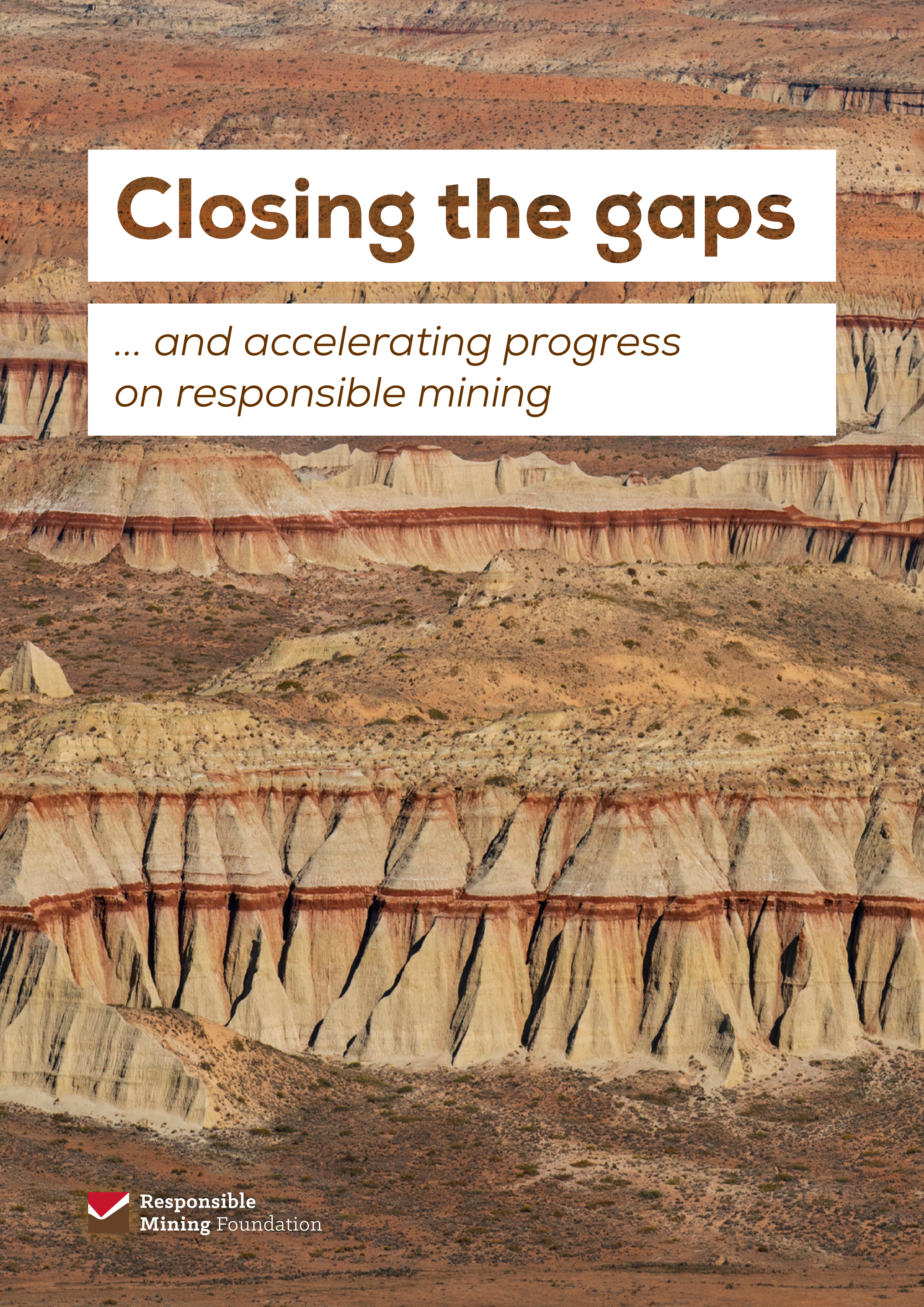

Closing the gaps

... and accelerating progress on responsible mining

Responsible Mining Foundation

The Responsible Mining Foundation

As an independent research organisation, the Responsible Mining Foundation (RMF) has aimed to encourage continuous improvement in responsible extractives, with a particular focus on the mining industry. RMF's work has centred on supporting industry-wide learning, highlighting leading practice, and engaging constructively with all relevant stakeholder groups, from affected communities, workers, civil society and labour unions to companies and industry associations, and those who influence corporate practices and industry norms, such as investors, lenders and regulators.

Closing the gaps is based in part on RMF's research data, observations and conversations as well as drawing on the work and analyses of other organisations and initiatives. Where appropriate, anonymised quotes are included as illustrative examples of RMF's first-hand evidence collected over the past years.

For more detailed analyses of the current state of play on specific topics related to responsible mining, see RMF's website and the RMI Report 2022 website.

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Acronyms

CCSI	Columbia Center for Sustainable Investment
EITI	Extractive Industries Transparency Initiative
ESG	Environmental, social and governance
FDI	Foreign direct investment
FPIC	Free, prior and informed consent
GRI	Global Reporting Initiative
ICMM	International Council on Mining and Metals
IFC	International Finance Corporation
IFRS	International Financial Reporting Standards
IGF	Intergovernmental Forum on on Mining, Minerals, Metals and Sustainable Development
ILO	International Labour Organization
IRMA	Initiative for Responsible Mining Assurance
MMSD	Mining, Minerals and Sustainable Development
NRGI	Natural Resource Governance Institute
OECD	Organisation for Economic Co-operation and Development
PPE	Personal protective equipment
RMF	Responsible Mining Foundation
RMI Report	Responsible Mining Index Report
SASB	Sustainability Accounting Standards Board
SDGs	UN Sustainable Development Goals
SLO	Social License to Operate
TSM	Towards Sustainable Mining
UNESCO	United Nations Educational, Scientific and Cultural Organization
UNGPs	UN Guiding Principles on Business and Human Rights

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Overview

The context

The shortfall between industry norms and society expectations remains very wide.

An accelerated shift to responsible mining worldwide will inevitably need to take account of a complex set of contradictions and tensions that exists within the industry and across global society. Many of these high-level issues are longstanding and inherent to mining or to global dynamics, and some are becoming more acute, making them particularly difficult to resolve. Nonetheless it is critical to acknowledge the challenges posed by these systemic issues and consider the opportunities available to mitigate them with incisive leadership and complementary action by all actors.

We are so familiar now with the term 'ESG', often used by companies as something to tick off in an investor presentation before getting to the primary focus on growth, expansion and profits. We use the same term in this report as a useful shorthand to cover the plethora of issues involved in responsible mining. Yet the easy way that the term ESG has entered the business lexicon, as part of the business case to manage company risk, has somewhat divorced discussions from the universal concepts of justice, rights, harm, deprivation and fairness that underlie the need for reference to ESG in the first place.

Similarly, corporate sustainability reports, though often weighty in word count and graphics, are mostly silent on the need for justice for the communities and environments disrupted by mining. And they include no mention of any efforts taken to reduce the power differential between mine operators and local stakeholders.

Current practice, treated as received wisdom, holds that it has been necessary to make a 'business case' if one wants to entice companies to incorporate ESG and respect for the rights of others into their normal work processes. Yet in a world where the economic narrative dominates, what is the role of the normative narrative, of the rights narrative – does there always need to be a business case for the industry to do the right thing?

Does there always need to be a business case for the industry to do the right thing?

In the absence of comprehensive legislation as an articulation of society expectations, should one need to make a business case for the *non-deprivation* of, for example, the right to clean drinking water, the right to livelihood, the right to a healthy environment, the right to traditional ways, the right to representation, the right to information and the right to be free from intimidation and violence?

More than twenty years ago, CEOs of leading mining companies publicly acknowledged a significant gap between industry practices and society expectations. This led to the establishment of the Mining, Minerals and Sustainable Development (MMSD) initiative, which proposed an agenda for change to better align the industry with society expectations for sustainable development.[1] Since then, numerous initiatives have been established to address this gap. Yet the results of RMF's research over the last six years have consistently shown that the shortfall between industry norms and society expectations remains very wide. While corporate commitments on ESG issues are becoming the norm, progress on responsible practices has been slow and highly variable even among the companies assessed in the RMI Reports which represent some of the largest, best resourced, and most-media exposed companies in the world (see Box 1). Much of the rest of the industry, tens of thousands of large and small companies operating uncounted number of sites, is far behind and often showing even less sign of movement.[2]

The question arises as to why even the best resourced companies are not living up to their declared agenda, and what is getting in the way of real progress across this globally critical industry. Why, as a mining sector analyst recently noted, is the industry “still very much in transition from ambition to execution” on ESG matters?[3]

BOX 1

Progress on responsible practices remains slow

The overall results of the RMI Reports 2018, 2020 and 2022 show some degree of improvement in average company performance levels. The assessed companies, representing 25-30% of global mining production, improved their results by an average of 17% between 2018 and 2020, and by 11% between 2020 and 2022. And overall, performance progress has been slow and in many cases marginal. Even the better performing companies are still far from meeting society expectations on most issues. Of particular concern is the evidence that leading companies are slowing down in their progress. For example, the top tier companies in the RMI Report 2022 show an average increase in results of only 4% since the 2020 results.

A gap analysis to support accelerated action

Closing the gaps presents a systemic view of opportunities and critical conditions for accelerating progress on responsible mining.[4] The report looks at key aspects of the 'ecosystem' – actors and their interactions – of relevance to responsible mining, including those in the mineral value chain and those with influence on industry practices and the global system, such as governments, investors, lenders, downstream customers, industry associations, voluntary initiatives, civil society and labour unions. The report pinpoints where the most radical and urgent shifts are needed to normalise mining activities that are responsible towards people and the planet.

Opportunities for systemic change

Meaningful information-sharing of public interest data is a minimal tool to reduce power disparities.

The main opportunities highlighted in the report include considerations on how to address society's conflict of conscience, the power disparities in the system, the reluctance of governments to regulate, access to justice, and the tension between profits and ESG for investors. This analysis emphasises the importance of access to information, open space for civic discourse, and the harmonisation and codification of internationally agreed norms for responsible extraction.

The report concludes by presenting four potential indicators that can be used to help track major shifts towards responsible mining. These include:

1. **ESG-led business models** with accountability and agency for ESG issues embedded across all functions and high in company hierarchies;

2. **Meaningful information-sharing** of public interest data as a minimal tool to reduce the power disparities and information asymmetries in company-community interactions;

3. **Rights-based approach to harm prevention**, notable in company actions that go beyond compliance and company reporting that includes disclosures of how any harmful impacts are being managed and remedied;

4. **International action on responsible mining** among home country and producing country governments, including more widespread application of legislative and regulatory tools and collaboration towards an international policy instrument on responsible extractives.

RMF shares this analysis as a forward-looking contribution to the ongoing efforts by many different stakeholders to advance mining's contribution to sustainable development.

And we thank all those from whom we have learned, who inspire us and who carry the baton for responsible extractives. It can be done - with good faith and collective effort. ■

Systemic tensions and contradictions

A worldwide shift to responsible mining will inevitably need to take account of a complex set of contradictions and tensions that exists within the industry and within global society. Many of these high-level issues are longstanding and inherent to mining or to global dynamics, and many are becoming more acute, making them particularly difficult to resolve. Nonetheless it is critical to acknowledge the challenges posed by these overarching issues and discuss how best they can be mitigated. And for issues over which mining companies have a degree of control, there is much to be gained from stronger innovation and leadership within the sector.

Society's conflict of conscience

A fundamental tension exists between societies' reliance on metals and minerals and our awareness of potentially harmful impacts.

A fundamental tension exists between our modern societies' reliance on metals and minerals and our awareness that mining is associated with high risks and potentially harmful impacts to people and environments. At one level we are all responsible for mining, as consumers of products and users of services that depend on metals and minerals. Yet there is a widespread perception of mining as distasteful and damaging, and a level of discomfort about our part in creating demand for this activity.

With growing awareness of the harmful impacts of mining and the need to reduce such harm, this conflict of conscience may bring much-needed pressure to stimulate more responsible practices. Other industries, particularly consumer-facing ones such as the food and garment sectors, have seen consumer pressure help bring about improvements in how companies address environmental and social issues. While this kind of pressure has been only weakly seen in the mining industry, the awareness-raising efforts of labour unions, civil society and campaign groups are serving to strengthen this potentially influential mechanism.

The increasing prominence given to lower-carbon energy sources exacerbates this conflict of conscience, as policy-makers and citizens are realising that these new sources of energy will generate increased demand for many metals and minerals, with implications for global supply chains. At the same time, some

Perspectives that question 'how much mining is enough?' are often viewed as radical and excluded from mainstream discourse.

proponents of these energy sources seem hesitant to engage on this issue, preferring to downplay the mining-renewables link to protect the 'green' credentials of the energy transition. Unless this connection is openly recognised and addressed by all stakeholder groups involved, there will be little chance to avoid a concomitant increase in harmful impacts of mining as production ramps up to support the energy transition.

Essential materials, but at a cost

It is widely accepted, even among some anti-mining groups, that mining will continue to be needed for the foreseeable future. While recycling rates are held back by biophysical, economic and technological constraints, all energy transition models are based on an increased demand for certain mined commodities. The industry has been quick to promote this link (although it is by no means the major source of mineral demand)[5], as seen in rebranding moves that see companies adopt terminology such as 'green mining', 'climate-smart mining', and a 'future-enabling industry'. But beyond this, the industry still relies on the narrative of 'if it's not grown, it's mined' to justify its essential position in society.[6] The danger of this mindset is that it can lead to a lack of self-reflection about the social and environmental costs of mining, and a defensive stance on alternatives to mining (see Box 2).

While a few mining companies are engaging in the circular economy, some industry actors view recycling as a threat to the mining sector, and perspectives that question 'how much mining is enough?' are often viewed as radical and generally excluded from mainstream media and political discourse. This despite growing concerns among environmental and development experts about the increased pressures that mining is placing on the natural world and on peoples' livelihoods, and the risks that local or regional environmental carrying capacities will be exceeded.[7] And the market may shift away from mined materials if they are seen to be produced irresponsibly, as evidenced for example in the search for alternatives to cobalt and lithium for electric vehicle batteries.[8]

Society needs to ensure realistic discourse about reducing global demand for these finite resources.

Society needs to ensure there is space for constructive and realistic discourse about reducing global demand for these finite resources, implementing robust circular economy approaches, and seeking sustainable alternative materials. This debate needs to include all actors – including industry.

BOX 2

Most mining companies fail to engage with the circular economy

In 2002 the Mining, Minerals and Sustainable Development (MMSD) initiative emphasised the need for mining companies to collaborate with downstream actors to advance product stewardship through recycling, re-use, and re-manufacture of products.[9] Ten years later the MMSD+10 report found little sign of movement on this issue. And this gap is still present. With some notable exceptions, there is still limited evidence of mining companies integrating secondary production into their business models and even less evidence of companies collaborating with manufacturers and other downstream stakeholders to support a circular economy approach. Indeed, some industry actors still describe recycling and substitution as "threats" or as "competition". If mining companies fail to engage with these fast-emerging issues, they not only hinder progress on responsible resource use but also risk missing out on promising new opportunities.

Power disparities and justice

Producing countries

The economic power and organisational stature of multinational mining companies can overwhelm some producing country governments. Strong power disparities can lead to challenges in mineral resource governance, where low-income and lower-middle-income producing countries find themselves at a disadvantage in negotiating contracts that adequately represent the legitimate rights and interests of their citizens, environments, and future generations. This is sometimes evidenced in moves by producing countries to renegotiate earlier contracts seen as giving unfair advantage to the companies involved.[10]

This power disparity may be further aggravated by instruments such as the investor state dispute settlement (ISDS) mechanisms that allow companies to bring claims against states for alleged violations of international investment treaties, in cases where governments are acting to protect their citizens, e.g. in access to water. Operating as supranational arbitration systems, these mechanisms effectively enable companies to bypass national domestic courts and international human rights or environmental norms.[11] The rulings of these non-transparent arbitration processes cannot be appealed and rulings against low- and middle-income countries can burden them with huge costs. According to a recent report, extractive sector companies have brought nearly one-quarter of known ISDS claims, mostly in Latin America.[12]

The ongoing work of organisations such as CCSI, NRGI and IGF in addressing these shortcomings through awareness raising and capacity building offers good examples of constructive and strategic opportunities to ameliorate the challenges presented by these mechanisms.

Local stakeholders

Power differentials are evidently much greater between mining companies and affected stakeholders such as local communities and workers. As the MMSD final report points out, a combination of factors – such as the location of many mining operations in remote, poorly served areas with weak governance and oversight – leads to "the potential for mining companies to wield too much power in the local context."[13] This power disparity is at the heart of many of the harmful impacts seen at the mine site level, as is the corporate practice of seeing communities as an issue to be managed rather than as fellow citizens and neighbours seeking shared solutions to mutual problems, or as stakeholders who should see a net benefit from mining operations in their midst. In this way inherent power disparities are amplified, further diminishing the agency of local stakeholders to deal with matters of concern to their wellbeing and livelihoods.

Respecting the rights of others on a level playing field requires courageous leadership and also external requirements.

In the face of violations of their rights, local communities and workers also have little chance of accessing justice or remedy without external legal and financial support.[14] Operational (mine-site-level) grievance mechanisms and other avenues of redress have proved deeply flawed (see page 26). And in some cases, producing country governments have exacerbated the power imbalance by acting in the interests of the companies involved, failing to meet their duty to protect rights, being reluctant to regulate companies, and not providing access to effective state-based remedy mechanisms.

Efforts to redress the inherent power imbalances in mining companies' interactions with local stakeholders have largely come from labour unions, the international NGO community and in-country civil society groups. While such initiatives are essential, action is required at a global level to ensure a fundamental change in how companies relate to those impacted by their activities. Respecting the rights of others on a level playing field requires an industry-wide shift, necessitating courageous and self-reflective leadership, and also external requirements.

The search for trust

The MMSD report highlighted a widespread mistrust of the mining industry by stakeholders, and drew a direct connection between this mistrust and companies' business interests: "Mistrust breeds uncertainty, which translates into risk in the market-place."[15]

Indeed, distrust of the mining industry by society at large has been an issue of central concern for companies. For the last four years, mining executives have ranked social licence to operate (SLO) as one of the top three risks to their businesses.[16] While SLO as a concept is flawed (implying as it does an unwritten contract for social and environmental disruption being compensated by economic benefits), it has been widely used within the industry as an indication of trust by local stakeholders, though not society at large. SLO is now generally recognised as a core business issue for companies. At the same time, widely acknowledged risk considerations around the harmful impacts of mining is what led investors to develop the now ubiquitous concept of ESG reporting. Companies are coming under pressure to be seen to 'do the right thing' in order to win the trust of investors, workers and communities. And some analysts highlight the need for companies to respond by ensuring meaningful consideration for, and engagement with, local communities and showing greater transparency.[17]

Each time a company demonstrates that it has put commercial interest over 'doing the right thing', it – and its peers – will find their credibility compromised.

While there is scattered evidence of these kinds of trust-building measures by individual companies or mining operations, overall the industry response to the trust deficit has been inadequate and reluctant. Many industry actors see the problem as a lack of awareness of the good that they do, and the solution as a communication one. One sees this in efforts such as the campaign by the Minerals Council of Australia to show how everyday life depends on mined commodities, the World Gold Council's report on how investors can improve the climate profile of their portfolios by investing in gold, and the new reporting initiative by ICMM on mining companies' social and economic contributions.[18]

However, the trust deficit clearly persists, as evidenced for example by the strong local opposition that has recently forced a number of mining projects to stop or downscale in places such as French Guyana, Greenland, India, Peru, and Serbia. And there is a real risk that the trust deficit will deepen as host communities, governments and investors are better informed about what they can expect from companies, as growing public awareness generates stronger demand for responsible business practices, and as high-profile controversies continue to dent the reputation of the entire industry. Recent incidents include for example Vale's tailings dam failure in Brumadinho, Brazil that killed at least 270 people, Yichun Luming's tailings spillage that caused a major pollution incident in northeast China, and Rio Tinto's destruction of a 46,000-year-old sacred site in the Juukan Gorge, Australia.[19] Each time a company demonstrates that it has put commercial interest over 'doing the right thing', it – and its peers – will find their credibility compromised.

FDI and ESG

Resource-rich countries with low-/lower-middle-income economies face particular difficulties in balancing economic and ESG imperatives. Their governments are typically under pressure to attract foreign direct investment to support economic development, while at the same time setting conditions to ensure that the extraction of mineral resources is managed in a responsible manner. Here again the power disparity and information asymmetry vis-à-vis multinational corporations create additional challenges for governments of these countries to safeguard the long-term interests of their populations and environments.[20]

Home country governments face a similar tension, supporting the interests of their mining industry while at the same time protecting the rights of those negatively impacted by the activities of companies. Some home country governments have been criticised for not taking more measures to regulate companies' practices abroad.[21] The potential for governments to do more is illustrated by for example, the growing introduction of mandatory human rights due diligence covering companies' assets in all jurisdictions (see page 42), the recent precedents set for allegations of abuses to be heard in companies' home countries (see page 38), and the emergence of entities such as the Canadian Ombudsperson for Responsible Enterprise (see page 39).

Geopolitical divides

International political and economic divides severely complicate efforts to set consistent provisions and requirements for responsible practices. This is reflected in the fact that very few mining norms and standards have been able to transcend geopolitical divisions. While the UN SDGs and the UN Guiding Principles on Business and Human Rights are widely accepted and supported, other international initiatives such as the due diligence guidance of the OECD or the transparency standard of EITI, are somewhat hampered by association with particular regions or economic groupings of the world, which in turn limits their influence and ability to transcend the geopolitical divides.

It is essential to keep the communication channels open across existing and emerging global divides.

International conflicts only deepen such divides and create lasting negative consequences for global efforts to normalise good practices. When responsible mining initiatives react to international conflicts by excluding industry actors solely on the grounds of their geographic affiliation, this creates additional barriers to a global response that puts the rights of peoples and environments above political differences. Extractive supply chains affect every part of the world, and climate change matters to everyone – it is essential to avoid unhelpful virtue signalling and rather keep the communication channels open and the focus on substantive issues of common concern across existing and emerging global divides.

Concerted and inclusive efforts will be needed to garner global action on responsible mining. International collaboration at the level of national governments would do much to help level the playing field, foster capacity-building and reduce inequalities. A recent UN-sponsored proposal for an international agreement or convention on extractives is certainly worth further consideration (see page 43). Moreover, evolving international groupings such as BRICS that go beyond regional boundaries and include significant extractives producers, can also play an influential role in the consolidation and harmonisation of a global instrument on responsible extraction.

Scope for action

The overarching issues highlighted in this section are some of the main systemic factors shaping the global context for any progress on responsible mining. While companies and other actors (such as governments, investors, multilateral bodies and international initiatives) are not individually in a position to resolve all these issues, their collective actions can still play a role in mitigating any barriers these dynamics present to normalising responsible mining. Clearly there is much to be gained from direct action on many of these issues. The following two sections will look at key opportunities for making a real difference on these and other issues. ■

Opportunities for companies to accelerate change

The issues highlighted in this section represent pivotal opportunities for systemic shifts towards responsible practices. While these issues are very widespread in the mining industry, they are by no means intractable. It is certainly within the capacity of mining companies to address these concerns and indeed some signs of movement have been seen as a few leading companies or operations show what can be done. But efforts to address these issues now need to be greatly accelerated and expanded industry-wide, in order to achieve the step change in industry norms that are required for mining to become a meaningful accelerator of the global imperatives for social and environmental justice and sustainable development.

Worldviews and corporate culture

Worldviews and corporate culture play a role in how a company responds to the evolving expectations of society.

Worldviews and corporate culture play an under-appreciated role in how decisions are taken, how a company treats its workers, how it relates to mining-affected stakeholders, and how it responds to the evolving expectations of society.

Many mining companies have strong cultural identities, influenced by factors such as the values of their founders or current leadership, the national cultures of their home countries, their prominence as major actors, and the hierarchies of their organisational structures.[22] There is a risk that deep-seated cultural norms become 'bubbles' that hinder recognition of any misalignment between corporate values and the realities of corporate practices. See for example the cases cited in Box 3. Values such as 'care', 'respect' and 'integrity' are commonly cited by companies as among their core corporate values yet when these values have evidently been violated (e.g., in confirmed cases of bribery, human rights violations or environmental damage) companies appear reluctant to apologise or even acknowledge responsibility or share what corrective action will be taken.[23]

Corporate culture can strongly influence how companies interact with affected communities and workers. At their worst, entrenched cultural prejudices can run counter to ESG policies and management systems. For instance, despite management

Operations may view communities in a project management mode, as problems and risks to be managed, rather than as neighbours to be treated with respect.

systems on local engagement and human rights, the prevailing culture may lead to paternalistic or antagonistic interactions with local people. Operations may view communities in a project management mode, as problems and risks to be managed, rather than as neighbours to be treated with respect. And the same transactional approach applied to a company's business relationships may be unconsciously transferred to its relations with local communities and other affected groups. This perspective is seen for example in the striking lack of evidence of mutual agenda-setting or of companies seeking meaningful collaboration with communities on the management of issues of common concern.[24]

Similarly, the competitive mindset that makes for successful businesses is often unreflectively extended to all aspects of company practices, precluding the potential for responding more openly to pre-competitive and non-competitive issues. This can lead to aggressive or defensive behaviour towards stakeholders on issues that would benefit from shared responsibility and collaborative problem-solving.

Effective transformation of company culture and how others are viewed requires persistent interventions over time, including courageous leadership from board and senior executives to set the tone, incentivised and accountable actions by managers, and open conversations about the legitimacy of other worldviews and norms that affect internal and external relations.

BOX 3

Cultural 'bubbles' in evidence

RMF has observed the 'cultural bubble' effect in communications with some companies. For instance, while no company ever challenged the accuracy of RMF's evidence-based assessments, one executive wrote to RMF complaining that the company's weak results in an RMI Report did not reflect *"who we are as a company"* and sent an infographic of its corporate values as 'evidence' of its responsible approach. A manager of an Australian company challenged the need for RMF to ask questions about gender equality (prior to the reports of widespread sexual harassment at Australian mine sites), stating *"We are Australian. Of course we know how to treat women fairly."* And an executive of a Canadian company, defending the lack of a human rights policy and formal affirmation of respect for Indigenous Peoples rights, claimed *"Our Aboriginals are not interested in fancy things like human rights – they are just interested in economic benefits."*

ESG in organisational structures

The placement of sustainability responsibilities within companies' hierarchies is critically important, not only to ensure effective management of ESG issues but also to send a clear message about the value placed on these issues. In some cases, sustainability seems to be viewed more as an add-on or a public relations issue than a core business issue (as evidenced by the placing, in some companies, of the sustainability function within external affairs or investor relations). This can severely hamper the ability of ESG specialists to influence company strategy and practice.

The principle of subsidiarity emphasises the importance of solving local issues locally, as close as possible to the place of impact.

More generally, those with responsibility for overseeing ESG issues often lack the necessary agency and seniority to ensure that ESG risks are adequately taken into account.[25] Indeed, sustainability managers have warned that they have been excluded from business decisions and then given the task to deal with the negative consequences of these decisions.[26]`

Some companies have sought to embed ESG accountability and responsibility at leadership level, e.g., by including ESG performance metrics in the calculation of executive bonuses, assigning oversight of sustainability issues to a C-suite position, or creating an executive-level role of Chief Sustainability Officer. However, unless this function is fully resourced with budget, stature and agency, there is a risk this may prove to be primarily a cosmetic measure.[26] Full integration of ESG matters into corporate business ultimately requires strong connections between teams working on ESG issues at an operational level with those responsible for corporate strategy and finance.[28] And even functions without an explicit ESG focus need to include ESG-related responsibilities and competencies in order to ensure that integration is business-wide.

Subsidiarity and site-level focus

The principle of subsidiarity, highlighted in the MMSD report, emphasises the importance of aiming to solve local issues locally and decentralise agenda-setting and decision-making to the point as close as possible to the place of impact.

However, the vast majority of ESG-related initiatives are focussed at a company-wide level. This applies to, for example, formal commitments, codes of conduct, management standards, guidelines, etc. This corporate-level focus is entirely appropriate, *A stronger focus on operational-level ESG practices is critical to ensure that site-level risks are being addressed.*

but without efforts to consider operational-level implementation of responsible practices, there is a risk that these measures will be ineffective and mine site realities will not be addressed.

One illustration of the lack of adequate focus at mine-site level relates to measures to address gender equality in the workplace. This is an issue that is commonly highlighted in company reporting, yet most initiatives are limited to headquarters. Many companies are addressing the issue of women's representation on their boards of directors and in their management teams, while far fewer companies can demonstrate they are addressing much more salient issues for women workers at mine sites (such as appropriate PPE or prevention of sexual harassment and assault). As with the treatment of other ESG issues, this primary focus on HQ-level measures may be partly explained by the fact that these are more easily managed, tracked, and reported on compared to operational-level measures.

The lack of evidence of responsible practices at mine-site level is one of the most striking findings of RMF's research. The mine site assessment element of the RMI Reports, covering data from 2016 to 2021, consistently showed a lack of mine site evidence on some of the most basic ESG issues such as local employment, local procurement, water quality, and grievances. In the RMI Report 2022, the majority of the 250 mine sites show no evidence of informing or engaging with local stakeholders on all but two of the fifteen issues assessed. And this despite the fact that corporate systems commonly exist for at least some of these issues.

This is a missed opportunity for companies to demonstrate respect for, and build trust with, local stakeholders including communities and workers. And importantly, a stronger focus on operational-level ESG practices is critical to ensure that site-level risks are being addressed. While some company structures are more decentralised than others, it is still entirely possible for all companies to do more to support ESG implementation and innovation at mine site level, to share good practices and encourage their wider adoption, and to track and report mine site actions and data.

Some companies have shown an antagonistic approach to those highlighting the negative impacts of mining, including efforts to criminalise human and land rights defenders.

Social justice for affected parties

In 2012, the MMSD+10 report noted that community development and community involvement remained *"one of the biggest issues for mining and sustainable development"*.[29] The report also pointed to the mismatch sometimes evident between company policy and practice on the ground in addressing social impacts.

Ten years on, the same conclusion holds. Companies are increasingly developing management standards, requirements and guidelines on community engagement and the assessment of local socio-economic impacts, yet responsible practice on the ground is still a major weak spot (see Box 4). Many companies limit their community development work to philanthropic projects that contribute little to sustainable development. More importantly, some companies have shown a disregard for human rights and an antagonistic approach to those highlighting the negative impacts of mining, including efforts to criminalise human and land rights defenders.[30] While good practices do exist and company efforts are to be acknowledged, there is considerable evidence of companies acting without due regard for the risks that their actions pose to local communities, workers and the environment.[31]

Aside from rare exceptions, the widespread lack of strategic action on community development suggests that many companies are taking something of a transactional approach to addressing mining-related socio-economic issues at the local level. Issues that directly impinge on operations are more likely to be addressed than those that pose less of a risk to operations. This prioritisation of material issues (i.e., issues that impact companies' business interests) over salient issues of critical importance to local communities has been evidenced in several RMF studies.[32] At present, many companies seem more concerned about maintaining minimal conditions locally favourable to the smooth running of operations (the Social License to Operate) than about ensuring that local people's rights are respected and local environments protected. For example, the RMI Report results on companies' climate actions show that while many companies consider how climate change may affect their operations, hardly any companies show they have considered how climate change may exacerbate their operations' impacts on affected communities, workers and environments.[33]

In the long run, business as usual on community relations will endanger not only the lives and livelihoods of huge numbers of people but also the viability of mining operations and the supply chains that depend on them. As accessible resources dwindle, as mining moves into more marginal environments and as mining activity increases to meet the mineral demand of a growing world economy striving to achieve the SDGs, conflicts over resources will increase and companies will find it increasingly difficult to access reserves and manage existing operations.

What is missing is the primary use of a rights-based approach, concerned with social justice and grounded in the recognition that mining companies have a core responsibility to prevent harmful impacts of their activities on local people and environments and to prevent the externalisation of related costs. This responsibility, as articulated in the UN Guiding Principles on Business and Human Rights, stems in part from the scale and severity of potential harmful impacts of their activities, as harm causes the deprivation of rights – most often those of local communities and workers. The strong power differential between companies and local stakeholders further exacerbates the problem, heightening the exposure of these stakeholders to harmful impacts. A rights-based approach requires companies to prioritise respect as a starting point, actively engaging with local communities from the earliest stages of mine design to ensure that their concerns are acted on and negative impacts are minimised and mitigated. And throughout the life of the mine, companies would need to move beyond community consultations to collaborative approaches that enable local communities to be involved in agenda-setting and decision-making on issues that impact their wellbeing.

While companies are increasingly committing to respect human rights, and some have developed management standards to operationalise their commitments, significant improvements are achievable. The overall average performance on human rights in the RMI Report 2022 was only 22%, indicating a lack of systematic action on the full range of issues including for example, Indigenous Peoples' rights, water rights, land rights, workers' rights, and child labour. More generally, companies can show respect for the rights of local communities and Indigenous Peoples by engaging with these stakeholders, as neighbours, for shared agenda-setting and shared decision-making, and for developing a shared vision for the mine site area during the life of the operation and beyond.

Social justice is particularly relevant in the context of global inequalities stemming from climate change and the energy transition. While climate justice requires action by all actors, companies have a specific responsibility to ensure a just transition for communities and workers so they can maintain viable livelihoods. A concern for just transition is rapidly becoming of paramount importance in the context of stranded assets and coal mine closures.

While climate justice requires action by all actors, companies have a specific responsibility to ensure a just transition for communities and workers so they can maintain viable livelihoods.

BOX 4

Community Wellbeing – a consistently weak area of action

The Community Wellbeing thematic area in the RMI Reports has consistently shown the weakest results. For example, in the RMI Report 2022:

- 50% of the companies show no evidence of having assessed mining-related health impacts in local communities;
- 50% of the companies show no evidence of having assessed the impacts of their activities on women;
- Only two companies have made formal commitments to respect the rights of Indigenous Peoples to FPIC, and no company has extended this commitment to other affected people; and
- 90% of the companies have not made formal commitments to respect the rights of human rights defenders.

Furthermore, the mine site assessment of the same Report found that many mining operations could not demonstrate that they are informing and engaging with local communities on issues critical to their lives and livelihoods. (See Box 6 for details.)

Access to meaningful information

Meaningful information-sharing is a vital part of responsible mining (see Box 5). The MMSD agenda for change called for greater public access to information, as a means of building trust, enabling cooperation and supporting public participation in decision-making, noting that: *"Information should be a levelling tool so that all stakeholders might participate in decision-making on equal ground"* and *"The quality of information and its use, production, flow, accessibility, and credibility affect the interaction of all actors in the sector."*

"Information should be a levelling tool so that all stakeholders might participate in decision-making on equal ground."
MMSD

Twenty years on, public disclosure by mining companies is still far behind society expectations on many ESG issues. While some companies see the value of sharing information, many others still operate with non-disclosure as the default, without questioning the need for confidentiality in dealing with pre-competitive public interest issues.

Mine-site-level ESG data is particularly important and particularly scarce. A key first step in supporting social justice is to mitigate the information asymmetry at mine-site level that reinforces the power imbalance between companies and local communities. Without access to meaningful ESG information, local people are at a huge disadvantage in engaging with mining operations, participating substantively in discussions and decision-making, and safeguarding their rights. Ensuring that mining prevents

BOX 5

Why transparency matters

The importance of access to meaningful information-sharing cannot be overstated.

The proactive public disclosure of public interest information can:

- **Strengthen the credibility** of company commitments and claims;
- **Reduce the power disparity** between companies and affected stakeholders;
- **Enable informed engagement** and agenda-setting between stakeholders and companies;
- **Improve trust** between companies and other stakeholders; and
- **Support industry-wide peer learning.**

A key first step in supporting social justice is to mitigate the information asymmetry at mine-site level that reinforces the power imbalance between companies and local communities.

harm, does not deprive people of rights, and meaningfully improves the lives of peoples requires as a minimum the normalisation of proactive information-sharing at the level of the mine and the community.

The mine site assessment component of the RMI Report 2022 shows that, for the sample of 250 mine sites across 53 countries, a vast gap exists in information-sharing and consultation with local communities and workers (see Box 6), a gap that has been seen in previous RMI Reports spanning six years of assessment.

In many cases, companies only disclose ESG data when they are required to do so. Legislation (in home countries or producing countries), regulations, investor requirements, membership requirements (e.g., of industry bodies or stock exchanges) can all influence companies' disclosure practices, to some degree. But many important issues are not covered by these requirements.

A few companies are beginning to show interest in providing more mine-site data, even considering moving towards what has been called 'radical transparency' for local stakeholders. It remains to be seen whether these intentions will be realised. In the meantime, all companies can make important improvements in their public reporting of ESG data, particularly at the mine site level, by aligning their reporting with the RMI Framework. This Framework, which is aligned with the Open Data Principles (see page 34), sets out in practical detail how companies can respond to society expectations on ESG information-sharing.

BOX 6

Lack of mine-site ESG disclosure

The mine site assessment element of the RMI Report 2022 confirmed a striking lack of public disclosure of mine-site-specific ESG data. Of the 250 mine sites assessed, the majority showed no public disclosure on basic issues of importance not only to local communities and workers but also to investors, governments, civil society and other stakeholders. For example:

- 83% of the sites do not disclose data on local employment
- 70% of the sites do not disclose data on local procurement
- 75% of the sites do not disclose data on air quality
- 76% of the sites do not disclose data on water quality

Corporate justifications for the lack of mine-site ESG disclosures often exclude consideration of the need for local stakeholders to access public interest data that directly relate to their lives and livelihoods and the mining-related risks they face. For example:

- **Disclosure would be of no value.** An industry expert: *"There are very few people on the planet who can understand water data, let alone local civil society groups or communities."*
- **Disclosure is not a material issue.** A Sustainability manager: *"I can't bother my site colleagues for ESG reporting - they are too busy doing the real work."*
- **Disclosure would be risky**. A company representative: *"We can't share our environmental quality data in detail. It would be far too risky. Anyone could take the data and make whatever story they wanted with it."*
- **Disclosure is not for public interest:** An industry association leader: *"Disaggregated health and safety statistics may tell you very little about the quality of management at a particular asset."*

Access to remedy

Reviews of operational grievance mechanisms have repeatedly recommended that companies involve local stakeholders in the design, operation and review of the mechanisms, to enhance their credibility and effectiveness.

Robust operational-level grievance mechanisms are a key element of the third pillar of the UN Guiding Principles, providing access for affected communities and workers to raise concerns and seek remedy. However, studies have shown that operational-level grievance mechanisms can be deeply flawed as procedures for providing remedy.[34] Common problems stem from failures to, for example, raise awareness about the existence of the mechanism, make the mechanism readily accessible to local men and women; address claims on a wide range of issues, investigate allegations in a transparent and timely manner, and provide fair and adequate remedy.

It is critically important for local community members and workers to be able to know how operational grievance mechanisms are functioning, in order to foster trust and broad-based participation in the mechanisms. To ensure these mechanisms are readily used and credible, mining operations can publicly disclose anonymised information such as the number and nature of issues raised, and details on any actions taken and any remedy provided. Too often this information is not shared by the companies involved. For example, the companies assessed in the RMI Report 2022 score an average of only 30% on tracking and publicly reporting on the functioning and uptake of their grievance mechanisms for affected communities and groups. And the equivalent results on sharing data on the functioning of worker grievance mechanisms are even weaker, with an average score of only 25%.

Reviews of operational grievance mechanisms have repeatedly recommended that companies adopt collaborative approaches, involving local stakeholders in the design, operation and review of the mechanisms, to enhance the credibility and effectiveness of these mechanisms.[35] Both larger companies and smaller mining operations would be acting in their own interest in ensuring that their operational grievance mechanisms are not just for show, but are an effective means to prevent problems from escalating into serious human rights violations.

UNGPs and SDGs as global touchstones

As a globally accepted norm, the UN Guiding Principles on Business and Human Rights (UNGPs) have been instrumental in catalysing corporate action on human rights. Many mining companies have developed formal commitments on human rights, aligned with the UNGPs, and some have been rolling out human rights due diligence programmes across their operations, though this practice is by no means well established and is often conducted at a relatively superficial level. Overall however, there are large gaps in corporate implementation of the UNGPs, particularly in relation to the provision of remedy.

The UN Sustainable Development Goals are also truly global, with their importance acknowledged and appreciated in all regions of the world. Worldwide, many mining companies – at least in the LSM sector – frequently make reference to the SDGs and report on their contributions to the Goals. However, a recent report by RMF and CCSI found that evidence of SDG-supportive action on the ground is still sorely lacking.[36] Most companies fail to integrate the SDGs into their business strategies, and company reporting on the SDGs is most often very superficial and selective.

If companies are to become the 'development partners' that some already describe themselves as, they need to better align their business and ESG practices with these global touchstones. This will require company executives to think outside of the 'materiality box' to rather use these principles and goals as a lens for decision-making. Mine site level action aligned with the UNGPs and the SDGs would involve not only targeted action on the specific issues involved but an overall approach that involves proactive efforts to ensure shared agenda-setting, shared decision-making, and shared monitoring, as well as the development of a shared vision for each mine site and its neighbourhood. ■

Other opportunities to accelerate change

Those with influence, direct or indirect, on corporate practices have a major role to play in supporting change.

Progress on responsible mining will not be achieved solely by the individual efforts of companies. Those with influence, direct or indirect, on corporate practices have a major role to play in supporting change. These actors include for example, industry bodies, multistakeholder organisations, reporting framework initiatives, and investors, lenders and customers of mining companies and mining operations. Yet these key stakeholders have their own challenges and limitations that hamper the effective fulfilment of their roles as potential agents of incisive change. Other opportunities outlined in this section relate to the provision of access to remedy and the protection of civic space, as critical elements for social justice.

Industry and multistakeholder initiatives

Industry associations that have engaged on ESG issues include for example:

- China Chamber of Commerce of Metals, Minerals and Chemical Importers & Exporters (CCCMC), which developed the Chinese Due Diligence Guidelines for Responsible Mineral Supply Chains;
- International Aluminium Institute, which developed the Sustainable Bauxite Mining Guidelines;
- International Copper Association, which supports the Copper Mark standard;
- International Council on Mining and Metals (ICMM), which developed Performance Expectations on its Mining Principles;
- International Tin Association, which developed the Tin Code and the International Tin Supply Chain Initiative;
- The London Bullion Market Association (LBMA), which developed a Responsible Sourcing Program;
- Mining Association of Canada, which developed the Towards Sustainable Mining (TSM) standard; and
- World Gold Council, which developed the Responsible Gold Mining Principles.

ICMM and the World Gold Council stand out as having done more than most industry associations to articulate ESG requirements for their members. Both have developed comprehensive sets of expectations for their member companies, together with assurance and validation procedures.

The Mining Association of Canada (MAC) has taken a slightly different approach, creating a mine-site-level standard, Towards Sustainable Mining (TSM), in which all Canadian operations of MAC members companies participate (but not their operations in other countries, which leaves out vast numbers of mine sites). The TSM framework has been adopted by some other national mining associations, though evidence of its implementation by these groups is sparse.

Multistakeholder initiatives on responsible practices include for example, the EITI expectations for supporting companies, the Global Industry Standard on Tailings Management, the IRMA standard, the UN Global Compact Principles, and the Voluntary Principles on Security and Human Rights.

Implementation and effectiveness

Though evidencing clear ESG ambition, each of these industry-led and multistakeholder initiatives has its own limitations, presenting considerable opportunities for more robust implementation and response to the expectations and concerns of society. Based on public domain information, RMF has assessed the level of implementation of a sample of six of these initiatives using customised extracts of the RMI Report 2022 as proxy results, and highlighted potential areas for more compelling implementation.[37] These assessments are available online.

As an important recent multistakeholder initiative, the effectiveness of Global Industry Standard on Tailings Management is yet to be tested. For now however, it is clear that while the standard represents a welcome first step in improving the safety of future tailings facilities, it could go much further to ensure effective management of tailings-related risks. Given the critical importance of preventing further harm from leaks and failures of tailings facilities, it is prudent to consider how any future revisions of the Global Industry Standard on Tailings Management could address the current gaps and shortcomings highlighted by RMF and others.[38]

Common limitations

While the numerous certification schemes, membership requirements/expectations, and other initiatives have the potential to encourage wider uptake of good practices and more robust reporting, it is important to note the limitations and shortcomings that hinder the effectiveness of these initiatives. This is particularly important given the mounting interest from downstream actors on supply chain due diligence and the need for robust measurement, credibility, trust building and risk mitigation.

Some of the more common limitations include the following:

Challenges to ambition. ESG initiatives by industry bodies can suffer from the inherent tension between the remit to promote members' interests and the objective to encourage improvement in ESG performance. The risk is that the associations may only move at the pace of their least responsive members and find it difficult to satisfy their more progressive members who would like to see more ambitious requirements and implementation.

Industry influence. Many voluntary initiatives have been designed with multistakeholder governance and decision-making structures. This is the case for example, with the Extractive Industries Transparency Initiative (EITI), the Initiative for Responsible Mining Assurance (IRMA), the Global Industry Standard on Tailings Management, and the Voluntary Principles Initiative. While their multistakeholder nature may encourage broad-based ownership and support from different sets of actors, there is a real risk that the industry representatives will have a dampening influence on the ambition and scope of these initiatives. A recent review of multistakeholder initiatives concluded that, largely because of this inherent limitation, these types of initiatives are ineffective in holding companies to account and protecting against human rights violations.[39] At worst, non-industry participants such as civil society groups or labour organisations may be co-opted or repeatedly overruled to protect industry interests. More often, the wording of standards reflects where negotiations have evidently led to weaker or more ambiguous requirements with phrases such as "companies will *'strive to'* or *'work towards'* or '*aim to*'…". And, as a recent example of industry interests prevailing, the undue influence wielded by ICMM during the development of the Global Industry Standard on Tailings Management is well documented.[40]

Risk of greenwashing. Some companies may choose to join a voluntary initiative or an ESG-profiled industry body for reputational reasons without any intention of aligning their practices with the expectations involved. This risk is highest when initiatives have no binding requirements for their member companies (as is the case for example with EITI's Expectations for Supporting Companies, the UN Global Compact's Principles for participating companies, and the Voluntary Principles Initiative).

Materiality versus salience. While these initiatives do not explicitly limit their scope to issues of material importance to companies' financial performance (as for example the IFRS standard does), many show evidence of not having used salience as the basis for deciding what issues to cover. For example, the TSM standard includes relatively few specific indicators on, for example, worker rights or potential socio-economic impacts. More generally the initiatives show a widespread lack of attention to locally important ESG disclosures and other common gaps in scope include issues such as skills development of local stakeholders, a living wage for mining workers, and gender equality in affected communities.

Information-sharing. As the ESG concept reflects a range of public interest issues it makes sense that ESG-related data should by default be in the public domain. Yet despite their public interest (ESG) focus, most initiatives have limited requirements on access to information, requiring companies to make ESG data publicly available on only a very limited set of issues. Provisions are particularly rare for disclosure of mine-site data, disclosure of performance monitoring data (targets and tracking), and disclosure of negative ESG impacts and corrective actions. And where disclosure requirements are in place, they can be strikingly weak. For example, on issues for which the otherwise robust IRMA standard does require mine sites to publicly disclose information, there is rarely a requirement for proactive disclosure – most often sites only need to disclose the information if stakeholders specifically request it, and can achieve a full score if no such requests have been made.

Measurability and assessability. The frameworks of many standards and membership requirements/expectations lack adequate practical details on how companies can demonstrate compliance with the indicators/principles. With a lack of specificity in the wording, there is a high level of subjectivity and opacity in how companies are assessed. And in some cases there has evidently been a lack of attention to ensuring that the indicators developed are measurable and assessable before adoption and implementation.

Supporting evidence. Most if not all standards and membership requirements/expectations require only a summary report of the audit results to be made publicly available. The raw data or the documentary evidence used in the assessment of compliance/performance are not publicly disclosed, unless the company chooses to do so. This means that the detailed information collected on companies' ESG policies, practices and performances rests with – and stops at – the assurance bodies. As such, these initiatives miss an important opportunity to support stronger credibility and accountability as well as industry-wide learning among peers.

Evolving expectations. Industry and multistakeholder ESG standards tend to set the bar in line with existing good practices at the time the standards were created. And standards tend to be reviewed and updated no more frequently than every four or five years. This means that there is limited scope for standards to keep pace with emerging issues and evolving expectations and practices. In other words, standards are of limited value in helping to set the pace on responsible mining, as they tend to run behind society expectations if they do not adopt a more forward-looking and anticipatory approach - on issues such as climate change, gender, tailings, pandemics, circular materials management, and deep seabed mining.

Reporting frameworks

Reporting frameworks on ESG issues play an important role in advancing sustainability disclosures to help manage risk and prevent harm. These frameworks include for example, those of the Global Reporting Initiative (GRI), the Sustainability Accounting Standards Board (SASB), and the Task Force on Climate-Related Financial Disclosures (TCFD), the latter two of which will transition into the reporting standards of the new International Sustainability Standards Board (ISSB). However, limitations in the scope or structure of some of these frameworks reduces their effectiveness as tools for meaningful reporting.

Global Reporting Initiative (GRI) framework

The reporting framework most commonly used by mining companies presents some major shortcomings that limit its effectiveness as a tool for meaningful information-sharing. The fundamental problem in the GRI framework is the fact that it relies on reporting companies selecting which issues to report on. The only information required for a sustainability report to be in accordance with GRI are general disclosures on governance and corporate organisational matters, with very little ESG substance. While the GRI framework provides guidance on the selection of material topics to include (and the mining sector standard gives further advice), there is no common and comprehensive information set for all companies to provide.

In addition, the kinds of data requested by the GRI framework are of little meaning in indicating companies' ESG impacts on the ground. The problems in this respect include the following:

- **Aggregate statistics:** Quantitative indicators focus on statistics aggregated to a company or regional level, with no mine-site-level reporting requested. On water discharges for example, companies are asked to report company-level consolidated data on the total aggregate levels of pollution parameters in their water discharges, and on local procurement, company-wide aggregate spend on local procurement is the required information.

- **Relative data:** Some GRI indicators require only rates rather than absolute figures. This is the case for example with injuries and occupational disease, which are reported as fractions of total hours worked.

- **Lack of contextual data:** GRI indicators rarely require statistics to be accompanied by information to put the figures in context. So for example, companies are asked to report the number of environmental incidents but not on any details such as the location and severity of these events.

Importantly, the value of the GRI framework is compromised by the fact that it does not ask for evidence on any of the information reported. Companies respond to the GRI questionnaire but without providing documentary evidence to back it their reporting. This severely reduces the usefulness of GRI-aligned reporting to stakeholders such as investors, lenders or local communities.

IFRS Sustainability Disclosure Standard

The Sustainability Disclosure Standard of the International Financial Reporting Standards (IFRS) Foundation, published by the International Sustainability Standards Board (ISSB), is designed to focus on companies' sustainability-related risks and opportunities and how these are being managed.

While of potential interest as a means to support stronger transparency, the current draft of the standard presents considerable shortcomings in this regard. The primary weakness relates to the limited focus on information deemed of material interest to investors and other providers of financial capital.

The Open Data Principles provide a practical framework for meaningful reporting.

A participating company is only required to disclose information it judges to be material to these users in their assessment of the enterprise value of the company. Thus, the company is expected to focus its disclosures only on sustainability-related risks (and opportunities) of importance to its business strategy, cash flows, and access to finance, rather than also disclosing risks of importance to other stakeholders such as affected communities and environments.

This narrow focus on financially material topics will severely undermine the value of this standard in supporting meaningful information-sharing on ESG issues. Particularly because, as the exposure draft states, companies are not required to disclose information they consider not material to their access to financing even if the standard includes such information as a specific disclosure requirement. This would seem to be a missed opportunity to show leadership as the Sustainability Disclosure Standard is being developed through the merging of two major frameworks (the climate disclosures standard of the CDP and the SASB standards).

Towards more meaningful reporting

Companies wishing to improve the usefulness of their ESG reporting can start by following the good practices demonstrated by some of their peers. The leading practices highlighted in the RMI Report 2022 include examples of good reporting, such as:

- Mine-site level data on ESG performance, in a variety of formats such as spreadsheets, web-based charts, and a digital 'app';
- Full disclosure of independent audit reports on social and environmental performance;
- Detailed data on worker and community grievances;
- Full disclosure of mining contracts;
- Disclosure of details on mining-related community fatalities as well as worker fatalities; and
- Disclosure of mine-site-specific risks from tailings facilities.

More generally, the Open Data Principles provide a practical framework for meaningful reporting by showing how disclosed data can be made accessible, meaningful and useful in order to inform people and enable them to act on the information. Operationalising the principles in company reporting would entail providing:

- Site-level data – not just aggregated
- Raw data – not just normalised
- Context – e.g., targets, regulatory limits
- Time series – not just the most recent
- Timely data – as up-to-date as possible
- Accessible formats for different stakeholders

Capital markets

Investors of mining companies and mining operations can have a potentially strong influence on ESG practices. RMF has observed this impact anecdotally, for example in the relatively open ESG disclosures of a mine site subject to specific requirements set by a group of multilateral investors. However, the overall weak results in corporate and mine site ESG practices seen in the RMI Reports suggest that investors (and financers) in the mining industry can play a significantly stronger role in accelerating better practices. This is particularly true for asset-level disclosures, which are purported to be of key interest to these stakeholders.

With little evidence to the contrary, there is growing scepticism about the real impact of ESG investors, amid calls to clarify what ESG investing actually entails.

A key factor limiting the effectiveness of investors as agents of change is the inherent tension between their primary objective of achieving strong financial performance and any secondary objective related to generating societal benefits. Values-based strategies do not necessarily align with profit maximisation, and even so-called ESG investors have limitations on the trade-offs in relation to their financial returns. In addition, the ESG-related requirements set by investors are often low-bar (e.g., only commitments rather than actions), the ESG credentials of companies in their portfolio may be questionable, and the common response to non-compliance – divestment – often has limited impact as other investors simply step in.[41] With little evidence to the contrary, there is growing scepticism about the real impact of ESG investors, amid calls to clarify what ESG investing actually entails.[42]

Voluntary initiatives such as the Equator Principles and the Principles for Responsible Investment (PRI) offer important opportunities for scaling up the ESG impact of investors and financers. However, with little or no membership requirements related to responsible investment, there is a real risk the initiatives may unwittingly act as greenwashing vehicles for both debt and equity investors.[43] Moreover it is not clear the extent to which, and how, these initiatives assess their own effectiveness in advancing responsible investment. Without robust review and performance assurance frameworks, the initiatives may find it difficult to demonstrate real impact on responsible practices.

Multilateral investors face the same compromise between being seen to require some level of ESG compliance while needing to invest to generate returns. This is seen for example in the IFC Environmental and Social Performance Standards, which still have significant shortcomings. For instance, there is no standard requirement for IFC clients to undertake specific human rights impact assessments. Instead, the relevant Performance

Financers of mining companies are increasingly setting ESG targets for borrowers to access preferential interest rates.

Standard mentions that specific human rights due diligence *'may be appropriate'* in *'limited high-risk circumstances'*.[44] This does little to ensure that the activities of IFC clients do not cause or contribute to human rights abuses, for example. The social and environmental safeguards of other multilateral investors in mining have been seen to have significant shortcomings.[45]

For their part, financers of mining companies are increasingly integrating ESG issues into their loan agreements, by for example setting ESG targets for borrowers to access preferential interest rates. These kinds of sustainable financing arrangements can play an important role in encouraging better practices, as long as the ESG criteria are sufficiently ambitious and effectively monitored.

A related group, stock exchanges, could serve as complementary levers for change. However by and large, stock exchanges have little or no ESG-related listing requirements, although exceptions include for example, the stock exchanges of Hong Kong, India, Indonesia and Johannesburg.[46] There is much to be gained in sustainability and ESG considerations across the full range of company sizes if for example an exchange such as the Toronto stock exchange, on which over 40 percent of the world's public mining companies are listed, were to take the lead on ESG listing requirements and compliance monitoring mechanisms.

Downstream value chains

Downstream actors such as commodity trading companies and manufacturers have a potentially strong role to play in encouraging responsible mining. Through their due diligence measures and their engagement with suppliers, they can influence for the better the ESG practices of mining companies and operations. The importance of this role is reflected in the burgeoning number of legislative, regulatory and guidance initiatives on due diligence and responsible sourcing in metal and mineral supply chains.

Commodity trading. Recent research by RMF has shown that the extractive commodity trading sector is not fulfilling its potential role to encourage responsible practices. The study found that companies' due diligence on risks of human rights abuses, illicit financial flows and environmental impacts is often very limited. Only two companies showed relatively strong performance and the 25 assessed companies scored an overall average of only 23% on their ESG due diligence practices. Performance was particularly weak on the critical steps of risk assessment and supplier engagement. And with regards to providing information to support responsible sourcing by those further down the value chain, 96% of the companies failed to provide comprehensive information about the countries of origin of the commodities they source from third parties. Overall, awareness of ESG issues among extractive commodity trading companies often appears to be weaker than among mining companies. Industry associations and lobbying organisations such as STSA (Swiss Trading & Shipping Association), could introduce ESG performance requirements to evidence a more robust ESG response across their memberships.

Manufacturers and brand retailers. Global brands of manufacturers and retailers are increasingly signing direct offtake agreements with specific mining companies or operations in order to demonstrate 'clean' supply chains and counter the risks of supply shortages or price volatility. Regulations on conflict-free minerals are helping to strengthen this trend. Yet the impacts of these initiatives in improving mining practices is by no means clear and if companies choose to stop sourcing from certain suppliers, they may well contribute to worsening conditions for the mining workers and communities involved.[47] More generally, robust due diligence on ESG risks in mineral supply chains is not yet common practice within the manufacturing and retail sectors globally as manufacturers, in particular of consumer-facing goods, look for guidance and certainty.

Access to justice

Providing for effective access to justice is fundamental to accountability.
MMSD

Mining will always be associated with ESG risks and the potential for harmful impacts that deprive victims of their basic rights. Responsible mining must entail responsible and ethical responses when harm happens. And as the MMSD final report states, "providing for effective access to justice is fundamental to accountability". Despite the broad acceptance of the principle enshrined in the UNGPs, ready access to remedy is still a work in progress as current pathways to justice and remedy are characterised by problems of access and effectiveness.

In addition to the common issues affecting the effectiveness of companies' operational grievance mechanisms (see page 25), other pathways to remedy have their own sets of challenges and limitations.

Judicial remedy

As companies have generally been hesitant to accept liability for harm done, it has often been left to victims to take legal action to seek remedy. Yet the time, effort, expense and expertise needed to file legal claims are major barriers to obtaining redress through the courts. The silicosis class action suit in South Africa is a case in point. The lawsuit against 30 gold mining companies took more than six years before a settlement was reached and approved by court.[48] The companies had earlier appealed against the court's decision to allow the class action suit to proceed, and the delays in reaching a settlement meant that many of the victims died without compensation.[49]

Recent rulings in the courts of the UK and Canada have set important precedents for hearing claims in companies' home countries on alleged damages in third countries. Yet lawsuits of this kind present their own challenges as paths to remedy, given the jurisdictional complexities involved and the lack of precedent for such cases in many home countries. In addition, successful claimants are usually only a small subset of those harmed and the time, cost and legal knowledge required to bring these cases make them inaccessible to most victims. There is much to be gained by governments in both producing countries and home countries taking stronger measures to improve access to legal action as well as non-judicial remedy for victims.

OECD National Contact Points

OECD National Contact Points (NCPs) are tasked with providing a mediation and conciliation platform to help resolve cases where companies have allegedly failed to adhere to the OECD guidelines on responsible business conduct. As such, the NCPs represent a potential grievance mechanism in the 38 OECD countries plus the 12 non-OECD countries that have adhered to the OECD guidelines. However in reality, the mechanism has significant inherent shortcomings, including its reliance on the willingness of companies to engage with the process. In addition, critics have cited failures of the NCP system, including an excessively high burden of proof on claimants, impartiality in how some cases have been handled, and a lack of 'teeth' for encouraging companies to follow any actions recommended at the conclusion of cases.[50]
An OECD Watch report analysed 15 years of NCP experience (the majority of the 250 cases related to mining) and found only one percent of cases had led to any improvement in conditions for the victims of corporate abuse.[51] There is evidently a strong need for reform of the NCP system to rebuild stakeholder trust and enable it to effectively fulfil its role as a grievance mechanism.[52]

Independent complaints review mechanisms

Independent bodies tasked with reviewing allegations of harmful impacts of mining can serve as important mechanisms for affected stakeholders to raise concerns and seek redress. The Canadian Ombudsperson for Responsible Enterprise (CORE), for instance, could be an interesting model for other home countries to consider, although it is still unproven and has significant limitations to its mandate and agency (including the fact that it has no power to ensure companies implement recommended actions, in cases where human rights abuses have been confirmed). The Office of the Compliance Advisor Ombudsman (CAO) of the IFC, the Complaints Mechanism of the European Investment Bank (EIB), and the Project-affected People's Mechanism (PPM) of the Asian Infrastructure Investment Bank (AIIB) provide examples from international finance institutions and illustrate common shortcomings of these types of mechanisms. For example, a recent review of CAO recommended a series of reforms to address important weaknesses in how the CAO has handled complaints, to improve the effectiveness of the CAO as a mechanism for providing remedy.[53] And concerns have been raised about the independence and credibility of both the EIB and AIIB mechanisms.[54]

If ombudsperson functions are to be effective in providing accountability and remedy, they need to be truly independent.

If ombudsperson functions dealing with allegations of harmful impacts of mining (or other industries) are to be effective in providing accountability and redress, they need to be truly independent and transparent, and have the authority to investigate allegations and ensure their recommendations are implemented.

The ILO has developed a different approach to support the resolution of issues, in this case on responsible workplace practices. The ILO Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy (MNE Declaration), although non-binding, establishes key elements of responsible business conduct and is universally applicable to all member states of the ILO and all enterprises.[55] To support implementation of the principles, the ILO offers a Company-Union Dialogue process, to facilitate discussions between multinational companies and trade unions on issues of dispute, to seek to achieve a mutually agreeable outcome.[56] However this process inevitably relies on the willingness of companies to participate in good faith, as any request for facilitation needs to be made jointly by the company and worker representatives involved.

National human rights institutions (NHRIs) offer further possibilities for complaints handling. Several NHRIs in producing countries have addressed issues related to mining, with the South African Human Rights Commission being particularly active. While these state-based institutions can play an important role in facilitating access to remedy, their effectiveness is constrained in some countries due to problems such as political interference and intimidation, restricted mandates, and inadequate resources.[57]

Protection of civic space

Governments and companies both have a responsibility to help ensure the protection of civic space.

Civic space is an essential prerequisite for social justice and no more so than in a mining context. The rights of affected groups, such as local communities, workers and human rights defenders, need to be protected in order to enable them to voice their views, access information, defend their rights, organise, and actively engage on issues that matter to them. Civil society and the media, for their part, need to be able to play their role in holding companies to account and providing independent monitoring and reporting of company actions and harmful impacts.

The shrinking of civic space globally has been evidenced by the increasing incidence of threats to human rights defenders speaking out against mining projects.[58] The situation has been exacerbated in some geographies by restrictions put in place during the Covid-19 pandemic. And selective private and state censure of internet-dependent forms of communication impedes inclusive deliberation on public interest issues.

Governments and companies both have a responsibility to help ensure protection of civic space in order to balance the complementary roles played by companies, governments and civil society, enable open discourse, and reduce the power imbalances that leave victims too often unprotected and unable to access remedy.

National governments

Legislative and regulatory frameworks

Home country and producing country governments have a critical role to play in ensuring responsible practices. As mentioned in previous sections, their ability to be effective in this role can be limited by conflicting priorities, competing interests, power imbalances, intimidation by multinational and multilateral entities, and problems of weak governance including in the worst cases corruption and collusion with industry at the expense of national interests and affected stakeholders.[59]

Addressing barriers to robust state action on responsible mining are particularly important in the current global context of dwindling resources, increasing demand and disrupted supply chains. Mining companies are increasingly moving into countries or regions with weak governance and transparency frameworks, and some governments are coming under criticism for relaxing ESG regulations, fast-tracking approvals for mining projects and using security infrastructure against their own citizens.[60]

On the other hand, the scope for positive action by governments is considerable. National legislation can be a potentially powerful tool. As the MMSD final report points out legislation, if effectively implemented, can:

- generate incentives for responsible behaviour by companies;
- create a stable, transparent and appropriate framework for business;
- protect citizens from abuse caused by corporate impunity;
- reduce the power imbalances between companies and communities; and
- enhance communities' negotiating powers to protect their rights.[61]

The results of RMF research have borne out the positive impacts of national legislation, showing repeatedly that while voluntary measures have little or no impact on company practices, companies that are subject to requirements on ESG issues perform significantly better than their peers. This impact has been seen on company actions to address issues such as anti-bribery and corruption, human rights, gender equality, responsible sourcing, and disclosure of public interest data on a wide range of topics.[62]

These kinds of legislative and regulatory measures offer models for many more governments interested in preventative measures, as do numerous global policy frameworks.[63] To name just one example, some of the most important mining countries in the world have still not ratified the 1995 ILO Convention on Safety and Health in Mines – an international instrument that seeks to address the most harmful impacts on mine workers.[64]

Governments globally can be more ambitious in articulating expectations as well as implementing international agreements.

Governments globally can be more ambitious in articulating ESG expectations, in enacting and enforcing national legislation, as well as implementing international agreements related to responsible mining - to ensure they are fulfilling their obligations under the UN Guiding Principles and that mining companies and operations in their jurisdictions contribute effectively to the UN SDGs and the welfare of peoples and environments.

Mandatory human rights due diligence

As mentioned earlier, implementation of the UN Guiding Principles has been seen to be highly variable and often weak, particularly on the provision of remedy. For this reason, RMF fully supports the ongoing process within the UN to create an international legally binding instrument that would transcend international divides and regulate company action in international human rights law, making mandatory the use of human rights due diligence including prevention of harm and provision of access to remedy.[65] The emergence of national initiatives to develop mandatory human rights due diligence legislation is also encouraging, as is the proposed EU regulation on this issue (although it remains to be seen how effectively they will be enforced).[66] There is a need for other states to follow suit, drawing on the experiences of first-movers, to create a level playing field and help ensure companies fulfil their human rights obligations. Any 'smart mix' of international and national action to accelerate respect for human rights needs to include legally binding measures as an essential element for success.[67]

International policy instrument on extractives

In addition to the specific legal and regulatory frameworks in home countries and producing countries, a raft of international policy instruments helps create the governance ecosystem within which mining companies operate (see Box 7).[68] These international Conventions, Treaties, Agreements, Declarations and Principles, while relying on the political will and capacity of governments and companies to implement the respective measures, offer potentially strong safeguards for avoiding the worst harmful impacts of mining and strengthening the mining sector's contribution to sustainable development. However, there is still no overarching mechanism to consolidate these various policy tools into a global governance framework that creates an enabling environment for responsible mining.

The idea of an international policy instrument on responsible extractives has been mooted before, notably in recent UN meetings and reports, including regional roundtables hosted by the UN Regional Economic Commissions, a global UN roundtable, two United Nations Environment Assemblies, and a report by UNEP's International Resource Panel (IRP).[69]

Despite the considerable challenges involved, there is certainly a strong rationale for further exploring this option.[70] An international instrument, building on existing national and international measures, could help consolidate a common international position across regions, harmonising the priorities of both home countries and producing countries, and creating a global agenda for coordinated action along extractive supply chains. A global instrument would fill a gap, as metals and minerals are not well covered in current international agreements on natural resource management.[71] And an international collaboration of this kind would be particularly relevant, given the links between mining, climate and the energy transition, and the need to redouble global efforts on the SDGs.

Important elements of such an initiative would include:

- Engagement of all countries on the basis of a global interest in responsible supply chains and extensive cross flows of commodities across regions, nations and supply chains;
- Consolidation of existing policy instruments into a common reference framework (rather than duplication of existing instruments);

BOX 7

Some of the international policy instruments relevant to responsible extractives

International policy instruments and internationally agreed principles relevant to responsible mining, and responsible extractives more generally, include for example:

- ILO Conventions such as C176 (Safety and Health in Mines), C087 (Freedom of Association and Protection of the Right to Organise Convention), C098 (Right to Organise and Collective Bargaining Convention), C182 (Worst Forms of Child Labour, and C169 (Indigenous and Tribal Peoples).

- Human rights frameworks such as the Universal Declaration of Human Rights, the UNESCO Convention Concerning the Protection of the World Cultural and Natural Heritage, the UN Declaration on the Rights of Indigenous People, and the UN Guiding Principles on Business and Human Rights.

- Security-related initiatives such as the Voluntary Principles on Security and Human Rights, the Montreux Document on Private Military and Security Companies, and the International Code of Conduct for Private Security Service Providers.

- Environmental instruments such as the Paris Agreement Under the United Nations Framework Convention on Climate Change, the New York Declaration on Forests, the Antarctic Treaty and Antarctic Protocol, and the Law of the Sea Convention.

- Initiatives related to mining techniques, such as the Minamata Convention on Mercury and the International Cyanide Management Code.

Careful consideration needs to be given to nurturing inclusive deliberations and privileging the common good.

- Coverage of the full range of issues across extractive value chains (from production to end-use and circular materials management) using a holistic approach that takes into account the inherent trade-offs involved;
- Guidance on implementation, enforcement, monitoring and evaluation; and
- Ambition to create a policy instrument that would be globally acknowledged and appreciated, in the way that the UN Guiding Principles and the UN SDGs are universal norms.

While useful models exist, such as the UN Framework Convention on Climate Change, careful consideration would need to be given to nurturing inclusive deliberations and privileging the common good. ■

In conclusion

Everyone has a role to play in accelerating progress on responsible mining. The operators of mines most directly, but also consumers and other actors in the system such as regulators, investors, lenders, insurers, stock exchanges, industry associations, downstream customers, civil society, media and multilateral organisations can bring their influence to bear in the interest of normalising responsible mining.

Some progress has been seen on a number of issues since the MMSD initiative 20 years ago, yet expectations of voluntary action from the wider mining industry have repeatedly proved disappointing. Where there is progress, it is evident that change is happening very slowly and even companies leading their peers on ESG issues are still far from meeting society expectations. With emerging environmental and socio-economic issues (such as circular materials management and just transition) still off the radar of most companies, the industry worldwide could be said to be defensively losing ground rather than innovatively progressing on ESG management and harm prevention.

Meanwhile the ESG risks associated with mining are mounting globally, given the industry trends towards exploiting lower-grade ores that often generate more waste and hazards, and moving into jurisdictions with fewer ESG requirements, in response to dwindling reserves. The increased demand for metals and minerals to support the energy transition and projected global economic growth will lead to increased risks of harmful impacts of mining, while the nascent deep-sea mining industry is adding new and unknown ESG risks.

In the absence of accelerated and intentional action by all parties, the global mining industry risks becoming more damaging and even less trustworthy. This would have serious implications for people and environments today and in the future. The industry on which society depends would itself face mounting resistance to new mining projects, difficulties in attracting talented employees, conflicts at existing operations, and constraints in accessing well-priced capital… in turn impacting the value chains that they supply.

It is eminently achievable for companies of all sizes to do what is necessary to rise to the challenge and to benefit from doing the right thing. The industry knows what responsible mining looks like and how to make it happen. There is a wealth of frameworks, guidelines and good practice examples from around the world. What is needed most from companies is courageous leadership on the part of mining executives to go beyond industry norms and incremental improvements, to develop transformative approaches to preventing and minimising ESG risks, and providing remedy when risks become realities.

And regulators, commodity traders, supply chain customers, investors, multilateral and multistakeholder organisations and others with influence on the industry need to leverage their power in the system to accelerate responsible practices, hold companies to account and ensure accessible pathways to remedy.

What will real progress look like? We offer four potential indicators (readily measurable and assessable) of major shifts towards responsible mining.

1. ***ESG-led business models***
   An indication of marked shifts towards responsible mining will be seen when agency and responsibility for ESG issues are embedded across all functions and high in company hierarchies. Companies committed to improving their performance on responsible mining will boost their in-house capacities by providing the relevant departments with sufficient agency, resources, and qualified staff. And, while less evident to the outside world, companies' business decision-making processes will include serious consideration of salient risks to people and environments – sustainability staff will no longer see their role limited to fixing problems that arise from ESG-blind decision-making.

2. ***Normalisation of meaningful information-sharing***
   An important indication of real progress on responsible mining will be the normalisation of meaningful information-sharing of public interest data as a minimal tool to reduce the power disparities and information asymmetries in company-community interactions. Proactive public disclosure of mine-site-specific data, in formats accessible to local stakeholders, will be a clear sign that companies are seeking to build respectful relations with communities as their neighbours. And companies openly disclosing their performance monitoring (targets and tracking data) will indicate a willingness to show how effective they are at achieving good outcomes for people and the planet.

3. A proactive rights-based approach to harm prevention

A third indication of real progress will be seen in how companies deal with their harmful social and environmental impacts. A shift away from current transactional and compliance-oriented approaches will be evident when companies switch their focus from seeking to maintain their 'Social Licence to Operate' to ensuring their activities leave positive legacies for affected stakeholders and environments. It will be common practice for companies to refer to social justice to describe their ethical stance on harm prevention and to publicly report not only their positive ESG actions and successes but also where harm has occurred, what remedy has been provided, and what actions have been taken to prevent recurrences. Companies will be seen to 'do the right thing' even when this is not mandatory and of no direct material interest to their businesses. Evidence will include, for example, a lack of cases where a company's public stance on respecting human rights is contradicted by its acts of omission (such as failing to provide remedy) or commission (such as attempts to criminalise local protestors or human and land rights defenders).

4. International action on responsible mining

Global progress will be notable when producing country and home country governments take stronger and more systematic action to advance responsible mining. The legislative and regulatory initiatives seen on mining-related issues such as human rights, gender, post-closure legacies and public disclosure of public interest data will become much more widespread. One specific sign of progress will be the ratification of the ILO Convention on Safety and Health in Mines by all major mining countries. More generally, there will be growing signs of international collaboration on responsible mining and a notably stronger appetite among governments worldwide for the development of an international policy instrument on responsible extractives.

Responsible mining is well within the capacities of all companies. It can be done - together with intentionality and collective action by all concerned. And we are all concerned. For the good of the planet and future generations, it is up to all of us to make sure that society's demand for metals and minerals does not continue to come at the cost of harm and injustice to people and environments. ■

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