the legalisation of the ASM producers. Legalisation may happen in a range of ways, including: 1. the ASM producers themselves meet the requirements of local law and register independently, if that law is appropriate to producers in the ASM sector<sup>1</sup>; 2. if local law permits, the Member could enter into an agreement with the ASM producers operating in the Member’s permit area that allows the ASM producers to work on the land of the Member. The process suggested in the following bullet may be used to reach agreement.</p>
<b>8. Community Development</b>		
Rio Tinto	2 August 2013	Editorial and additional reference suggestions for Standard Guidance.
WWF	2 August 2013	Better reference to the work of the IFCs CommDev is needed- as some of the references cited are derived from their work. CommDev housed by the World Bank, provides tools, case studies, training opportunities,

**Comment [JEH5]:** This could be included in Guidance rather than COP.

<sup>1</sup> In some countries, the requirements to register and operate as a legal entity were developed for the large-scale mining sector and may not be realistic for ASM producers.

		presentations and resources produced by IFC, partners and other organizations to guide companies in delivering shared value and enhancing benefits to local communities. <a href="http://commdev.org/extractives/">http://commdev.org/extractives/</a> (It is referenced under ASM but not Community development- which is its raison d’etre).  Reference to the MDGs should also perhaps note that these are in the process of revision and updating?
<b>9. Bribery and Facilitation Payments</b>		
De Beers	29 July 2013	Additional reference suggestions for Standard Guidance
Solidaridad	5 August 2013	<b>Code of Practices</b> 9.2 - Members shall have systems in place to manage Bribery Risk in their organization. The systems shall include:
<b>10. Money Laundering and Finance of Terrorism</b>		
RJC COP Review – India Committee	22 July 2013	<b>Code of Practices</b> 10.1 - In our representation dated 01 March 2013, we had raised the question if the KYC is applicable to B2C, ie. When sales are done to customers at retail outlets. There has been no response. Please clarify
<b>11. Security</b>		
Human Rights Watch	1 July 2013	To address the particular concerns arising from the use of private security contractors, the Code should require members to adhere to the standards laid down in the Voluntary Principles on Security and Human Rights, and only hire private security contractors who have joined the Voluntary Principles on Security and Human Rights, and implemented it.
<b>12. Provenance Claims</b>		
De Beers	16 April 2013	Editorial and additional reference suggestions for Standard Guidance.
Rio Tinto	2 August 2013	<b>Standard Guidance</b>  <b>A). Definitions and Applicability</b> A <b>Provenance Claim</b> is a claim, made through the use of descriptions or symbols, relating to Diamonds, Synthetics, Gold and/or Platinum Group Metals that are offered for sale, whether as stand-alone materials or set in jewellery, and specifically relate to their: <ul style="list-style-type: none"> <li>• Origin - Geographical origin of material, for example country, region, mine or corporate ownership of the Mining Facility/ies ; and/ or</li> <li>• Source - Type of source, for example recycled, mined, artisanally mined, Synthetic, or date of production; and/or</li> <li>• Practices - Practices applied in the supply chain relevant to the Code of Practices, including but not</li> </ul>

**Comment [JH6]:** More emphasis on capacity building and training needed here. There is mention of monitoring and investigating, but not training managers and staff. Other sections **do** include such references to a Member’s responsibility to train employees, e.g. under 11. Security or 21. Health and Safety.

This is in line with the shift today from purely looking at performance (e.g. how many hours of overtime do people work) to more emphasis on the process for improving the situation (e.g. how is the employer working to reduce overtime going forward). Management systems and processes, including training, become more important, as can be seen from leading international standards and principles like UNGP, ISO26000, OECD, SA8000, etc.

**Comment [A7]:** The requirement for provenance associated with origin such as country or region makes sense, as it does for representations such as “conflict free.” However, there is a concern that the broad definition included within this COP now mandates – at least in certain circumstances – the requirement for chain of custody verification, in a way that may go beyond the original intent.

**Comment [A8]:** Including “mined” and “synthetic” (at least in the context of diamonds) as a provenance claim makes the provenance COP very broad. In the development of this COP it was noted that a member does not need to make a Provenance claim but the provision applies if one is made. Arguably making a claim that one is selling “diamonds” could be construed as a provenance claim under this standard. Such an outcome seems unintended. However, section 4.10 of the CIBJO Blue Book makes clear that a “diamond” is a “natural mineral” or “naturally occurring” – presumably mined. This goes to the heart of the Product ...

		<p>limited to, conditions of extraction, processing or manufacturing, conflict-free status, or due diligence towards sources.</p> <p><b>D). Suggested Implementation Approach</b></p> <ul style="list-style-type: none"> <li>• "Sourced in accordance with certain policies"</li> <li>• "Produced in accordance with beneficiation policies"</li> </ul>
AngloGold Ashanti	3 August 2013	Editorial and additional reference suggestions for Standard Guidance.
Solidaridad	5 August 2013	<p><b>Code of Practices</b></p> <p>Members that make a Provenance Claim(s) shall have systems in place to ensure that the Provenance Claims(s) is valid and supported by evidence. The systems shall include:</p> <ol style="list-style-type: none"> <li>Documented criteria or requirements that are compatible with the Provenance Claims(s);</li> <li>Procedures for record keeping and verification that the criteria or requirements are met;</li> <li>Controls to maintain the integrity of the materials covered by the Provenance Claim(s);</li> <li>Training procedures to ensure that employees who are expected to respond to product inquiries understand the Provenance Claim(s) and can explain them accurately;</li> <li>A complaints or grievance mechanism appropriate to the nature, scale and impact of the business, to allow interested parties to voice concerns about the veracity of the Provenance Claim(s).</li> </ol>
<b>3 Labour Rights and Working Conditions</b>		
IndustriALL Global Union; Construction, Forestry, Mining and Energy Union (Australia); United Steelworkers (Canada); Earthworks (USA); MiningWatch Canada	31 July 2013	<p>Labor: We are concerned that the Code of Practice does not recognize the critical role played by trade Unions in the work place, on health and safety matters, and in the verification process; is weak compared to other standards on the right of workers to organize; does not require RJC members to Provide a 'living wage'; enables children as young as 14 to be employed by RJC members if allowed by National law, and allows RJC members to do business with suppliers and others who use forced or child labor.</p>
<b>13. General Employment Terms</b>		
RJC COP Review – India Committee	22 July 2013	<p><b>Code of Practices</b></p> <p>The India Committee had made the following submission on 12th September 2013:</p> <p>Employment of Trainees – There is no legal provision for employment, period of training and compensation payable to trainees in the industry – Besides, there are no institutions that train workers for this industry – This means that the industry has to train persons - IC proposes that trainees may be</p>

**Comment [A9]:** It is unclear why practices such as extraction, processing or manufacturing methods would involve a provenance claim. Is there a specific example at certain points of the supply chain why this would require verification as required by this COP? If a member says it produces or refines gold – does it now have to establish a verification system?

**Comment [A10]:** It is unclear what this means. Is there an example?

**Comment [A11]:** It is unclear what beneficiation policies are.

		<p>employed upto a period of 3 years and compensated at 75% of minimum wages and seeks a guidance in this regard.</p> <p>This issue has not been addressed by the Standards Committee – We request that this be included in the Standard Guidance.</p>
<b>14. Working Hours</b>		
Anonymous	24 May 2013	Editorial and additional reference suggestions for Standard Guidance.
RJC COP Review – India Committee	22 July 2013	<p><b>Code of Practices:</b> 14.2 - We had made the following representation in September 2012:</p> <p>Overtime Hours – Seasonality / Market dynamics of the diamond / jewellery industry results in overtime hours exceeding limits during certain periods – This subject needs a suitable guideline.</p> <p>We request that the following guideline be considered in the Indian context:</p> <p>Entities that are required to work overtime to meet seasonal demand should seek consensus of the concerned workers through a Worker Representative Committee (not necessarily elected). If the concerned workers agree to the overtime proposal in a voluntary manner, the entity may resort to overtime. The entity shall maintain records of such overtime done by each worker and it shall be ensured that such overtime of any worker does not exceed beyond 12 hours per week calculated on an annual average basis.</p>
<b>15. Remuneration</b>		
RJC COP Review – India Committee	22 July 2013	<p><b>Code of Practices:</b> 15.1 - This clause has an impact on piece rated workers. We had made the following representation in September 2012:</p> <p>Payment to Piece rate workers – While piece rate system is prevalent in the industry, it is ensured that wages and compensation are in line with time rated workers based on a fixed rate structure and minimum wage requirements are adhered to – IC seeks guidance in this regard.</p> <p>We propose the following guideline:</p>

		<p>Wage calculation for piece rate workers may be modeled on “Monthly Fixed Rate” basis. All legal requirements of minimum wage and other benefits shall be built into the wage structure. A provision may be made for “Incentive Payment” to accommodate the variations in wages arising out of piece rate working.</p> <p>15.2 - There is an ambiguity regarding the basis for calculating the overtime amount. In our representation of 01-03-2013, we had proposed that overtime payments may be based on minimum wage.</p> <p>We suggest India specific guideline as follows:</p> <p>The compensation for overtime may be worked out at the legal premium rate and calculated on the total minimum wage prevailing at the point of time when overtime was carried out.</p>
Solidaridad	5 August 2013	<p><b>Code of Practices</b></p> <p>In the spirit of continuous improvement, reference should be made here to a living wage, in addition to the legal minimum wage. Living wage is also referred to as basic needs wage: enough to meet the basic needs of the worker and his or her family. Basic needs are food, housing, clothing and other costs, such as education and medical costs. An additional component that is sometimes included is discretionary income. A living wage is internationally considered as a human right. The United Nations Universal Declaration of Human Rights (1948) and various declarations of the International Labour Organisation (ILO) recognise the need for workers to receive a living wage.</p> <p>Some links on this topic, and examples from other Codes on this issue:</p> <ul style="list-style-type: none"> <li>- Fair Wage Network: detailing 12 dimensions of a fair wage – comprehensive approach to decent remuneration: <a href="http://www.fair-wage.com/en/fair-wage-approach-menu/12-fair-wage-dimensions-menu.html">http://www.fair-wage.com/en/fair-wage-approach-menu/12-fair-wage-dimensions-menu.html</a></li> <li>- ILO publication on living wage: <a href="http://www.ilo.org/travail/whatwedo/publications/WCMS_162117/lang-en/index.htm">http://www.ilo.org/travail/whatwedo/publications/WCMS_162117/lang-en/index.htm</a></li> <li>- Inventory report on how living wage is currently being implemented in various sectors, commissioned by Dutch ministry of Foreign Affairs in 2012: <a href="http://www.berenschot.com/publish/pages/2314/living_wage_12-07.pdf">http://www.berenschot.com/publish/pages/2314/living_wage_12-07.pdf</a></li> <li>- ETI Base Code:</li> </ul> <p>O 5.1 Wages and benefits paid for a standard working week meet, at a minimum, national legal standards</p>

		<p>or industry benchmark standards, whichever is higher. In any event wages should always be enough to meet basic needs and to provide some discretionary income.</p> <p>- FLA Workplace Code of Conduct:</p> <p>O Compensation -- Every worker has a right to compensation for a regular work week that is sufficient to meet the worker's basic needs and provide some discretionary income. Employers shall pay at least the minimum wage or the appropriate prevailing wage, whichever is higher, comply with all legal requirements on wages, and provide any fringe benefits required by law or contract. Where compensation does not meet workers' basic needs and provide some discretionary income, each employer shall work with the FLA to take appropriate actions that seek to progressively realize a level of compensation that does.</p>
<b>16. Discipline and Grievance Procedures</b>		
<p>IndustriALL Global Union; Construction, Forestry, Mining and Energy Union (Australia); United Steelworkers (Canada); Earthworks (USA); MiningWatch Canada</p>	<p>31 July 2013</p>	<p>Comments and feedback for COP and Standards Guidance contained in Shine vs Substance Report.</p>
<b>17. Child Labour</b>		
<p>Human Rights Watch</p>	<p>1 July 2013</p>	<p>The draft Code now clearly references ILO Conventions 138 on Minimum Age and 182 on the Worst Forms of Child Labor. However, it allows members to make exceptions to the general principles set out by the ILO Conventions, when they take place in accordance with national laws and procedures. In particular, under the proposed Code children may be employed from the age of 14 if the law of the country permits, and children may be employed from the age of 16 in hazardous labor if national laws allow and the children have received adequate specific instruction or vocational training. The draft Code also allows light work for children between the ages of 13 and 15. While these requirements may not violate international law (depending on the circumstances of implementation), they essentially use the lowest common denominator available. Since the Code of Practices aims to set a high standard for the industry, it should go beyond this lowest common denominator approach.</p> <p>The proposed draft contains more useful detail on remediation processes, but is lacking reference to concrete activities that companies should undertake to address child labor, such as support for programs</p>

		aimed at withdrawing children from child labor in mining. The draft also states that children who are not involved in the worst forms of child labor can remain in partial employment during a remediation process. In line with ILO Convention 138, this should only be the case for children aged 15 or older, and this should be stated explicitly. But even for those older children, our research suggests that there are few tasks in mining that are not hazardous, and that it is extremely difficult for children to combine school or vocational training and work in mining.
Solidaridad	5 August 2013	In Africa, some children must seek work because they are HIV/AIDS orphans. One of our colleagues working in Africa recommended including that RJC provide some targeted guidance on this topic, since it is quite common in some countries for children to seek work and may end up in ASM operations on or around Member concessions.
<b>18. Forced Labour</b>		
Anonymous	2 May 2013	Editorial and additional reference suggestions for Standard Guidance.
<b>19. Freedom of Association and Collective Bargaining</b>		
Anonymous	24 May 2013	Editorial and additional reference suggestions for Standard Guidance.
RJC COP Review – India Committee	22 July 2013	<p><b>Standards Guidance</b></p> <p>The Standard Guidance has provided for “Un-elected” workers committee to be formed (Refer Box X). It is further stated that Minutes of Meetings (MOM) / Memoranda of Understanding (MOU) may be documented to define conditions related to working hours, overtime, remuneration, deductions etc.</p> <p>Such MOM / MOU will not be treated equivalent to Collective Bargaining Agreements. It has also been mentioned that Collective Bargaining Agreements must comply with Applicable Law.</p> <p>There is an explanation as to how the terms and conditions of such MOM / MOU may be treated as “Minor Non-conformances” and subjected to corrective action over the certification period.</p> <p>The India Committee has studied the Standard Guidance document and also discussed the contents with persons experienced in labour related issues. Our observations are as under:</p> <p>a) The Standard Guidance has accepted the Minutes of Meeting (MOM) with Workers Committee as a valid document, though not equivalent to a Collective Bargaining Agreement (CBA). The Standard Guidance further mentions that such MOM may contain terms and conditions relating to working hours and remuneration that are agreed after negotiations between the employer and worker committee.</p> <p>b) In the same Standard guidance, it is also mentioned that Collective Bargaining Agreements cannot</p>

		<p>contain any clause that violates Applicable Law.</p> <p>c) For example, if the Employer and the Workers Committee agree on overtime payment based on minimum wage and the same is documented in MOM, this agreement will be questioned by the auditor as it violates Applicable Law.</p> <p>d) Similarly, if the Employer and the Workers Committee agree that there is a need to do additional overtime due to peak load of work and this is documented in a MOM, the auditor can take a stand that the agreement is not valid since it violates the law.</p> <p>e) For all practical purposes, any agreement between employer and workers committee will be of no validity if it is tested against Applicable Law.</p> <p>f) Thus, the extensive and detailed guidance given in Box X: Collective Bargaining Agreements and Working Hours and Remuneration does not seem to help the auditee in any manner.</p> <p>g) We request that the MOM / MOU with Workers representative Committee be treated as a document created in good faith and not as a legal document. As long as both employer and employees abide by the contents of the MOM / MOU, the auditor should not classify as a non-conformance.</p> <p>We request a guidance as follows:</p> <p>The workers of the entity may form a Worker Representative Committee consisting of workers who are not elected but nominated by general consensus among the workers. The employer may hold discussions with such Worker Representative Committee and arrive at agreement on a number of issues that affect the welfare, safety, working hours, overtime, remuneration etc. of the workers of the entity. Such agreements should be documented in the form of a Minutes of Meeting (MOM) or a Memorandum of Understanding (MOU) and signed off by the Employer Representative and the members of the Worker Representative Committee. The contents of the MOM / MOU should be communicated to all workers and administered in a way that protects the interests of all workers and does not bring any harm or loss to any worker in the entity.</p>
<p>IndustriALL Global Union; Construction, Forestry, Mining and Energy Union (Australia); United Steelworkers (Canada); Earthworks (USA);</p>	<p>31 July 2013</p>	<p>Comments and feedback for COP and Standards Guidance contained in Shine vs Substance Report.</p>



MiningWatch Canada		
Adam Greene - US Council for International Business	6 August 2013	Editorial and additional reference suggestions to Standard Guidance.
<b>20. Non-Discrimination</b>		
		No comments received.
<b>4 Health, Safety and Environment</b>		
IndustriALL Global Union; Construction, Forestry, Mining and Energy Union (Australia); United Steelworkers (Canada); Earthworks (USA); MiningWatch Canada	31 July 2013	Environment: RJC's standard fails to place concrete targets or limits on water and air pollution such as Mercury emissions. It allows unlimited consumption of water and energy. It also allows toxic tailings disposal into lakes and ocean environments, and allows mining in legally protected areas.
<b>21. Health &amp; Safety</b>		
IndustriALL Global Union; Construction, Forestry, Mining and Energy Union (Australia); United Steelworkers (Canada); Earthworks (USA); MiningWatch Canada	31 July 2013	Comments and feedback for COP and Standards Guidance contained in Shine vs Substance Report.
RAISE Health Initiative For Workers, Companies and Communities	3 August 2013	<b>Standard Guidance</b> General Comments The Responsible Jewellery Council's Health & Safety Guidance Chapter has taken some important steps towards highlighting a business case for companies and their supply chains that addresses health concerns beyond occupational health and safety. In particular, we commend RJC's acknowledgement that

	<p>businesses are moving towards health and safety models that address general health and wellbeing. Moreover, we appreciate the inclusion of our previous suggestion for the provision of educational materials on personal health and wellbeing to employees (page 5 of “Health &amp; Safety” document). However, we believe that more can be done to emphasize the importance of overall worker health, and in particular, women’s health in both short and long-term business operations. We suggest the following amendments be made to the sections listed below.</p> <p>Specific Suggestions</p> <ul style="list-style-type: none"> <li>• Pg. 1, Section B: Issue Background <ul style="list-style-type: none"> <li>o “However, some businesses are finding it strategic to develop programs for the general health and wellbeing of workers. These businesses are addressing broader aspects of health, such as stress, obesity, fatigue, fitness for work, substance addiction and abuse, reproductive health/family planning, and work-life balance.”</li> </ul> </li> <li>• Pg. 3, Section C: Key Regulations <ul style="list-style-type: none"> <li>o Comment: In addition to a commitment to the International Labour Organisation’s conventions, we advocate or the inclusion of commitments to the following: the Women’s Empowerment Principles (WEPEs), the UN Global Compact, and the UN Guiding Principles on Business and Human Rights.</li> </ul> </li> <li>• Pg. 3, Section D: COP 21.2 <ul style="list-style-type: none"> <li>o Context: This section refers to the provision and maintenance of workplaces and on-site housing. It states: “Members shall provide and maintain workplaces, and on-site housing where provided, that have...”</li> <li>o Amendment to bullet point C: <ul style="list-style-type: none"> <li>“Clean and hygienic washing and toilet facilities, as well as the provision of sanitary napkins for women, which commensurate with the number and gender of staff employed.”</li> </ul> </li> </ul> </li> <li>• Pg. 4, Section D: COP 21.4 – <ul style="list-style-type: none"> <li>o Context: This section refers to the establishment and conduct of on-site Healthy and Safety committees. It states: “Members shall provide Employees and on-site Contractors with a mechanism, such as a joint Health and Safety committee, by which they can raise and discuss Health and Safety issues with management.”</li> <li>o Add the following bullet point under ‘Points to Consider’: “The mechanism should address both short</li> </ul> </li> </ul>
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		<p>and long-term health trends identified by employees, contractors, and management.”</p> <ul style="list-style-type: none"> <li>• Pg. 5, Section D: COP 21.5 <ul style="list-style-type: none"> <li>o Context: This section refers to the provision of Health and Safety training and information. It states: “Members shall provide training and information about Health and Safety to Employees and on-site Contractors in an understandable form and in an appropriate language. This will include...”</li> <li>o Add the following as bullet point F: “Appropriate training in basic health areas, including non-communicable diseases, hygiene, and maternal and reproductive health.”</li> <li>o Amendment to bullet point 3, under ‘Points to Consider’: “Trainings should take gender dynamics, language, and levels of education into account.”</li> </ul> </li> <li>• Pg. 5, Section D: COP 21.7 <ul style="list-style-type: none"> <li>o Context: This section refers to the provision of medical facilities. It states: “Members shall provide access to adequate on-site Health and medical facilities, including clearly marked first aid provisions and trained first-aid personnel, and have appropriate procedures in place for transportation to local medical facilities in the case of a medical emergency.”</li> <li>o Add the following bullet point under ‘Points to Consider’: “Policies should be established to enable access to basic health services, particularly if services are not available after work hours.”</li> <li>o Add the following bullet point under ‘Points to Consider’: “Medical staff should be trained in general and gender-specific health issues and in making referrals to qualified providers as needed.”</li> </ul> </li> </ul>
<b>22. Environmental Management</b>		
WWF	2 August 2013	<p>22.1 Perennial issue: How will ‘significance’ be determined?</p> <ul style="list-style-type: none"> <li>- Nothing wrong with the definitions – but a source should be noted as ISO14000’s Terms and Definitions standard to give it increased authority.</li> <li>- The risk to ecosystems integrity caused by poor practices is only reflected in biological terms. It is important to also point out that people are also dependent upon the integrity of these ecosystems and the services they provide – especially the poor and vulnerable (as a vehicle for highlighting the poverty-environment nexus).</li> <li>- No mention is made of the issue of ‘implementation deficit’. Eg whereas most developing countries have EIA regulations these days, many have inadequate resources to implement and monitor them. What should be the expectations of members? It is not sufficient to simply adhere to domestic regulations in such situations. Self-regulation is mentioned – but some elaboration on why this is important in many</li> </ul>

		developing countries is needed. - No mention of <i>continuous improvement</i> - an integral part of an EMS.
AngloGold Ashanti	3 August 2013	Editorial and additional reference suggestions for Standard Guidance.
Solidaridad	5 August 2013	<b>Code of Practices</b> 22.1 Members shall identify and document environmental Risks, significant environmental impacts, and opportunities for improving environmental performance.  22.2 Members shall implement and regularly review controls to minimise identified environmental Risks and minimise and mitigate any significant environmental impacts, and to improve environmental performance.
<b>23. Hazardous Substances</b>		
		No comments received.
<b>24. Wastes and Emissions</b>		
WWF	2 August 2013	<ul style="list-style-type: none"> <li>• Logically this section should be after Cop 25 not before to better reflect the required logic in flow from prevention to 'cure' –eg resource efficiency to pollution prevention to end of pipe pollution management. The preference is for the earlier strategies eg pollution prevention strategies and / cleaner production.</li> <li>- Water extracted from mine sites in the process of dewatering should be monitored.</li> <li>- 24.2 ... <ul style="list-style-type: none"> <li>○ a. <i>Taking into account environmental impact considerations (including off-site impacts of operations), alongside cost considerations;</i></li> <li>○ .....</li> <li>○ d. <i>Assessing long term post closure risks.</i></li> </ul> </li> </ul>
Solidaridad	5 August 2013	<b>Code of Practices</b> 24.1 Members shall monitor for and identify significant wastes and emissions to air (including noise), water and land generated in their business processes.
<b>25. Use of Natural Resources</b>		
WWF	2 August 2012	"Air emissions are of increasing international concern because of their potential contribution to global climate change" implies that ALL atmospheric emissions are contributors to climate change- not so. (factual error)
<b>5 Diamonds, Gold and Platinum Group Metals</b>		

**Comment [JEH12]:** This provision is not strong enough. It must not be limited to "minimise", but should also include mitigation of any "significant" environmental risks.

**Comment [JEH13]:** This is needed to ensure that Members are able to identify emissions. It is mentioned in other provisions and should be here.

**Comment [JEH14]:** This needs to be defined in the COP itself or else it is a loophole. Is it applicable law? Levels defined by other standards, such as IFC PS? Or, should Members be required in advance to define what levels would call for these following steps?

<b>26. Product Disclosure</b>		
AngloGold Ashanti	3 August 2013	Editorial suggestions for Standard Guidance.
<b>27. Kimberly Process Certification Scheme and World Diamond Council System of Warranties</b>		
Human Rights Watch	1 July 2013	The Code defines conflict diamonds, rough diamonds used by rebel movements or their allies to finance conflict aimed at undermining legitimate governments. This definition, which has been developed in the context of the Kimberley Process Certification Scheme, is limited, because it does not include diamonds mined in the context of serious human rights abuses under government control. The Code should expand the definition of conflict diamonds to include diamonds mined in the context of serious human rights violations under government control.
<b>28. Grading and Appraisal</b>		
Mel Moss, Regal Imports Ltd	11 June 2013	Editorial and additional reference suggestions to Standards Guidance.
<b>6 Responsible Mining Sector</b>		
<b>29. Extractive Industries Transparency Initiative</b>		
IndustriALL Global Union; Construction, Forestry, Mining and Energy Union (Australia); United Steelworkers (Canada); Earthworks (USA); MiningWatch Canada	31 July 2013	Comments and feedback for COP and Standards Guidance contained in Shine vs Substance Report.
Rio Tinto	2 August 2013	Editorial and additional reference suggestions for Standard Guidance.
WWF	2 August 2013	- WWF fully endorses the commitment of RJC members to implement EITI in compliant and implementing countries. This could be extended to encourage RJC members to actively promote the merits of EITI in, as yet, <i>non-participating</i> countries – not only developing countries but also OECD countries (as UK and France have just agreed to do)? The standard currently says ‘help promote’ but this reads as if it is limited to (already) EITI implementing countries only. It does say ‘where the company operates’ and this could be extended to say ....”Including currently non implementing/compliant countries”. - Implies that signing up to EITI in an implementing country is voluntary - it is not- all relevant oil, gas and

		<p>mining companies operating in a compliant and implementing country are required to report their payments (factual error).</p> <ul style="list-style-type: none"> <li>- Reference is made to the need to update this Cop in the light of the pending GRI revisions. It was agreed in Sydney in 2013 to extend the EITI standard beyond <i>revenues to licenses</i>. The COP should reflect this development and update the COP accordingly.</li> <li>- Final para of the “Issue Background” refers to ‘resource transparency’ (sic) this is nonsensical. (factual error)</li> <li>- Under ‘key regulations’ the term ‘oil’ is inexplicably used? (factual error)</li> <li>- It is incorrect to use the heading ‘national law’ under ‘Key regulations’. It is not a requirement to pass a national law for EITI under the EITI compliance criteria - some countries do – but others use other mechanisms to ensure compliance (factual error)</li> </ul>
<b>30. Community Engagement</b>		
Solidaridad	5 August 2013	<p><b>Code of Practices</b></p> <p><b>30.1</b></p> <p>c. Establish effective communication measures to disseminate relevant project information and receive feedback in an inclusive, equitable, culturally appropriate and rights-compatible manner;</p> <p>d. Through informed consultation, consider the interests and development aspirations of affected communities in major mining decisions in the project’s lifecycle, and seeks broad community support for proposals.</p>
Rio Tinto	2 August 2013	<p>Overall – this is a good summary of engagement. As noted below, however, it would be helpful to more clearly point out that successful engagement should help avoid complaints.</p> <p>Editorial and additional reference suggestions for Standard Guidance.</p>
<b>31. Indigenous Peoples and Free Prior Informed Consent</b>		
Human Rights Watch	1 July 2013	<p>In the proposed section on indigenous peoples, the Code does not explicitly mention the UN Declaration on Rights of Indigenous Peoples. The UN Declaration stipulates that indigenous peoples have rights over the land, territories, and resources they have traditionally owned, occupied, or otherwise used or acquired. The Code falls short of the UN Declaration’s principles when it requires that members ‘work to obtain’ the free, prior and informed consent of the affected Indigenous Peoples in the context of relocation and actions with significant impact on the lives of indigenous peoples. Under the Convention, indigenous peoples can only be relocated once they have given their free, prior, and informed consent, after agreement on just and fair compensation of land, property, and livelihood.</p>

**Comment [JEH15]:** We suggest including, “Members may need to engage and actively support organisations that guide affected communities in understanding their rights so that consultation is truly informed.”

Society for Threatened Peoples - Switzerland	31 July 2013	<p><b>Code of Practices</b></p> <p><b>COP 31.2: Broad-based support:</b> <i>Members in the Mining Sector shall seek to obtain broad-based support of affected Indigenous Peoples and to have this support formally documented, including partnerships and/or programs to provide benefits and mitigate impacts.</i> Note that this provision applies in all cases where there are affected Indigenous Peoples. For Mining Facilities with affected Indigenous Peoples, implementation of this provision will vary according to the context.</p> <p><b>COP 31.3: Free Prior and Informed Consent (FPIC):</b>  <i>Members in the Mining Sector shall during the planning and approval stages obtain the free, prior and informed consent of the affected indigenous peoples for all new projects of existing Facilities or new Mining Facilities, or significant changes to existing Facilities, that are associated with any of the circumstances identified below:</i></p> <ul style="list-style-type: none"> <li>• <i>Impacts on lands and natural resources subject to traditional ownership or under customary use or rights;</i></li> <li>• <i>Relocation of Indigenous Peoples from lands and natural resources subject to traditional ownership or under customary use;</i></li> <li>• <i>Significant impacts on critical cultural heritage that is essential to the identity and/or cultural, ceremonial, or spiritual aspects of Indigenous Peoples lives; or</i></li> <li>• <i>Use of cultural heritage, including knowledge, innovations or practices of Indigenous Peoples for commercial purposes;</i></li> </ul> <p><b>COP 31.4: Complaint procedure:</b> An important instrument to build trust is the establishment of an internal complaint procedure system. It includes dispute mechanisms with the staff in charge with the relationship with the indigenous peoples, an appeal body if the conflict cannot be settled, and a final recourse possibility involving the senior management level. In some countries, participation of a governmental body might be useful. The complaint procedure shall be developed in a participative approach and gained the consent of affected indigenous communities.</p> <p>Note that our comments do not mean that we support the final wording of the standards. We look forward to the revision and will then decide on what our position will be on it.</p> <p>Editorial and additional reference suggestions for Standard Guidance.</p>
IndustriALL Global Union; Construction,	31 July 2013	<p>Free, Prior and Informed Consent: The addition of free, prior and informed consent (FPIC) is commendable, but the language needs to be strengthened. Universal standards espoused by the United</p>

**Comment [OD16]:** There will never be a longlasting support of affected Indigenous Peoples if there they could not give their consent.

Forestry, Mining and Energy Union (Australia); United Steelworkers (Canada); Earthworks (USA); MiningWatch Canada		Nations Declaration on the Rights of Indigenous Peoples and those of other multilateral organizations hold that companies must obtain free, prior and informed consent before developing a project. The RJC standard requires only that companies "seek to obtain broad--based support," which dilutes the effectiveness and measurability of this standard. Further, there is no requirement to publicly disclose evidence showing that free, prior and informed consent has been obtained prior to development.
Rio Tinto	2 August 2013	<b>Standard Guidance</b> RJC may want to consider acknowledging the potential for government action notwithstanding efforts to achieve FPIC. ICMM has done so in its position statement and has also explained the issue in its response to the First Peoples Worldwide critique. ICMM's position statement notes that: "Where .... And consent is not forthcoming despite the best efforts of all parties, in balancing the rights and interests of Indigenous Peoples with the wider population, government might determine that a project should proceed and specify the conditions that should apply. In such circumstances, ICMM members will determine whether they ought to remain involved with a project."
Solidaridad	5 August 2013	<b>Code of Practices</b> We strongly recommend that this section add, "Where FPIC cannot be obtained, Members shall stop any activities that adversely affect the rights of Indigenous Peoples and shall not begin again until such consent is obtained."  31.3.b Document the process and the outcomes of the negotiations.
<b>32. Impact Assessment</b>		
Human Rights Watch	1 July 2013	The draft Code requires environmental and social impact assessments, but not human rights impact assessments. The Code should explicitly require a human rights impact assessment as part of the overall impact assessment, using international human rights law as its framework. The human rights assessment must take into account differential impacts on women, children, the elderly, and marginalized sectors of society. All environment, social, and human rights assessments should be based on the collection of disaggregated data. The findings of impact assessments should be disseminated publicly and in a way that is easily accessible and understandable to directly affected populations.
Rio Tinto	2 August 2013	<b>Code of Practices</b> <b>COP 32.2: Baseline Conditions, Options and Prevailing Standards:</b> Impact Assessments    should be comprehensive as appropriate for the context and include assessment of: <ul style="list-style-type: none"> <li>• baseline conditions,</li> <li>• design options where applicable that mitigate negative impacts, and</li> </ul>

**Comment [JEH17]:** Guidance does not currently explain that it is important to obtain consent and documentation that truly represents a broad-based FPIC from among the affected people. At times in the past, "approval" has come from one or two leaders who sign a document yet are acting without the knowledge of their own people. This should not be the basis of consent.

**Comment [A18]:** Assuming that there is a consistent understanding of what an "integrated" impact assessment is. Is this intended to mean that all types of impact assessments must be integrated into one assessment? It is not appropriate to mandate a single type of assessment. In many cases, human rights impacts are assessed and included as part of either or both the social /environment impact assessment, which may be separate documents. In some cases human rights impacts may not be called such – but the substantive effect of assessment would be the same.

It is important to recognize that the form of assessments are often dictated by legal requirements.

Additionally, this language should recognize the difference in circumstances – thus the term "comprehensive" may be misinterpreted. E.g., what might be appropriate for an exploration stage project is different than for a large scale mining project.



		<ul style="list-style-type: none"> <li>environmental and social impacts, including impacts related to Human Rights, labour and employment, gender, health and Conflict.</li> </ul> <p>Editorial and additional reference suggestions for Standard Guidance.</p>
WWF	2 August 2013	See earlier comments about 'implementation deficit' in many countries.
AngloGold Ashanti	3 August 2013	<p><b>Code of Practices</b></p> <p><b>COP 32.1: Impact Assessment and Plans:</b> Members shall complete an environmental and social Impact Assessment, and associated environmental and social management plans, during the planning and approval of new Facilities or significant changes to existing Facilities.</p> <p>Editorial suggestions for Standard Guidance.</p>
<b>33. Artisanal and Small-Scale Mining</b>		
Human Rights Watch	1 July 2013	The draft Code requires members in the mining sector to engage with artisanal miners through community engagement and impact assessments, and participate in initiatives towards the professionalization and formalization of ASM. The provision misses, however, a requirement for supply chain due diligence for companies that source directly or indirectly from ASM. The Code of Practices should require companies sourcing minerals directly or indirectly from artisanal mines to establish a robust due diligence process. Monitors should operate independently and the results of monitoring should be published. The due diligence process must also include procedures to address adverse human rights impact.
WWF	2 August 2013	<ul style="list-style-type: none"> <li>- The para starting... "formalisation and professionalisation of the sector is considered a prime need".....has linguistic problems.</li> <li>- The term 'professionalisation' is the wrong word for improving safety conditions in ASM?! Generally: Formalisation yes, but not professionalisation.</li> <li>- The figures (20 million and 100 million) used in the 'Background Issues' need attribution – they are a wild guess.</li> <li>- The statement that..."There is a growing consensus among development agencies and organisations that if these issues could be addressed, ASM could become a more viable livelihood for those engaged in it and could contribute to the development of new economic opportunities both up- and downstream in the supply chain". This needs attribution. It is not really true. Notwithstanding the fact that ASM is the HISTORY of mining (1) Development agencies really see ASM as a means for people to get out of ASM and into more sustainable livelihoods- based on renewable resources- not finite resources- very few want to be seen to be perpetuating ASM unless in a sense of small business development (factual error)</li> </ul>

**Comment [ASP19]:** As recommended previously, environmental and social impacts aren't unique to mining.

		<p>- It is incorrect to say ASM “is central to a number of international development agendas” - although ‘international development agendas’ is a somewhat vague term and all-encompassing. One of the critical challenges remains to get bilateral donor agencies to recognize the development potential of ASM communities. We are a long way from this currently (factual error).</p> <p>- The Cop makes little mention of the leverage RJC members could exercise to encourage host governments to better manage the ASM sector.</p> <p>- Some reference is needed to the Communities and Small scale Mining (CASM) initiative as some of the references cited are derived from their work- as are some of the institutions (eg ARM).. Although not existing with the support of the World Bank Secretariat/ Trust Fund any more – the international network is still active and coordination has been resurrected through the creation of the ASM Knowledge Programme, 2013-2018 (hosted by IIED, London).</p> <p>- The statement...”33.1. Members in the Mining Sector shall, where artisanal and small-scale mining (ASM) is not under the Control of the Member occurs within their areas of operation:</p> <ul style="list-style-type: none"> <li>o Engage directly with the ASM as part of community engagement approaches (30) and social and environmental impact assessments” is missing some words?</li> </ul>
Estelle Levin Ltd	28 August 2013	Editorial and additional reference suggestions for Standard Guidance.
<b>34. Resettlement</b>		
Human Rights Watch	1 July 2013	<p>While the proposed Code recognizes that members have to avoid or otherwise minimize involuntary resettlement, it misses key principles on resettlement, as highlighted in the UN Basic Principles and Guidelines on Development-Based Evictions and Displacement. The Code of Practices should explicitly commit to adhering to the UN Basic Principles and Guidelines on Development-Based Evictions and Displacement, and elaborate on some key elements in its text.</p> <p>In particular, community participation is integral to every phase of a resettlement during design, implementation, and after the move. The full and informed consent of affected persons, groups, and communities should be sought as regards the relocation site prior to the resettlement. Affected persons should also have a meaningful opportunity to challenge the eviction through accessible complaints or grievance mechanisms and redress. All persons, groups and communities have the right to suitable resettlement, which includes the right to alternative land of better or equal quality and housing that satisfies the following criteria for adequacy: accessibility, affordability, habitability, security of tenure, cultural adequacy, suitability of location, and access to essential services such as health and education. A resettlement policy, consistent with international standards, should be in place prior to any resettlements.</p>

		Local government officials and independent observers, properly identified, should be present during the resettlement to ensure that no force, violence or intimidation is involved. Adequate compensation, 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.
IndustriALL Global Union; Construction, Forestry, Mining and Energy Union (Australia); United Steelworkers (Canada); Earthworks (USA); MiningWatch Canada	31 July 2013	Resettlement: Even with the current revisions, the standard allows members to involuntarily resettle communities. The Code of Practices should explicitly commit to adhering to the UN Basic Principles and Guidelines on Development-Based Evictions and Displacement, and elaborate on some key elements in its text. Community participation is essential to every phase of resettlement.
Rio Tinto	2 August 2013	Editorial and additional reference suggestions for Standard Guidance.
Solidaridad	5 August 2013	<b>Code of Practices</b> Members in the Mining Sector shall avoid <b>Involuntary Resettlement</b> . Where resettlement is unavoidable, it shall be minimised and appropriate measures to mitigate adverse impacts shall be carefully planned and implemented, consistent with International Finance Corporation (IFC) Performance Standard 5.
<b>35. Emergency Response</b>		
		No comments received.
<b>36. Biodiversity</b>		
IndustriALL Global Union; Construction, Forestry, Mining and Energy Union (Australia); United Steelworkers (Canada); Earthworks (USA); MiningWatch Canada	31 July 2013	Comments and feedback for COP and Standards Guidance contained in Shine vs Substance Report.
WWF	2 August 2013	Issues background para 2 is unclear. It refers to areas where low levels of biodiversity exists – due to other land use change than mining – but then refers to the need to ‘enhance’ biodiversity? Do we mean ‘restore’ as part of a BAP here?  - The text requires strengthening so that the need for specific BAP s is more obvious.... “Implement action plans to deliver measurable biodiversity benefits that are at least commensurate with the level of adverse

**Comment [FS20]:** Resettlement has been brought out of Community Engagement and Development as separate provision. Added definition for Involuntary Resettlement to Glossary, as per IFC PS 5.

**Comment [JEH21]:** We strongly recommend that this not be voluntary. If there are adverse effects, in particular loss of livelihoods, the company shall take all steps to minimise and compensate for them, preferably in partnership with government.

	<p>impacts”, suggested added text <i>but ideally provide net positive impact</i>.</p> <ul style="list-style-type: none"> <li>- Some WWF commentators believe that bio diversity off-sets - require qualification “as a last resort”.</li> <li>- “The RJC biodiversity standard requires Members to not explore or mine within, or negatively impact adjacent, UNESCO World Heritage Sites. The RJC also requires Members to respect other areas legally designated for biodiversity protection, at the international, national, regional or local level. A clear understanding of the status of protected areas, and the implications for mining operations, is thus essential.” <ul style="list-style-type: none"> <li>o This statement elicits various responses within WWF. The prevailing consensus seems to be that treating WHS as ‘no go’ areas is the best we can hope for. This is mindful that to extend ‘no go’ status to other protected areas is a sure way to lead to a rash of de –proclamations of those protected areas - thus a ‘pyrrhic victory’. It is important to point out though that a minority within WWF would prefer to see the following wording: <ul style="list-style-type: none"> <li>▪ “World Heritage Sites, IUCN Protected Areas Cat. I-II, Ramsar Sties and Alliance for Zero Extinction Sites and shall ensure that their activities do not negatively impact directly on adjacent World Heritage Sites, IUCN Protected Areas Cat. I-II, Ramsar Sites or Alliance for Zero Extinction Sites.”</li> </ul> </li> </ul> </li> <li>- “Implement action plans to deliver measurable biodiversity benefits that are at least commensurate with the level of adverse impacts, <i>but ideally provide net positive impact</i>”.</li> <li>- The IUCN/ICMM agreement on this is a little bit more than an on-going dialogue ...there is tacit agreement that ICMM members will not explore or mine in WHS? ICMM’s Position Statement on Mining and Protected Areas includes a commitment not to mine or explore in World Heritage Sites and to work with IUCN and others on various protected areas and biodiversity issues.</li> </ul> <p><b>Sub-sea Mining</b></p> <ul style="list-style-type: none"> <li>- The precautionary principle should prevail in the case of marine/ sub-sea mining.</li> <li>- Suggested text: Members in the Mining Sector shall adhere to the precautionary principle and not operate in deep sea areas until sufficient scientific knowledge exists as to what the impacts may be and how to effectively manage any potentially negative impacts that may occur.</li> </ul> <p>- 36.6 Members in the Mining Sector shall demonstrate that they <i>proactively</i> (?)support measures to minimize the environmental impact of infrastructure (roads, power stations, ports, employee housing, etc.) created to support mining operations. What about the synergies this infrastructure presents for</p>
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		development? - Given the impacts of associated infrastructure being developed to support mining member’s activities, there is a need for their (sometimes indirect) responsibility for the impacts of these developments to be considered much stronger than in the above statement.
AngloGold Ashanti	3 August 2013	Editorial and additional reference suggestions for Standard Guidance.
Solidaridad	5 August 2013	<b>Code of Practices</b> 36.2 Members in the Mining Sector shall respect legally designated protected areas by ensuring that: a. Members have a process to identify nearby legally designated protected areas. b. Members comply with any regulations, covenants or commitments attributed to these areas. c. Decisions to proceed with exploration, development, operation and closure activities take into account the presence of, and impact on, legally designated protected areas.  36.4 Members in the Mining Sector shall implement controls to ensure that their operations will not lead to the significant decline of a species listed by the IUCN as threatened with extinction, or create adverse impacts on habitat critical to supporting their survival.
<b>37. Tailings and Waste Rock</b>		
De Beers	31 July 2013	<b>Code of Practices</b> 37.4 Members in the Mining Sector shall not use marine tailings and waste rock disposal from land-based Mining Facilities, unless: a. a thorough inventory has been conducted of existing marine resources that would be impacted by the marine waste disposal, and <i>SUGGESTED alternative to a) a scientific assessment has been conducted to identify key marine species and habitat that would be impacted by the marine waste disposal, and</i> b. a thorough environmental and social analysis of alternatives was conducted which showed that marine tailings disposal creates fewer environmental and social impacts and risks than a land-based tailings facility, and c. it can be scientifically demonstrated that a significant adverse effect on coastal or marine species and habitat does not result, and d. in the case of deep-sea submarine tailings disposal, tailings are released below the surface thermocline and euphotic zone.  <b>Standard Guidance</b> 37 A). Issue Background - Additional reference suggestions for Guidance.

**Comment [JEH22]:** This should explicitly say, “...including complying with any prohibitions to mining in or near protected areas.”

**Comment [JEH23]:** This should include a definition by reference on what “significant decline” means.

**Comment [WP24]:** This new requirement (“thorough inventory”) seems unnecessarily onerous and should perhaps be more explicit – i.e. presumably, it is not necessary to have a complete inventory of everything from bacteria to marine mammals, assuming that “marine resources” imply living resources? The proposed amendment is an alternative that includes the use of an assessment (which should balance how much is needed to define the biodiversity to be impacted)

**Comment [WP25]:** The proposed amendment to the wording is changed in order to be explicit about where it applies. It cannot apply to beach/shallow marine disposal (where there is no thermocline due to wave action).

WWF	2 August 2013	<p>Suggested addition: “Protect the surrounding environment and local communities from potential impacts of acidification, metal leaching, loss of containment or contamination, including contamination of groundwater <i>during the mine’s operation and post-closure</i> “</p> <p>Suggested addition: Members with Mining Facilities shall...</p> <ul style="list-style-type: none"> <li>○ Implement risk-based tailing management, during operation and post closure (based on a geochemical risk assessment);</li> <li>○ Implement appropriate treatment of contaminated groundwater;</li> <li>○ Segregate and /or isolate acid-generating material in waste facilities.</li> </ul> <p><b>Sub-sea Tailings disposal</b></p> <p>- Previously WWF has pushed for more rigorous EIA procedures for Subsea tailings. We believe this should now be removed as an option, for a number of reasons. One, this waste cannot be managed underwater, metals leach from it and it is a potential source of future minerals through reprocessing when extraction rates improve.</p> <p>- It is noted that an exception exists in the following statement (but this requires the additional text)...”A thorough environmental and social analysis of alternatives was conducted which showed that marine tailings disposal creates fewer environmental and social impacts and risks than a land-based tailings facility”. <i>This analysis must be based on scientifically valid data to enable relevant comparison, and any such operations must include long-term impact monitoring, in particular for cumulative impacts, and provision made for an abatement/mitigation plan.</i></p> <p>- Suggested additional text: “it can be scientifically demonstrated that a significant adverse effect on coastal or marine resources or ecosystems does not result, <i>including impacts on features such as deep water corals, sponge and vent communities;</i> “</p> <p>- Suggested text: In the absence of the appropriate conditions, <i>or lack of relevant data to conduct such analysis, the precautionary principle must apply.</i></p> <p>- Suggested addition to ‘points to consider’:</p> <ul style="list-style-type: none"> <li>○ An analysis conducted by independent experts regarding the upwelling and currents which accounts for the potential mobility of the waste.</li> </ul>
AngloGold Ashanti	3 August 2013	<p><b>Code of Practices</b></p> <p>COP 37.4: Marine disposal: Members in the Mining Sector shall not use marine tailings and waste rock disposal for land-based Mining Facilities, unless:</p> <ul style="list-style-type: none"> <li>a) a thorough environmental and social analysis of alternatives was conducted which showed that</li> </ul>

		<p>marine tailings disposal creates fewer environmental and social impacts and risks than a land-based tailings facility, and</p> <p>b) it can be scientifically demonstrated that a significant adverse effect on coastal or marine species and habitats does not result.</p> <p>Editorial and additional reference suggestions for Standard Guidance.</p>
Solidaridad	5 August 2013	<p><b>Code of Practices</b></p> <p>We recommend that this section require geo membranes under final tailings disposal sites.</p> <p>37.3 Members in the Mining Sector shall not use riverine disposal of tailings or waste rock at new Mining Facilities. Any Mining Facilities that currently use riverine tailings disposal shall be excluded from the Member's Certification Scope, but all other relevant COP provisions still apply to that Facility.</p>
<b>38. Cyanide</b>		
		No comments received.
<b>39. Mercury</b>		
Human Rights Watch	1 July 2013	The draft Code contains a separate section on mercury, which is positive. The section should explicitly endorse the new Minamata Convention on Mercury. Members using mercury amalgamation in artisanal and small-scale mining should be required to take measures to eliminate mercury use where feasible, as stated in the Convention. Members should also be required to immediately eliminate particularly harmful practices, and not only after the end of the certification period. In addition to the practices already contained in the draft Code, this should include whole ore amalgamation. Members should also develop special measures to ensure no one under the age of 18 is present at amalgamation sites, as the chemical poses a threat to children's health, and women are informed about the particular risk of exposing the fetus to mercury during pregnancy.
IndustriALL Global Union; Construction, Forestry, Mining and Energy Union (Australia); United Steelworkers (Canada); Earthworks (USA); MiningWatch Canada	31 July 2013	Comments and feedback for COP and Standards Guidance contained in Shine vs Substance Report.
Rio Tinto	2 August 2013	Editorial and additional reference suggestions for Standard Guidance.

**Comment [ASP26]:** Deletions as discussed because the requirements are superfluous. The guidance would have to be edited accordingly.

**Comment [FS27]:** While there was a comment re phase-out of riverine tailings disposal, this is unrealistic for RJC to drive in practice. Because of this, RJC approach is to exclude the Facility from the Certification Scope, without excluding the Member as a whole, and thereby encouraging other responsible practices to apply at the site and the Member's other Facilities.

**Comment [JH28]:** This provision undermines the credibility of RJC as a whole because it creates confusion as to which parts are included in the certification scope for mining members, which are the highest-risk members. It also allows companies that are engaged in some "worst practices" to benefit from RJC membership, while lowering the credibility of RJC. We recommend eliminating this loophole.

WWF	2 August 2013	<ul style="list-style-type: none"> <li>• The heavy reliance on the Minamata text is acceptable.</li> </ul> <p>- Suggested text: Members shall eliminate, by <i>the beginning of the Certification Period</i>, open burning of amalgam or processed amalgam, burning of amalgam in residential areas;</p>
Alliance for Responsible Mining	3 August 2013	<p>In my opinion, as the Minamata convention is practically (but not yet legally) agreed, it makes perfect sense to already build alignment into the RJC COP. Sooner or later ASM miners (within and outside of the scope of RJC certified operations) will have to work in compliance with this convention. I understand 39.2 as applying to ASM under the control of the certified Member (different to 33.1), and therefore applying to artisanal operations which are formal (under a contract with the license holder) and have access to technical assistance/guidance (by the licence holder, as part of his duties to control mining operations in his area). Consequently, the sooner the ASM operations are enabled to comply with Minamata requirements, and particularly when counting on technical support to do so, the better for them.</p> <p>I therefore support the improved alignment of 39.2 with the draft text of the Minamata convention, which you propose. However, as the final INC meeting has not yet taken place, and the Convention has not yet been approved nor "baptized" we cannot formally endorse the "Minamata Convention" (as proposed by HRW) ... it is still only the "upcoming legally binding instrument on mercury".</p> <p>Regarding the timeline of implementation I had a conversation in May with Brenda Koekkoek (not anymore officially in charge of the mercury convention, but still an excellent resource person). She mentioned regarding the implementation of the Minamata convention that it will come into force only after a certain number of countries (I think she mentioned 50?) has signed the convention, and then there will still be a period (something like 3 years?) until it becomes legally binding, during which signatory countries have time to design implementation. Brenda estimated that it will take about 4 years until implementation of the Convention really starts.</p> <p>Taking this real-life timeline into account, the RJC COP requirement of eliminating some practices by end of the Certification Period is already much more stringent than the Minamata Convention (both in scope as Minamata only requires "where feasible eliminate", as in timeline).</p> <p>Open burning is always feasible to be eliminated (although in some cases battling with cultural resistance), and therefore this is fine.</p>



		<p>Whole ore amalgamation is a tricky issue. Particularly in hardrock mining, ASM is extracting very selectively and you often have additional hand sorting before the remaining "whole ore" is amalgamated. Hand sorting is a legitimate (and the most eco-friendly!) concentration "technology", but often not recognized as such, particularly when it takes place inside the mine. In other cases, where gravimetric pre-concentration is needed, it depends very much on the type of the ore. Some ores just need cheap sluices, others need much more sophisticated (and costly) processes for achieving a comparable gold recovery. Therefore feasibility to eliminate whole ore amalgamation in the short term (by end of certification period) needs to be assessed on a case to case basis. A too restrictive requirement, for which socio-economic feasibility is not guaranteed under any circumstances, could have 2 unintended consequences: (i) mineral processing escapes into clandestine uncontrollable spaces, or (ii) ASM becomes unfeasible for miners and their families, they lose their income, their workplaces and their livelihoods (which then become a HR issue!). These risks are minimized by sticking to the generic intent of the Minamata Convention to "reduce, and where feasible eliminate", without being too prescriptive regarding particular technologies; particularly as the RJC COP already has a much tighter timeframe than Minamata.</p> <p>In my personal opinion, this applies also to leaching of amalgamated tailings in general, but as - within the context of certified RJC members - leaching of ASM tailings is almost certainly done by the certified RJC Member itself (getting the tailings is the usual business case for allowing artisanal miners) and not by ASM miners, I did not argue against. RJC member companies count almost certainly on technology to remove Hg before leaching.</p>
AngloGold Ashanti	3 August 2013	Editorial and additional reference suggestions for Standard Guidance.
Solidaridad	5 August 2013	39.2 Members in the Mining Sector using mercury amalgamation in artisanal and small-scale mining and processing activities shall take measures to control and reduce the mercury emissions of their activity, aiming, where possible, for zero release of mercury. Members shall seek alternatives to mercury amalgamation wherever economically and technically viable. Members shall eliminate, by the end of the Certification Period, open burning of amalgam or processed amalgam, burning of amalgam in residential areas; and cyanide leaching in sediment, ore or tailings to which mercury has been added without first removing the mercury.
<b>40. Mine Rehabilitation and Closure</b>		
WWF	2 August 2013	<ul style="list-style-type: none"> <li>• Suitable financial mechanisms should be managed by a third party, for throughout the life of the project as well as post closure</li> <li>- Rehabilitation and closure planning shall consider risks and residual impacts from infrastructure, subsidence, or acid-generation material etc.</li> </ul>

**Comment [JH29]:** The aim here should be "zero release"/complete recapture of mercury, either at the start of (preferably) or at the end of the certification period.



## Appendix 1 – Submissions received

- Alliance for Responsible Mining (ARM)
- AngloGold Ashanti
- Adam Greene, US Council for International Business (USCIB)
- De Beers
- Estelle Levin Ltd
- Human Rights Watch
- IndustriALL Global Union, Construction, Forestry, Mining and Energy Union (Australia), United Steelworkers (Canada), Earthworks (USA), MiningWatch Canada
- Mel Moss, Regal Imports Ltd
- RAISE Health Initiative for Workers, Companies and Communities
- Rio Tinto
- RJC COP Review – India Committee
- Society for Threatened Peoples - Switzerland (STP)
- Solidaridad
- WWF
- 3 submission where anonymity was requested