

# More Shine Than Substance

HOW RJC CERTIFICATION  
FAILS TO CREATE  
RESPONSIBLE JEWELRY

MAY 2013



A report by:



Mining Watch Canada  
Mines Alertes

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*This report is based on publicly available information sources. It is believed to be accurate but does not purport to be complete.*



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## List of Acronyms

Acronym	
<b>AGA</b>	AngloGold Ashanti
<b>ASM</b>	Artisanal and small-scale mining
<b>ARM</b>	Alliance for Responsible Mining
<b>ASI</b>	Accreditation Services International
<b>CEO</b>	Chief executive officer
<b>CoC</b>	(RJC) Chain-of-Custody
<b>CoP</b>	(RJC) Code of Practice
<b>DRC</b>	Democratic Republic of Congo
<b>ECOWAS</b>	Economic Community of West African States
<b>ETI</b>	Ethical Trading Initiative
<b>EPA</b>	U.S. Environmental Protection Agency
<b>FFS</b>	Fairtrade and Fairmined Standard
<b>FIFO</b>	Fly-in, fly-out (mining operation)
<b>FLO</b>	Fairtrade International
<b>FNI</b>	Congolese Nationalist and Integrationist Front
<b>FSC</b>	Forest Stewardship Council
<b>GHG</b>	Greenhouse gas
<b>GJ</b>	Gigajoule
<b>GN</b>	Guidance note
<b>ICGLR</b>	International Conference on the Great Lakes Region
<b>ILO</b>	International Labour Organisation
<b>IFC</b>	International Finance Corporation
<b>IFC PS</b>	IFC Performance Standards
<b>IUCN</b>	International Union for Conservation of Nature
<b>KYC</b>	Know Your Customer
<b>MSC</b>	Marine Stewardship Council
<b>NGO</b>	Non-governmental organization
<b>OECD</b>	Organisation for Economic Co-operation and Development
<b>PAC</b>	Partnership Africa Canada
<b>PGM</b>	Platinum group metals
<b>REDD</b>	Reducing Emissions from Deforestation and forest Degradation (UN Program)
<b>RJC</b>	Responsible Jewellery Council
<b>RSB</b>	Roundtable on Sustainable Biofuels
<b>RSPO</b>	Roundtable on Sustainable Palm Oil
<b>SAI</b>	Social Accountability International
<b>STD</b>	Submarine tailings disposal
<b>UNEP</b>	United Nations Environment Programme
<b>WBG</b>	World Bank Group

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## Executive Summary

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In 2005, in the wake of campaigns targeting dirty gold and conflict diamonds, and media exposés of the high environmental and social costs of these minerals, jewelry companies and trade associations recognized that their brands and reputations were at risk. These jewelry retailers and manufacturers joined forces with a few mining companies and metals refiners to establish a multi-sector trade association, the Responsible Jewellery Council, or RJC. In 2009, the RJC launched its certification system in order to “increase consumer confidence in diamond, gold and platinum group metals jewellery ...through the successful implementation of a system for certification of responsible business practices that is widely recognized and valued by our stakeholders.”<sup>1</sup>

In the years since, RJC has steadily grown its membership, reaching 440 members to date. This report examines the scope of RJC’s certification system, and analyzes its components: its governance, membership, standards, auditing, and system for dealing with complaints, among others. It concludes that the RJC system and its components are riddled with flaws and loopholes on each of these fronts, rendering it an ineffective tool by which to create an environmentally and socially responsible supply chain in the jewelry industry. As currently structured, RJC’s certification cannot provide consumers with meaningful reassurance about the ethical antecedents of the jewelry and minerals produced by its member companies. Without significant improvements, the system risks tarnishing, rather than burnishing, the reputations of its member companies.

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**Section 1** highlights a key weakness in the RJC certification process: its industry-controlled governance. There are no representatives of impacted communities, trade unions, or NGOs on the RJC Board of Directors, its ultimate decision-making body. This is in sharp contrast to other certification systems such as the Forest Stewardship Council, or FSC, which includes civil society at all levels.

RJC’s standards development has been affected by this industry dominance as well. RJC’s standards development included opportunities for public comment, which is commendable. But final decisions on standards were made exclusively by industry representatives, despite civil society groups calling for a more inclusive process. RJC’s decision to keep decision-making, even on standards, under tight industry control resulted in several NGOs and trade unions withdrawing completely from the RJC process.

In part because of its industry-dominated governance, the RJC has created a weak certification system that does not adequately respect the rights of communities and workers, enforce necessary environmental protections nor create confidence in consumers.



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**RJC’s certification cannot provide consumers with meaningful reassurance about the ethical antecedents of the jewelry and minerals produced by its member companies. Without significant improvements, the system risks tarnishing, rather than burnishing, the reputations of its member companies.**

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**Section 2** addresses ambiguities in RJC’s membership and claims associated with it. For a fee, any company or trade association related to the jewelry supply chain may become a member of RJC, and reputational benefits begin to accrue right away. Companies must be certified within two years of becoming RJC members. But loopholes in RJC certification requirements have enabled companies with known irresponsible operations to gain company-wide certification. And certification requirements are often confusing and contradictory. For example:

Even though the RJC’s CoP says that the certification scope covers all parts of the member’s business that actively contribute to the jewelry supply chain, this does not happen in practice. Some of a company’s operations can be excluded from the certification process, even if those businesses contributed to the gold, platinum group and diamond supply chain.

- There have been instances of companies getting certified before all of their facilities were audited (see the Rio Tinto case study in the Appendix).
- Companies claiming RJC membership have cherry-picked particular facilities to include in their certification while excluding others (for example, AngloGold Ashanti, as detailed in the report).
- Members can choose to exclude facilities that are partially owned, but not controlled, by members, even though those facilities contribute significantly to the company’s gold, platinum or diamond supply chain. (For more information, see the Grasberg mine case study in the Appendix.)

RJC and its members cannot have it both ways. If RJC wants to certify member companies as a whole and enable them to claim “responsible business practices” then all of a members’ facilities should adhere to RJC standards. If this does not occur, RJC should more clearly state that it is not in fact certifying a member’s business practices as being responsible, but rather, their practices at individual facilities. The RJC should eliminate such inconsistencies and loopholes if it seeks to achieve a more robust and credible certification system.



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## RJC and its members cannot have it both ways

**If RJC wants to certify member companies as a whole and enable them to claim “responsible business practices” then all of a members’ facilities should adhere to RJC standards.**

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**Section 3** analyzes weaknesses in the RJC Code of Practices (CoP). The CoP is currently under review, and the report notes opportunities for the RJC to strengthen its CoP.

For a certification system to verify that businesses are ethically, socially and environmentally responsible, it must be based on standards that actually reflect “responsible” or best practice. But this bar is not being met in a number of ways, including:

- **Indigenous peoples:** RJC fails to require members to obtain the free, prior and informed consent (FPIC) of indigenous peoples. There is a proposed revision to require FPIC, but the proposal fails to acknowledge the need to apply FPIC throughout all stages of mining.
- **Communities:** RJC standards do not require that companies engage with impacted communities at all stages of the mineral development process. While companies are supposed to seek ‘broad community support’ before they develop mines, there is no requirement to publicly disclose evidence showing that broad support has been obtained prior to development. RJC certification also allows members to involuntarily resettle communities.
- **Mining in conflict zones:** RJC’s Code of Practice allows mining in conflict zones, and fails to require adequate due diligence to ensure that mining in these controversial locations does not contribute to conflict. Companies are also allowed to mine diamonds in areas where governments are inflicting human rights abuses on local populations.
- **Workers:** RJC standards do little to protect workers’ rights to join trade unions, do not require worker input on important issues such as working hours, fly-in/fly-out operations and retrenchment, do not require RJC members to provide a ‘living wage’, contain weak grievance provisions, enable children as young as 14 to be employed by RJC members if allowed by national law, and allow RJC members to do business with suppliers and others who use forced or child labor.
- **Environment:** RJC’s certification fails to place any concrete targets or limits on water and air pollution such as mercury emissions, or on energy and water consumption. It also allows toxic tailings disposal into lakes and ocean environments, and mining in legally protected areas.

For a public that is interested in purchasing responsibly produced jewelry, the RJC seal of approval offers no real guarantee of the responsible conduct of its member companies or the antecedents of the gold, platinum and diamonds it certifies.



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**RJC standards do not require that companies engage with impacted communities at all stages of the mineral development process.**

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**Section 4** of the report takes stock of the RJC’s voluntary Chain-of-Custody (CoC) Standard for the precious metals supply chain.

RJC CoC certification is problematic because of a number of key design defects and loopholes that allow irresponsibly produced materials to be considered ‘eligible’ CoC materials, and thus become part of the RJC CoC supply chain. Some of these loopholes are described in the chart below.

Loophole Category	Chain of Custody Loophole Descriptions
<b>Mined material</b>	<p>Allows material that has been certified by “recognized responsible mining standards,” a vague definition which may not adequately protect environmental, social or human rights.</p> <p>Minerals from artisanal and small-scale mining operations may enter the CoC supply chain even though their practices do not have to meet RJC performance or audit requirements.</p>
<b>Conflict-sensitive sourcing</b>	Lacks transparency and reporting requirements to ensure that mined material does not contribute to conflict.
<b>By-product gold and platinum group metals</b>	May come from irresponsible mining operations; no requirement to trace byproduct back to original mining operation.
<b>Recycled gold</b>	Broad definition and lack of due diligence requirements create potential for irresponsible gold to enter supply chain.
<b>Grandfathered gold</b>	Lack of due diligence requirements may allow irresponsible gold to enter the CoC system as grandfathered material
<b>Platinum</b>	Platinum group metals contained in gold alloys do not need to be CoC certified, and therefore, may be introducing PGM from irresponsible operations.
<b>Bullion</b>	Bullion may not be original material that was certified by RJC, but instead come from the inventory of a bullion bank.
<b>Outsourcing contractor</b>	Outsourcing contractors do not need to meet ethical, environmental, labor or human rights standards, obtain CoC certification or be audited under the RJC CoC system.

In addition, the RJC CoC is not transparent. It fails to require public disclosure of information on the origin of chain-of-custody material, which prevents the ability of others to trace the material back to a particular mining operation or supplier of bulk gold scrap material. In addition, information on gold or platinum refiners must be included in CoC transfer documents only if the materials are from the Democratic Republic of Congo and adjoining countries. These documents, however, are not made publicly available through the RJC.

## Chain of custody loopholes

**Key design defects and loopholes allow irresponsibly produced materials to become part of the supply chain.**



**Section 5** deals with deficiencies with the RJC's auditing and verification assessment system.

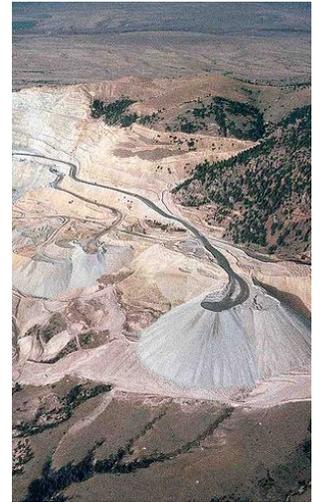
Robust certification systems rely not only on strong standards, but also on rigorous auditing systems to ensure that companies are meeting standards. But RJC's auditing process is fraught with problems. Auditors conducting verification assessments are not required to visit every facility that is within the audited company's certification scope. RJC also does not require auditors to assess companies for adherence to all relevant standards. And there is not enough transparency, stakeholder involvement or independent review of the auditing process to provide non-industry stakeholders with confidence that the audits have been thorough, objective, or effective.

Although RJC claims that "Transparency is a critical component of business responsibility initiatives," there is, in fact, very little transparency in the RJC certification system. Audits are published with almost no accompanying information so external stakeholders have no way of knowing:

- What facilities were visited,
- What evidence formed the basis of auditors' findings,
- Any breaches of the standards,
- Whether the company was required to take corrective action,
- Whether any stakeholders were consulted, and if so, whether those consulted reflected the issues of concern for the range of facilities included in the certification scope.

Equally troubling, the evidence used to verify that a member has met the CoP is not even disclosed to RJC, the body responsible for issuing the certification. The RJC Management Team receives a summary report of the audit, and a recommendation on whether or not RJC should grant certification.<sup>2</sup> The summary report, however, does not include details about the information reviewed by the auditor to provide the basis for its recommendation.

In stark contrast to other certification systems, civil society, labor organizations and communities are not provided with an opportunity to participate in audits, nor is there a requirement for independent review of the verification assessment reports.



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**The evidence used to verify that a member has met the Code of Practice is not disclosed to RJC, the body responsible for issuing the certification.**

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**Section 6** details inadequacies in the RJC’s complaints system – typically, a vital component of an effective certification system.

Most certification systems have processes in place to enable stakeholders to file complaints related to the certification system, or to individual practices of companies. Effective complaints can not only lead to discovery of infractions, but also help create a culture of accountability. According to the ISEAL Alliance (a global association for sustainability standards), “the larger effect of the complaints system is the incentive it provides for everyone to comply with the requirements of the standards program.”

RJC has a mechanism that enables stakeholders to file complaints relating to potential non-conformance with RJC Certification or with the RJC’s own policies and procedures. RJC itself handles all complaints unless a formal investigation appears necessary. In such a case an “ad hoc” complaints panel is created, but its composition is almost entirely controlled by RJC’s CEO and office bearers.

There is also no way to publicly track or view complaints that have been lodged regarding RJC’s certification process or the certification of an individual member. Finally, the costs involved with having complaints investigated by RJC may preclude community members from filing complaints. These deficiencies hamstring the RJC complaints system, and may prevent it from serving as an effective tool to ensure accountability by RJC and its members.



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**There is no way to publicly track or view complaints that have been lodged regarding RJC’s certification process or the certification of an individual member.**

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## Conclusion

RJC has developed a voluntary certification system designed to promote responsible practices in the jewelry supply chain. RJC should be recognized for its efforts in producing both a Code of Practices and Chain-of-Custody standard that applies to the various actors throughout the supply chain.

The RJC system has some strengths: it has included a few provisions to prohibit worst practices (e.g., riverine tailings disposal), provides good guidance on what is required to meet standards, and integrates other widely accepted standards into its Code of Practice.<sup>3</sup> And RJC was recently certified as compliant with ISEAL, a membership association for standard-setting and accreditation bodies.

However, the RJC system also has many weaknesses that undermine its credibility – and its effectiveness as a certification system.

As the full report shows in detail, there are many reasons why RJC certification is not a sufficient guarantee of responsible behavior. Among them:

- 1) The RJC is exclusively industry-controlled and governed, leaving civil society out of decision-making or oversight,

- 2) RJC fails to include and respect the voices of those most affected by jewelry-supply-chain practices,
- 3) Certification is based on standards that fail to fully protect communities, workers and the environment,
- 4) Multiple loopholes in the certification process weaken the system's legitimacy,
- 5) The certification system has virtually no public transparency or accountability,
- 6) The complaints system is inadequate and RJC-controlled rather than independent.

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RJC remains, at heart, an industry-only club that more closely resembles a trade association designed to burnish its public image than an independent certification system. RJC's tagline is: "Performance. Accountability. Confidence," and yet it falls short on all three counts.

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## Introduction

In 2005, a group of 14 organizations representing various companies and trade groups involved in the diamond and gold jewelry business came together to form the Council for Responsible Jewellery Practices. In October 2008, the non-profit Council adopted the trading name of the Responsible Jewellery Council (RJC).

RJC developed its Principles and Code of Practices (CoP), a set of voluntary standards on ethical, social, human rights and environmental commitments, and began full operation of its member certification system in December 2009.<sup>4</sup> In March 2012, the RJC launched its Chain-of-Custody (CoC) Standard, which “aims to support the identification of responsibly-sourced jewellery materials produced, processed and traded through the jewellery supply chain.”

RJC’s vision is:

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“To increase consumer confidence in diamond, gold and platinum group metals jewellery. We will accomplish our vision through the successful implementation of a system for certification of responsible business practices that is widely recognised and valued by our stakeholders.”<sup>5</sup>

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While the RJC certification system is likely be valued by industry stakeholders because it gives the impression that their business practices are responsible, the system is fraught with flaws.

As will be detailed in this report, RJC’s industry-only governance structure lacks accountability, and the third-party auditing process suffers from a lack of transparency, both of which deeply undermine the credibility of the RJC certification system. The RJC certification does not guarantee that gold, diamonds and other minerals are mined in a way that protects communities and the environment (e.g., RJC standards do not adequately protect the environment, or human or workers’ rights throughout the jewelry supply chain, or provide proper assurance that its gold has not funded conflict). And the chain-of-custody standard does not provide assurance throughout the supply chain to guarantee access to responsibly produced and sourced gold and platinum-group metals.

Consequently, the RJC certification system is unlikely, in its present form, to become widely valued by affected communities and other stakeholders who have concerns about the jewelry supply chain. Like industry-defined and controlled certification systems in other sectors—such as the Sustainable Forestry Initiative (SFI), for example—these flaws seriously damage the RJC’s credibility and render it ineffective in improving the social and environmental performance of the jewelry supply chain.<sup>6</sup>



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### A flawed system

**RJC’s industry-only governance structure lacks accountability; the third-party auditing process is not transparent, which deeply undermines the credibility of the RJC certification system.**

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# 1 Flawed Governance and Processes

## 1.1 GOVERNANCE

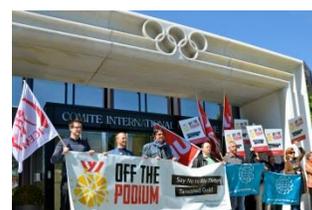
There are different forms of accountability arrangements in voluntary certification systems. In one type, civil society and corporate stakeholders agree on the ‘rules of the game’, have equal decision-making powers, and are accountable to a wide range of stakeholders. This can be contrasted with a second system, where industry dominates rulemaking and governance, and is primarily accountable to industry peers. In the latter type, community, environmental, labor and social stakeholders may participate in consultative functions.<sup>7</sup>

Many certification systems are embracing the first model, one of increased accountability “by allowing for greater participation from outside stakeholders and adapting their ways of organizing rule-making and governance. Indeed, both in forestry and fishery certification, we see that certification organizations are becoming increasingly professional and constitute themselves as independent of the organizations that established them.”<sup>8</sup> We do not see a similar move by RJC, which started as an industry-driven certification initiative, and remains one.<sup>9</sup> Many of its founding members still play a major role in the governance of RJC.<sup>10</sup>

Michael Rae, CEO of RJC, has described RJC’s process as ‘multi-sector’ as opposed to a multi-stakeholder. According to Rae: “A product stewardship group is how we view ourselves. It has much more in common with a trade association than with any other entity. Its membership is made up of companies and individuals who are participants in the gold and diamond jewellery supply chain, and our governance is by those members.”<sup>11</sup>

Although community-based organizations, labor unions, NGOs and others have urged RJC to create space at the table for civil society, even prior to the official launch of the organization, RJC has not welcomed equal participation by such groups.<sup>12</sup> RJC remains an industry-only game at which civil society is invited to be an outside spectator, with occasional speaking rights, but not an equal player.

According to the Enough Project, “Nothing matters more to the legitimacy of a [certification] process than how it makes decisions and who pays for it. Genuine partnership requires shared ownership of the process, with equal representation for government, civil society and industry in the steering body of the initiative.”<sup>13</sup> Certification expert Michael E. Conroy describes a robust multi-stakeholder approach to third-party certification as one in which, “standards [are] created jointly by the full set of stakeholders. . . negotiated by industry representatives and representatives of social, environmental, and community organizations, then audited annually by a totally independent outside organization.”<sup>14</sup>



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**RJC remains an industry-only game at which civil society is invited to be an occasional participant but not an equal player.**

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There are good examples of voluntary certification systems that include a balance of interested stakeholders in decision-making bodies.<sup>15</sup> For example, the highest decision-making body of the Forest Stewardship Council (FSC) is the General Assembly, which is composed of three chambers (environmental, social and economic).<sup>16</sup> Each chamber holds 33.3% of the weight in votes, and there is equal representation within each chamber of members from northern and southern countries. Members are from diverse backgrounds and include representatives of environmental and social non-governmental organizations, the timber trade, forestry organizations, indigenous people's organizations, community forestry groups, retailers and manufacturers, and forest certification organizations, as well as individual forest owners and interested parties.<sup>17</sup> The FSC Board, which has decision-making powers for operational activities and other issues delegated by the General Assembly consists of nine representatives, with three elected from each of the chambers.<sup>18</sup>

It is not imperative for there to be equal representation from different stakeholder groups, but RJC does not have any representatives from civil society—no representatives of mining-affected communities, NGOs or labor unions on its Board of Directors, which is the ultimate decision-making body of the RJC. The Board continues its trade association structure, with representation only from the industries that are certified by RJC.<sup>19</sup>

From the beginning of the RJC process civil society expressed its strong preference for multi-stakeholder ownership and decision-making in standard setting, as opposed to the RJC model of stakeholder consultation and industry-based decision-making. Numerous NGO, community and labor organizations repeatedly encouraged RJC to remedy the biased governance structure,<sup>20</sup> but RJC did not heed the requests.<sup>21</sup>

## 1.2 STANDARD DEVELOPMENT PROCESS

RJC often refers to its “multi-stakeholder standard setting procedures.” This is partly accurate as the standards that form the Code of Practice were developed with input and consultation with various stakeholders. Yet the decision-making remains largely industry-controlled: while standards were being developed, all the members of the standard committee that drafted and voted on the standards in the RJC Code of Practice were from companies involved in the jewelry supply chain or related trade associations.<sup>22</sup>

As explained by Solidaridad:

*The entire process of formulating requirements for RJC so far has been conducted by the industry for the industry. Non-industry stakeholders, like [civil society organizations] and practitioners, have been invited to comment in the drafting of the Code of Practices via open public comment periods, and participate in a consensus-building process via the Consultative Panel, but have not*



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### The RJC model

**“A product stewardship group is how we view ourselves. It has much more in common with a trade association than with any other entity.”**

– Michael Rae,  
CEO of RJC

*been given a decision-making role. This may have limited the stringency of certain requirements (e.g., human rights, emissions, or grievance processes).<sup>23</sup>*

The decision by RJC to continue with its industry-dominated model resulted in the withdrawal of numerous non-governmental organizations (NGOs) and trade unions from the RJC process. In a letter to RJC, eight civil society organizations explained that unlike most industry trade associations and companies, community representatives and many NGOs do not have the resources to participate in every initiative that arises, and so they chose to put their energies into certification processes that were more inclusive and whose standards were more reflective of industry best practices.<sup>24</sup>

In response to civil society push-back, RJC formed a Standards Consultative Panel in 2010, which included jewelry trade associations, consultants, and NGOs. This panel has an advisory, not decision-making role.

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As of 2012, there are now non-industry members on the standards committee (e.g., academic institutions, governments, auditors, NGOs and others) who are appointed by the RJC Board of Directors, but the majority of the members still represent different parts of the diamond, gold and platinum group metals jewelry supply chain.<sup>25</sup> And there remains no representation from trade unions or labor organizations, or mining-affected communities.

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### 1.3 CERTIFICATION PROCESS

To become a certified member of the Responsible Jewellery Council, companies must undergo third-party verification by accredited auditors to ensure that they are adhering to RJC's Code of Practices or its Chain-of-Custody standard.<sup>26</sup> (See Section 2 for more information on RJC membership)

While having independent, third-party auditors is an essential component of a credible audit/verification system, a certification system is only as good as the standards upon which it is based. Additionally, not all third-party verification systems are created equal. There are varying levels of auditor accreditation, stakeholder involvement in audits, and transparency in the information used to support a certification decision.

RJC's auditing system is non-inclusive and non-transparent. There is no third-party accreditation of auditors (RJC is the accreditation body), and companies select the auditor and define the scope of what gets certified. Additionally, RJC audits rely primarily on company-supplied information, which would be fine if there were a robust verification system. Unfortunately, there is a notable lack of opportunity for communities, trade unions and civil society organizations to participate in the verification process. As a result, it is likely that the worst company practices will not come to light during audits.

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**RJC's auditing system is non-inclusive and non-transparent.**

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Perhaps most troubling, not all of the members' facilities are visited by auditors, nor is there a requirement to verify that all standards have been met; and the objective evidence used to verify that a member has met the CoP is not disclosed to the public, nor is it even disclosed to the RJC Management Team, which is ultimately responsible for issuing the certification. The problems of the RJC audit system are outlined in more detail in Section 5.

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The continued resistance of RJC to incorporate civil society representatives into its governance structure has resulted in a weak Code of Practices, a verification system that does not meet the needs of communities and workers affected by the jewelry supply-chain operations, and a certification system that fails to ensure that members implement responsible practices throughout the jewelry supply chain.

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## 2 Membership Ambiguity

For a fee, any company or trade association related to the jewelry supply chain may become a member of RJC.<sup>27</sup> Companies actively involved, for commercial reasons, in the diamond, gold and/or platinum group metals jewelry supply chain are referred to as commercial members, while trade associations are referred to as association members.<sup>28</sup>

Commercial members are supposed to be certified by RJC within two years of becoming RJC members. Once they go through the certification process, they become certified members. Trade associations are exempt from certification requirements.<sup>29</sup> In this report, “members” will refer to commercial members unless otherwise indicated.

**RJC commercial member certification has four elements:**<sup>30</sup>

- 1. The Code of Practices:** A set of voluntary standards which lay out the specific requirements of the system;
- 2. Auditor Accreditation:** Independent, third party auditors who are accredited as competent to evaluate conformance against the standard;
- 3. Independent Verification:** Verification by accredited auditors to provide objective evidence that the requirements of the Code of Practices have been fulfilled;
- 4. RJC Certification:** A decision on certification is taken by the RJC according to the results of verification. Certification may be granted for up to three years, after which re-certification will be required.

RJC’s website extols the ‘reputational benefits’ of becoming an RJC commercial member, such as strengthening a company brand by promoting RJC membership and certification status on the RJC website and through use of the RJC logo on its marketing material.<sup>31</sup>

These reputational benefits begin to accrue even before a company is certified. For example, in September 2012, Blaze Metals became an RJC member under the diamond, gold and/or platinum group metals producer category.<sup>32</sup> Curiously, as of December 2012 RJC had not provided a link to the company’s website. It only indicated that Blaze Metal’s address is Kumasi, Ghana.<sup>33</sup> Nor did RJC include the full company name, which is Blaze Metals Resources Inc.<sup>34</sup> There is virtually no publicly available information on Blaze Metals Resources other than what is available through its own website,<sup>35</sup> and there is no indication that the company has produced any gold to date.<sup>36</sup> While not yet a certified RJC member, references to RJC membership are prominently displayed all over the company’s website.



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**RJC’s website extols the ‘reputational benefits’ of becoming an RJC commercial member. These reputational benefits begin to accrue even before a company is certified.**

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## 2.1 RJC CERTIFIED MEMBERSHIP CLAIMS MISLEAD CONSUMERS

RJC has applied an inconsistent approach to its certified membership. In some cases it has certified a company, in other cases it has certified individual mine sites.<sup>37</sup> This is despite the fact that RJC claims that, “Certification is granted to a Member as a whole...Certification is not granted to individual Facilities.”<sup>38</sup>

When a company’s name appears on the RJC Certified Members web page it gives the appearance of compliance of all its operations with RJC standards.<sup>39</sup> The RJC Members web page says: “*Certification under the RJC system demonstrates that the Member’s business practices conform to RJC’s Code of Practices for business ethics, human rights, social and environmental performance.*”<sup>40</sup>

From this statement, one assumes that the phrase “the member’s business practices conform” includes all of its operations.

In reality, not all of a member’s business practices need to conform to RJC’s Code of Practices in order for the company to become a certified member. (See Section 3.1)

The ability of a company to use RJC membership and certification to enhance its brand recognition might be justified if RJC certification meant that the company, as a whole, was a responsible business entity. As shown in the following subsections, a company can choose to exclude some of its operations from the certification process, even if those businesses contributed to the gold, PGM and diamond supply chain. Thus, it is somewhat deceptive for RJC to have member certification. RJC should clearly state on its website and in all promotional and written materials that certification only demonstrates that some of a member’s business practices conform to the Code of Practices, and clearly state which facilities have been certified.

### Selective Certification and Verification

RJC has argued that taking a company-wide certification approach “. . .means that all the sites within the defined membership company must meet the standards; not just a few good sites. A single site failing to meet the defined member will jeopardise the certification of the whole Member – this is a major incentive to improve standards across the board.”<sup>41</sup>

Even though the RJC’s Code of Practices says that the certification scope covers those parts of the member’s business that actively contribute to the diamond and/or gold jewelry supply chain,<sup>42</sup> this is not happening in practice.

For example, Rio Tinto became a certified member in July 2012, and the company’s certification scope included its head office in London, Argyle Diamonds Limited in Australia, Diavik Diamond Mines in Canada, Murowa Diamonds in Zimbabwe, Kennecott Utah Copper in the U.S., and Rio Tinto Diamonds NV in Belgium.<sup>43</sup>



## Misleading certification

**RJC members pick and choose what aspects of their business are included in the certification process, implying that the entire business is RJC certified, even when only part of it is.**

The letter from Rio Tinto to RJC that set out the scope of the certification said it applied to “those entities that are under its control and actively contribute to the gold and diamond jewelry supply chain,”<sup>44</sup> yet the certification did not include the Palabora mine in South Africa, which at the time of certification was 57% owned and managed by Rio Tinto.<sup>45</sup> Palabora produces anode slimes that contain gold and platinum, and so it was actively contributing to the Rio Tinto’s gold supply.<sup>46</sup> In the first three quarters of 2012 Rio Tinto’s share of gold from Palabora’s anode slimes was more than 4,000 ounces.<sup>47</sup>

Also, the Northparkes copper mine was not yet certified, “[d]ue to further clarification sought on the percentage of gold material produced at the [mine].” It is not clear why further clarification was required, since Rio Tinto publishes information on gold production from all of its operations, including Northparkes, on a quarterly basis.<sup>48</sup> The Northparkes mine did not undergo a verification audit until December 2012,<sup>49</sup> yet Rio Tinto still achieved its member certification in July 2012.

In the “Responsible Gold” section of its 2011 Sustainability Report, AngloGold Ashanti claims to be a member of the Responsible Jewellery Council.<sup>50</sup> Instead of certifying all of its operations that contribute to the diamond, gold and/or PGM jewelry supply chain, AngloGold Ashanti has elected to only certify three of its operations, which together accounted for just 20% of AngloGold Ashanti’s gold production in 2011.<sup>51</sup> The AngloGold Ashanti website says:

*Mining members of the RJC are required to be independently certified to its Code of Practices by December 2012. Currently, the following AngloGold Ashanti operations are included in the RJC programme: CC&V (USA), AGA Mineração (Brazil) and Sunrise Dam (Australia). These operations continue to work towards the December 2012 deadline. AngloGold Ashanti is committed to working towards the certification of all its operations.*<sup>52</sup>

So, in this case, RJC has not taken a company-wide certification approach. Contrary to its statement in its 2011 Sustainability Report, AngloGold Ashanti is not an RJC member. Rather, it is the specific AngloGold Ashanti operations mentioned above that are members.<sup>53</sup>

Additionally, RJC’s verification system is not designed to evaluate whether all sites within a company’s certification scope are meeting the standards. As described in Section 5, auditors are not required to visit all facilities within a member’s certification scope, or verify that they have met all of the RJC standards.

Given the information above, RJC should revisit its decision to recognize companies as certified members rather than simply certifying individual facilities, primarily because it is misleading to portray the system as covering all of a member’s relevant facilities when clearly that is not the case. Furthermore,

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## Not verified

**Auditors are not required to visit all facilities within a member’s certification scope, or verify that they have met all of the RJC standards.**

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the task of carrying out verification assessments of multiple facilities for a single certification cannot possibly result in the attention to detail and due diligence that a single-facility-audit would enable.<sup>54</sup>

### **LOOPHOLE** Mines Not Under Member “Control” Do Not Require Certification

RJC defines “control” primarily as, “Direct or indirect ownership, or Control (alone or pursuant to an agreement with other Members) of 50% or more of the voting equities/rights (or equivalent) of the controlled business or Facility.”<sup>55</sup>

This definition exempts some RJC members’ mining operations from needing to meet RJC standards, even though they may contribute significant quantities of gold, diamonds or platinum to a member’s overall production. This loophole enables certified RJC members to remain involved in mines that are far from responsible operations. This goes against RJC statements that describe how,

*Certification under the RJC system demonstrates that the Member’s business practices conform to RJC’s Code of Practices for business ethics, human rights, social and environmental performance (emphasis added).*<sup>56</sup>

Certified members are able to claim that they’ve demonstrated responsible practices, and avail themselves of the positive publicity and exposure that goes along with RJC certification, even though they may be involved in operations with abysmal human rights, social and/or environmental abuses.

For example, Rio Tinto, a certified member of RJC, receives a 40% share of production from the Grasberg mine in the Papua province of Indonesia.<sup>57</sup> This mine is most definitely a Rio Tinto business that contributes to its gold supply chain (e.g., the Grasberg operation accounted for 27% of the gold produced by Rio Tinto in 2011).<sup>58</sup> Similarly, Rio Tinto jointly controls the Escondida mine in Chile, which accounted for 6% of Rio Tinto’s gold production in 2011.<sup>59</sup> Yet because of RJC’s “control” provision these operations do not need to be certified by RJC.

That works out well for Rio Tinto because it is highly likely that inclusion of its controversial Grasberg mining operation would have prevented the company’s certification under the RJC system. (See Appendix I, Case Study 3.)

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If RJC insists on awarding certified membership to companies, rather than simply certifying specific facilities, it must revisit the question of operations under a member’s control, and at least require members to make some effort to implement the RJC Code of Practices at these facilities. For example, the World Gold Council (WGC) encourages its members to apply the WGC Conflict-Free Gold Standard to their joint-venture operations as well.<sup>60</sup>

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## **LOOPHOLE** Facilities Not Actively Contributing to Supply Chain are Excluded

As mentioned previously, only mining facilities actively contributing to the diamond and gold jewelry supply chain are included in a member's RJC certification scope.<sup>61</sup> The phrase "actively contributing" has not been defined in RJC's materials. As seen in the following examples, Rio Tinto interpreted this to mean that only mines in commercial production must be included in the certification, and RJC has not disputed this interpretation. As a result, mining operations that have already actively produced gold and diamonds may be left out of the certification process.

For example, two of Rio Tinto's mining operations, its Bunder Diamond Project (India) and Oyu Tolgoi Project (Mongolia), were excluded from its RJC certification because "these projects have not yet commenced commercial production."<sup>62</sup>

- In August 2012, one month after Rio Tinto received its RJC certification, the company unveiled a set of diamond jewelry from its Bunder diamond mine in Madhya Pradesh, India. The jewelry, while not yet for sale, is being showcased by Rio Tinto at various events.<sup>63</sup>
- In June 2012, metals from the Oyu Tolgoi mine were used in the production of Olympic medals for the 2012 Olympic games.<sup>64</sup>

It is not clear why these facilities should have been excluded from an RJC audit, since they were actively producing diamond and gold jewelry that were being promoted by Rio Tinto at the time of its RJC certification.

It should be noted, as well, that because of this loophole, operations that are in exploration, construction or pre-commissioned stages are not required to be audited for compliance with RJC CoP,<sup>65</sup> even though there are standards in the RJC CoP that specifically relate to these phases of operation. (See Section 2.1 and Appendix I, Case Study 22. )

Similarly, operations that are in closure or post-closure and are no longer actively producing gold, PGM or diamonds apparently do not have to undergo an RJC verification audit, even though RJC CoP provisions mention closure and post-closure monitoring requirements.<sup>66</sup> (See Kelian example on next page.)



## Rio Tinto's PT Kelian Gold Mine, Indonesia

Operations in closure are not required to undergo RJC verification audits

Although it is in post-closure monitoring mode, Rio Tinto's Kelian gold mine was not included in its RJC certification scope.

The Kelian mine was operated by Rio Tinto subsidiary PT Kelian Equatorial Mining (KEM), which extracted gold until it 2005 and continued producing gold through the processing of stockpiles until 2007.<sup>67</sup> The gold mining operation has a history of human rights violations,<sup>68</sup> the site has had issues with acid rock drainage,<sup>69</sup> and there are concerns among local residents regarding the long-term safety of various waste structures at the site.<sup>70</sup>

In 2004, in an address to the Mineral Council of Australia, Charlie Lenegran of Rio Tinto said that "Closure works will continue until 2008 and post closure management will continue until 2013 at least," adding that, "There can be few greater responsibilities than the successful closure of a mine whose existence has had environmental, economic and social impacts. It will be premature to claim success for the Kelian closure for many years yet."<sup>71</sup>

In 2010, Rio Tinto subsidiary PT Kelian Equatorial Mining stated that it would monitor the mine site only until 2013. After that point, a post-closure authority, HLKL, funded by an \$11 million trust fund for long-term monitoring and maintenance, would take over day-to-day responsibilities.<sup>72</sup>

It is unclear if Rio Tinto will relinquish responsibility for the Kelian mine in 2013, or what exactly that means in terms of long-term financial responsibility for the site. There is very little recent information related to Kelian on the Rio Tinto website. The most recent financial report from Rio Tinto that included a reference to Kelian was 2009.<sup>73</sup>

Rio Tinto appears to have acknowledged some ongoing responsibility for the site. In 2011, at Rio Tinto's annual meeting shareholders voiced concerns on behalf of local communities regarding the Kelian mine. According to Chalid Muhammad, an activist in close contact with affected peoples in the Kelian region, "their grievances have remained unaddressed for the past couple of years."<sup>74</sup> Rio Tinto claimed to still be in contact with NGOs and communities regarding compensation for impacts related to the Kelian mine,<sup>75</sup> and also with Indonesian authorities regarding the stability of a tailings dam at the site.<sup>76</sup>



### 3 Weak Code of Practices (CoP)

RJC does not purport to strive for best practices in its certification system, simply “responsible” practices. This is a lower bar, and as will be shown below, even this low bar is not being met in a number of ways.

For a public that is interested in purchasing responsibly produced jewelry, RJC certification provides no such guarantee. Unfortunately, some consumers interested in purchasing ethically produced jewelry will be misled into thinking that this is the case.<sup>77</sup>

The following subsections outline some of the ways that the RJC CoP fails to ensure responsible practices. Also, the case studies in the Appendix provide examples of mines owned or operated by or supplying to RJC-certified companies that suffer from a number of irresponsible practices.

**Note:** in November 2012 RJC proposed revisions to its CoP.<sup>78</sup> Where relevant, the proposed changes have been addressed below.

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**RJC does not purport to strive for best practices in its certification system.**

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#### What about ISEAL certification?

In 2012, RJC became certified as compliant with ISEAL, a global alliance whose mission is to “strengthen standards systems for people and the environment.”<sup>79</sup> ISEAL Alliance certification is an important minimum bar for a certification system to. But it’s important to understand its scope: ISEAL’s Standard-Setting Code pertains to process rather than content. As certification expert and long-time ISEAL affiliate Michael E. Conroy notes: “ISEAL doesn’t pretend to enter into the evaluation of the on-the-ground performance quality of a set of candidate standards; it only assures outsiders that the appropriate levels of transparency have been pursued in the creation of the standards and in the performance of the standard-setting organization.”<sup>80</sup>

#### 3.1 FAILS TO RESPECT THE RIGHTS OF INDIGENOUS PEOPLES

Increasingly, private sector corporations are held to global standards of social responsibility. According to the International Finance Corporation, companies are expected to demonstrate respect for the human rights, dignity, aspirations, cultures, and livelihoods of indigenous peoples, and conduct their business in a manner that upholds these rights.<sup>81</sup> The mining industry is not known for its stellar human rights record. In 2012, an Oxfam survey of 28 major oil, gas, and mining exploration and production companies found that, “All but two of the companies publicly commit to respecting human rights...All but five also publicly commit to specifically respecting the rights of indigenous peoples.”<sup>82</sup> Therefore,



it is critical that RJC adopt and enforce strong standards that respect the rights of these and other affected communities.

Unfortunately, the RJC does not adopt an integral element to human rights protection: free, prior and informed consent (FPIC). FPIC is a right of indigenous peoples to give or withhold consent for projects that affect them. It is a principle that many organizations, including the United Nations, International Labor Organization (ILO), and the International Finance Corporation (IFC), have recognized as essential for resource sector engagement with indigenous peoples.<sup>83</sup> Many voluntary certification systems, such as the Forest Stewardship Council and the Roundtable on Responsible Palm Oil, require FPIC.<sup>84</sup>

Any certification system that purports to “promote responsible ethical, social and environmental practices, which respect human rights,”<sup>85</sup> must include a requirement for FPIC. Yet the current RJC CoP 2.11 does not. It only requires companies to “seek to obtain broad-based support of affected Indigenous Peoples and to have this support formally documented.”<sup>86</sup>

Not only does RJC adopt a weak standard by substituting consent with support, the CoP only requires companies to seek to obtain support instead of requiring them to obtain and document broad-based support of affected indigenous peoples. Furthermore, this weak stance is rendered meaningless because there is no definition in RJC materials of what constitutes “broad-based support.”

The November 2012 proposed revisions to RJC’s CoP would require companies to “facilitate a process of Free, Prior and Informed Consent with affected Indigenous Peoples consistent with [IFC] Performance Standard 7, during the planning and approval stages for new mining projects, or significant changes to existing projects. . .”<sup>87</sup> RJC also mentions that a reference to the United Nations Declaration on the Rights of Indigenous Peoples will be added in its CoP guidance document.<sup>88</sup>

Inclusion of a requirement for FPIC, and acknowledgement of UNDRIP, which is viewed as the primary reference for indigenous peoples rights,<sup>89</sup> is an overdue and much needed improvement to the RJC CoP.

Unfortunately, IFC’s guidance on FPIC does not reflect the general understanding of the scope of free, prior and informed consent. Oxfam America has outlined some of the problems with the IFC standard, the most important being that IFC’s guidance says that FPIC can only be provided at a single point in time.<sup>90</sup> As explained by Oxfam, this provision is deficient because, “Procedurally, gaining FPIC is not a ‘one-off’ procedure, but instead an ongoing process. FPIC should start before exploration—prior to the issuing of concessions—and continue throughout the life-cycle of the project.”<sup>91</sup>

There is a firm basis for Oxfam’s critique. Many institutions agree that FPIC is not a one-time event, but rather a continuous, iterative process. For example, the World Commission on Dams, the U.N. Expert Mechanism on the Rights of

Indigenous Peoples, the Indian Law Resource Center, the Framework for Responsible Mining, and the Economic Community of West African States to name a few.<sup>92</sup> This important provision is also entrenched in Philippine law, which requires that “Unless specifically stated in the [Memorandum of Agreement between operators and indigenous communities], separate exercise of the right to FPIC shall be for each major phase of the proposed activity such as Exploration; Operation or Development; Contracting of operator; and the like.”

In addition, many corporations recognize the importance of FPIC. RJC member De Beers has also recognized the need to seek consent from communities at multiple times over the course of a mining project’s lifetime. See box on next page.<sup>93</sup>

### De Beers’ Canadian diamond mine policy

includes the provision, “Respecting community governance and always seeking a community’s free and informed consent prior to initiating any significant mining operations that will have a substantial impact on their interests.” In the application of this policy, the company has agreed to renegotiate consent if the scope of the project varies significantly from the original agreement between the company and indigenous peoples community.<sup>94</sup>



## 3.2 FAILS TO REQUIRE MEANINGFUL COMMUNITY ENGAGEMENT

The RJC CoP fails to require that companies carry out early engagement, and there is no transparency regarding whether or not community engagement is evaluated during the RJC audit process.

### Does Not Require or Verify Early Engagement

Consultation with affected stakeholders and local communities is a responsible practice that is critical to ensuring that a project’s risks are identified early, and mitigated to lessen the impacts on local communities.<sup>95</sup> While consultation or engagement is a requirement in many jurisdictions,<sup>96</sup> there are still countries that do not have effective institutions and governance systems in place that require or enforce such requirements.<sup>97</sup> It is especially important, therefore, that company policies or initiatives like RJC provide solid guidance on what constitutes responsible and effective community consultation.

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*The RJC CoP 2.1.1 on community engagement and development states that: Members with Mining Facilities will have appropriate skills, resources and systems in place for early and ongoing engagement with affected communities and stakeholders throughout the project's lifecycle, from earliest exploration activities, construction prior to commencement of mining, during mine operations, through to closure and post-closure monitoring.*

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RJC acknowledges that early and ongoing engagement is important, but for many reasons RJC's standard fails to guarantee that RJC members will actually implement early engagement with affected communities.

First, CoP 2.1.1 says that members with mining facilities will have appropriate skills, resource and systems in place for early and ongoing engagement without saying that early and ongoing engagement is required.

The November 2012 proposed revisions to CoP 2.1.1 still does not require early and ongoing engagement, but does require that RJC members communicate with and receive feedback from affected communities.<sup>98</sup>

Second, the CoP states that engagement systems must be in place from earliest exploration activities to post-closure monitoring. But there are no verification requirements during exploration, construction or post-closure activities.<sup>99</sup> According to RJC's "Facilities in the exploration to pre-commissioned stages of the mine lifecycle are not visited as part of the Verification Assessment. Business practices in these stages of the mine lifecycle can be evidenced, where necessary and appropriate, by desktop review of policies, systems, procedures and processes."<sup>100</sup>

A strong argument can be made that it is necessary and appropriate for Rio Tinto's Oyu Tolgoi mine to be audited for compliance with the RJC community engagement standard, as there has been significant community dissatisfaction with Rio Tinto's community engagement and the environmental assessment process. (See Appendix I, Case Study 2.) Also, there cannot be a better time to gauge broad community support for a project than at the exploration stage. However, as mentioned in Section 2.1 Rio Tinto excluded Oyu Tolgoi from its RJC verification assessment, and RJC allowed this exclusion.



## Rio Tinto's Oyu Tolgoi mine, Mongolia

**An RJC audit of Oyu Tolgoi would likely have discovered non conformance** with RJC's early engagement requirement, and presumably to obtain RJC certification Rio Tinto would have had to address some of the problems being raised by the communities affected by its exploration and construction activities. This would have benefited the local people and the company's ongoing relationship with the community. Instead, by the time Oyu Tolgoi is in commercial production and undergoes certification, it will likely be too late to remedy some of these issues.

**This raises many questions:** Will Rio Tinto ever be held accountable by RJC for its poor consultation practices? Will Rio Tinto lose its certified member status when Oyu Tolgoi is audited, because it failed to responsibly engage communities at Oyu Tolgoi?

In order to confirm that community engagement has been carried out from the "earliest exploration activities" on, there should be a requirement to verify it. If there is to be no verification, the CoP should explicitly say that practices during exploration/pre-commercial and post-closure operations are not included in RJC's verification audits, or simply remove provisions that are not actually verified. Failure to do so will further mar the credibility of the RJC certification system.

### Fails to Require Consent or Support from Affected Communities

Provision 2.11 in RJC's CoP says that, "The interests and development aspirations of affected communities must be considered in major mining decisions in the project's lifecycle, and broad community support for proposals should be sought."<sup>101</sup>

Suggesting that broad community support should be sought is very different from *requiring* a company to obtain broad community support. By this standard, even if there were widespread community opposition to the project, certification could occur as long as the company put some effort into seeking broad community support.

This provision allows certification of mining projects that impose themselves on communities that do not want them, and thus, does not represent responsible practice.<sup>102</sup> Aggressive development agendas have repeatedly resulted in human rights abuses and violence in communities resisting mines that are proposed and developed without community consent or support. There are also costs to the companies. Projects may be delayed or cancelled, costing companies millions of dollars, vandalism may result in repair and increased security costs, lawsuits related to human rights abuses may ensue, and overall, there can be great damage to a company's reputation.<sup>103</sup>



## Fails to Require Consent – The Cost of Foregoing Community Consent

While the following examples do not involve RJC companies, they serve to illustrate the damage to communities and companies that can occur when mines are developed without community consent.

**In April 2011, the Peruvian government announced that it would not approve Southern Copper's Tia Maria project.** The decision followed 17 days of violent protests against the project by local residents and clashes with the police, which resulted in three protesters being killed and at least 40 others being injured. A review of the project by the United Nations Office for Project Services found deficiencies in the environmental impact assessment and that the company had underestimated the importance of social participation in the permitting process.<sup>104</sup>

**From the initial proposal of Newmont's Conga gold mine project in February 2010, residents of nearby Peruvian communities expressed mistrust for the project, fearing for the safety of their water supplies.** Protests and demonstrations began in 2011, and continued through 2012. Some of the clashes between community members and government security forces were violent and resulted in fatalities. Approval for the mining project has since been suspended by the government.<sup>105</sup> By Newmont's own account, delays cost the company \$2 million per day in the initial months.<sup>106</sup>

**The Fenix nickel project in Guatemala has been at the center of much controversy.** In December 2010, a local resident filed a multi-million-dollar civil lawsuit against Hudbay Minerals, alleging that her husband was killed by the company's private security forces during a protest at the site. In March 2011, 11 women filed a lawsuit against the company alleging that they were assaulted and gang-raped by security forces during armed evictions near the site in January 2007. Hudbay sold the project at a significant loss in August 2011.<sup>107</sup>

The RJC standards guidance document explains that:

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*Broad community support is a collection of expression by the affected communities, through individuals and/or their recognized representatives, in support of the project. Support may take a range of forms depending on the situation, such as a formal agreement between the company and community, or expressed during community participation in an ongoing dialogue about impacts and benefits of a project. There may be broad community support even if some individuals or groups object to the project; conversely, community participation in a dialogue with the company does not necessarily equate to support.<sup>108</sup>*

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RJC's wording closely mimics what is found in the International Finance Corporation's sustainability policy, which requires that projects with potentially significant, adverse impacts on communities must have "broad community support" in order to receive direct investment by IFC.<sup>109</sup>

But in 2009, the World Resources Institute highlighted several shortcomings with IFC's use of "broad community support" requirement:

*Several concerns prevent this standard from effectively protecting the rights of affected communities. For example, broad community support can exist even if the community is unaware that they have expressed support. Furthermore, IFC does not disclose its justifications for its assessment of the existence of broad community support. IFC also draws evidence of broad community support almost exclusively from the client's documentation, which presents a conflict of interest.*

*For this standard to be credible, the IFC must disclose the evidence for its determination that a project has broad community support. IFC should also take steps to ensure that communities are aware of this standard, and that stakeholder groups have the opportunity to knowingly provide or withhold their support.<sup>110</sup>*

A similar critique can be made of RJC's inclusion of the "broad community support" provision. To obtain RJC certification there is no requirement for companies to document the support. There is also no guidance to companies or auditors on what evidence is needed to show broad community support, and there is no requirement for auditors to obtain input from community members to determine if they believe that their support has been sought, let alone received.<sup>111</sup> So there is no public transparency with respect to the community support provision.



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**RJC certification requires broad community support.**

**But there are no requirements for companies to document their "broad community support." They only need to claim that they have it.**

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### 3.3 ALLOWS INVOLUNTARY RESETTLEMENT OF AFFECTED COMMUNITIES

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*Section 2.11 of the current RJC CoP says that: Members with Mining Facilities will avoid or otherwise minimise involuntary resettlement. Where resettlement is unavoidable, its implementation should be consistent with International Finance Corporation (IFC) Performance Standard 5.*

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The RJC CoP guidance document references the April 2006 version of the IFC's Performance Standard (PS) 5.<sup>112</sup> This version only requires the "informed participation" of affected communities, including indigenous peoples.<sup>113</sup> The 2012 version of IFC PS5 now requires free, prior and informed consent, under certain conditions, for relocation of indigenous peoples.<sup>114</sup> The proposed revisions to the RJC CoP would adopt the updated version of IFC PS5, which is a notable step forward, and like FPIC for indigenous peoples, is overdue.<sup>115</sup>

However, like IFC's FPIC requirements, the IFC's resettlement policy does not go far enough to protect the rights of relocated communities. In 2007, the U.N. Special Rapporteur on adequate housing presented to the United Nations Human Rights Council a set of "Basic principles and guidelines on development-based evictions and displacement." It includes the criteria that "The right of affected persons, groups and communities to full and prior informed consent regarding relocation must be guaranteed."<sup>116</sup> The Special Rapporteur's statement was not confined to indigenous peoples.

Increasingly, FPIC is being required for resettlement of any affected community (not only indigenous communities). Some financial institutions have incorporated an FPIC provision in their resettlement standards that apply beyond indigenous peoples. For example, the Inter-American Development Bank will only support operations that involve the displacement of indigenous communities or other low income ethnic minority communities if the bank can ascertain that the people affected have given their informed consent to the resettlement and compensation measures.<sup>117</sup>

Several extractive industry certification systems do not allow any involuntary resettlement of communities, and require free, prior and informed consent from any community that is resettled.<sup>118</sup> For example, the Roundtable on Sustainable Palm Oil (RSPO) Criterion 7.6 states that, "Local people are compensated for any agreed land acquisitions and relinquishment of rights, subject to their free, prior and informed consent and negotiated agreements."<sup>119</sup> Also, the United Nations Reducing Emissions from Deforestation and forest Degradation Programme draft revised REDD+ standards require free, prior and informed consent from indigenous peoples and local communities where any relocation or displacement occurs.<sup>120</sup>



In addition to not prohibiting involuntary resettlement, RJC does not require that its members obtain FPIC from all affected communities regarding resettlement and compensation measures.<sup>121</sup>

The resettlement provision provides another example of the shortcomings of the RJC auditing system. RJC verification assessments/audits are only required for mines that are actively producing gold, diamonds or PGMs. Often, by the time mines are in commercial operation resettlement will be, for the most part, completed. If a certified member is found to have been non-compliant with CoP 2.11 regarding resettlement will its RJC certification be denied or withdrawn? (E.g., if negotiations and resettlement occurred prior to a full impact assessment or without FPIC of indigenous peoples – see Appendix I, Case Study 2.) Or in such cases will RJC members be required to re-open resettlement negotiations until the resettled peoples are satisfied with the end result?



### 3.4 FAILS TO REQUIRE PUBLICATION OF PAYMENTS TO ALL GOVERNMENTS

RJC CoP 1.6 says that, “Members with Mining Facilities will commit to and support implementation of the Extractive Industries Transparency Initiative (EITI).”

EITI requires companies to disclose payments to governments, and requires governments to disclose payments from companies. The problem is, not all countries are members of EITI. As of December 2012 there were 37 countries in the EITI program, but only 18 were compliant with EITI requirements.<sup>122</sup> Some of the major gold and diamond producing nations, e.g., Australia, Canada, United States, South Africa, Papua New Guinea, Philippines, Brazil and others are not EITI members.

In countries where EITI is not in place, there is no explicit RJC requirement for companies to disclose payments. In its standards guidance document, RJC suggests that, “voluntary disclosure of payments to governments in non-EITI countries is also encouraged.”<sup>123</sup>

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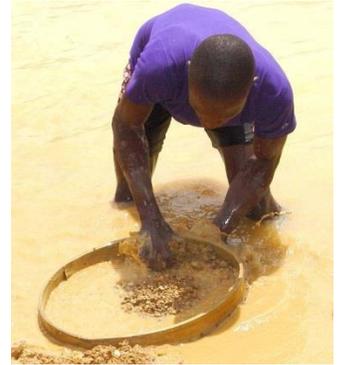
RJC should require that payments to governments in non-EITI countries be disclosed. This is already standard practice for many companies.<sup>124</sup>

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### 3.5 LACKS DUE DILIGENCE FOR MINING OPERATIONS IN CONFLICT ZONES

Various organizations and experts agree that large-scale mining operations should not take place in areas of conflict or high risk. For example:

- In 2003, the World Bank’s multi-stakeholder Extractive Industries Review (EIR) concluded that World Bank financial institutions should only promote investment in or fund extractive industries projects when a country’s government is able to withstand the inherent social, environmental, and governance challenges of developing major extractions. The EIR also identified the core governance criteria that should be in place prior to World Bank support for extractive projects. One criterion was the absence of armed conflict or of a high risk of such conflict.<sup>125</sup>
- In 2010, Phillip Olden, a consultant who has worked with RJC and some of its members, and with the Organisation for Economic Co-operation and Development (OECD) on its due diligence guidelines for the gold supply chain, recommended that mining companies “establish policies which ensure the mine does not operate within nor contribute to an area of conflict or high risk and that the integrity and security of supply from mine to refinery is maintained.”<sup>126</sup>
- In 2011, Partnership Africa Canada commented that, “Areas where minerals are extracted. . . must be free of military activity. That may seem self-evident, but even the presence of government forces may become problematic if prolonged. Beyond their reference to human rights, the RJC [is] silent on this subject.”<sup>127</sup>



Worldwide, experience shows that mining in conflict zones often exacerbates conflict.<sup>128</sup> Companies that operate in conflict zones may also be partially, even if unintentionally, complicit in the human rights abuses that occur in these areas. For example, in 2006 AngloGold Ashanti (AGA) admitted making payments to the Congolese Nationalist and Integrationist Front (FNI), an armed faction in the Democratic Republic of Congo (DRC) that was, at the time, committing grievous human rights abuses against local Congolese populations.

AGA said that these payments were made “under protest and duress” after FNI threatened the “safety of staff and the company’s assets.”<sup>129</sup> This response shows the high risks associated with operating in conflict zones: companies put their own workers at risk and in some cases are ‘forced’ to support unethical practices. Human Rights Watch has stated that AGA should have waited until “a legitimate government authority” took charge before proceeding with its mine exploration activities, “rather than dealing with armed groups implicated in gross human rights violations.”<sup>130</sup>

Mining operations may create conflict zones, and it may be government forces, not armed rebel groups, who perpetrate human rights abuses – sometimes on behalf of a mining company. The World Bank Extractive Industries Review received “many testimonies concerning the military and police being involved in

securing company control over territory and protecting their operations....When conflicts arise between corporations and local community interests, human rights abuses and violations are often reported.”<sup>131</sup>

### Rio Tinto, Bougainville, Papua New Guinea

In 2008, a class action lawsuit was filed on behalf of 10,000 current and former residents of Bougainville, Papua New Guinea, which accuses Rio Tinto of environmental and human rights abuses.<sup>132</sup> “Plaintiffs are residents of Bougainville who assert . . . that in the effort to keep mining operations open for Rio Tinto, the PNG central government committed human rights abuses including war crimes, crimes against humanity, and an unlawful medical blockade in response to the civil unrest precipitated by the mine. The medical blockade alone is alleged to have resulted in the death of approximately 15,000 people.”<sup>133</sup> In 2011, a US federal court of appeals issued a ruling that allows claims for genocide and war crimes to proceed against Rio Tinto.<sup>134</sup>

Despite the harmful impacts and serious risks involved, the current RJC CoP does not prohibit mining in conflict zones, nor does it directly address mining or sourcing of materials from conflict zones.<sup>135</sup> RJC’s November 2012 proposed revisions to the CoP include a provision that members operating in or sourcing directly from a conflict-affected area “shall review the heightened risks of adverse human rights impacts and take steps to avoid contributing to Conflict.”<sup>136</sup>

RJC does not elaborate on the steps to be taken to avoid contributing to conflict. RJC mentions the OECD “*Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas*” and “other relevant standards,” such as those of World Gold Council, London Bullion Market Association and Conflict-Free Smelter Program, but there is no requirement to adhere to any of these standards.

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If the practice of large-scale mining in high risk or conflict zones is to be included as a responsible practice in the RJC certification standard, RJC should put in place stronger provisions to provide greater assurance that these operations are not contributing to conflict. The OECD Due Diligence Guidance is the logical framework for RJC to adopt. It has been endorsed by a broad spectrum of companies, governments and NGOs; the Congolese government has made its application a domestic legal requirement;<sup>137</sup> and it is widely respected for its comprehensiveness.<sup>138</sup> The OECD Guidance, in particular its Gold Supplement, provides a due diligence framework to help companies identify risks, and includes important provisions such as independent auditing and public reporting requirements on due diligence for any company sourcing from mines located in conflict or high risk zones.<sup>139</sup>

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### Conflict Diamond Loopholes

RJC's CoP includes provisions addressing the Kimberley Process (KP) and "conflict diamonds." Both RJC and the Kimberley Process restrict the definition of conflict diamonds to "rough diamond[s] used by rebel groups or their allies to finance conflict aimed at undermining legitimate governments."<sup>140</sup> By utilizing such a narrow definition, RJC and the Kimberley Process fail to take into account the human rights abuses committed by so-called 'legitimate' governments like the Mugabe regime, which controls mining areas in Zimbabwe.<sup>141</sup>

RJC's provisions on conflict diamonds rely heavily on the Kimberley Process certification scheme,<sup>142</sup> and as a result, the strength of RJC's conflict diamond provisions can be gauged by the successes or failures of the KP. The KP has recently drawn harsh criticism for failing to address governmental non-compliance with KP rules. In the fall of 2010, two members of the RJC – Element Jewelry and Open Source Minerals – resigned from RJC in protest over the council's support of the KP stance on Marange diamonds.<sup>143</sup> Exports from this region had been banned since 2009 due to human rights abuses by Zimbabwe security forces and diamond smuggling, but in July 2010 KP members agreed to permit Zimbabwe to export two shipments of diamonds from the Marange fields.<sup>144</sup>

Jewelers Marc Choyt and Greg Valerio of Fair Jewelry Action have remarked that, "Many in the industry, including ourselves, view Zimbabwe diamonds as blood diamonds. That the RJC members accept these diamonds into their supply chain undermines RJC's stated objectives of 'Reinforcing the consumer confidence in the Diamond and Gold Supply Chain'."<sup>145</sup>

In 2011, the KP process again created controversy because of continued export of Zimbabwe diamonds.<sup>146</sup> "The integrity of the entire clean diamond supply chain is on the line," said Alan Martin, Research Director of Partnership Africa Canada. "How can consumers buy a diamond this Christmas with any confidence that they are not buying a Marange diamond mined in unquestionable violence? How can industry give any assurances that they will be able to separate these diamonds from the legitimate diamond supply chain?"<sup>147</sup>

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## Zimbabwe

**"Many in the industry, including ourselves, view Zimbabwe diamonds as blood diamonds. That the RJC members accept these diamonds into their supply chain undermines RJC's stated objectives of 'Reinforcing the consumer confidence in the Diamond and Gold Supply Chain'."**

– Jewelers Marc Choyt and Greg Valerio of Fair Jewelry Action

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In December of 2011, Global Witness, which was instrumental in establishing the Kimberley Process, withdrew as an official KP observer because of failures of the process to address problems in Zimbabwe, Ivory Coast and Venezuela.<sup>148</sup>

In 2012, during her term as Kimberley Process Chair, Gillian Milovanic pointed out that the Kimberley Process is lagging being global standards in its adherence to a very narrow definition of conflict.<sup>149</sup> At its December 2012 meeting, however, the Kimberley Process failed to reach consensus on a new definition of conflict diamond,<sup>150</sup> and thus, its narrow definition will continue to limit the ability of the process to protect human rights violations in many conflict-prone diamond-producing regions of the world.



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**RJC fails to acknowledge the key and critical role that trade union representatives should play in the RJC verification process.**

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### 3.6 FAILS TO PROTECT WORKERS

In the existing RJC Code of Practice (CoP), there is just a single mention of trade unions.<sup>151</sup> The November 2012 proposed revisions to RJC’s CoP improve the language somewhat, by requiring members to “respect the right” of employees to associate freely in trade unions or workers organizations of their choice.<sup>152</sup>

Many protective measures for workers, however, remain absent even in the proposed revisions to the CoP, reflecting a default position arising out of failure to adequately recognize the role of trade unions in the work place. Most importantly, the RJC CoP fails to acknowledge the key and critical role that trade union representatives should play in the RJC verification process.

The RJC CoP offers only a bare bones approach on labor standards in comparison to the standards outlined in the International Finance Corporation’s Performance Standard 2: Labour and Working Conditions (IFC PS2), which incorporates and expands upon both ILO core labor standards and United Nations conventions related to labor.<sup>153</sup> While the RJC guidance document mentions some of these standards, the CoP is silent on most of them. So there are not mandatory requirements for many of the protective measures for workers covered in the guidance.<sup>154</sup>

Similarly, RJC references labor-related certification standards such as the Social Accountability International’s SA8000 and the Ethical Trading Initiative, but selectively leaves out some of the more protective provisions for labor organizations and workers.

Additionally, unlike the IFC PS2, the RJC standard makes only scant reference to workers engaged by third parties or supply chain partners. IFC PS2 includes provisions to protect these workers,<sup>155</sup> whereas the only third-party workers that appear to be covered by RJC’s CoP are those employed by contractors working on a member’s facility. Suppliers and contractors located off-site are not required to meet RJC labor standards.<sup>156</sup>

Finally, in many of its labor-related provisions RJC's CoP does not require companies to go beyond what is legally required of them, which, in many cases will do little to improve the quality of life for workers and their families, or ensure sustainable economies in the communities where RJC members operate.

### Narrow View on Human Rights

RJC's CoP provides a very narrow conceptualization and a minimalistic approach to human rights by referencing only the UN Universal Declaration on Human Rights without also referencing labor rights (e.g., ILO fundamental Core Labour Standards), the UN Declaration on the Rights of Indigenous Peoples, the UN Convention on the Protection of the Rights of all Migrant Workers and Members of their Families, and other core instruments mentioned in the RJC guidance that involve human rights that may be affected by activities carried out by members of the jewelry supply chain.<sup>157</sup>

### Weak Provisions on Child Labor

RJC's Child Labour standard (CoP 2.2) does not prohibit RJC members from utilizing or supporting the use of child labor; nor does it set firm minimum age limits on the employment of children. Instead, provision 2.2.1 currently enables the use and support of child labor for children as young as 14, if allowed by national law.<sup>158</sup> The November 2012 proposed revisions to RJC's CoP still allow children age 14 to be employed by members operating in developing countries, but improves the standard somewhat by requiring those members to increase the minimum age to 15 by the end of their first RJC certification period.<sup>159</sup> It's not clear, however, why there needed to be a three-year grace period for these members instead of simply requiring them to stop employing children aged 14 years and younger.

The RJC standard specifically mentions ILO Recommendation 146, which according to the RJC Guidance "recommends that states should move towards a minimum age of 16."<sup>160</sup> Even though this has clearly been laid out as a best practice, the RJC standard does not use 16 as a minimum age.<sup>161</sup> Nor does it even encourage the progressive increase of the minimum age to 16.

Whether or not companies involved in the jewelry supply chain employ children, and how they define the minimum working age for their businesses, are policies that are under their full control. Similarly, a voluntary initiative such as the RJC's Code of Conduct, which purports to support responsible and ethical practices, has the prerogative to set a minimum age that is truly protective of children and young persons. Instead, the RJC standard enables companies to follow national laws when they are weaker than international best practice (i.e., minimum age of 16) to protect children.

This is especially troublesome in the RJC provisions related to 'hazardous child labour', or the 'worst forms of child labour'.



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## Child Labor

**RJC does not prohibit its members from utilizing or supporting the use of child labor.**

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Mining is a highly hazardous occupation for workers of every age, but it is considered to be the most dangerous occupation for children. Child workers employed in mining face more acute risks than adults as neither their bodies nor judgment are fully developed, and children suffer a higher fatal injury rate in mining than any other sector.<sup>162</sup>

Children are also employed in the processing of minerals and gems that are part of the jewelry supply chain. For example, the U.S. Department of Labor's *2011 Findings on the Worst Forms of Child Labor* reports that "Children in India are engaged in the worst forms of child labor. . . [including] work under dangerous conditions manufacturing a variety of products. . . breaking stones and polishing gems."<sup>163</sup> Others also report the use of child labor in diamond cutting and polishing in India.<sup>164</sup>

In 2008, Rio Tinto stated that the majority of its diamonds were manufactured in India.<sup>165</sup> In 2009, De Beers, Rio Tinto and BHP Billiton, all RJC members, were approved for importing rough diamonds into India.<sup>166</sup> It is not clear if these diamonds were finding their way into operations that employed child labor, as this sector is largely unregulated.<sup>167</sup> This is something that one would expect RJC auditors to examine, but because there is virtually no transparency in RJC audits (See Section 5.1 of this report) there is no way for the public to know whether or not the auditors investigated potential use of child labor during Rio Tinto and BHP Billiton audits.

Instead of setting a firm minimum age of 18 for employment in hazardous work, which is what the Ethical Trading Initiative has done,<sup>168</sup> RJC enables members adhere to "applicable laws", which may enable children as young as 16 to be exposed to situations harmful to their health and safety.<sup>169</sup> One country to which this loophole may apply is India, where "The minimum age for hazardous work is not consistent with international standards and may likewise jeopardize the health and safety of young people ages 14 through 17."<sup>170</sup> India is considering raising the minimum age of children involved in hazardous occupations from 14 to 18, but a bill introduced in December 2012 that proposes such a change has not yet passed.<sup>171</sup>

RJC's proposed revision to its Hazardous Child Labour provision mentions ILO 182 and Recommendation 190 on the Worst Forms of Child Labour, which is a notable improvement over the current CoP provision (2.2.4), but RJC is selective in its use of ILO language. RJC leaves out the ILO recommendation that if a minimum age of 16 is to be accepted based on so-called 'applicable laws' there

needs to have been consultation with workers’ and employers’ organizations prior to the passage of such laws.<sup>172</sup>

Another issue of concern is that RJC recognizes that “Child labour is one of the most high profile and widely-condemned social performance issues,” and yet if an RJC member is found to be employing children it is not considered a critical breach of the RJC COP if the company provides some remedial actions.<sup>173</sup>

Additionally, the current provision 2.2.2 states that, “Children found to be in employment contrary to minimum age requirements may remain in partial employment during a phased Remediation process.” This provision makes it appear that RJC condones a continued violation of minimum age laws, which is not a very responsible approach.

The proposed new provision 2.2.2 removes the language “found to be in employment contrary to minimum age requirements,”<sup>174</sup> but still allows members to continue to partially employ children found to be working at their facilities as long as they are not engaged in the worst forms of child labor. It does not explain remedial actions if children are found to be engaged in the worst forms of child labor at members’ facilities.

Given that much of the work in the jewelry supply chain is hazardous to children’s health and safety, it would seem prudent to immediately remove children from those jobs. There is nothing preventing RJC and its members from doing that while still implementing remedial actions to lessen the financial impact on the lives of the children and their families.

Finally, this standard does not restrict RJC members from doing business with, entering into or maintaining business relationships with suppliers that use child labor.<sup>175</sup> Nor does the RJC Chain-of-Custody Standard prevent RJC-CoC-certified material from being processed by child labor.<sup>176</sup> In a 2009 interview with Greg Valerio, RJC’s CEO, Michael Rae admitted that adherence to RJC standards would not stop gold mined by children using mercury from entering the supply chain.<sup>177</sup>

The IFC PS2 specifically requires clients to perform a risk assessment related to potential use of child labor by suppliers, take steps to have the situation remedied, and if no remedy is achieved change suppliers.<sup>178</sup> It seems reasonable to expect similar from RJC members.

### Allows Members to Do Business with Suppliers Using Forced Labor

CoP provision 2.3 prohibits RJC members from using forced labor and restricting the freedom of movement of workers. As with the child labor standard, however, this standard does not restrict RJC members from doing business with, entering into or maintaining business relationships with suppliers who use forced labor.<sup>179</sup>



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## Forced Labor

**RJC does not restrict its members from doing business with, entering into or maintaining business relationships with suppliers who use forced labor.**

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This is an especially pertinent and troublesome point with respect to conflict zones or conflict diamonds. As mentioned in Section 3.5, the Kimberley Process (KP) and RJC allow diamonds from conflict areas into the supply chain as long as the diamonds did not support rebel groups. So KP and RJC do not stop diamonds from military-controlled diamond operations like the Marange diamond fields of Zimbabwe from being sold internationally. In 2009, Human Rights Watch conducted regular visits and interviews in Marange and documented the killing, torture and the use of forced labor in the diamond fields.<sup>180</sup>

Nor does the RJC Chain-of-Custody Standard prevent RJC-CoC-certified gold or PGM from being processed by forced labor. RJC members certainly have the prerogative to outsource RJC Chain-of-Custody-certified material to any contractors of their choosing. If, however, the contractor engages in forced labor (or other unethical practices) one would expect that the material would no longer remain RJC CoC-certified. This does not appear to be the case. Under the CoC standard it appears that the only RJC CoC provision that must be met by a contractor is the requirement to segregate the CoC-certified material from non-certified material.<sup>181</sup> Since outsourcing contractors do not need to be RJC members or adhere to the RJC CoP, it is possible that they may use forced labor to process the material.

### Expresses Weak Support for Trade Unions

The current RJC CoP standard on freedom of association and collective bargaining states that:

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*2.4.1. “Members will not prevent Employees from associating freely. Where laws prohibit these freedoms, Members will support parallel means for independent and free association and bargaining.”*

*2.4.2 “Members will not prevent collective bargaining and will adhere to collective bargaining agreements, where such agreements exist.”*

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RJC’s November 2012 proposed revisions to the CoP state that:

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*2.4.1 Members shall respect the right of Employees to associate freely in trade unions or workers organisations of their choice, without interference or negative consequences to them from the Member.*

*2.4.2 Members shall respect the right of Employees to collective bargaining, shall participate in any collective bargaining processes in good faith, and shall adhere to collective bargaining agreements, where such agreements exist.*

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*2.4.3 Where laws restrict the right to freedom of association and collective bargaining, Members shall allow Employees to freely elect their own representatives.*

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Even in the proposed changes to the various provisions, the standard is weak if not disingenuous about the role or support for trade unions. RJC claims that part of its standard is adapted from the Ethical Trading Initiative (ETI) Base Code.<sup>182</sup> The RJC standard, however, failed to include some of the key provisions of the ETI Code that protect worker rights such as:<sup>183</sup>

- The employer adopts an open attitude towards the activities of trade unions and their organizational activities.
- Workers representatives are not discriminated against and have access to carry out their representative functions in the workplace.

More clarity is needed on what is meant by “Members shall respect the right of Employees to associate freely. . . without interference. . .” This is an important concept, and needs elaboration. For example, RJC members should be prohibited opposing efforts at unionization, e.g., through the distribution of literature, holding anti-union meetings, selectively laying-off or dismissing pro-union workers, threatening plant or mine closures, and promoting or supporting company-dominated unions.

RJC’s November 2012 proposal to recognize collective bargaining as a right, and the provision for RJC members to bargain in good faith are important improvements over the current provision.<sup>184</sup>

The standard is, however, silent on the right of workers to strike. According to the ILO, “The right of workers and employers to establish their independent organizations is the basic prerequisite for collective bargaining and social dialogue. The right to strike has been recognized internationally as a fundamental right of workers and their organizations and as an intrinsic corollary to the right to organize. Nevertheless, these fundamental rights are still not enjoyed by millions around the world, and where these rights are recognized, there continue to be challenges in applying them.”<sup>185</sup>

Botswana provides an example of restrictions on freedoms experienced by workers in the jewelry supply chain. Although workers have the right to organize, diamond workers do not have the right to strike.<sup>186</sup> As seen in the following example, RJC member De Beers,<sup>187</sup> rather than adhering to best global practices,<sup>188</sup> used the government restriction on “right to strike” to its advantage.

As related in International Trade Union Confederation’s *Annual Survey of Violations of Trade Union Rights*: “In 2005, 461 miners were sacked, including the Botswana Mining Workers’ Union (BMWU) Chairman, Chimbidzani



Chimidza, and General Secretary, Jack Tlhagale, for taking part in what the government deemed was an illegal 13 day strike in August-September 2004. After failing to get the union penalised for going on strike in 2005, Debswana [jointly owned by De Beers and the government of Botswana] management tried to intimidate the sacked BMWU leaders by summoning them to internal hearings. The 461 dismissed strikers had still not been reinstated by the year's end."<sup>189</sup>

### Applies Minimal Protections for Worker Health and Safety

The current and proposed revisions to CoP 2.6 take a selective and restrictive approach to health and safety, and provide another example of where the standard fails to require members to respect the rights of workers.

The standard is selective in that it refers to UNEP on Awareness and Preparedness for Emergencies at the local level (APELL) but fails to mention the preeminent core labor standard on health and safety in the mining industry, ILO Convention 176.<sup>190</sup>

It is minimalistic by declaring that “Members will provide safe and healthy working conditions for all Employees in accordance with Applicable Law and other relevant industry standards” (emphasis added). It does not specifically reference which industry standards must be adhered to, nor does it require that members employ the most protective measures (i.e., the stronger of the applicable law or industry standard).

While the standard provides some examples of employer responsibilities, neither the current nor the proposed revised standard addresses employee rights and responsibilities on health and safety as outlined ILO conventions 155 and 176, including the right of workers to collectively select safety and health representatives, participate in health and safety inspections and monitoring, and other provisions.<sup>191</sup> For example:

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*RJC standard 2.6.3 Members will provide Employees with a mechanism, such as a joint Health and Safety committee, by which they can raise and discuss Health and Safety issues with management. **It does not mention the right of the workers to choose their representation on this committee (e.g., through the union, or election by workforce).***<sup>192</sup>

*RJC standard 2.6.10 Members will ensure that serious Health and Safety incidents, as well as the business' response and outcome from such incidents, are formally documented and investigated with the results of the investigation feeding into regular Health and Safety reviews and improvement plans. **It does not provide for worker representation as part of the investigation.***<sup>193</sup>

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*RJC standard 2.6.11 Members will ensure that Employees and Contractors understand that they have the right and responsibility to stop work or refuse to work in situations that have Uncontrolled Hazards, and to immediately bring these situations to the attention of those at imminent Risk and to management. **While it says that workers have the right to inform others, it does not say that the employer will provide notice to worker health and safety representatives of accidents and dangerous occurrences.***<sup>194</sup>

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### Contains Weak Discipline and Grievance Procedures

The proposed revision to CoP 2.7 protects workers from harassment, intimidation, abuse or degrading treatment imposed by RJC members, but fails to provide protections for workers against harassment by fellow employees or contractors (the current standard appears to provide this protection).<sup>195</sup> This is a protection afforded by IFC Performance Standard 2, which requires clients to take measures to prevent and address harassment, intimidation and exploitation, especially with respect to women,<sup>196</sup> and applies to any harassment within the workplace.<sup>197</sup> Social Accountability International's SA8000 (5.3) standard does not allow any threatening, abusive, exploitative or sexually coercive behavior in the workplace or other facilities provide by the company.<sup>198</sup>



Also, the provision fails to provide workers with any recourse, such as notification of alleged misconduct, or time to prepare a defense when misconduct is alleged, and fails to mention the fundamental principle of the employees' right to be represented in a disciplinary inquiry.<sup>199</sup>

Similarly, although the proposed provision 2.7.3 explains that employees are free to submit (individually or with other workers) grievances, neither the current nor the proposed provision specifically mentions a worker's right to be represented during grievance procedures.<sup>200</sup>

### Fails to Require Worker Input on Acceptable Working Hours

The RJC CoP mentions ILO conventions related to working hours (e.g., 1, 14 and 132), but where there are national laws they take precedence over the ILO Conventions.<sup>201</sup> Although RJC says it is encouraging responsible practices, this is another case where RJC it is setting a low bar (e.g., instead, it could have required members to adhere to the more stringent of the ILO conventions or applicable law).

If RJC were truly attempting to develop standards for responsible operations that protect workers and their families, RJC would go beyond applicable laws and conventions and ensure that companies negotiate with workers so that workers have a voice in determining acceptable working hours. This is a requirement of SA8000, a standard that is referenced in RJC's Nov. 2012 revision document,<sup>202</sup> but the specific provision of SA8000 that says that

overtime and work-time averaging are only allowed when permitted by law and there is a collective agreement in place is not included in RJC's proposed standard.<sup>203</sup>

Additionally, under the SA8000 system, 60 hours is the absolute maximum, and overtime may never exceed 12 hours per week.<sup>204</sup> The reason given by SA8000 for capping overtime at 12 hours maximum overtime is "to promote better work-life balance and reduce workers' stress-related occupational conditions and accident rates."<sup>205</sup>

RJC's standard, however, enables employees to work more than 60 hours a week.<sup>206</sup> RJC's proposed revisions to overtime state that, "The sum of the normal work week and overtime hours shall not exceed 60 hours in a week," but then say that "Overtime hours beyond this limit to meet short-term business demand are permitted."<sup>207</sup> Additionally, RJC members with mining facilities do not have to abide by the 60-hours-per-week limit for workers on rotational shifts.<sup>208</sup>

Similarly, the proposed RJC revisions allow members to circumvent the minimum rest provision laid out in ILO Convention 14 (i.e., 24 consecutive hours of rest during each seven-day period) if there is a collective bargaining agreement "and/or" Applicable Law that allows for work time averaging including adequate rest periods.<sup>209</sup> SA8000 only allows exceptions to minimum rest when allowed through a collective bargaining agreement and by national law.<sup>210</sup>

Finally, RJC proposes that members avoid excessive overtime hours that create negative impacts on employee health and safety.<sup>211</sup> According to recent studies in Australia, the lack of employee ability to prevent excessive or unreasonable hours creates problems for employees in terms of their well-being and family relationships.<sup>212</sup> Thus, it must be stressed again that instead of providing the option of simply following applicable law, a more responsible practice is to also require companies to consult and reach agreement with the workers who will be impacted by any overtime arrangement or work-time averaging.<sup>213</sup> The most reliable way to ensure that overtime hours do not harm workers health and safety, and the well-being of their families, is to require employers to include workers in the decisions regarding work hours (through collective agreements or decisions made by workers' organizations).<sup>214</sup>

### Does not Require Members to Provide a Living Wage

A responsible operator in the jewelry supply chain would want to ensure that its workers receive a 'living wage'.<sup>215</sup> The RJC standard (current and proposed revision) on remuneration does not guarantee that. Rather, RJC members are required to pay wages based on the higher of either the applicable legal minimum wage plus associated statutory benefits, or the prevailing industry standards.<sup>216</sup> Once again, in apparent aversion to recognizing the role of trade unions, the standard makes no mention of remuneration being a function of collective bargaining with workers.

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**A responsible operator in the jewelry supply chain would want to ensure that its workers receive a 'living wage.'**

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This provision has the guise of requiring a “higher” remuneration standard, but neither of the choices guarantees a living wage for workers and their families. According to Dan Cunniah of the ILO, “minimum wage rarely qualifies as a living wage in most jurisdictions.”<sup>217</sup> Similarly, the Global Compact states that, “a large number of countries’ minimum wages do not necessarily by themselves provide for a decent living . . . So a company might be operating within the bounds of national law by paying a minimum wage but not respecting the rights of its workers to receive a living wage defined in terms of a decent living for themselves and their families.”<sup>218</sup>

Similarly, in countries where there is no minimum wage, the prevailing industry standard may be far below what is considered a decent or living wage.

RJC falls back on either the lowest wage that is legally permissible, or the vague “prevailing industry standard.” As explained in the RJC guidance, the prevailing industry standard is determined by conducting a study on remuneration being paid in a member’s business sector in the geographical area where it is operating.<sup>219</sup> There is no definition of geographical region (province, country, continent), no guidance on what to do if there are no comparable businesses in the geographical region, no requirement to ensure that companies include businesses operating under collective worker agreements, nor is there guidance on what to do if a wide range in remuneration is found. Responsible practice would suggest matching the highest remuneration found, as a means of supporting workers, their families and the communities in which they live.

Finally, RJC’s standard does not include provisions for severance or retrenchment/layoff pay (or consultation with workers on retrenchment prior to collective dismissal (see next section). According to the International Finance Corporation (IFC), severance payments are the key instrument of mitigation when retrenchment occurs. “They are important from the standpoint both of complying with relevant national legislation and ensuring that workers and their families have some form of financial compensation to cushion the often harsh effects of losing their livelihood.”<sup>220</sup>

### No Worker Protections Related to Retrenchment

Retrenchment means the elimination of a number of work positions or the dismissal or layoff of a number of workers by an employer, generally due to facility closures or as a cost savings measure.<sup>221</sup>

RJC’s CoP does not address responsible practices for the retrenchment process. This is covered in IFC PS2, which requires that, “Prior to implementing any collective dismissals, the client will carry out an analysis of alternatives to retrenchment. If the analysis does not identify viable alternatives to retrenchment, a retrenchment plan will be developed and implemented to reduce the adverse impacts of retrenchment on workers. The retrenchment plan will be based on the principle of non-discrimination and will reflect the

client's consultation with workers, their organizations, and, where appropriate, the government, and comply with collective bargaining agreements if they exist."<sup>222</sup>

**IFC's Good Practice Note on retrenchment says that,**  
"Consultation on both the development and the implementation of a retrenchment plan is critical. Without consultation, companies run the risk of not only getting key decisions wrong, but also of breaching legal rules and collective agreements and alienating workers and the community. Workers can often provide important insights and propose alternative ways for carrying out the process to minimize impact on the workforce and the broader community. If there is a recognized trade union either at the workplace or named in the national law, this will be one of the key consultees."<sup>223</sup>

The IFC recommendation appears to be based on ILO Convention 158, which "provides that when the employer contemplates the introduction of major changes in production, program, organization, structure or technology that are likely to entail terminations, the employer should consult the workers' representatives concerned as early as possible on, among other things, the introduction of such changes, the effects they are likely to have, and the measures for averting or mitigating their adverse effects."<sup>224</sup>

IFC PS2 also references OECD Guidelines for Multinational Enterprises, which suggest that reasonable notice of collective layoffs or dismissals should be provided by multinational enterprises to representatives of their employees, and enterprises should cooperate with workers representatives to mitigate the adverse effects of such dismissals.<sup>225</sup>

In addition to the standard practice of severance being paid to each worker dismissed in a retrenchment, IFC suggests other good practices such as providing funds to pay for retraining of workers to find new employment.<sup>226</sup> ILO Recommendation 166 also mentions training and retraining as a measure that should be considered as a means of mitigating the effects of termination, and where possible "the employer should assist the workers affected in the search for suitable alternative employment."<sup>227</sup> This important practice would demonstrate a commitment by RJC and its members to the long-term economic wellbeing of the workers and communities where they have chosen to operate.

## No Protections Related to Fly-in, Fly-out Mining Operations

The current RJC CoP makes reference to fly-in, fly-out (FIFO) mining operations with respect to hours of work.<sup>228</sup> The reference to these types of operations has been removed in the proposed revisions.

While FIFO operations deliver some benefits to employers and employees, FIFO is considered by some to be a controversial practice due to its potential impacts on worker health, family relationships, and local communities.<sup>229</sup> Therefore, if the practice is to be employed the conditions (working hours, remuneration, living conditions, etc.) should be negotiated with employees through a collective bargaining process. This will enable workers to voice their concerns and help shape solutions to mitigate the negative effects that often accompany FIFO operations. RJC audits should ensure that this has occurred, and ensure that workers believe that the agreements have indeed addressed their concerns in a meaningful way.

RJC's proposed revised CoP provisions on freedom of association and collective bargaining (2.4.1 and 2.4.2) should make it clear that members with FIFO operations should allow trade unions access to the site, so that they can fully participate in organizing and consulting with workers to enable collective bargaining.<sup>230</sup>

It is also important that companies should not use FIFO to abdicate their responsibility for genuine sustainable development of local communities.<sup>231</sup>

## 3.7 FAILS TO PROTECT THE ENVIRONMENT

### Does Not Place Limits on Water and Air Pollution

The metal mining industry is the largest toxic polluter in the United States.<sup>232</sup> In 2011 it was responsible for 46% (or 1.9 billion pounds) of all reported toxins in the U.S. It is also among the biggest sources of toxic pollution globally.<sup>233</sup>

RJC does not place any firm requirements to establish measurable performance indicators on emissions of toxic substances. Instead, RJC CoP Provision 3.3.3 on Waste and Emissions simply requires that members dispose of waste substances in compliance with Applicable Law, take steps to reduce the quantity of waste produced from their operations through the principles of reduce, recover, re-use and recycle; and seek to decrease emissions to air, water and land relative to output.

Provisions of this weak standard are not even being upheld. Doctors and community and environmental organizations in Salt Lake City have filed suit<sup>234</sup> against Rio Tinto for violations of the Clean Air Act<sup>235</sup> at the RJC-certified Bingham Canyon mine.<sup>236</sup> The mine's emissions have contributed to a regional air quality problem — Salt Lake County, where the mine is located, has levels of particulate matter that consistently violate health standards, and Salt Lake City



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**Even RJC's weak environmental standards are not being upheld.**

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ranks among the top ten cities in the U.S. with the worst particulate matter pollution.<sup>237</sup>

In addition to not meeting applicable laws, Rio Tinto's Kennecott mine also failed to decrease toxic emission to air, water and land in the years leading up to Rio Tinto's RJC certification.

## Rio Tinto's toxic releases have increased

Between 2009 and 2011 the toxic releases from Rio Tinto's Kennecott copper mine (concentrator, powerplant, smelter and refinery) increased from approximately 123 million pounds in 2009 to 169 million pounds in 2011.<sup>238</sup> Relative to output of gold, toxic releases increased from 257,500 pounds in 2009 to 445,300 pounds in 2011 per 1000 ounces of refined gold.<sup>239</sup>

RJC's proposed revisions to CoP Provision 3.3 weaken the already weak provision. The proposed new standard requires members to identify significant wastes and emissions, and "responsibly manage" these wastes. It no longer requires that members strive to reduce emissions except for a vague statement that waste and emissions be managed by "Applying the principles of reduce, recover, re-use and recycle to reduce environmental impact where applicable" (New CoP 3.3.2b). It is not at all clear what would constitute an "applicable" situation. Furthermore, there is no goal or target included to provide a sense of what is responsible practice.

The current CoP 3.3.3 is a more tangible standard, which could be strengthened simply by making emission reductions a requirement instead of an aspiration. Furthermore, the public disclosure of emissions of wastes should be standard practice for any responsible operator and should be included in RJC's standard.

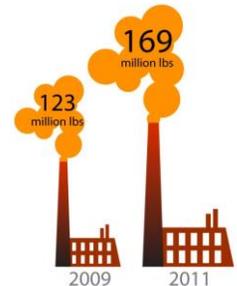
### Does Not Seriously Address Toxic Mercury

It is difficult to believe that any system purporting to encourage responsible gold mining practices would do nothing to promote best practices on the use or management of mercury, but the current RJC CoP is silent on it.<sup>240</sup> The November 2012 proposed revisions to the CoP add some provisions that address mercury, but as outlined below they are weak.

In 2008, the United Nations Environment Programme (UNEP) estimated that artisanal and small-scale (ASM) gold mining and industrial gold mining are responsible for approximately 18% and 5-6% of global airborne mercury emissions, respectively.<sup>241</sup> It is likely, however, that the contribution from ASM is much higher because of the informal nature of this sector.<sup>242</sup> In the United

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**Kennecott's total emissions increased 37% between 2009-2011.**



States, large-scale gold mining operations are the leading industrial source toxic mercury pollution.<sup>243</sup>

Airborne mercury is a global problem, as mercury can travel great distances, ultimately settling in locations far from the original source. If the mercury settles in lakes or rivers, bacteria transform the mercury into methylmercury, which then accumulates in fish.<sup>244</sup> Both methylmercury and elemental mercury vapors are toxic to humans. Even the smallest amounts of mercury are extremely dangerous to the developing brains of infants and children,<sup>245</sup> and can create contamination problems downwind from emission sources.<sup>246</sup>

Steps are being taken to control mercury emissions at the global level via the United Nations' Minamata Convention on Mercury (adopted January 2013), but actions to reduce mercury emissions from mining as a result of this convention may still be years away.<sup>247</sup> As a result, voluntary initiatives provide an important opportunity for responsible operators to take action to reduce mercury use and emissions.

Unfortunately, this opportunity has not been seized by RJC. As mentioned previously, the current CoP does not even mention mercury, and the November 2012 proposed revisions do little to tackle the problem. According to the proposed CoP (3.2.5), "Members with Mining Facilities where mercury is used in processing or contained in saleable products, by-products or emissions shall adopt responsible management practices that are at minimum in accordance with Applicable Law."<sup>248</sup>



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It is not enough for RJC members to adopt responsible practices that at minimum meet applicable law, because in most places there is no applicable law.<sup>249</sup> (It is unclear how RJC auditors will determine if members have indeed adopted 'responsible management practices' related to mercury in countries where there is no applicable law, nor does RJC provide any details on what constitutes 'responsible management practices'.)

To make the RJC standard truly responsible and effective, RJC members with large-scale gold mines should at least meet the requirements of the one law that contains provision to control airborne mercury emissions from large-scale gold mining operations, for example, provisions of the *U.S. Clean Air Act*.<sup>250</sup>

Additionally, as a minimum requirement, RJC should make public disclosure of members' mercury emissions mandatory (e.g., from diamond, gold and/or PGM mining and processing operations, as well as other facilities involved in other jewelry supply chain activities), as this would help both members and civil society identify opportunities for controlling mercury emissions and reveal situations where better monitoring may be required.<sup>251</sup> And finally, RJC should address the disposal of mercury from RJC member operations.

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## Fails to Protect Natural Water Bodies from Tailings Dumping

Wastes produced from processing ores, also known as tailings, can contain dozens of dangerous substances including arsenic, lead, mercury and processing chemicals such as petroleum byproducts, acids and cyanide.<sup>252</sup> Tailings are not chemically inert: they release contaminants into the environment when they interact with fresh water and seawater.<sup>253</sup>

The practice of dumping tailings into natural water bodies such as lakes (lacustrine tailings), rivers (riverine tailings) and marine environments (submarine tailings or STD) has contaminated drinking water supplies; smothered and destroyed aquatic habitat, wetlands and forests; poisoned and killed fish and other aquatic life; and impacted food and income sources for those dependent on tailings-impacted fisheries.<sup>254</sup>

### Dumping tailings into natural, life-supporting water bodies does not represent responsible practice.

As explained by Miningwatch Canada and Earthworks:

*In some cases, safer waste management options exist: putting dry waste in lined and covered landfills (a process called dry stacking) and putting tailings back into the pits and tunnels the ore came from (called backfilling). In other cases, even land-based tailings disposal is too risky. Some places where companies want to dump tailings are simply inappropriate for mining and should be no-go zones.<sup>255</sup>*

In Canada, industries are prohibited from releasing harmful substances into fish-bearing waters, but the mining industry has been granted a loophole that has enabled some companies to dump toxic tailings into lakes. This has resulted in the creation of dead-zones where there were once viable populations of fish and wildlife, such as otters.<sup>256</sup> There are several Canadian lakes at risk from current or proposed tailings dumping by a number of RJC members including BHP Billiton, De Beers and Rio Tinto.<sup>257</sup> In 2010, however, the Canadian government rejected lacustrine tailings disposal for a proposed mine in northern British Columbia, citing “significant adverse environmental effects” related to the proposed destruction of two natural fish-bearing lakes and a creek.<sup>258</sup>

RJC addresses the dumping of tailings in rivers and oceans, but is silent on the dumping of tailings into natural lakes. RJC CoC 3.3 states that RJC members with mining facilities will:

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**Not use riverine tailings disposal at new Facilities.** Any Mining Facilities that currently use riverine tailings disposal cannot be included in the Member’s RJC Certification. These Facilities will be excluded from the Certification, but all other relevant CoP provisions apply.

**Not use submarine tailings disposal for land-based Mining Facilities, unless:**

A thorough environmental and social analysis of alternatives was conducted which showed that submarine tailings disposal creates fewer environmental and social impacts and risks than a land-based tailings facility, and

It can be scientifically demonstrated that a significant adverse effect on coastal resources does not result, and

The tailings are released in seawater below the surface thermocline and euphotic zone.

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It is commendable that RJC bans the use of riverine tailings disposal at new facilities, but perplexing that there are no provisions related to the disposal of tailings in lakes – not even the requirement to ensure that there will be no significant adverse effects on ecosystems or on the communities that utilize resources.

RJC also takes a soft stance on the dumping of tailings in marine environments. Mining companies have acknowledged that both riverine and submarine tailings disposal are irresponsible practices. For example, in its *2012 Sustainability Report*, RJC member BHP Billiton stated that, “We do not dispose of tailings or waste rock into a river or marine environment.”<sup>259</sup> Also, Goldcorp’s website says that the company “does not dispose of tailings in riverine systems or marine environments.”<sup>260</sup>

Rather than banning the practice of submarine tailings disposal, as it did with riverine disposal, RJC allows companies to use environmental and social impact and risk assessments, and a scientific determination of no significant adverse effects on coastal resources to show that STD will be acceptable. It is not clear what is meant by “significant” adverse effects, or whether most third-party auditors would be able to verify such statements.

Very few environmental studies of tailings disposal in the ocean have been published in the scientific literature.<sup>261</sup> According to hydrologist Robert Moran, “Given the paucity of data on composition of tailings and associated wastes being routinely discharged from mining operations in many parts of the world, it is not currently possible to estimate total inputs of contaminants nor, therefore, to describe or predict the scale of impacts that such discharges may have. Indeed, this lack of data and international oversight is very much part of the

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**Many important protected areas are not on the World Heritage list and therefore are vulnerable to mining under RJC.**

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issue to be resolved, such that the scale of the problem and the urgent need for far greater regulatory control are all too often overlooked. What we do know already, however, is sufficient to indicate substantial cause for concern relating to disposal of tailings to the marine environment.”<sup>262</sup>

A recent study by Evan Edinger of Memorial University in Canada shows that the environmental impact assessment and studies carried out or commissioned by Newmont at its Minahasa Raya Gold Mine in Indonesia failed to predict numerous impacts related to submarine tailings disposal,<sup>263</sup> or were inadequate in their scope of study.<sup>264</sup>

This raises a very important point: if RJC insists on allowing submarine tailings disposals based on scientific studies, responsible practice would be to have these studies carried out by independent scientists (i.e., not selected by the company),<sup>265</sup> or, at the very least, have the studies peer reviewed by scientists selected by other stakeholders, such as potentially affected communities. Such a move would provide RJC auditors with a greater ability to determine if CoP 3.3 has been met.

In the rare cases where third-party, independent reviews have occurred, they have cautioned against the use of submarine tailings disposal. For example, in 2000 the US Geological Survey conducted an independent review of Placer Dome’s proposal to dump mine tailings into sea off of the island of Marinduque in the Philippines. The USGS warned that, “there is considerable potential that a highly acidic, metal-enriched, and environmentally detrimental plume would develop in the ocean around the tailings discharge point during tailings disposal.”<sup>266</sup>

Finally, the wording “not use marine tailings disposal for land-based Mining Facilities,” suggests that it is acceptable to use submarine tailings disposal for seabed or deep-sea mining operations. Seabed mining is a nascent practice and the full range of environmental impacts are still unknown, but risks have been identified.<sup>267</sup> Until the practice can be proven environmentally acceptable, this loophole should be removed.

### Fails to Protect Biodiversity

RJC’s CoP 3.5 would allow RJC certification in areas that are important for biodiversity or cultural heritage and should be off limits to mining.

RJC’s CoP 3.5 on biodiversity does prohibit exploration and mining in World Heritage Sites. While it is critical to prevent the development of mines within these sites, there are many important protected areas that are not on the World Heritage list and that remain vulnerable to mining.<sup>268</sup>

Much of Ghana’s forested land has been denuded over the past 40 years. Less than 11 percent of the original forest cover remains, primarily in the country’s forest reserves, which are part of the Guinean Forests of West Africa



**While the RJC cannot prevent mining in “no go” zones, the RJC’s certification process does not need to support these controversial proposed mines. Yet the RJC permits mining in legally designated protected and other ecologically important areas.**

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biodiversity hotspot and endangered ecoregion. These forest reserves support a diversity of bird, bat and other animal species, as well as many rare and threatened plant species. Ghana's leading environmental groups argue that these forest reserves should remain off-limits to mining.<sup>269</sup>

Similarly, only 10 percent of Ecuador's western forests remain. The forests of the Intag region support a multitude of species and thousands of peasant farmers. Communities have been working to build sustainable, alternative livelihoods while preserving the ecologically important Intag cloud forest. Consequently, many communities are strongly opposed to proposals to develop large-scale copper mines in the region.<sup>270</sup>

For example, a 2003 World Resources Institute analysis examined all the parks, reserves, and other official natural areas that meet the International Union for the Conservation of Nature's (IUCN) criteria for 'strictly protected areas' (i.e., IUCN protected area categories I-IV), and found that more than a quarter of active mines and exploration sites overlap with or are within 10 kilometers (6 miles) of such areas; an even higher percentage of sites were located within intact areas of high conservation value or high ecological value.<sup>271</sup> The World Resources Institute study recommended that the mining industry, through its global trade association (International Council on Metals and Mining or ICMM), make a commitment not to develop mines in strictly protected areas, and to consider designating other environmentally and/or socially sensitive areas as "no go" zones for mining.<sup>272</sup>

While the RJC cannot prevent mining in "no go" zones, the RJC's certification process does not need to support these controversial proposed mines. Yet, the RJC CoP 3.5 permits mining in legally designated protected and other ecologically important areas.<sup>273</sup>

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A truly responsible biodiversity standard would prohibit certification of mining operations in any IUCN category-designated protected area,<sup>274</sup> as well as other areas designated under international conventions or under national, regional, or local authority; and in other areas important for their ecological functions, conservation value or biodiversity.

The latter requirement is important because much of the world's biodiversity is found outside of designated protected areas and many major ecosystem types are still poorly represented within official protected areas.<sup>275</sup>

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In addition to the World Resources Institute, others have supported a prohibition on mining in more areas than World Heritage Sites:

- In 2003, the World Bank Group's (WBG) Extractive Industries Review recommended that, "The WBG should not finance any oil, gas, or mining projects or activities (including through policy lending and technical assistance) that might affect existing World Heritage properties, current

official protected areas, or critical natural habitat (as described in its current Natural Habitat Policy) or areas planned in the future to be designated by national or local officials as protected.”<sup>276</sup>

- Robert Goodland, former World Bank environmental advisor, recently wrote that mining should not take place in: areas of high biodiversity and endemism, rare or endangered species, rare habitats, and intactness (e.g., coral reefs, mangroves, tropical rain forest, remaining old growth forests, biological hotspots, wetlands, and wilderness. . . This category includes all conservation units, IUCN’s Categories I thru IV and to a certain extent Categories V and VI, such as national parks, state or provincial parks, UN Biosphere Reserves, UN World Heritage Sites, areas scheduled for inclusion in the national system of conservation units, protected forests, UN Ramsar Convention wetland sites, as well as their buffer zones. Most mangroves and old-growth tropical forests should be included.<sup>277</sup>
- In 2009, the Economic Community of West African States (ECOWAS) *Directive on The Harmonisation of Guiding Principles and Policies in the Mining Sector* designated “no go zones” for mining activities if such lands have environmental, social and cultural sensitivity, e.g., forest reserves.<sup>278</sup>



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Earthworks’ No Dirty Gold campaign developed the “Golden Rules” for responsible mining, which call on mining companies to meet a number of basic standards in their operations. One of the rules requires companies to “ensure that projects are not located in protected areas, fragile ecosystems, or other areas of high conservation or ecological value.”<sup>279</sup> As of February 2013, 90 jewelry retailers had signed on to the Golden Rules. Fourteen of the signatories are also members of the RJC,<sup>280</sup> which suggests that there is support for RJC to employ stricter provisions on biodiversity and other standards. While these jewelry retailers are not the companies carrying out the mining activities, they recognize that their businesses drive demand for gold. Thus, they have committed to sourcing more responsibly produced metals, and encouraging the mining companies to take greater steps to protect biodiversity, as well as workers, human rights, communities and the environment.<sup>281</sup>

In addition to expanding the areas that are off-limits to mining, a “responsible” mine certification system should strictly limit members from using biodiversity offsets, a controversial strategy that has recently emerged globally but carries uncertain benefits. Biodiversity offsets should not be considered to reduce the impacts on mining in areas of high biodiversity unless the project would have proceeded under RJC certification in the absence of offsets, and unless the community has provided free, prior and informed consent for the use of offsets.<sup>282</sup>

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### Fails to Address Water Consumption

According to the United Nations Global Compact CEO Water mandate, “Water poses one of the greatest sustainability challenges of the 21st Century. Water scarcity and pollution, among many other issues, threaten our ability to grow

strong and stable economies, meet basic human needs, and protect healthy ecosystems (and the services they provide), while also posing severe human health problems.”<sup>283</sup>

Mining requires significant volumes of water, especially in the extraction and processing phases,<sup>284</sup> and many mining operations are located in water-stressed regions.<sup>285</sup> Additionally, water availability for mining operations is likely to become a more critical issue as rising global demand for mineral commodities and declining ore grades increase water demands of the mining industry.<sup>286</sup>

Yet the November 2012 proposed revisions to RJC’s CoP make no mention of water consumption. The current RJC CoP mentions water consumption in CoP 3.4, which states that “Members will seek to ensure the efficiency of their business operations in terms of consumption of natural resources including, but not limited to, water and energy.”

While the current provision acknowledges that water usage is something that requires some efficiency measures, a stronger provision would be to require, for example, that RJC set water efficiency targets to reduce the amount of fresh water used by its members, and show that progress on meeting the targets has been achieved. The targets could vary depending on the local water context.<sup>287</sup>

If demonstrable progress were required, then all three mining companies currently certified by RJC would be out of compliance with CoP 3.4.

### RJC members failing to reduce water consumption

**Rio Tinto** experienced a 2.7% increase in freshwater water used per ton of product between 2008 and 2011, despite having a goal to decrease water usage by 6% per ton of product between 2008 and 2013. The company’s total water usage increased from 439 billion liters in 2010 to 443 billion liters in 2011.<sup>288</sup>

**Anglogold** Ashanti’s Brazil AGA Mineração operation increased its water use from 2,691 to 3,175 million liters (ground and surface water) between 2010 and 2011.<sup>289</sup>

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RJC has taken an ill-advised step by removing all references to water consumption in its proposed revisions. In this world where water is an increasingly precious resource, responsible operators throughout the jewelry supply chain should be monitoring and reporting on water consumption at their operations; setting targets or determining other meaningful ways to measure progress in recycling and re-use of water and/or reduction in fresh water use; and ensuring that their use of water does not result in impacts to downstream ecosystems or communities.

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## Fails to Address Energy Consumption and Greenhouse Gas Emissions

Energy consumption in the mining industry is dictated by the quantity of materials that must be handled and the sources of energy available. Industrial gold mining is an especially energy-intensive undertaking because of the sheer volumes of ore processed and waste material that must be moved to produce saleable product,<sup>290</sup> as well as the remote nature of many mine sites that may not have access to the electrical grid.

In South Africa, the mining industry is estimated to use 6% of all the energy consumed; in Ghana, the four major gold mining companies consumed approximately 13% of that country's electricity and 9% of its diesel in 2009;<sup>291</sup> and in the United States, the mining industry accounts for more than 3% of the total industrial energy consumed.<sup>292</sup>

Both mining and mineral processing have significant energy requirements.<sup>293</sup> A recent study shows that the amount of energy required to produce a kilogram of gold from various mines worldwide increased from 142 Gigajoules (GJ) in 1995 to 187 GJ in 2007.<sup>294</sup> As the quality or grade of gold ore bodies continues to decline, the amount of energy required to produce a ton of gold is only going to increase.

Consumption of fossil fuels and electricity for mining and mineral processing results in the production of greenhouse gas (GHG) emissions. Globally, the mining industry is estimated to contribute 1.8% of GHG emissions.<sup>295</sup> The International Council on Mining and Metals estimates that gold mining produces more GHG emissions than all other types of mining except aluminum and coal,<sup>296</sup> and that gold and platinum-group metals have higher GHG intensities than any other mined commodities.<sup>297</sup>

*The current RJC CoP addresses energy use by mining facilities in provision 3.4, which says only that "Members will seek to ensure the efficiency of their business operations in terms of consumption of natural resources including, but not limited to, water and energy." This provision does not actually require anything of companies. There is no goal attached, and nothing measurable, so it is not clear how the auditors determine whether or not an RJC member company is meeting this CoP.*

## RJC-certified mining companies have not increased efficiencies in recent years

Between 2010 and 2011, Rio Tinto's GHG total emissions, total energy use and energy intensity increased.<sup>298</sup>

At AngloGold Ashanti's Mineração operation in Brazil, energy consumption increased by 15% between 2010 and 2011.<sup>299</sup> Also, energy was used less efficiently – in 2010 the operation used 154 GJ to produce an ounce of gold while in 2011 it used 169 GJ per ounce of gold.<sup>300</sup> Greenhouse gas emissions increased slightly over this time period, as well.<sup>301</sup>

De Beers reported that its total energy use increased by 3.1% between 2010 and 2011, and that GHG emissions remained relatively constant. Based on the total production of diamonds in 2010 and 2011, more energy was required and more GHG emissions produced to mine one carat of diamond in 2011 than 2010.<sup>302</sup>

The November 2012 proposed revision to RJC's CoP 3.4 requires that, "Members shall monitor energy usage in their business operations and put in place energy efficiency initiatives, including through measures that reduce any significant use of fossil fuels and associated greenhouse gas emissions." Again, this suffers the same weakness as the existing provision, as there is no measurable goal or target.

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Setting hard targets for energy efficiency and greenhouse gas emissions, in combination with utilization of best practices for reducing energy use and greenhouse gas emissions,<sup>303</sup> would be ways to ensure that progress is made toward reducing energy use and emissions.<sup>304</sup> Additionally, while requiring monitoring of energy usage is important, it is also equally important for companies to publicly disclose their energy usage and greenhouse gas emissions.

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## 4 Limited Chain-of-Custody Requirements

In March 2012, RJC launched its voluntary Chain-of-Custody (CoC) Standard for the precious metals supply chain (does not apply to the diamond supply chain). According to RJC:

*“The CoC Standard provides requirements for the creation of a Chain-of-Custody for responsibly-sourced Precious Metals (gold, platinum, palladium and/or rhodium) produced, processed and traded through jewellery supply chains. Responsible sourcing encompasses responsible business practices generally (as outlined in the RJC Code of Practices or other recognised standard) as well as due diligence relating to conflict issues (as outlined in the OECD Due Diligence Guidance). The CoC Standard specifies requirements for a business to segregate CoC Material from other material in its custody, and to provide relevant information supporting the provenance of CoC Materials when transferred or sold to other parties.”<sup>305</sup>*

The CoC Standard sets out requirements for the identification of ‘Eligible Material’. When eligible material moves through the supply chain it is referred to as ‘Chain-of-Custody (CoC) material’.<sup>306</sup>

Eligible materials are gold and platinum group metals (PGM) sourced in accordance with the requirements of the CoC Standard. Diamonds, and materials currently outside the RJC’s scope (e.g., other metals or precious stones) are not covered under the CoC Standard.<sup>307</sup> The following types of gold and PGM are eligible to become CoC Material:<sup>308</sup>

- Conflict-free mined material produced: by a CoC Certified Entity; by artisanal and small-scale miners (ASM) on an entity’s concession; under a recognized responsible mining standard; or as mining byproduct declared by a refiner;
- Recycled material sourced from eligible recyclable sources, screened according to Know-Your-Customer (KYC) principles to avoid illegitimate sources;
- Grandfathered materials in existence in their current form prior to 1 January 2012.

As will be seen in the following subsections, for consumers seeking to buy jewelry that does not contain gold/PGM from conflict zones or irresponsible mining operations, certification under RJC’s CoC standard does not deliver that assurance. According to RJC CEO Michael Rae, “what we are doing is certifying the performance of the links in the supply chain. We are not certifying the stuff that is moving through the chain. . .”<sup>309</sup>

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Not certifying materials in the supply chain

“We are...certifying the links in the supply chain. We are not certifying the stuff that is moving through the chain.”

– RJC’s CEO  
Michael Rae

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The main thrust of RJC’s CoC certification is to ensure that a company has in place systems to segregate gold or PGM that have been ‘responsibly’ produced from those that are not. RJC’s chain-of-custody system does not actually track the movement of RJC CoC-certified materials.<sup>310</sup>

#### 4.1 CHAIN OF CUSTODY LOOPHOLES

RJC CoC certification is highly problematic because of a number of key design defects and loopholes that allow irresponsibly produced materials to be considered ‘eligible’ CoC materials, and thus become part of the RJC CoC supply chain. The loopholes are listed in the following table.

Loophole Category	CoC Loophole Descriptions
<b>Mined material</b>	Allows material that has been certified by “recognized responsible mining standards,” a vague definition which may not adequately protect environmental, social and human rights. Minerals from artisanal and small-scale mining operations may enter the CoC supply chain even though their practices do not have to meet RJC performance or audit requirements.
<b>Conflict-sensitive sourcing</b>	Lacks transparency and reporting requirements to ensure that mined material does not contribute to conflict.
<b>By-product gold and PGM</b>	May come from irresponsible mining operations; no requirement to trace byproduct back to original mining operation.
<b>Recycled gold</b>	Broad definition and lack of due diligence requirements create potential for irresponsible gold to enter supply chain.
<b>Grandfathered gold</b>	Lack of due diligence requirements may allow irresponsible gold to the CoC system to enter as grandfathered material
<b>Platinum</b>	Platinum group metals contained in gold alloys does not need to be CoC certified, and therefore, may be introducing PGM from irresponsible operations.
<b>Bullion</b>	Bullion may not be original material that was certified by RJC, but instead come from the inventory of a bullion bank.
<b>Outsourcing contractor</b>	Outsourcing contractors do not need to meet ethical, environmental, labor or human rights standards, obtain CoC certification or be audited under the RJC CoC system.

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## Loopholes

**Irresponsibly produced materials can be considered ‘eligible’ and then become part of the RJC supply chain.**

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#### Conflict-sensitive Sourcing Loophole

CoC provisions 4.2 and 10 contain due diligence requirements for mined and refined materials that originate in conflict-affected areas.<sup>311</sup> However, RJC’s CoC provisions are significantly weaker than other due diligence frameworks when it comes to disclosure of due diligence data and audit reports.

One such example is *OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas* (OECD Due Diligence Guidance), which has been endorsed by a broad spectrum of stakeholders. When these guidelines were adopted by the OECD Council in May 2011, it was lauded by NGOs, who immediately called upon companies sourcing

minerals from the Great Lakes Region of Africa to implement the standards without delay.<sup>312</sup> According to the U.S. Securities and Exchange Commission, in 2012 OECD due diligence was the only nationally or internationally recognized framework for assessing a company’s due diligence with respect to sourcing of conflict minerals.<sup>313</sup>

RJC’s CoC Standard 10 draws on OECD Due Diligence Guidance, but fails to adopt all the provisions in the OECD guidance.<sup>314</sup> The table below shows some of the gaps in requirements in the RJC CoC conflict-sensitive sourcing provisions as compared to the OECD Guidance. As a result of the gaps, RJC’s standard fails to provide adequate assurance to investors, consumers and, increasingly to legislators that materials are free of minerals that have funded conflict.

	OECD	RJC
<b>Disclosure</b>	Publicly report policy on supply chain of materials from conflict-affected areas	Yes
	Publicly report on due diligence for responsible supply chains annually, including: <sup>315</sup>	
	1) information on company management systems	No
	2) risk assessment in the supply chain	No
	3) risk management (including efforts made by company to monitor and track performance)	No
	Refiners publish audit summary reports*	Partial <sup>316</sup>
<b>Auditing</b>	Visit all facilities and sites	No <sup>317</sup>
	Audit a sample of suppliers as required	No
	Auditors consult with local/central government authorities, UN expert groups, UN peacekeeping missions and local civil society.	No <sup>318</sup>

\* with due regard taken of business confidentiality and other competitive concerns.

The lack of public disclosure, generally, in the RJC certification system is troubling.<sup>319</sup> Disclosure of due diligence increases the accountability of the process by enabling interested parties to verify that a company has carried out sufficient due diligence. Making audits and other collected data publicly available not only lends credibility and legitimacy to a certification system but also allows governments, industry, and civil society to monitor participants and the initiative, as well as hold them accountable.<sup>320</sup>

OECD Due Diligence Guidance also states that, “all companies should conduct due diligence aimed at ensuring that they do not contribute to human rights abuses or conflict.” The RJC CoC requirements related to due diligence are not designed to ensure that mined or refined material does not contribute to human rights abuses.<sup>321</sup>

It is not clear why RJC’s CoC standard does not require members to adhere to all aspects of the OECD Due Diligence Guidance. Given the RJC’s participation and

repeated public commitments to the OECD Due Diligence Guidance process this lack of rigor makes them appear disingenuous at best.

### Mined Material Loopholes

Not all 'eligible mined material' in RJC's CoC system has to be sourced from mining operations that have responsible environmental, human rights, labor or other ethical practices.

Eligible material may originate from mines or producers certified under a 'Recognised Responsible Mining standard' if it has documented due diligence that confirms that the material comes from such producer's mining operations.<sup>322</sup> But RJC's Recognised Responsible Mining standards may not ensure that mined material was produced in a manner that upholds important environmental, social or human rights provisions.

As of December 2012, RJC listed Part A of the Alliance for Responsible Mining and the Fairtrade Foundation's Fairtrade and Fairmined Standard (FFS) as a recognized responsible standard.<sup>323</sup> An analysis by Earthworks shows that while the FFS standard scores high on social responsibility when compared to other 'responsible' artisanal mining initiatives, it fails to provide some key environmental safeguards.<sup>324</sup>

Artisanal and small-scale mining (ASM) is an important source of income for millions of people worldwide. However, as described by the Alliance for Responsible Mining, "ASM activities tend to take place in fragile ecosystems notable for their cultural and biological diversity. Material poverty in ASM regions is aggravated by environmental impacts directly affecting ecosystem and human health. . . These activities have long-term environmental and health impacts for populations living in and around such operations."<sup>325</sup>

Additionally, material mined from artisanal and small-scale operations that are located on a certified member's mining concession can become CoC certified even though, according to RJC,

*"the ASM may not meet the RJC Code of Practices or another Recognised Responsible Practices," and "RJC's CoC Standard does not place performance or audit requirements on the ASM themselves."<sup>326</sup>*

In other words, this provision enables potentially irresponsibly produced material to be CoC certified. It also enables the mixing of these materials into the CoC chain.

According to RJC, if the ASM material on a mining entity's concession has met the CoC Standard's eligibility criteria, which amounts to little more than ensuring the ASM material comes from the entity's mining concession,<sup>327</sup> it may

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**Not all 'eligible mined material' in RJC's Chain of Custody has to be sourced from mining operations that have responsible environmental, human rights, labor or other ethical practices.**

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be purchased by and mixed with the mining facility's CoC-eligible production before sale or transfer.<sup>328</sup>

While RJC's motivation for including ASM material may be well intentioned,<sup>329</sup> there is no reason to enable this material in a supply chain until it can be proven that it is produced according to responsible environmental, social and human rights standards. Until such time, companies can and should work with ASM operators to eventually bring the ASM operations into compliance with RJC CoP or responsible mining standards that protect human rights and the environment and promote ethical practices.

### Gold Byproduct Loophole

The byproduct provision contains a gaping loophole that allows irresponsibly mined gold or platinum metals into the RJC CoC system.

RJC does not require members to certify copper or other polymetallic mining operations – only gold and platinum group metal (PGM) mines. But RJC's CoC system enables gold or PGM that are produced as a byproduct from copper or other metal mines to become eligible mined material.<sup>330</sup> Byproduct is mined gold or PGM that are trace constituents or residues such as electrolytic slimes produced from other metal mining operations (e.g., copper mines).<sup>331</sup>

The introductory paragraph to CoC Provision 4 on Eligible Mined Materials says that, "Eligible Mined Materials come only from legitimate and conflict-free sources through a commitment to responsible business practices, as defined in the RJC Code of Practices or another recognised 'responsible mining' standard." Yet there is no actual requirement or due diligence required to ensure that the mines that were the original source of the gold or PGM byproduct meet either RJC's CoP or any ethical, human rights, labor, or environmental standards.

Gold "byproduct" from polymetallic (e.g. copper-gold) mines can be eligible gold under the CoC standard, regardless of whether or not the mine that produced the gold byproduct is RJC certified.<sup>332</sup> In fact, RJC suggests that most of these polymetallic mines won't be RJC certified:

*"As copper is not part of the RJC scope, copper supply chain participants are unlikely to apply the RJC Code of Practices or the CoC Standard unless they directly extract Precious Metals."<sup>333</sup>*

The only due diligence required by refiners that receive byproduct slime or concentrate containing gold or PGM is that they screen byproduct suppliers through a "know your customer" (KYC) system.<sup>334</sup> KYC due diligence is not designed to uncover irresponsible mining practices – it is designed to provide some assurance that the suppliers are not engaged in money laundering or the finance of terrorism. So the limited due diligence required by RJC's CoC system will not prevent CoC certification of byproduct material from irresponsible mining operations.

Additionally, there is no requirement to disclose, publicly, or in CoC transfer documents, the mining operation that was the source of the byproduct. Under the RJC system, chain of custody for mining byproduct starts at the refinery.<sup>335</sup> So in a CoC Transfer Document a refiner need only include information on where the mining byproduct was refined,<sup>336</sup> not where the ore that resulted in the byproduct originated. It is not clear why information on the initial source of byproduct is not required. Unlike some scrap or recycled gold, byproduct gold should be easily traced back to the original mining operation. The lack of transparency regarding the actual origin of the byproduct is a serious loophole in RJC's CoC system.

## How irresponsibly produced gold may become RJC certified material

The Grasberg mining complex (more commonly known as the Grasberg mine) in Indonesia is a joint venture between Freeport-McMoRan Copper & Gold Inc. (Freeport) and Rio Tinto. The Grasberg mine is a notoriously irresponsible copper and gold mining operation. (See Appendix I, Case Study 3)

In 2011, the Grasberg mine produced more than 1.2 million ounces of gold.<sup>337</sup> According to Freeport, the gold is primarily sold as a component of copper concentrate or in slimes.<sup>338</sup>

Freeport reports that substantially all of the copper concentrates from the mine are sold under long-term contracts, of which approximately one-half is sold to Freeport-affiliated smelters, Atlantic Copper and PT Smelting, and the remainder to other customers.<sup>339</sup> Atlantic Copper markets refined copper and precious metals in slimes.<sup>340</sup> So any entity purchasing slimes from Atlantic Copper may be purchasing gold from the Grasberg mine.

Freeport does not list the other smelters or refineries that purchase copper concentrates from Grasberg. Who are those other customers? They may very well be refiners who would be able to get RJC CoC certification because they would never have to reveal that they received byproduct gold from the notorious Grasberg mine. (See Appendix I, Case Study 3.)

The Grasberg mine in Indonesia is a joint venture between Freeport-McMoRan Copper & Gold Inc. and Rio Tinto.



## Recycled Material Loophole

RJC allows recycled gold as eligible CoC material. Although it is sensible to encourage use of above-ground stocks as part of a CoC certification initiative, RJC's definition of recycled materials is so broad, and CoC due diligence requirements so weak, that it creates opportunities for uncertified mined materials to enter the certified CoC system.

RJC's definition of eligible recycled material includes material containing gold and PGM that has been previously refined, such as end-user, post-consumer and investment products, and scrap and waste metals and materials arising during refining and product manufacturing.<sup>341</sup>

The *OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas* states that "Recycled material is a potential means of laundering gold that has been mined in conflict-affected and high-risk areas in order to hide its origin. . . there is a known practice of fabricating gold products directly from Mined Gold as a means of tax avoidance or laundering gold."<sup>342</sup>

RJC appears to justify its position for taking all types of recycled gold by saying that "Responsible recycling of gold provides no further financing of conflict, for example within the DRC and Adjoining Countries."<sup>343</sup>

Unfortunately, RJC's scant reporting requirements provide little assurance that companies have performed the due diligence necessary to ensure that recycled materials do not finance conflict. RJC's Eligible Materials Declaration and CoC Transfer Document for recycled gold do not require due diligence statements.<sup>344</sup> Under the RJC CoC 8.3 companies have the option of providing supplemental information in a CoC Transfer Document such as information about the country of origin of recycled materials, and any previous CoC transfer document numbers for the material "to better support retrospective inquiries about the Chain-of-Custody."<sup>345</sup> The provision of this type of information should be mandatory.

Additionally, due diligence procedures used by RJC members are not designed to screen suppliers for environmental, labor or human rights abuses. In the RJC system, for CoC refiners that receive recycled materials there is an assumption that Know Your Customer (KYC) due diligence procedures will uncover irresponsible practices of their suppliers.<sup>346</sup> The KYC due diligence procedures required by RJC are only in place to avoid supplies from 'illegitimate sources', which are sources that are contrary to applicable law, and/or involved with illegal mining, funding of conflict, money-laundering, funding of terrorism, or proceeds of crime.<sup>347</sup>

Thus, RJC's recycling provision provides little assurance that recycled materials will be sourced only from responsible sources. RJC has admitted that "'recycled' claims could be used to hid[e] 'inconvenient truths' about supply chains."<sup>348</sup> In

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addition to strengthening due diligence requirements, RJC could close this loophole by limiting eligible recycled gold to post-consumer, end-use products such as jewelry, electronics and dental gold.

### Grandfathering Loophole

In the RJC CoC system stocks of gold or PGM material that existed prior to January 2012 can be grandfathered as part of their CoC standard. Grandfathered gold and PGM may be in the form of bars, ingots, coins, or similar, or within a sealed container (e.g. grain, powder or sponge). To prove that the material is eligible to be grandfathered it must come with a reliable record demonstrating its date of ownership, extraction and/or manufacture.<sup>349</sup>

#### **Grandfathers stocks in the CoC supply**

One of the reasons RJC allows grandfathered stocks to become certified CoC material is that this gold is already in existence, and therefore “can provide no incremental negative impact.”<sup>350</sup> In other words, harmful impacts that may have occurred during the original production are history, and so the gold is acceptable for use.

There is no need to grandfather all existing stocks. It should be possible to trace gold that exists as stocks in some refineries, or even as bullion in banks, back to the original mining source. While perhaps not all refineries keep detailed records on the materials entering the refinery, according to Philip Olden, a consultant to OECD and RJC members, “Gold supply to refiners normally requires signed certification from an official from the mine (validating the source and quality of the doré), the handling/clearing agent (such as Brinks, Viamat) and, if applicable, a customs agent, and the product is sealed in containers with individual serial numbers.”<sup>351</sup> Presumably, when refineries subsequently produce batches of higher purity gold bars they know the serial numbers of the containers that went into a specific batch. Many refineries then stamp their gold bars with serial numbers and dates.<sup>352</sup> So they should be able to determine if gold in their high purity bars contains gold from a particular mine site.

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RJC members should be required to exercise due diligence to attempt to track gold in stock to particular mining operations. If it turns out that some gold in existing stocks originated from irresponsible mines, then these stocks should not be grandfathered as eligible material under the RJC CoC standard.

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### Platinum Loophole

Even though the RJC CoC is supposed to prevent mixing of CoC-certified and non-CoC-certified materials (i.e., if mixing occurs it is no longer RJC CoC-certified

material), there is a loophole that allows non-CoC platinum group metals (PGM) to be mixed with CoC gold, and be moved up the supply chain as CoC-certified gold.

The CoC standard exempts platinum group metals contained in certified CoC gold if the PGMs are contained in gold alloys.

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*“Platinum Group Metals are a common minor component of many Gold alloys but are not described as such to consumers. For alloys or jewellery products that are described as ‘Gold’, irrespective of fineness, the inclusion of any Platinum Group Metals in the gold alloy does not need to be identified in the CoC Transfer Document.”<sup>353</sup>*

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Gold alloys known as ‘white gold’ may contain as much as 25% platinum or palladium.<sup>354</sup> According to the World Gold Council, “Recent concerns over possible health hazards associated with the use of cadmium and nickel have led to efforts to find alternatives and, as far as whiteness is concerned, palladium has now largely superseded nickel, despite its relatively high price.”<sup>355</sup> Also, rhodium is sometimes used to plate gold products to give them a white finish.<sup>356</sup>

One could envision a situation where a jewelry manufacturer purchases CoC certified gold from a refiner, and in turn produces a product such as a gold ring that contains 25% palladium. Given the requirements in RJC’s standard, it appears that the palladium would not have to be CoC certified (or responsibly produced), but the jewelry manufacturer could still obtain an RJC CoC transfer document would specify that the gold ring met CoC standards.

Thus, gold jewelry with a CoC certification for the whole gold piece may contain PGMs from a notoriously irresponsible PGM mine without the consumer ever knowing about it. This undermines the assurance that RJC is attempting to provide.

### Inadequate Tracking of Bullion

The RJC is also providing a possible tracking exemption for movement of gold through bullion banks. The Guidance document is unclear but seems to create a loophole where gold emerging from a bullion bank with CoC documentation might not be the same gold that entered the bullion bank with that documentation.

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*The inventory management and market systems of Bullion Banks may not support CoC Transfer Documents being attached to shipments. Refiners may therefore issue the CoC Transfer Document for CoC Precious Metals bullion or product in a sealed container (e.g. grain) that bears their Mark **after it has been received** by a*

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**Gold jewelry with a Chain of Custody certification may contain platinum groups metals from a irresponsible mine without the consumer ever knowing about it.**

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*customer **from the inventory of a Bullion Bank.** The Refiner's Mark and any other identifying information will need to be linked to the refiner's original CoC Transfer Document records."*<sup>357</sup>

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This could be allowing for a mass-balance approach through the bullion banks.<sup>358</sup> As mentioned by RJC in one of its CoC discussion papers, "Some stakeholders requested RJC to consider allowing a mass balance model under its CoC standard. . . However, inclusion of a CoC model not based on physical segregation would add complexity to RJC CoC Certification and potential confusion for implementation and CoC claims."<sup>359</sup> As a result, the mass-balance model to CoC was not adopted by RJC.<sup>360</sup>

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If it seeks a true chain of custody tracking mechanism, RJC should clarify that a mass-balance approach is not acceptable for CoC transfers through bullion banks, especially since bullion banks and dealers are one of the five points in the supply chain that Philip Olden identifies as high risk points for mixing of materials.<sup>361</sup>

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One option to reduce the potential mixing of CoC-certified and non-CoC certified material in bullion banks is to require certified entities to have allocated accounts, so that the actual gold product remains segregated within the bank, and is the property of the certified entity, not the bank.<sup>362</sup> According to Olden:

*Where possible, through the supply chain, the gold industry should be encouraged to use "allocated" gold accounts, especially by the larger participants in the supply chain; examples include major jewellery producers and retailers, large-scale financial investors . . . Although the costs of allocated accounts are higher, and the ownership resides with the companies rather than the banks, increased allocated accounts will improve the integrity of supply and traceability of gold and reduce the risk of "contamination" of gold from illicit sources.*<sup>363</sup>

### **Outsourcing Contractor Exemption**

Outside contractors are sometimes used by entities in the jewelry supply chain to provide services such as processing or jewelry manufacturing, either on a regular basis, or occasionally, to add capacity to meet orders or manage fluctuations in supply.<sup>364</sup>

If a certified member uses an outsourcing contractor, the contractor must be included in the certified Entity's CoC Certification Scope.<sup>365</sup> This means that the contractor must ensure that it has systems in place to document and physically segregate RJC CoC-certified gold or PGM from non-CoC materials.<sup>366</sup> The contractor can be audited to determine compliance with these requirements, but there is no requirement for this to occur.<sup>367</sup>

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**RJC's CoC system allows outsourced material to be certified even though outsourcing contractors themselves do not need to obtain CoC Certification, and therefore do not need to meet all of RJC's CoC provisions.**

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RJC's CoC system allows outsourced material to be certified even though outsourcing contractors themselves do not need to obtain CoC Certification,<sup>368</sup> and therefore do not need to meet all of RJC's CoC provisions.<sup>369</sup> Also, it does not seem require outsourcing contractors to be RJC members. Consequently, they do not have to meet RJC's CoP standards on responsible environmental, social and human rights practices. For example, CoC-certified gold from an RJC member's mine may be outsourced to a jewelry manufacturer that uses children or forced labor. As long as that manufacturer physically segregates the CoC-certified gold it can remain as part of the RJC CoC supply chain regardless of that manufacturer's employment practices.

Clearly, this provides an opportunity for materials produced through irresponsible practices to become certified as responsible through the RJC CoC certification system.

Additionally, while a certified entity's certification scope must list all outsourcing contractors that they intend to use, an outsourcing contractor's identity "can be withheld from the entity's Certification status published on the RJC website, at the entity's or the Contractor's request,"<sup>370</sup> thereby further reducing the transparency of the CoC certification process.

## 4.2 PROVENANCE DEFICIENCIES

Provenance, as used here, refers to the origin of the eligible CoC material.<sup>371</sup> One of the primary flaws in the CoC standard and certification is the failure to require that provenance records accompany all certified material.

In a February 2012 article in *JCK Magazine*, Michael Rae, CEO of RJC, is quoted as saying, "You can go to Starbucks and know the origin of your coffee. . . But you can't go into a jewelry store and know the origin of one of the most significant purchases of your life."<sup>372</sup> Unfortunately, RJC CoC certification does nothing to resolve that problem.

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**Without the mine provenance information, it is misleading for RJC to claim that it is creating a chain of custody system that will result in a truly traceable product.**

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According to RJC's CoC Guidance document, "The CoC standard supports the 'Bulk Commodity' Chain-of-Custody model, which prevents the mixing of eligible Material with non-eligible Material but does not require tracing to origin. The CoC standard can also support a 'Track and Trace' model, which does trace to origin"<sup>373</sup> but this is not required.

Under the RJC CoC system, country of origin must be included in Eligible Material declarations for mined material (e.g., in the Conflict-free declaration), but there is no requirement to list a specific mine or mine cluster origin.<sup>374</sup> The provision of such information is purely discretionary.<sup>375</sup> Refiner information is

only required if CoC materials comes from DRC and adjoining countries.<sup>376</sup> Recycled and grandfathered gold and/or PGM do not need to include any origin information.<sup>377</sup>

Since many of the social and environmental impacts of the jewelry supply chain occur at mine sites, a chain-of-custody system that does not require transparent traceability to a mine, or set of adjacent mines using a joint processing center to produce doré or other pre-refinery metals, will fail to provide assurance of responsibility. Without the mine provenance information, it is misleading for RJC to claim that it is creating a chain of custody system that will result in a truly traceable product.

Although it is certainly challenging, other mineral certification schemes, even for complex sourcing such as from artisanal operations, are committed to mineral tracking from mine to saleable product. For example, the ARM/FLO *Fairtrade and Fairmined Standard For Gold From Artisanal And Small-Scale Mining* includes a system to ensure the traceability of the metals from mine to market, which is designed to guarantee that the labeled product . . . put on the market is a product coming from a certified mine.<sup>378</sup>

Also, the International Conference on the Great Lakes Region (ICGLR) is currently working to implement a mineral tracking and certification scheme for conflict minerals for the 11 nations of the Great Lakes Region of Africa. The ICGLR mineral tracking and certification scheme will include full mineral tracking from mine to point of export and independent third party auditing. Importantly, this system will also provide full public disclosure of mineral flows and audits.<sup>379</sup>

### 4.3 NO CHAIN-OF-CUSTODY TRANSPARENCY

According to the RJC CoC Certification Handbook, RJC strives to protect data confidentiality of members' commercially sensitive information.<sup>380</sup> As a result, the CoC standard provides almost no publicly available information related to CoC audits or evidence provided to support CoC claims. Additionally, as mentioned previously, outsourcing contractors who process CoC material do not need to be publicly disclosed. (For information on lack of transparency in the RJC certification system, see Section 5.1.)

For example, publicly disclosed information regarding Metalor Technology's CoC certification is limited. It is clear that recycled and grandfathered materials have been CoC-certified at three of Metalor's facilities, but there is no information on the provenance of material being refined at these facilities; nor does the certificate identify whether a Track-and-Trace or a Bulk Commodity method was used to determine chain-of-custody.<sup>381</sup>

It is possible to protect commercially sensitive data while still allowing for data transparency and this has been successfully accomplished in other sectors such as wood products. As mentioned previously, the ICGLR mineral tracking and

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**The Chain of Custody standard provides almost no publicly available information related to CoC audits or evidence provided to support CoC claims.**

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certification scheme plans to provide full public disclosure of mineral flows and audits, including names of suppliers and details of their assurances.<sup>382</sup>

The NGO Partnership Africa Canada (PAC) was instrumental in establishing the key elements of the ICGLR tracking system.<sup>383</sup> In their recommendations to ICGLR, PAC suggested that in order to protect commercially sensitive information, price data could be stripped out such that mines, refiners, exporters and others would have to report date of shipment, material, concentration, weight/volume, source/destination of shipment, but not price paid or price received.<sup>384</sup>

PAC also commented that, “Making data public harnesses public and civil society as watchdogs – allows for more efficient oversight, at no additional cost.”<sup>385</sup> Lack of transparency, on the other hand, “creates significant problems and suggests that statements of probity and propriety, even from well-known companies, cannot always be taken at face value.” They provide the following example of why public transparency is so important:

*In December 2009, a Nevada company, Niotan, said categorically that it does not source tantalum from the Democratic Republic of the Congo and takes every possible step to ensure that tantalum tainted by conflict – in the form of ‘coltan’ or any other form – does not enter its supply chain. Furthermore, the company said, Niotan has a policy against the purchase of any tantalum precursor material originating from Democratic Republic of the Congo ore. The Enough Project, however, responded almost immediately with detailed facts and figures showing that Niotan imports tantalum from a Hong Kong company which sources its ore in the DRC.<sup>386</sup>*

RJC CoC standard 1.5 says that, “The Entity shall have systems in place to enable it to respond to reasonable requests for verification of CoC Transfer Documents issued by the Entity.” It is unclear what is meant by ‘reasonable requests’. But given the lengths that RJC has gone to “protect the privacy of its Members” by limiting public transparency, it seems highly likely that requests from civil society would not be deemed reasonable.<sup>387</sup>

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**The CoC Certification has the potential to promote the greenwashing of companies because it grants CoC-certified members public “certified” visibility on the RJC website and in company materials, even though it may only be a small portion of their supply that is actually CoC certified.**

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#### 4.4 MISLEADING CHAIN-OF-CUSTODY CONSUMER CLAIMS

The CoC Certification has the potential to promote the greenwashing of companies because it grants CoC-certified members public “certified” visibility on the RJC website and in company materials, even though it may only be a small portion of their supply that is actually CoC certified.

Furthermore, RJC’s Chain-of-Custody standard guidance includes examples of “general messages that could be used about the CoC Certification and the CoC standard.”<sup>388</sup> The very first suggestion is:

*Gold/Platinum Group Metals that are from RJC Chain-of-Custody Certified companies only come from responsible sources.*

It is misleading for RJC to suggest that this is an acceptable general message. Members define their CoC certification scope, so the CoC standard does not need to be applied to all of the gold and PGM material handled by a company that has CoC certification.<sup>389</sup> For example, Metalor is only CoC-certified for its recycled and grandfathered gold, not mined gold. As discussed in the Metalor Case Study (Appendix I, Case Study 4. ), publicly available information suggests that Metalor is refining gold from irresponsible mining operations.

Another suggested general message is that:

*Everyone in the supply chain for CoC Precious Metals has been independently audited for compliance with responsible practices and chain-of-custody.*

Again, this is not accurate. For example, artisanal miners on CoC-certified mining concessions and outsourcing contractors do not need to be audited for compliance with responsible practices or the full chain-of-custody requirements. (See Sections 5.1.2 and 5.1.8.)

Metalor, a refiner with RJC CoC certification for recycled and grandfathered gold, has made the claim that:

*Metalor's RJC Chain of Custody Program is an audited, certified assurance that our CoC gold products – bullion, grain, and surface coating chemistry (PGC) – come from sources that are themselves consistent with RJC's business, ethical and environmental standards. Not just conflict free, but true to the full range of corporate social responsibility.<sup>390</sup>*

This is inaccurate. The CoC certification does not provide assurance that grandfathered gold meets any ethical standards,<sup>391</sup> and RJC's due diligence requirements for recycled gold relate to money laundering and the finance of terror,<sup>392</sup> not the full range of corporate social responsibility.<sup>393</sup>

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RJC should not encourage messages that overstate what the CoC system actually delivers, and should ensure that its members do not convey misleading messages.

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## 5 Auditing Deficiencies

To become a certified RJC member, or to be certified under the CoC standard, RJC members hire third-party, independent auditors to carry out verification assessments. Members must select auditors from a list of RJC-accredited auditors.<sup>394</sup>

If the auditors find “that the Member has achieved the required level of Conformance against the Code of Practices” or “applicable provisions of the CoC standard” then certification will be awarded by RJC.<sup>395</sup>

In the RJC certification system, members first conduct a self-assessment to evaluate their own performance against the CoP or CoC standards. This self-assessment is supposed to help companies identify and correct areas of non-conformance prior to hiring auditors.

Auditors then verify or ‘check’ the member’s self-assessment through a preliminary desktop review; through selection of a ‘representative’ set of the member’s facilities and practices to visit and assess (the verification scope);<sup>396</sup> and by conducting an on-site review of one or more facilities.<sup>397</sup> Auditors are to determine if standards have been met by collecting ‘objective evidence.’<sup>398</sup>

A review of RJC materials reveals many deficiencies with the audit/verification assessment system. Auditors conducting verification assessments for the CoP or CoC are not required to visit every facility that is within the verification scope; and auditors are not required to assess all relevant CoP provisions during the assessment.<sup>399</sup>

The RJC auditing process is fraught with other problems as well: there is not enough transparency, stakeholder involvement or independent review of the auditing process to provide non-industry stakeholders with confidence that the audits have been thorough, objective, or effective.

### 5.1 LACK OF TRANSPARENCY AND ACCOUNTABILITY

According to the RJC website:

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*RJC Members are committed to promoting responsible ethical, human rights, social and environmental practices in a transparent and accountable manner throughout the industry from mine to retail.*<sup>400</sup>

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Although RJC’s Certification Handbook says that, “Transparency is a critical component of business responsibility initiatives,”<sup>401</sup> there is very little transparency in the RJC certification system.

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### Claims of transparency

“Transparency is a critical component ...” says the RJC certification handbook, but there is very little transparency in the RJC certification system.

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Auditors prepare two reports: one for the Member and one for the RJC Management Team. Neither of these reports is made public. The Member's Verification Report is not even submitted to the RJC Management Team.<sup>402</sup>

Equally troubling, the evidence used to verify that a member has met the CoP is not even disclosed to RJC, the body responsible for issuing the certification. The RJC Management Team receives a summary report of the audit, and a recommendation on whether or not RJC should grant certification.<sup>403</sup> The summary report, however, does not include details about the information reviewed by the auditor to provide the basis for its recommendation. According to the RJC Assessment Manual, "Objective Evidence is a matter between Members and the Assessors or Auditors and must not be disclosed to the RJC."<sup>404</sup>

The RJC system is designed to protect the confidentiality of a Member's commercially sensitive information.<sup>405</sup> However, instead of removing sensitive information from audit reports as other certification systems do (see next page), however, RJC simply does not allow any public access to audit reports or information.

Because there is no public access to audit information, external stakeholders have no way of knowing what facilities were visited; what information formed the basis of the auditor's recommendations; the nature of any major or minor non-conformances or critical breaches; whether or not the company was required to carry out corrective actions;<sup>406</sup> if any stakeholders were consulted, and if so, whether those consulted reflected the issues of concern for the range of facilities included in the certification scope.

The lack of transparency in RJC audits makes it very difficult for communities, workers, consumers or other stakeholders to have any faith in the certification system. A 2011 report published by Fair Jewelry Action found that even though many luxury jewelry companies are members of RJC, "information on social and environmental performance is difficult to obtain from [them], indicating a general lack of transparency. . . With limited information available to the public, consumers are unable to assess how brands are contributing to a more just and sustainable world."<sup>407</sup>

Disclosure of audit information would help build public confidence in RJC members and the RJC certification process and would help consumers better assess the performance of companies involved in the gold, diamond and platinum supply chain. As noted by the Enough Project, "Making audits and other collected data publicly available not only lends credibility and legitimacy to a certification system but also allows governments, industry, and civil society to monitor participants and the initiative, as well as hold them accountable."<sup>408</sup>

Many other certification processes include or are moving toward comprehensive disclosure of data and audits. With the advent of increasingly complicated standards covering social and ecological requirements as well as

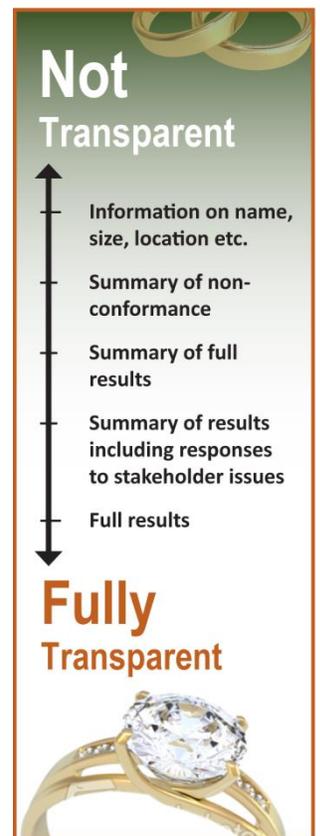


Image adapted from Nussbaum et al. 2002, p. 36.

technical ones, Yale University researchers note that “it has been recognized that to provide credibility it may be necessary to allow interested parties direct access to information about the process and the results of a certification assessment.”<sup>409</sup>

## Other certification or monitoring systems that do provide audit information to the public

**The Fair Labor Association provides public access to its independent factory audits on its website.**<sup>410</sup> These Independent External Monitoring reports, also called tracking charts, are published annually, and provide an assessment of a factory’s noncompliance, risk of noncompliance, and uncorroborated evidence of noncompliance with the FLA’s Code of Conduct. They also take note of best practices.<sup>411</sup> FLA identifies a factory’s buyers and the countries where they are located, but it does not, however, disclose the individual factories’ names.<sup>412</sup>

**The International Cyanide Management Code publishes more information about audits than RJC does.** For example, the following documents are available online: Auditor summary reports; Auditor Credential forms; Corrective Action Completion forms showing that those that did not obtain full compliance carried out the corrective actions necessary to obtain certification. Auditor summary reports also provide the basis for the findings or deficiencies identified during the audit.<sup>413</sup>

**To ensure transparency of the FSC system, Forest Stewardship Council requires that summaries of all forest management assessment and audit reports are made publicly available.** Previously these Public Summary reports were available at the individual Certification Bodies’ websites.<sup>414</sup> As of 2009, the reports became available via the FSC Certificate Database.<sup>415</sup>

## 5.2 NO REQUIREMENT FOR STAKEHOLDER INVOLVEMENT IN AUDITS

In addition to disclosing audit reports, transparency and accountability can be provided through other mechanisms including stakeholder participation and consultation in audits, peer review of audits and evaluation of certification bodies (addressed in Sections 5.3 and 5.45.4).

Stakeholder consultation may serve a number of important roles in the auditing process including:<sup>416</sup>

- provision of input into the interpretation of the standard for the specific organization being certified,

- provision of information on the organization being assessed,
- provision of objective evidence on compliance or non-compliance with requirements relating to interaction with consultees,
- identification of issues that may otherwise not be apparent to the auditors,
- contribution to the credibility of the final decision.

When RJC was developing its mining supplement, a question was posed as to whether NGOs, unions and/or communities could be involved in audits. The RJC noted that, “Members can choose to invite external parties to participate in audits as observers, as appropriate. However any organisation would need to meet objective criteria for relevant auditing competence and experience to be accredited as an RJC auditor. Auditors will definitely speak with workers and communities as part of the process of seeking objective evidence of implementation of the Code of Practices.”<sup>417</sup> (emphasis added)

Although this assurance was provided to stakeholders, there is nothing in the RJC materials that requires auditors to contact communities, unions, or other stakeholders during the audit process.<sup>418</sup> Facility employees are part of the auditing process.<sup>419</sup>

Given that RJC auditors have the option to choose the facilities to visit, and select just a subset of CoP provisions to assess during verification visits,<sup>420</sup> best practice would require an auditor to contact unions representatives, community members and civil society organizations to help hone in on the areas of greatest concern. The lack of such a requirement reduces the credibility of the RJC auditing system.

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**There is nothing in the RJC materials that requires auditors to contact communities, unions, or other stakeholders during the audit process.**

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## The Roundtable on Sustainable Biofuels (RSB) certification system

**The (RSB) certification system requires that stakeholders and workers confirm that RSB criteria that involve them have been met.<sup>421</sup> For example:**

- Stakeholders affected by the biomass/biofuels operation(s) of the participating operator confirm that management documentation including all documentation related to the impact assessment and ESMP of the participating operator was available and accessible. (Indicator 2.b.i.8)
- Workers engaged in the operation(s) of the participating operator confirm that they are aware of, and have the right to freely organize, voluntarily negotiate their working conditions and bargain collectively with the management of the operation(s), as established in ILO Conventions 87 and 98. (Indicator 4.a.i.1)



## Forest Stewardship Council Certification Process

RJC's approach is a stark contrast to the Forest Stewardship Council certification process. FSC requires that its certification bodies consult with a range of stakeholders, "to ensure that the certification body carries out a level of consultation sufficient to provide a credible guarantee that the requirements of applicable Forest Stewardship Standard are complied with."<sup>422</sup> FSC also has a policy that allows external observers to participate in on-site FSC audits.<sup>423</sup>

To encourage stakeholder participation, FSC stakeholders:<sup>424</sup>

- are provided with at least six weeks notice that a FSC forest evaluation is going to take place,
- are provided with the applicant's name and the location of the area to be assessed,
- are provided with information on how to acquire a copy of the FSC standard to be used in the evaluation,
- are informed that the certification body is seeking the views and opinions of stakeholders as to whether the applicants practices comply with the standard,
- are provided with contact information for the certification body so that they can let them know their views and opinions,
- are informed that the certification body will make arrangements to allow stakeholders to meet with them during the evaluation,
- are informed of the existence of mechanisms for resolution of complaints or disputes,
- are informed that the source of any information may be kept confidential upon request.



**FSC's Stakeholder Portal provides a listing of all upcoming audits and assessments,<sup>425</sup> and includes contact information for the auditors so that stakeholders can become engaged in the audit process. FSC Public Summaries also document the stakeholder input that was received.<sup>426</sup>**

In contrast, RJC offers no way for stakeholders to proactively engage in member verification assessments. There is no advertising that audits are going to occur, and no way stakeholders to voluntarily contact and provide input to auditors.

*According to ISEAL, an organization dedicated to defining good practices for sustainability standards, "Active inclusion of stakeholders in the assurance process increases the transparency and thus public confidence in the process, and can be a vital source of information for assurance."<sup>427</sup>*

RJC has been weak on both inclusiveness and transparency, and as a result, the system fails to provide the public with confidence that the certification system is credible or effective.

### The critical role of unions is not recognized

The RJC Assessment Manual specifies that auditors must interview some employees as part of the auditing process.<sup>428</sup> The manual also says that “The Verification Assessment will be conducted by professional Auditors accustomed to interviewing employees from all levels of the Members business,” but does not explicitly say that interviews must come from all levels of a member’s business.

It is important that non-management-level workers be included in audit interviews, as these workers are often impacted by employer practices in both the work place and in nearby communities where they live, and therefore are in a unique position to verify whether or not many of the RJC standards are being followed.

What RJC fails to recognize, or acknowledge, is the critical role that trade unions can play in a more robust auditing process. At unionized facilities, unionized workers and their representatives may be in the best position to provide open and critical input into the auditing process.

Although the Assessment Manual outlines some protective measures for workers who participate in an audit (e.g., “no employee shall be reprimanded for their responses,” and “report findings linked to Employee interviews remain anonymous”) there will likely be cases where workers who may be critical of aspects of the operation will refuse to participate,<sup>429</sup> fearing retaliation, if they lack the protections afforded by trade unions.

Also, unionized workers are often more aware of the health, safety and labor standards that exist, and can therefore provide a more in-depth analysis of a company’s labor practices.

Neither IndustriALL, the global union federation representing mining trade unions globally, nor the United Steelworkers, a principal mining trade union in the United States and Canada, had knowledge of a union worker or official ever being approached by an RJC auditor to provide information for an RJC verification assessment, nor were they aware of any union member being asked to provide input during an audit.<sup>430</sup>

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There should, therefore, be an explicit requirement to include union members or their representatives in RJC verification assessment interviews (at facilities where there is a union presence).

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**It is important that non-management-level workers be included in audit interviews, as these workers are often impacted by employer practices in both the work place and in nearby communities where they live, and therefore are in a unique position to verify whether or not many of the RJC standards are being followed.**

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### 5.3 NO PEER REVIEW OF AUDIT REPORTS AND RECOMMENDATIONS

Peer review is the process of engaging one or more independent specialists to review the certification report and recommendations produced by the auditors. Peer review of a certification or, in the case of RJC, a verification assessment report can help to add a level of independent confirmation that the objective evidence collected is sufficient, the interpretation of the evidence is reasonable, and that the standards have been met.<sup>431</sup>

In the case of RJC certification, there is no peer review of the verification assessment. The lead auditor submits a summary report to the RJC Management Team providing a summary of the member's overall performance against the Code of Practices, and issues a recommendation for or against certification.<sup>432</sup> The decision whether to grant RJC certification is then made by the RJC Management Team.<sup>433</sup>

The Forest Stewardship Council requires that draft forest management certification reports be submitted to a formal peer review process. This involves having one or more independent reviewers "with the experience and technical knowledge necessary to assess the adequacy of the report and the validity of the proposed certification decision."<sup>434</sup>

The Marine Stewardship Council not only requires peer review of the draft certification assessment, it also provides for public review.<sup>435</sup>

### 5.4 LACK OF INDEPENDENT ACCREDITATION OF AUDITORS

Companies seeking RJC certification select and pay for a third-party auditor to verify that the company has adhered to the RJC CoP or Chain-of-Custody standard. Because there is no involvement of other stakeholders in the selection of the auditor, strict controls are necessary to provide some degree of independent assessment. These are not currently present in the RJC system.

The quality of the auditor is so critical to both the technical success and the credibility of the whole process that most schemes also require 'certification of the certifiers' through a process called accreditation.<sup>436</sup>

RJC is the accreditation body for its auditors.<sup>437</sup> Other certification systems utilize outside bodies to regularly assess auditors/certification bodies.

For example, the Marine Stewardship Council (MSC) uses a third-party to accredit its 'certifiers' (i.e., auditors). "To obtain accreditation certifiers must meet the requirements set out in the MSC certification requirements. **To ensure our complete independence from the certification process** a third organisation, Accreditation Services International GmbH (ASI) is the independent organisation that accredits certifiers to conduct MSC assessments (emphasis added)."<sup>438</sup>

Similarly, the Forest Stewardship Council website states that: "To make sure the certification bodies [i.e., auditors] operate in line with our rules, they are

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## No peer review

In the case of RJC certification, there is no peer review of the verification assessment.

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checked or accredited. . . In the same way that certification bodies carry out annual checks on holders of FSC forest management and chain of custody certificates, so ASI carries out annual checks on the certification bodies, through office and field audits.”<sup>439</sup> Accreditation Services International, or ASI, witnesses the activities of FSC certification bodies and evaluates whether they have the expertise to carry out the audits, whether they apply the proper procedures, undertake the audit effectively and draw correct conclusions. ASI also carries out stakeholder consultations as part of its evaluation of a certification body. The assessment is written up and published in a Public Summary report, which includes information on problems observed, corrective actions for auditors, and a recommendation as to whether or not the auditors should remain accredited.<sup>440</sup>

It is notable that RJC does not rely on an outside body to independently accredit its auditors. At some point in the future, RJC plans to commission independent peer reviews of auditing quality and auditor training, but there is no indication how frequently these reviews will take place, or when the first peer review will occur. Furthermore, the reviews will be “subject to individual Members’ agreement for access” to information.<sup>441</sup>

## 6 Inadequate Complaints Process

According to ISEAL’s Code of Good Practice for Assuring Compliance with Social and Environmental Standards:

*Standards system owners may consider the complaints system an essential component of the assurance scheme, as it allows them to include stakeholders in the assurance process. The knowledge that stakeholders (including peers) are watching them has a modifying effect on a client’s behaviour. Some complaints will lead to discovery of infractions, but the larger effect of the complaints system is the incentive it provides for everyone to comply with the requirements of the standards programme.<sup>442</sup>*

It is not generally considered sufficient just to document complaints. For example, the International Organization for Standardization (ISO) guidelines specify that certification bodies should have policies and procedures for the resolution of complaints, appeals and disputes.<sup>443</sup>

RJC has a Complaints Mechanism for complaints relating to potential non-conformance with RJC Certification or with the RJC’s own policies and procedures. General information on how to file a complaint can be accessed through its website.<sup>444</sup> However, as outlined below, the complaints system has several deficiencies.

### 6.1 COMPLAINTS ADJUDICATION COMMITTEE NOT BALANCED

RJC itself handles all complaints unless a formal investigation appears necessary. In such a case an “ad hoc” complaints panel is created, composed of an RJC staff person, a lawyer (presumably chosen by RJC), and one independent third-party. If the complainant and the RJC member company cannot agree on a third party, RJC appoints one.<sup>445</sup> All other members of the ad hoc panel are appointed by the CEO or an office-bearer of the RJC. This selection process creates the potential for a strong industry-bias, given that RJC has so much control over the composition of the committee.

Other certification systems have much more balanced representation for determining the legitimacy of complaints and investigating complaints. For example, the RSPO Complaints Panel consists of an environmental NGO, a social/development NGO, an RSPO affiliate member, a representative of growers, and a representative of processor/traders/manufacturers/retailers/banks/investors.<sup>446</sup>

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**Other certification systems have much more balanced representation for determining the legitimacy of complaints and investigating complaints.**

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### 6.2 COMPLAINTS SYSTEM NOT TRANSPARENT

The RJC website does not provide any way for the public to view or track complaints, and find out whether or not complaints have been adequately resolved. Other certification systems provide this level of transparency regarding complaints via their websites. For example, the Forest Stewardship

Council has a dispute resolution center for stakeholders to submit and track disputes and appeals online.<sup>447</sup> Similarly, RSPO has a complaints status page, with information on cases.<sup>448</sup>

Furthermore, it is possible that many stakeholders will not be aware that there is the opportunity to file complaints regarding certification and compliance with RJC CoP, because they have no idea that an audit even occurred.<sup>449</sup>

### 6.3 COMPLAINTS SYSTEM INACCESSIBLE

The cost structure of the RJC complaints mechanism is likely to preclude participation by community members or NGOs as RJC adopts a shared-cost model.

*“The RJC aims to minimize the costs of the complaints process for all parties. Where a formal investigation is contemplated, parties to the complaint will need to agree on the sharing of costs.”<sup>450</sup>*

RJC claims that it complies with ISEAL’s Codes of Good Practice.<sup>451</sup> Yet the ISEAL Code of Good Practice states that certification system shall “investigate and take appropriate action regarding relevant complaints.”<sup>452</sup>

Investigation and appropriate action in RJC’s system, however, is only going to occur if the complainant can pay. In reality, many individuals affected by a project’s operations who may want to dispute a certification are unlikely to do so if there are high costs involved. Workers and local residents affected by operations may not have the ability to pay.

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**The cost structure of the RJC complaints mechanism is likely to preclude participation by community members or NGOs as RJC adopts a shared-cost model.**

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## 7 Conclusions

RJC has developed a voluntary certification system designed to promote responsible practices in the jewelry supply chain. RJC should be recognized for its efforts in producing both a Code of Practices and Chain-of-Custody standard that applies to the various actors throughout the supply chain.

The RJC system has some strengths: it has included a few provisions to prohibit worst practices (e.g., riverine tailings disposal), provides good guidance on what is required to meet standards, and integrates other widely accepted standards into its Code of Practice.<sup>453</sup>

**However, the system also has many weaknesses that undermine its credibility. Though by no means exhaustive, this report has attempted to address some of the largest loopholes in the RJC Certification System, which, if left unaddressed, will continue to undermine the utility and integrity of the system.**

- ⇒ **RJC certifies companies, rather than individual facilities. Evidence to-date** shows that this approach has resulted in the certification of companies (e.g., see Rio Tinto case studies) linked to irresponsible operations or practices. Certification of individual facilities would be a more credible approach.
- ⇒ **The Code of Practices either fails to mention certain** irresponsible practices (for e.g., mercury emissions) or creates standards that are weak and/or unenforceable (i.e., provide no targets or way to measure whether or not they have been met).
- ⇒ **The Chain-of-Custody standard fails to fully adopt OECD's Guidance** related to due diligence when sourcing minerals from conflict-affected and high-risk areas, and provides too many opportunities for irresponsibly materials to enter the supply chain.
- ⇒ **Flaws in the auditing system** (e.g., failure to require stakeholder involvement, absence of transparency in auditing results, lack of independent certification of auditors) weaken confidence that standards have been met.
- ⇒ **The complaints system is not transparent**, and is inaccessible to those who would most likely want to use it.



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If unaddressed, RJC's loopholes will undermine its integrity.

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## 8 APPENDIX: Case Studies

All of these case studies refer to Rio Tinto and Metalor operations. Rio Tinto was selected because it was the first mining operator to become a certified member of RJC, and a review of its certification scope and various operations highlight many of the shortcomings of the RJC certification system. Metalor was selected because it provides an example of a major refining business that has been certified against RJC's CoP, and as of December 2012 it was the only company certified under RJC's Chain of Custody standard.

These case studies reveal how the number one priority of RJC certification is to enhance members' public image. As these case studies clearly demonstrate, other priorities, such as discouraging irresponsible practices at member companies' operations, are sacrificed in service of priority #1.

### 1. CASE STUDY – RIO TINTO'S RUSHED CERTIFICATION

Rio Tinto was the first mining company to be certified under the RJC system.

Company-wide certification was granted even though at least one Rio Tinto mine – its Northparkes mine in Australia – had not completed the certification process at the time. Rather than waiting to certify Rio Tinto until all of its operations were audited (the Northparkes verification assessment took place in December 2012), the company was awarded RJC certification on July 10, 2012.<sup>454</sup>

RJC may have rushed to certify Rio Tinto at least in part because the company was supplying medals to the 2012 Olympic games, and as part of the London Organizing Committee of the Olympic and Paralympic Games' (LOCOG), sustainability commitment suppliers like Rio Tinto were required to undergo an audit. In the case of Rio Tinto, the RJC audit was being used in place of the Sedex Members Ethical Trade Audit.<sup>455</sup>

On June 19, 2012, Sean McCarthy, the chairman of the Commission for a Sustainable London 2012, told the *Telegraph* that Rio Tinto was the only Olympic supplier he was aware of that was able to start production without having an agreed audit in place, adding "LOCOG's procedures say there has to be an audit but they allowed this company to slip through the net, they don't have an audit they haven't been certified and yet the metals have been supplied."<sup>456</sup>

A LOCOG spokesperson responded that the required certification was on its way, and that Rio Tinto had "informed us that certification from the Responsible Jewellery Council Standard (RJC) is imminent."<sup>457</sup> Within weeks, Rio Tinto was awarded RJC Certification.

Northparkes is not the only Rio Tinto mine RJC allowed to fall through the cracks. When Rio Tinto supplied metal to the Olympic Games from its Oyu Tolgoi mine in Mongolia,<sup>458</sup> its RJC certification did not include Oyu Tolgoi within

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**RJC may have rushed to certify Rio Tinto at least in part because the company was supplying medals to the 2012 Olympic games.**



its scope because it was not yet “in commercial production.” So Olympic medals were sourced from an operation with no audit to ensure that it met the sustainability guidelines for the Olympic Games. Since metal from Rio Tinto’s Oyu Tolgoi mine was used in Olympic medals – garnering international attention for this honor — this operation should have been included in Rio Tinto’s RJC certification scope. The next case study how this happened in greater detail.



This expedited certification casts doubts on the thoroughness of the Rio Tinto RJC audits. Numerous trade unions and NGOs lodged complaints with the LOCOG against Rio Tinto, arguing that its poor environmental and social practices should have precluded them as a supplier for the 2012 Olympic Games, which were being touted as the most sustainable Games to date.<sup>459</sup> In July 2012, global labor organizations and other NGOs recognized Rio Tinto as the most irresponsible company linked to the London Olympics.<sup>460</sup>

Since RJC’s audits are not transparent, there is no way to know whether RJC auditors considered the concerns of The Commission for Sustainable London or other groups.

## 2. CASE STUDY – RIO TINTO’S OYU TOLGOI PROJECT

The Oyu Tolgoi gold mining project is the largest capital investment in Mongolia’s history.<sup>461</sup> Rio Tinto forecasts Oyu Tolgoi will annually produce an average of 450,000 tons of copper and 330,000 ounces of gold.<sup>462</sup> Commercial start-up of the mine is expected by mid 2013.<sup>463</sup>

Unfortunately, Mongolia’s experience with this not yet fully operational facility illustrates why the RJC Certification System should not exempt “pre-commercial” projects.

### Exempted from RJC Review

Oyu Tolgoi was not included in Rio Tinto’s RJC Certification Scope because it “had not yet commenced commercial production” at the time of Rio Tinto’s verification audit.<sup>464</sup> Under the RJC system:

*“Facilities in the exploration to pre-commissioned stages of the mine lifecycle are not visited as part of the Verification Assessment. Business practices in these stages of the mine lifecycle can be evidenced, where necessary and appropriate, by desktop review of policies, systems, procedures and processes.”<sup>465</sup>*

Given that metals from Oyu Tolgoi were used to make medals for the 2012 Olympic games, a strong argument can be made that RJC should have required at least a desktop review for this operation. This is especially relevant since the London Organizing Committee of the Olympic and Paralympic Games (LOCOG) used the RJC audit as evidence that Rio Tinto was utilizing a sustainable approach to metal production.<sup>466</sup>

Rio Tinto assured RJC that it was developing Oyu Tolgoi “in accordance with responsible, ethical, social and environmental practices which respect human rights.”<sup>467</sup> Yet the development of the Oyu Tolgoi project appears to have contravened several RJC Code of Practice standards.

### **Fails to Meet RJC Community Engagement Standards**

If it were to be reviewed for RJC CoP compliance, the Oyu Tolgoi project should be found out of compliance with RJC CoP standard 2.11 on Community Engagement and Development, as shown in the table below.

Provisions in RJC CoP 2.11	Examples of failure to meet standard <sup>468</sup>
Broad community support for proposals should be sought	<ul style="list-style-type: none"> <li>• There is “growing opposition among the herder community, as well as the local government” which “calls into question any claim that the project has broad community support”</li> <li>• “Herders have become increasingly disgruntled with the operations of Oyu Tolgoi and other mining companies, which has prompted the herders to organize themselves into NGOs such as Gobi Soil. These groups have threatened hunger strikes and organized protests against mining-related projects, such as the transport roads leading from Oyu Tolgoi and Tavan Tolgoi to Gashuun Sukhait. This group activity is unusual for the region given that the herders, who live 5-10 km apart on average, generally do not interact as much.”</li> <li>• The company’s environmental and social impact assessment “fails to describe how the company benchmarks broad community support”</li> </ul>
The interests and development aspirations of affected communities must be considered in major mining decisions in the project’s lifecycle	<ul style="list-style-type: none"> <li>• “[T]o date, none of the group consultations have included discussions about pollution of air, soil, and water from the mining operations or how the company plans to mitigate impacts on community health, all of which are questions that deeply concern the herders and soum residents.”</li> </ul>
Engagement must be carried out in an inclusive, equitable, culturally appropriate and rights-compatible manner	<ul style="list-style-type: none"> <li>• “[O]ne-on-one consultations undermines the principle of freedom from intimidation invoked in the [European Bank for Reconstruction and Development] Performance Requirements.”</li> <li>• “[I]n accordance with their cultural traditions, herders treat visitors to their homes as guests and are therefore unlikely to voice their concerns about anything their guests propose. One-on-one consultations therefore do not elicit candid responses from herders and are not culturally appropriate. Group consultations with herders and soum centre residents would encourage discussions in which herders would be more likely to feel comfortable speaking freely about their concerns regarding the project.”</li> <li>• [F]or some of these consultations the relevant documents were not provided to the community in a timely manner, in some cases only shared on the day of the event itself, and the consultations were usually more of a presentation of what the company has done and will do rather than a true in-depth discussion about the needs and concerns of the herders and soum center residents.</li> <li>• Although Rio Tinto organized one meeting on the ESIA in Khanbogd, it was deeply flawed and inaccessible. Notice was given only 2 days before the meeting, making it impossible for many affected herders to attend, given that they live between 20 and 60 kilometers from Khanbogd. Additionally, only 2 copies of the Mongolian translation of the ESIA were provided during the meeting, thus those attending were not able to review the document before the meeting.<sup>469</sup></li> </ul>

## Fails to Meet RJC Standard/Guidance on Resettlement

RJC Guidance says, “Resettlement negotiations should take place with the participation of all affected persons and communities, including women, and be based on full impact assessments.”<sup>470</sup>

The majority of resettlement related to the Oyu Tolgoi project occurred prior to the release of a full impact assessment. Involuntary resettlement of families from their traditional pastures began in 2004.<sup>471</sup> Baseline surveys (e.g., a census of households near the Oyu Tolgoi project area) began in 2003 and continued through 2011.<sup>472</sup> But these studies do not qualify as full impact assessments. The full ESIA for the project was not released until July 31, 2012.<sup>473</sup>

Furthermore, a study conducted by USAID provides evidence that the consultations that took place prior to resettlement were flawed, and would not meet the RJC CoP, or any definition of responsible consultation:

*“There was consensus that from the beginning there was a lack of information on the project, a lack of understanding of the herders’ land ownership laws and knowledge of their own rights. Previous government officials told at least a couple of herder families to not complain or speak out against the project and that they were asking for too much. Consequently herder families signed the resettlement contracts without adequate knowledge of what they were signing. There was also at least one instance where it appears that the head of the family was provided misinformation by local government official and consequently was not at home when the contract was signed. The residents in the area where the groundwater will be taken never agreed to [Oyu Tolgoi] using it and are still “protesting.” In discussions with herders, it is clear that there continues to be a lack of information and confusion.”<sup>474</sup>*

There is further evidence that the project does not meet RJC’s resettlement requirements. RJC Standard 2.11 says “where resettlement is unavoidable, its implementation should be consistent with IFC Performance Standard 5.” One of the requirements of IFC Performance Standard 5 is that “When displacement cannot be avoided, the client will offer displaced persons and communities compensation for loss of assets at full replacement cost and other assistance to help them improve or at least restore their standards of living or livelihoods.”<sup>475</sup>

In October 2012, a group of Mongolian herder households filed a complaint with the IFC Compliance Advisor/Ombudsman, charging, among other things, that their livelihoods were negatively affected by resettlement related to the Oyu Tolgoi project.<sup>476</sup> A press release from Oyu Tolgoi Watch describes how, “The herders were forced to move to inferior locations without adequate time to select spots that would protect their animals from harsh winter storms. . . . The minimal assistance provided at the time of resettlement was not

sufficient. Since being relocated, at least one household lost all of its animals, and several others had to purchase additional livestock to continue herding.”<sup>477</sup>

The CoP includes provisions for activities that occur prior to commercial production of gold, diamonds or PGM. If Oyu Tologoi were held to the same standards that RJC requires for commercially operational facilities, it would likely be found in violation for the following.

Yet there is no verification, in real time, to ensure that these provisions are being met.

To audit these provisions after the fact may not repair damage that has already been done. And after-the-fact auditing (presumably inadvertently) provides incentive to operations to perform the most rewarding irresponsible activity before commercial operation begins.

It remains unclear whether the Oyu Tolgoi project will be audited as soon as it begins commercial production, or whether it will be reviewed in 2015 when Rio’s re-certification is slated to take place.<sup>478</sup> It is also unclear whether the violations of the RJC CoP that predate commercial operations will result in Rio Tinto’s decertification.

If these types of CoP violations aren’t sanctioned, then RJC is effectively declaring “anything goes” for pre-commercial (and post-closure) operations.

### 3. CASE STUDY – RIO TINTO’S SHARE OF THE GRASBERG MINE

As mentioned in Section 2.1, the control loophole – which exempts from RJC standards those facilities in which a company owns a non-controlling stake – allows RJC certification of a company even though it earns revenue and metals from operations that would not meet RJC standards.

Grasberg, located in the province of West Papua in Indonesia, is one of the world’s largest copper and gold mines in terms of reserves and production. In 2011, copper sales totaled 846 million pounds and gold sales totaled 1.3 million ounces.<sup>479</sup> It is owned and operated by Freeport Indonesia (PTFI), which is a subsidiary of the US based Freeport-McMoRan Copper & Gold Inc. (Freeport).

#### Rio Tinto’s share of production revenue: 40 percent

In 1995, Rio Tinto forged a deal with Freeport to invest US\$500 million in the operation for a 12% share of Freeport. Rio Tinto also financed a US\$184 million expansion of the Grasberg mine in exchange for 40% of production revenue from the mine.<sup>480</sup> In March 2004, Rio Tinto sold its 12% shareholding in Freeport, but maintained a joint-venture interest in Grasberg mining operations.<sup>481</sup> The joint venture gives Rio Tinto a 40% share of production above specific levels until 2021 and 40% of all production after 2021, as well as representation on

operating and technical committees.<sup>482</sup> As a result, in 2011 Grasberg accounted for 27% of Rio Tinto's mined gold production.<sup>483</sup>

But as described in Section 2.1, a 40% share of the mine's production is not enough to require Rio Tinto to include Grasberg in its RJC certification. Conceivably, the control loophole would allow Rio Tinto's certification even if Grasberg – as described below, clearly an operation in violation of the RJC CoP – were to provide ALL of Rio Tinto's mined gold, rather than “just” 27%.

### Grasberg is one of the world's most environmentally destructive mines

In 2005, the *New York Times* reported that, “A multimillion-dollar 2002 study by an American consulting company, Parametrix, paid for by Freeport and its joint venture partner, Rio Tinto, and not previously made public, noted that the rivers upstream and the wetlands inundated with waste were now ‘unsuitable for aquatic life’.”<sup>484</sup>

In 2008, Norway's Ministry of Finance blacklisted Rio Tinto from the Government Pension Fund because it was “deemed likely that Rio Tinto contributes materially to Freeport's operation of the Grasberg mine in Indonesia... [which is] expected to result in severe long-term environmental damage in the area. There are no indications to the effect that these practises will be changed in future, or that measures will be taken to significantly reduce the damage to the environment.”<sup>485</sup>

A report from the Council on Ethics, whose research formed the basis for the blacklisting of Rio Tinto by the pension fund, elaborates on the existing environmental damages from riverine tailings disposal and acid rock drainage and potential for future impacts related to waste disposal practices at the mine.<sup>486</sup>

### Grasberg has a long track record of human rights violations

In addition to environmental damages caused by the Grasberg mine, there have been and continue to be various human rights abuses associated with the Grasberg mining operation.<sup>487</sup>

- According to Global Witness, “Freeport's mining operations have been guarded since the 1970s by the Indonesian military, which has been fighting during this time to suppress a rebellion for Papuan independence. The Indonesian military has a history of atrocities against civilians and is known to have been involved in corruption and illegal business activities, as have the police. For this reason, there has long been controversy over the close relationship between the [Grasberg] mine and the government security forces which guard it.” This controversy grew after 31st August 2002, when gunmen ambushed a party of teachers working for Freeport Indonesia and

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killed two Americans and an Indonesian, and wounded another eleven people. . . Although the Indonesian authorities have blamed the killings on Papuan rebels, the case remains unsolved and various observers, including Indonesian police officers and US officials, have voiced suspicions that members of the security forces may have been involved."<sup>488</sup>

- In 2005, the *New York Times* obtained documents showing that from 1998 through 2004, Freeport gave military and police generals, colonels, majors and captains, and military units, nearly \$20 million. According to some, including a former Indonesian attorney general, these payments were illegal and amounted to bribes. Freeport has said that, "There is no alternative to our reliance on the Indonesian military and police in this regard. . .The need for this security, the support provided for such security. . . are ordinary business activities."<sup>489</sup>
- In 2008, Freeport-McMoRan admitted that Indonesian police and military security forces were still being used to protect its operations, and that the company provided "logistical and infrastructure support, as well as supplemental funding for these necessary services."<sup>490</sup>
- In the second half of 2011, up to 12,000 Grasberg workers engaged in strike action for improved wages and conditions at the Grasberg mine.<sup>491</sup> The striking miners were demanding that their current minimum wage of less than \$3 an hour be raised to globally competitive levels.<sup>492</sup> There were many violent clashes between mineworkers and Indonesian security forces, resulting in several deaths.<sup>493</sup>
- 2008 testimony delivered before the Senate Judiciary Committee, Subcommittee on Human Rights and the Law, documents a range of human rights abuses and environmental and health impacts suffered by the Kamoro and Amungme peoples as a result of the Grasberg operations.<sup>494</sup> The Kamoro and Amungme continue to seek the return of lands that Freeport and the Indonesian government confiscated without the communities' permission; accountability for military personnel who have perpetrated human rights abuses;<sup>495</sup> a role in decision-making regarding use and management of natural resources and environmental conservation; and independent environmental and human rights assessments to determine the extent of damages.<sup>496</sup>

RJC should remove the control loophole in the CoP and require RJC members to include all of their gold/PGM/diamond operations, or it should simply certify individual operations rather than entire companies. Otherwise, associations between companies like Rio Tinto and irresponsible operations like the Grasberg mine reduce RJC certification to greenwashing.

#### 4. CASE STUDY – METALOR’S CERTIFICATION FOR RECYCLED GOLD REFINING

In January 2011, Metalor Technologies (Metalor), was the first refinery to be certified against the RJC ethical, human rights, social and environmental standards.<sup>497</sup> Metalor’s four refining operations, located in Hong Kong, the United States, United Kingdom and Switzerland, were in Metalor’s certification scope.<sup>498</sup>

This case study is not about Metalor refineries’ adherence to the RJC Code of Practice (CoP) once the gold has arrived at the refinery. Instead, this case study serves to illustrate the shortcomings in the RJC’s Chain-of-Custody (CoC) certification – first, how RJC’s lack of transparency requirements leave the public and gold purchasers in the dark about the provenance of gold sourced from RJC certified refineries, and second, how the CoC system rewards operators who may be supporting irresponsible practices in the jewelry supply chain.

In 2012, three of Metalor’s refining facilities (U.S., Switzerland and Hong Kong) were certified under RJC’s CoC standard – for the refining of recycled and grandfathered gold only.<sup>499</sup> Metalor does not claim to source from responsible mining operations, nor does it claim to have systems in place to segregate responsibly mined gold and PGM from irresponsibly mined materials.

Despite the fact that Metalor obtained RJC CoC certification, the public has no assurance that gold refined by Metalor was responsibly produced or mined. They must take Metalor’s (and the RJC’s) word because:

- Metalor is a private company – meaning that it need not comply with regulatory reporting requirements for publicly traded companies like those mandated by the U.S. Securities and Exchange Commission.
- The RJC certification system is set up to protect its members’ information, resulting in close to no transparency. Other than listing the name of the certified facility and types of material that are certified under the CoC system, there is virtually no disclosure.<sup>500</sup>
- Auditors are not required to visit all facilities that are included in the CoC certification.<sup>501</sup>
- Recycled material does not necessarily come from responsible sources – there is no required due diligence to ensure that the suppliers have used responsible practices (e.g., if it is scrap waste from a jewelry maker, there is no way of knowing if the manufacturer employed child labor). And there is no requirement to disclose the due diligence information to support that recycled material has not contributed to conflict.<sup>502</sup>
- RJC’s CoC system does not require companies like Metalor to trace material back to its original source (e.g., a mine site or a supplier of

recycled material).<sup>503</sup> There is not even a requirement to include any provenance information – not even country of origin – for recycled or grandfathered gold/PGM.<sup>504</sup>

So in spite of RJC CoC certification, Metalor is required to reveal very little about the supply of its recycled or grandfathered gold, and nothing about the mined sources of gold that are refined at its facilities. Nor is the company required to publicly disclose what percentage of its materials are from recycled/grandfathered sources versus mining operations.

Yet Metalor has used its CoC certification to gain what RJC calls ‘reputation benefits’.<sup>505</sup> Unfortunately, Metalor has made claims about the CoC system that are not entirely true, claiming, in a letter to its customers, that that RJC CoC certification provides assurance that CoC gold comes from sources that are not only conflict-free, but that are consistent with RJC’s business, ethical and environmental standards.<sup>506</sup> But RJC’s CoC system does not ensure that CoC material comes from responsible sources.

It is especially important for the public to realize that Metalor has not been CoC-certified for material that it has received from mining operations. What the public and purchasers of Metalor’s gold can know – thanks to public documents – is that mining operations that provide gold to Metalor refineries would almost certainly be found in violation of at least some of RJC’s “responsible” standards.

The following example illustrates some of the irresponsible practices taking place at the Masbate Gold Project in the Philippines which supplies gold to Metalor facilities.

### MASBATE GOLD PROJECT IN THE PHILIPPINES (CGA Mining Ltd/Filminera Resources Corp).<sup>508</sup>

Gold from Masbate mine was delivered to Metalor’s Switzerland refinery beginning in May 2009,<sup>509</sup> and in 2012 the contract was renewed.<sup>510</sup>

Mining in a conflict-affected area: The mine is located on the island province of Masbate, which has been an area of deadly combat for the New People’s Army (NPA), a guerrilla group that has been fighting the government and foreign-owned companies for decades.<sup>511</sup> In 2007, rebels attacked the mine, leaving behind improvised landmines and grenades;<sup>512</sup> in 2010, a village chief was shot dead;<sup>513</sup> and in 2012, a Masbate mine security guard was found shot dead at his post.<sup>514</sup> Philippine National Police and army soldiers have been stationed both outside and inside the mine site and gold processing facilities.<sup>515</sup>

No broad community support for the operation: In 2009, thousands of local residents in Aroroy on Masbate joined protests against the mine project and the mine. Their concerns included:

- Farmers relocation to inferior land,

- Inadequate compensation,
- Artisanal miners left with no livelihood,
- Destruction of water sources that fed rice fields and fish,
- Destruction of agricultural lands,
- Endangerment of local rivers and coastal fisheries from mine wastes, laced with cyanide.<sup>522</sup>

Serious environmental risks: The mine layout presents a risk to water sources in the area as well. The project's open pits are located on either side of a dammed river and the existing tailings storage facility is only a few kilometers upstream from the ocean.<sup>524</sup> This risky site layout is potentially vulnerable to the severe weather (the island is routinely hit by typhoons) and seismic activity. Masbate province sits atop the very active Philippine fault zone, which has caused "cataclysmic" quakes as recently as 1990.<sup>525</sup> There have been several minor earthquakes in the region, as well as larger ones.<sup>526</sup> In 2003, Masbate province was hit by a 6.2-magnitude earthquake, and in March of 2012, a 5.2-magnitude quake rocked the Bicol region, damaging buildings and creating concerns that mining shafts may have collapsed.<sup>527</sup> Such a precariously located mine could result in massive contamination of the river and ocean.

## 9 References

- <sup>1</sup> Responsible Jewellery Council (hereafter referred to as RJC) website: "About Us." <http://www.responsiblejewellery.com/about-us/> Accessed Feb. 16, 2013.
- <sup>2</sup> RJC. 2009. *Assessment Manual*. p. 28
- <sup>3</sup> Solidaridad. 2011. *Benchmark Study of Environmental and Social Standards in Industrialised Precious Metals Mining*. p. 59. [http://solidaridadnetwork.org/sites/solidaridadnetwork.org/files/Revised%20Solidaridad\\_Benchmark\\_Study\\_Revised\\_Final%20Dec\\_2011.pdf](http://solidaridadnetwork.org/sites/solidaridadnetwork.org/files/Revised%20Solidaridad_Benchmark_Study_Revised_Final%20Dec_2011.pdf)
- <sup>4</sup> RJC website: "Member Certification." <http://www.responsiblejewellery.com/certification/> Accessed Feb. 16, 2013.
- <sup>5</sup> Responsible Jewellery Council (hereafter referred to as RJC) website: "About Us." <http://www.responsiblejewellery.com/about-us/> Accessed Feb. 16, 2013.
- <sup>6</sup> ForestEthics, 2010, SFI: Sustainable Greenwash, <http://forestethics.org/news/sfi-certified-greenwash-report>
- <sup>7</sup> Gulbrandsen, L. 2006. "Organising Accountability in Non-State Certification Schemes: The Forest Stewardship Council as a Good Governance Model". Paper to the 47th Annual Convention of the International Studies Association. San Diego, 22–25. March, 2006. p. 17 [http://citation.allacademic.com/meta/p\\_mla\\_apa\\_research\\_citation/0/9/7/9/8/pages97985/p97985-1.php](http://citation.allacademic.com/meta/p_mla_apa_research_citation/0/9/7/9/8/pages97985/p97985-1.php)
- <sup>8</sup> *Ibid.* p. 10.
- <sup>9</sup> "In 2005, a group of 14 organisations from a cross section of the diamond and gold jewellery business came together to form the Council for Responsible Jewellery Practices. The founding organisations were ABN AMRO, BHP Billiton Diamonds, Cartier (part of Richemont), World Jewellery Confederation, Diamond Trading Company (part of De Beers), Diarough, Jewelers of America, National Association of Goldsmiths (UK), Newmont Mining, Rio Tinto, Rosy Blue, Signet Group, Tiffany & Co., and Zale Corporation." (RJC website: "About Us." <http://www.responsiblejewellery.com/about-us/#policies> Accessed Feb. 16, 2013)
- <sup>10</sup> Eight of the founding businesses are still on the board of directors (BHP Billiton Diamonds, Cartier, De Beers, Jewelers of America, National Association of Goldsmiths (UK), Rio Tinto, Rosy Blue, and Signet Group. (*Ibid.*)
- <sup>11</sup> Fair Jewelry Action website: June 29, 2009. "Greg Valerio Interviews Michael Rae, CEO of the Responsible Jewellery Council." <http://www.fairjewelry.org/greg-valerio-interviews-michael-rae-ceo-of-the-responsible-jewellery-council/>
- <sup>12</sup> E.g., see: RJC. December 2008. "Mining Supplement – Meeting with stakeholders – London." p. 3. [http://www.responsiblejewellery.com/files/RJC\\_MiningSupplement\\_stakeholder\\_mtg\\_summary\\_London\\_Dec2008\\_final.pdf](http://www.responsiblejewellery.com/files/RJC_MiningSupplement_stakeholder_mtg_summary_London_Dec2008_final.pdf); December 2008 Letter to Matt Runci and RJC members from various civil society organizations. [http://www.responsiblejewellery.com/files/CSL\\_CRJP\\_12\\_08.pdf](http://www.responsiblejewellery.com/files/CSL_CRJP_12_08.pdf); and August 2009 Letter to Michael Rae and RJC members from various civil society organizations. [http://www.responsiblejewellery.com/files/civil\\_society\\_letter\\_to\\_RJC\\_AUG2009.pdf](http://www.responsiblejewellery.com/files/civil_society_letter_to_RJC_AUG2009.pdf)
- <sup>13</sup> Lezhnev, S. and Sullivan, D. May 2011. *Certification: The Path to Conflict-Free Minerals from Congo*. Enough Project. p. 6. [http://www.enoughproject.org/files/certification\\_paper\\_0.pdf](http://www.enoughproject.org/files/certification_paper_0.pdf)
- <sup>14</sup> Conroy, Michael E., 2007, *Branded! How the Certification Revolution is Transforming Global Corporations*, New Society Publishers.
- <sup>15</sup> Roundtable on Sustainable Biofuels: RSB Chambers each elect two members to the RSB Steering Board (usually one from the global South and one from the global North), who will make all of the decisions regarding the RSB strategy, any changes to the standards, and approve the various options for certification, with decisions made via consensus. This new structure will ensure a strict balance amongst different actors affected by biofuels. (<http://rsb.epfl.ch/op/edit/page-24931.html>)
- Roundtable on Sustainable Palm Oil: RSPO members belong to one of seven sectors – Oil Palm Growers, Palm Oil Processors or Traders, Consumer Goods Manufacturers, Retailers, Banks and investors, Environmental/nature conservation NGOs and Social/developmental NGOs. Except stated otherwise in the present by-laws, the decisions are taken by a simple majority vote of the Ordinary members present or represented at General Assembly Meetings. (RSPO Bylaws. [http://www.rspo.org/file/RSPO%20By-laws\(2\).pdf](http://www.rspo.org/file/RSPO%20By-laws(2).pdf))
- <sup>16</sup> "The General Assembly will normally restrict its decisions to revising the Statutes and Principles and Criteria, admitting and destituting members, electing the Board and being the final authority in dispute resolutions." (Forest Stewardship Council (hereafter referred to as FSC). 2009. *FSC A.C. By-laws*. <http://ic.fsc.org/download.by-laws.379.pdf>)
- <sup>17</sup> FSC website: "FSC Governance." <http://ic.fsc.org/governance.14.htm>
- <sup>18</sup> FSC. 2009. *FSC A.C. By-Laws*. pp. 4, 9, 10. <http://ic.fsc.org/download.by-laws.379.pdf>
- <sup>19</sup> The current Board of Directors consists of industry representatives. (RJC website: "About Us." <http://www.responsiblejewellery.com/about-us/#management-team> Accessed Feb. 16, 2013.) The Governance

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Handbook says “Directors need not be Members of the Council,” apparently leaving the door open to non-industry directors, but given the system for selecting new Board members (Board of Directors are appointed by the Founder Members of the Council, or elected by Member Fora, or appointed by the board as additional Directors) it is doubtful the Board will be anything but industry dominated. (RJC. 2012. *RJC Governance Handbook*. p. 3)

<sup>20</sup> These groups included: CAFOD, Canadian Boreal Initiative, Center for Science in Public Participation, Earthworks, Global Witness, Great Basin Resource Watch, International Federation of Chemical, Energy, Mine and General Workers' Unions, MiningWatch Canada Oxfam America, Oxfam Australia, and Western Shoshone Defense Project.

<sup>21</sup> See footnote 8.

<sup>22</sup> RJC. 2011. *2011 Standards Committee*. <http://www.responsiblejewellery.com/files/RJC-Standards-Committee-August20111.pdf>

<sup>23</sup> Solidaridad. 2011. *Benchmark Study of Environmental and Social Standards in Industrialised Precious Metals Mining*. p. 59.  
[http://solidaridadnetwork.org/sites/solidaridadnetwork.org/files/Revised%20Solidaridad\\_Benchmark\\_Study\\_Revised\\_Final%20 Dec 2011.pdf](http://solidaridadnetwork.org/sites/solidaridadnetwork.org/files/Revised%20Solidaridad_Benchmark_Study_Revised_Final%20Dec_2011.pdf)

<sup>24</sup> August 2009 Letter to Michael Rae and RJC members from various civil society organizations including: CAFOD, Earthworks, Center for Science in Public Participation, Oxfam America, Great Basin Resource Watch, Canadian Boreal Initiative, Global Witness, and MiningWatch Canada.  
[http://www.responsiblejewellery.com/files/civil\\_society\\_letter\\_to\\_RJC\\_AUG2009.pdf](http://www.responsiblejewellery.com/files/civil_society_letter_to_RJC_AUG2009.pdf)

<sup>25</sup> “The RJC Standards Committee is comprised of 14 representatives, 2 from each stage of the diamond and gold jewelry supply chain, as well as 12 external stakeholders. External stakeholders are appointed by the RJC board from the RJC’s major stakeholder sectors, which include NGOs, standards-setting organizations, academic institutions, auditors, international institutions, national governments, technical experts, etc.” (RJC. 2009. *Governance Handbook*. p. 6.)

<sup>26</sup> RJC website: “Certification.” <http://www.responsiblejewellery.com/certification/>

<sup>27</sup> RJC website: “Join.” <http://www.responsiblejewellery.com/applications/> Accessed Dec. 27, 2012.

<sup>28</sup> RJC website: “Join.” <http://www.responsiblejewellery.com/applications/> Accessed Dec. 27, 2012.

<sup>29</sup> RJC website: “Members.” <http://www.responsiblejewellery.com/members/> Accessed Dec. 27, 2012.

<sup>30</sup> RJC website: “Certification.” <http://www.responsiblejewellery.com/certification/> Accessed Dec. 27, 2012.

<sup>31</sup> RJC website: “RJC Commercial Member.” <http://www.responsiblejewellery.com/applications/rjc-member/> Accessed Dec. 27, 2012.

<sup>32</sup> RJC website: “Blaze Metals.” <http://www.responsiblejewellery.com/member/blaze-metals/> Accessed Feb. 16, 2013.

<sup>33</sup> Ibid.

<sup>34</sup> Blaze Metals is a scrap metal recycling operation located in Canada. (<http://www.blazemetals.com/>) Blaze Metals Resources Inc. is a mining company with offices in Kumasi Ghana, Dubai, United Arab Emirates and Cyprus. (<http://www.blazemetalsresources.com/>)

<sup>35</sup> An internet search for “Blaze Metals Resources” reveals a company website, a facebook page, some references to linked-in and not much more. The company website says it explores for and develops mines in Ghana, and says “Blaze Metals has its own mine production.” It lists as projects Konongo and Wassa. The website Internet searches for Konongo and Wassa in association with Blaze Metals Resources only returns the company website. There are no company policy documents, no references to financial information or names of principals, etc.

<sup>36</sup> Blaze Metals Resources website: “Projects.” <http://www.blazemetalsresources.com/about/projects/>

<sup>37</sup> For example, Anglo Ashanti’s Brasil Corregó do Sítio Mineração S/A. (See Section 2.1)

<sup>38</sup> RJC. 2009. *RJC Certification Handbook*. p. 17.

<sup>39</sup> RJC website: “Certified Members.” <http://www.responsiblejewellery.com/members/certified-members/> Accessed Dec. 27, 2012.

<sup>40</sup> RJC website: “Members.” <http://www.responsiblejewellery.com/members/> Accessed Dec. 27, 2012.

<sup>41</sup> Solidaridad. Dec. 2011. *Benchmark Study of Environmental and Social Standards in Industrialised Precious Metals Mining*. p. 60, note 293.  
[http://solidaridadnetwork.org/sites/solidaridadnetwork.org/files/Revised%20Solidaridad\\_Benchmark\\_Study\\_Revised\\_Final%20 Dec 2011.pdf](http://solidaridadnetwork.org/sites/solidaridadnetwork.org/files/Revised%20Solidaridad_Benchmark_Study_Revised_Final%20Dec_2011.pdf)

<sup>42</sup> RJC. 2009. CoP. p. 19.

<sup>43</sup> RJC. July 10, 2012. *Rio Tinto – RJC Certification*.  
[http://www.responsiblejewellery.com/files/RJC\\_Certification\\_Information\\_-\\_Rio\\_Tinto3.pdf](http://www.responsiblejewellery.com/files/RJC_Certification_Information_-_Rio_Tinto3.pdf)

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<sup>44</sup> Letter from Robert Court, Rio Tinto, to Michael Rae, RJC. July 12, 2012. Attached to *RJC Certification Information – Rio Tinto*. [http://www.responsiblejewellery.com/files/RJC\\_Certification\\_Information\\_-\\_Rio\\_Tinto2.pdf](http://www.responsiblejewellery.com/files/RJC_Certification_Information_-_Rio_Tinto2.pdf). Accessed Feb. 28, 2013. **Note:** an updated version of Rio Tinto’s certification information on the RJC Member page does not have the letter from Rio Tinto attached. See: [http://www.responsiblejewellery.com/files/RJC\\_Certification\\_Information\\_-\\_Rio\\_Tinto3.pdf](http://www.responsiblejewellery.com/files/RJC_Certification_Information_-_Rio_Tinto3.pdf)

<sup>45</sup> Rio Tinto Palabora website. “Major Shareholders”. [http://www.Palabora.com/whatweproduce/anode\\_slimes.php](http://www.Palabora.com/whatweproduce/anode_slimes.php) Accessed Dec. 10, 2012. **Note:** On Dec. 12, 2012 Rio Tinto sold its stake in the mine.

<sup>46</sup> Ibid. “Anode Slimes”. [http://www.Palabora.com/whatweproduce/anode\\_slimes.php](http://www.Palabora.com/whatweproduce/anode_slimes.php) Accessed Dec. 10, 2012.

<sup>47</sup> See Rio Tinto. October 2012. “Third quarter 2012 operations review.” [http://www.riotinto.com/documents/Third\\_quarter\\_2012\\_operations\\_review\\_tables.xls](http://www.riotinto.com/documents/Third_quarter_2012_operations_review_tables.xls)

<sup>48</sup> For example, Rio Tinto reported that its share of gold production from Northparkes mine was 12,600 ounces in the First Quarter of 2012. (Rio Tinto. April 17, 2012. “First quarter 2012 operations review.” [http://www.riotinto.com/documents/1QOR\\_2012\\_Excel\\_Tables\\_-\\_17\\_April\\_2012.xls](http://www.riotinto.com/documents/1QOR_2012_Excel_Tables_-_17_April_2012.xls))

<sup>49</sup> Letter from Robert Court, Rio Tinto, to Michael Rae, RJC. July 12, 2012. Attached to *RJC Certification Information – Rio Tinto*. [http://www.responsiblejewellery.com/files/RJC\\_Certification\\_Information\\_-\\_Rio\\_Tinto2.pdf](http://www.responsiblejewellery.com/files/RJC_Certification_Information_-_Rio_Tinto2.pdf). Accessed Feb. 28, 2013.

The verification assessment for Northparkes was completed in Dec. 2012. (*RJC Certification Information – Rio Tinto*. [http://www.responsiblejewellery.com/files/RJC\\_Certification\\_Information\\_-\\_Rio\\_Tinto\\_b.pdf](http://www.responsiblejewellery.com/files/RJC_Certification_Information_-_Rio_Tinto_b.pdf) Accessed Feb. 23, 2013.)

<sup>50</sup> “AngloGold Ashanti is engaged in a number of initiatives that promote product responsibility in gold. The company is a member of both the International Council on Mining and Metals (ICMM) the Responsible Jewellery Council (RJC) and the World Gold Council (WGC).” (AngloGold Ashanti web site: “Responsible Gold.” Supplementary information in AngloGold Ashanti’s 2011 Annual Report – Sustainability Report. <http://www.aga-reports.com/11/sustainability-report/supplementary-information/responsible-gold> Accessed March 7, 2013. See also:

<http://www.aga-reports.com/11/download/AGA-S11-20-responsible-gold.pdf>)

<sup>51</sup> Cripple Creek and Victor, U.S. produced 6.2%, AGA Mineracao produced 8.3% and Sunrise Dam, Australia produced 5.7% of the 4,331 ounces of gold produced by the company in 2011. (Anglogold Ashanti. *Annual Integrated Report*. p. 36. <http://www.aga-reports.com/11/download/AGA-annual-integrated-report-2011.pdf>)

<sup>52</sup> AngloGold Ashanti website: “Global Initiatives.” <http://www.anglogold.com/Sustainability/Global+initiatives/> Accessed Dec. 10, 2012.

<sup>53</sup> RJC website: “All Diamond, gold and/or platinum group metals producer members.” <http://www.responsiblejewellery.com/members/?cat=diamond-gold-and-or-platinum-group-metals-producer-2> Accessed March 7, 2013.

<sup>54</sup> The overwhelming task of verifying multiple operations for a single certification is the most likely reason why auditors are not required to visit all facilities within a member’s certification scope. For more details see Section 5 on auditing deficiencies.

<sup>55</sup> There are other factors that may indicate control, such as “2. Direct or indirect (including pursuant to an agreement with other Members) power to remove, nominate or appoint at least half of the members of the Board of the directors or management (or equivalent of the controlled business or Facility; and/or 3. Day-to-day or executive management of the controlled business or Facility; or 4. Any legally recognised concept of ‘Control’ analogous to those described in (1) to (2) above in a relevant jurisdiction.” (RJC. 2009. CoP. p. 21)

<sup>56</sup> RJC website: “Members.” <http://www.responsiblejewellery.com/members/> Accessed Dec. 27, 2012.

<sup>57</sup> The Grasberg mine is a joint venture that gives Rio Tinto a 40% share of production above specified levels until 2021, and 40% of all production after 2021. (Rio Tinto website: “Non-managed operations and joint ventures.” [http://www.riotinto.com/annualreport2011/performance/sustainable\\_development/non\\_managed\\_operations\\_and\\_joint\\_ventures.html](http://www.riotinto.com/annualreport2011/performance/sustainable_development/non_managed_operations_and_joint_ventures.html) Accessed Dec. 15, 2012.)

<sup>58</sup> Rio Tinto’s share of gold from Grasberg was 178,000 ounces, while its total gold production from all its mining operations was 669,000 ounces. (Rio Tinto website: “Metals and mineral production” from *Annual Report 2011*. [http://www.riotinto.com/annualreport2011/production\\_reserves\\_and\\_operations/index.html](http://www.riotinto.com/annualreport2011/production_reserves_and_operations/index.html) Accessed Dec. 15, 2012.)

<sup>59</sup> Ibid. Rio Tinto has a 30% interest in this operation. See “Principal jointly controlled entities.” *Rio Tinto 2011 Annual Report*. p. 187. [http://www.riotinto.com/annualreport2011/pdf/notes/notes\\_35\\_38.pdf](http://www.riotinto.com/annualreport2011/pdf/notes/notes_35_38.pdf)

<sup>60</sup> See World Gold Council. Conflict-Free Gold Standard. p. 3. [http://www.gold.org/download/cfgs/Conflict\\_Free\\_Gold\\_Standard\\_English.pdf](http://www.gold.org/download/cfgs/Conflict_Free_Gold_Standard_English.pdf)

<sup>61</sup> RJC definition of Certification Scope: The Certification Scope is defined by the Member and covers those parts of the Member’s business (i.e. Facilities and activities) that actively contribute to the Diamond and/or Gold Jewellery supply chain.” (RJC. 2009. CoP. p. 19.)

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<sup>62</sup> In a letter to RJC CEO Michael Rae, Rio Tinto stated that: “Rio Tinto will review the inclusion of these projects within the certification scope to the extent that in due course they enter commercial production for the purposes of the certification.” (Letter from Robert Court, Rio Tinto, to Michael Rae, RJC. July 12, 2012. Attached to RJC Certification Information – Rio Tinto. [http://www.responsiblejewellery.com/files/RJC\\_Certification\\_Information\\_-\\_Rio\\_Tinto2.pdf](http://www.responsiblejewellery.com/files/RJC_Certification_Information_-_Rio_Tinto2.pdf) Accessed Feb. 28, 2013)

<sup>63</sup> DeMarco, A. August 26, 2012. “Rio Tinto unveils inaugural diamond jewelr from Indian mine,” *Forbes*. <http://www.forbes.com/sites/anthonydemarco/2012/08/26/rio-tinto-unveils-inaugural-diamond-jewelry-from-indian-mine/>

<sup>64</sup> As advertised on the London Olympic Games website: “The precious ore for the medals has been supplied by London 2012 sponsor Rio Tinto and was mined at Kennecott Utah Copper Mine near Salt Lake City in America, as well as from the Oyu Tolgoi project in Mongolia.” <http://www.london2012.com/medals/about/>

<sup>65</sup> RJC definition of Mining Facility: “Facilities in the exploration to pre-commissioned stages of the mine lifecycle are not visited as part of the Verification Assessment. Business practices in these stages of the mine lifecycle can be evidenced, where necessary and appropriate, by desktop review of policies, systems, procedures and processes.” (RJC. 2009. CoP. p. 24)

<sup>66</sup> The RJC CoP Provision 2.1.1 states that, “Members with Mining Facilities will have appropriate skills, resources and systems in place for early and ongoing engagement with affected communities and stakeholders throughout the project’s lifecycle, from earliest exploration activities, construction prior to commencement of mining, during mine operations, through to closure and post-closure monitoring.”

<sup>67</sup> Rio Tinto. “Closure at Kelian Equatorial Mining.” <http://www.riotinto.com/ourapproach/6804.asp> and Rio Tinto . 2007. Annual Report. “Operations and Financial Report.” [http://www.riotinto.com/annualreport2007/operationsfinancialreview/metals\\_minerals\\_production/index.html](http://www.riotinto.com/annualreport2007/operationsfinancialreview/metals_minerals_production/index.html)

<sup>68</sup> Rio Tinto has acknowledged that human rights violations occurred during the early development of the mine and expressed regret for abuses, and in 2002, a settlement was reached with various affected persons (Rio Tinto. Dec. 2004. “Kelian Mine Closure.” [http://www.riotinto.com/media/news\\_4414.asp](http://www.riotinto.com/media/news_4414.asp)). Also, it has been alleged that human rights violations continued to occur even after mine closure. In 2008, a letter from 43-year-old resident M. Sofyan to JATAM, Indonesia’s mining advocacy network, stated that he had been shot by the Police Mobile Brigade, who helped company security, when he was found carrying a small sack of rocks that potentially contained gold. (London Mining Network. 2011. Rio Tinto Background Information. <http://londonminingnetwork.org/docs/Rio-Tinto-background-information-2011.doc>)

<sup>69</sup> In KEM’s 2002 report they stated that, “Management of [ARD] and sediment continue to be challenges at KEM due to the high rainfall and acid-producing ore body (KEM Social and Environmental Report. p. 116. [http://www.riotinto.com/documents/ReportsPublications/2002\\_socEnv\\_KelianEnglish.pdf](http://www.riotinto.com/documents/ReportsPublications/2002_socEnv_KelianEnglish.pdf))

<sup>70</sup> In 2009 when high rainfall occurred at Kelian, the Nakan waste dump dam overflowed into the Lakan River. In 2010 a landslide occurred on Mt Sopan, allegedly as a result of water spilling over the dam to the mountain. (London Mining Network. 2011. Rio Tinto Background Information. <http://londonminingnetwork.org/docs/Rio-Tinto-background-information-2011.doc>)

<sup>71</sup> Lenegran, C. Rio Tinto. “Environmental Stewardship.” Address to the Mineral Council of Australia, Canberra May – 4 June 2004. p. 8. [http://www.riotinto.com/documents/Media-Speeches/Lenegran-Minerals\\_Ind\\_Seminar.pdf](http://www.riotinto.com/documents/Media-Speeches/Lenegran-Minerals_Ind_Seminar.pdf)

<sup>72</sup> PT. Kelian Equatorial Mining. 2010. “Mine Closure.” Presentation at the 3<sup>rd</sup> Governor’s Climate and Forests Taskforce meeting. pp. 4, 11. [http://www.gcftaskforce.org/documents/May\\_Aceh/Day\\_3/East%20Kalimantan%20Presentation%20\(May%2020%202010\).pdf](http://www.gcftaskforce.org/documents/May_Aceh/Day_3/East%20Kalimantan%20Presentation%20(May%2020%202010).pdf)

<sup>73</sup> Rio Tinto. 2009. Annual Report. “Notes to the 2009 financial Statements.” [http://www.riotinto.com/annualreport2009/financial\\_statements/notes\\_to\\_the\\_2009\\_financial\\_statements/37\\_principal\\_subsidaries.html](http://www.riotinto.com/annualreport2009/financial_statements/notes_to_the_2009_financial_statements/37_principal_subsidaries.html) Reviews of 2010 and 2011 note to financial statements did not list Kelian.

<sup>74</sup> London Mining Network. April 15, 2011. “Activists from around the world attack British mining giant.” <http://londonminingnetwork.org/2011/04/activists-from-around-the-world-attack-british-mining-giant/>

<sup>75</sup> Ibid. See also: Nostromo Research. April 14, 2011. “Indonesian Green Activist addresses Rio Tinto Shareholders in London.” <http://londonminingnetwork.org/2011/04/indonesian-green-activist-addresses-rio-tinto-shareholders-in-london/>

<sup>76</sup> In 2011, at the Rio Tinto annual meeting, a British shareholder said that he had inspected the Kelian site in 2010, and asked whether the company would guarantee to maintain the Namuq tailings dam “in perpetuity,” considering the long term danger of a collapse. Tom Albanese, Rio Tinto’s CEO at the time, did not make any commitment, but instead responded that this would be a concern of the Indonesian authorities, with whom Rio Tinto continued to be in discussions. (Nostromo Research. April 14, 2011. “Indonesian Green Activist addresses Rio Tinto Shareholders in London.” <http://londonminingnetwork.org/2011/04/indonesian-green-activist-addresses-rio-tinto-shareholders-in-london/>)

<sup>77</sup> An RJC discussion paper says that: “A consumer-facing product label supported by RJC would strongly imply that not only is the material provenance known, but also that it has been responsibl[y] produced.” Similarly, seeing the

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name of a company prominently displayed as a member of RJC would suggest that materials have been responsibly produced. (Quote from: RJC Chain-of-Custody certification for the diamond, gold and platinum jewellery supply chain – Discussion Paper 2. Sept. 2010. Response to question: Why require RJC Membership or equivalent? p. 5. [http://www.responsiblejewellery.com/files/RJC\\_Chain\\_of\\_Custody\\_discn\\_paper2\\_230910.pdf](http://www.responsiblejewellery.com/files/RJC_Chain_of_Custody_discn_paper2_230910.pdf))

<sup>78</sup> RJC. Nov. 2012. *Code of Practices Review – Draft Revision 1*. [http://www.responsiblejewellery.com/files/RJC\\_COP\\_Revisions\\_for\\_comment131212.pdf](http://www.responsiblejewellery.com/files/RJC_COP_Revisions_for_comment131212.pdf)

<sup>79</sup> ISEAL website, <http://www.isealalliance.org/>

<sup>80</sup> Michael E. Conroy, Colibri Consulting, personal communication, July 2012.

<sup>81</sup> This expectation of corporations exists among various sectors. For example, IFC Guidance Note 7, GN1 states that, “Private sector projects are increasingly expected to foster full respect for the human rights, dignity, aspirations, cultures, and customary livelihoods of Indigenous Peoples.” (International Finance Corporation (IFC). 2012. *IFC’s Guidance Notes: Performance Standards on Environmental and Social Sustainability*. [http://www1.ifc.org/wps/wcm/connect/e280ef804a0256609709ffd1a5d13d27/GN\\_English\\_2012\\_Full-Documents.pdf?MOD=AJPERES](http://www1.ifc.org/wps/wcm/connect/e280ef804a0256609709ffd1a5d13d27/GN_English_2012_Full-Documents.pdf?MOD=AJPERES))

<sup>82</sup> Voss, M. and Greenspan, E. (Oxfam America). 2012. *Community Consent Index: Company Public Positions on Free, Prior and Informed Consent for Oil, Gas and Mining Projects*. p. 21. [http://www.oxfamamerica.org/files/community-consent-index\\_final-1.pdf](http://www.oxfamamerica.org/files/community-consent-index_final-1.pdf)

<sup>83</sup> Rio Tinto. 2011. *Community consultation and engagement guidance*. p. 7. [http://www.riotinto.com/documents/Community\\_consultation\\_and\\_engagement\\_guidance\\_2011\\_2014.pdf](http://www.riotinto.com/documents/Community_consultation_and_engagement_guidance_2011_2014.pdf) Accessed 11/16, 2012.

<sup>84</sup> E.g., Forest Stewardship Council, Roundtable on Sustainable Palm Oil, Rou Forest Stewardship Council, Roundtable for Sustainable Biofuels, the Climate, Community and Biodiversity Alliance and the United Nations’ Reducing Emissions from Deforestation and forest Degradation Programme.

<sup>85</sup> This is mentioned in various RJC documents and web materials. For example, see: “RJC Member Commitments.” <http://www.responsiblejewellery.com/applications/rjc-member/> Accessed Dec. 27, 2012.

<sup>86</sup> RJC. 2009. CoP. Provision 2.11.

<sup>87</sup> RJC. November 2012. *Code of Practices Review – Draft Revision 1*. p. 37.

<sup>88</sup> Ibid.

<sup>89</sup> Mackay, F. 2010. “Indigenous Peoples and International Financial Institutions.” In *International Financial Institutions and International Law*. D. Bradlow and D. Hunter, eds. Kluwer Press. p. 317. <http://ssrn.com/abstract=1853607>

<sup>90</sup> International Finance Corporation (IFC). 2012. *IFC Performance Standards on Environmental and Social Sustainability. Guidance Note 7: Indigenous Peoples*. GN40. p. 13. [http://www1.ifc.org/wps/wcm/connect/50eed180498009f9a89bfa336b93d75f/Updated\\_GN7-2012.pdf?MOD=AJPERES](http://www1.ifc.org/wps/wcm/connect/50eed180498009f9a89bfa336b93d75f/Updated_GN7-2012.pdf?MOD=AJPERES)

<sup>91</sup> Greenspan, E. Jan. 23, 2012. “New Year, New IFC?” Oxfam. <http://politicsofpoverty.oxfamamerica.org/2012/01/23/new-year-new-ifc/>

<sup>92</sup> World Commission on Dams (WCD), in their guidelines for good practice, expressed that: “Free, prior and informed consent (PIC) of indigenous and tribal peoples is conceived as more than a one-time contractual event – it involves a continuous, iterative process of communication and negotiation spanning the entire planning and project cycles.” (WCD. 2000. *Dams and Development: A new framework for decision-making*. p. 281. [http://www.unep.org/dams/WCD/report/WCD\\_DAMS%20report.pdf](http://www.unep.org/dams/WCD/report/WCD_DAMS%20report.pdf))

The Indian Law Resource Center (ILRC) says that, “For consent to be “prior,” it must be given . . . before each decision-making stage in the proposed activity’s planning and implementation at which additional relevant information is available or revised plans are proposed.” (ILRC. 2005. *Contribution of the Indian Law Resource Center: Indigenous Peoples’ Right Of Free Prior Informed Consent With Respect To Indigenous Lands, Territories and Resources*. p. 2. [http://www.un.org/esa/socdev/unpfii/documents/workshop\\_FPIC\\_ILRC.doc](http://www.un.org/esa/socdev/unpfii/documents/workshop_FPIC_ILRC.doc))

The U.N. Expert Mechanism on the Rights of Indigenous Peoples (Expert Mechanism) has stated that: “As an example, for oil and gas, the key areas for examination include indigenous peoples’ involvement in legislation; seismic studies and surveys, from the initial stages to the results; and adequate compensation for access permits, leases, exploration, development and reclamation, which may sometimes best be outlined in impact benefit agreements . . . Throughout all stages, obligations relating to sustainable development, environmental protection and the free, prior and informed consent of indigenous peoples must be respected.” (U.N. Expert Mechanism. 2010. *Progress report of the study on indigenous peoples and the right to participate in decision-making*. Report to the Human Rights Council, July, 2010. [http://www.galdu.org/govat/doc/decision\\_making\\_study.pdf](http://www.galdu.org/govat/doc/decision_making_study.pdf))

The Framework for Responsible Mining says that, “Companies should obtain the free, prior, and informed consent of indigenous peoples before exploration begins and prior to each subsequent phase of mining and post-mining

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operations.” (Miranda, M., Chambers, D. and Coumans, C. 2005. *Framework for Responsible Mining: a guide to evolving standards*. p. 60. <http://www.frameworkforresponsiblemining.org/docs.html>)

The Economic Community of West African States (ECOWAS) has clearly articulated that, “Companies shall obtain free, prior and informed consent of local communities before exploration begins and prior to each subsequent phase of mining and post-mining operations.” (ECOWAS. 2009. *Directive CIDIR.3/05/09 on the Harmonisation of Guiding Principles and Policies in the Mining Sector*. <http://www.comm.ecowas.int/sec/en/directives/ECOWASMiningDirectives.pdf>)

<sup>93</sup> De Beers Canada. 2008. *Community Policy*. No. AA.AD.01.01. Received from De Beers August 2, 2012

<sup>94</sup> E.g., IFC: Informed participation entails organized and iterative consultation on issues concerning potential impacts to the Affected Communities, so that the client can incorporate into its decision-making process their views on these issues. Consultation with Affected Communities should begin in the early scoping process that establishes the terms of reference for the assessment process, which includes an inventory of risks and impacts to be assessed, and should continue through the entire project life-cycle. (IFC. 2012. *IFC's Guidance Notes: Performance Standards on Environmental and Social Sustainability*. *Guidance Note 1*. GN 105. p. 35. [http://www1.ifc.org/wps/wcm/connect/b29a4600498009cfa7fcf7336b93d75f/Updated\\_GN1-2012.pdf?MOD=AJPERES](http://www1.ifc.org/wps/wcm/connect/b29a4600498009cfa7fcf7336b93d75f/Updated_GN1-2012.pdf?MOD=AJPERES))

<sup>95</sup> E.g., IFC: Informed participation entails organized and iterative consultation on issues concerning potential impacts to the Affected Communities, so that the client can incorporate into its decision-making process their views on these issues. Consultation with Affected Communities should begin in the early scoping process that establishes the terms of reference for the assessment process, which includes an inventory of risks and impacts to be assessed, and should continue through the entire project life-cycle. (IFC. 2012. *IFC's Guidance Notes: Performance Standards on Environmental and Social Sustainability*. *Guidance Note 1*. GN 105. p. 35. [http://www1.ifc.org/wps/wcm/connect/b29a4600498009cfa7fcf7336b93d75f/Updated\\_GN1-2012.pdf?MOD=AJPERES](http://www1.ifc.org/wps/wcm/connect/b29a4600498009cfa7fcf7336b93d75f/Updated_GN1-2012.pdf?MOD=AJPERES))

<sup>96</sup> For example, see: New South Wales Minerals Council. “Consulting with Communities.” <http://www.nswmin.com.au/Mining-in-NSW/Community-Partnerships/Consulting-with-Communities/Consulting-with-Communities/default.aspx> Accessed Dec. 27, 2012.

<sup>97</sup> Herbertson, K., Ballesteros, A., Goodland, R. and Munilla, I. 2009. *Breaking Ground: Engaging Communities in Extractive and Infrastructure Projects*. *World Resources Institute*. p. 3. [http://pdf.wri.org/breaking\\_ground\\_engaging\\_communities.pdf](http://pdf.wri.org/breaking_ground_engaging_communities.pdf).

<sup>98</sup> The revised RJC CoP 2.11.2 says that: “Members with Mining Facilities shall have appropriate skills, resources and systems in place for early and ongoing stakeholder engagement that: c. Establishes effective communication measures to disseminate relevant project information and receive feedback in an inclusive, equitable, culturally appropriate and rights-compatible manner.” (RJC. Nov. 2012. *Code of Practices Review – Draft Revision 1*. p. 35.)

<sup>99</sup> As mentioned in Section 2.1 of this report, only those operations “actively contributing” are audited. Mines that have closed, but are still being monitored, and projects that are in the exploration or construction phases do not yet produce gold, so are not “actively” contributing to the gold supply chain.

<sup>100</sup> Definition of a Mining Facility. RJC. 2009. CoP. p. 24.

<sup>101</sup> Wording is similar in the proposed revision to CoP 2.11.2 d, but the revision proposes to add that consideration of interests and development aspirations be achieved “through informed consultation.” (RJC. Nov. 2012. *Code of Practices Review – Draft Revision 1*. p. 36.)

<sup>102</sup> “Responsible mining corporations don’t force mines on people and communities who don’t want them.” Goodland, R. 2012. “Responsible Mining: The Key to Profitable Resource Development.” *Sustainability*. 4:9:2099-2126. p. 2104. <http://www.mdpi.com/2071-1050/4/9/2099>

<sup>103</sup> Herz, S., Sohn, J. and La Vina, A. 2007. *Development Without Consent: The Business Case for Community Consent*. *World Resources Institute*. [http://pdf.wri.org/development\\_without\\_conflict\\_fpvc.pdf](http://pdf.wri.org/development_without_conflict_fpvc.pdf)

<sup>104</sup> Sosa, I. 2011. *License to Operate*. *Sustainalytics*. p. 4. [http://www.sustainalytics.com/sites/default/files/indigenouspeople\\_fpvc\\_final.pdf](http://www.sustainalytics.com/sites/default/files/indigenouspeople_fpvc_final.pdf)

<sup>105</sup> Kim, R. Nov. 25, 2011. “Peruvians in Cajamarca stop the building of giant gold mine, 2011-2012.” *Swarthmore College Global Nonviolent Action Database*. <http://nvdatabase.swarthmore.edu/content/peruvians-cajamarca-stop-building-giant-gold-mine-2011-2012>

<sup>106</sup> Reuters, March 2012, “Newmont reconsiders cost of delayed Peru mine,” <http://www.reuters.com/article/2012/03/14/peru-newmont-conga-idUSL2E8EE6CW20120314>

<sup>107</sup> Brown, J. Aug. 15, 2011. “Firm hopes to keep HudBay lawsuits alive despite sale.” *Canadian Lawyer*. <http://www.canadianlawyermag.com/3823/firm-hopes-to-keep-hudbay-lawsuits-alive-despite-sale.html> and Sosa, I. 2011. *License to Operate*. *Sustainalytics*. p. 4. [http://www.sustainalytics.com/sites/default/files/indigenouspeople\\_fpvc\\_final.pdf](http://www.sustainalytics.com/sites/default/files/indigenouspeople_fpvc_final.pdf)

<sup>108</sup> RJC. 2009. *Standards Guidance*. p. 52.

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<sup>109</sup> In cases where the business activity to be financed is likely to generate potential significant adverse impacts on communities (i.e., Affected Communities) or is likely to generate potential adverse impacts on Indigenous Peoples, IFC expects clients to engage in a process of Informed Consultation and Participation (ICP). In such cases, through its own investigation, IFC will determine whether the client's community engagement is one that involves ICP and enables the participation of the Affected Communities, leading to Broad Community Support for the business activity by Affected Communities. Broad Community Support is a collection of expressions by Affected Communities, through individuals or their recognized representatives, in support of the proposed business activity. There may be BCS even if some individuals or groups object to the business activity. (IFC. 2012. *IFC Performance Standards on Environmental and Social Sustainability*. p. 6. [http://www1.ifc.org/wps/wcm/connect/c8f524004a73daeca09afd998895a12/IFC\\_Performance\\_Standards.pdf?MOD=AJPERES](http://www1.ifc.org/wps/wcm/connect/c8f524004a73daeca09afd998895a12/IFC_Performance_Standards.pdf?MOD=AJPERES))

<sup>110</sup> World Resources Institute. 2009. *Review of IFC Performance Standards and Sustainability Policy – Overview of Key Issues*. <http://www.wri.org/stories/2009/11/review-ifc-performance-standards-and-sustainability-policy-overview-key-issues>

<sup>111</sup> It's unclear how auditors gauge whether or not community support has been sought. There are no objective measures for the auditors to use to verify that community support has, indeed, been sought. Presumably, a company could argue that it held community meetings to discuss the project and hear community concerns, and that may be enough to show that a company made an effort to seek broad community support.

Due diligence by auditors should entail communication with a broad cross-section of the community to ensure that a company has made the effort to obtain their support for the project. There is nothing in the standard or guidance that requires this level of outreach to communities by the auditors. The RJC Assessment Manual provides examples of types of documents and records that may be reviewed during the third-party audit. The only community-related materials that RJC includes are: "Community related initiatives such as regular meetings and stakeholder participation programs." (RJC. 2009. *Assessment Manual*. Appendix 7: Examples of Documents and Records Reviewed During the Verification Assessment. p. 47)

<sup>112</sup> RJC. 2009. *Standards Guidance*. p. 54.

<sup>113</sup> IFC. July 31, 2007. *IFC Performance Standards on Social and Environmental Sustainability*. Guidance Notes. pp. 112 and 152. [http://www1.ifc.org/wps/wcm/connect/9fb7150048855c138af4da6a6515bb18/2007%2BUpdated%2BGuidance%2BNotes\\_full.pdf?MOD=AJPERES&attachment=true&id=1322804281925](http://www1.ifc.org/wps/wcm/connect/9fb7150048855c138af4da6a6515bb18/2007%2BUpdated%2BGuidance%2BNotes_full.pdf?MOD=AJPERES&attachment=true&id=1322804281925)

<sup>114</sup> IFC. 2012. *IFC's Guidance Notes: Performance Standards on Environmental and Social Sustainability*. Guidance Note 5, GN 67 and Guidance Note 7, GN 27. [http://www1.ifc.org/wps/wcm/connect/e280ef804a0256609709ffd1a5d13d27/GN\\_English\\_2012\\_Full-Documents.pdf?MOD=AJPERES](http://www1.ifc.org/wps/wcm/connect/e280ef804a0256609709ffd1a5d13d27/GN_English_2012_Full-Documents.pdf?MOD=AJPERES)

<sup>115</sup> For example, the International Labour Organisation's (ILO) Convention No. 169, which is legally binding for states that ratify it, includes the provision that resettlement of indigenous peoples should only occur after obtaining their free and informed consent. The Convention was developed in 1989 (ILO. *C169 – Indigenous and Tribal Peoples Convention*, 1989. Article 16. [http://www.ilo.org/dyn/normlex/en/f?p=1000:12100:0:NO::P12100\\_INSTRUMENT\\_ID:312314](http://www.ilo.org/dyn/normlex/en/f?p=1000:12100:0:NO::P12100_INSTRUMENT_ID:312314))

<sup>116</sup> Kothari, M. 2007. *Report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living*. Annex 1. "Basic principles and guidelines on development-based evictions and displacement." A/HRC/4/18. p. 12. [http://www2.ohchr.org/english/issues/housing/docs/guidelines\\_en.pdf](http://www2.ohchr.org/english/issues/housing/docs/guidelines_en.pdf)

<sup>117</sup> The IFC and IDB require that companies obtain the free, prior and informed consent prior to resettlement of indigenous peoples, and the IADB extends this right to indigenous peoples and low income ethnic minorities. <http://www.iadb.org/en/about-us/involuntary-resettlement,6660.html>

<sup>118</sup> For example, Roundtable on Sustainable Biofuels (RSB) Criterion 12.b does not allow involuntary resettlement, and says that, "Free, Prior, and Informed Consent shall form the basis for all negotiated agreements for any compensation, acquisition, or voluntary relinquishment of rights by land users or owners for biofuel operations." According to the guidance, this applies to all stakeholders; (RSB. 2010. *RSB Principles & Criteria*. V. 2.0. p. 29. <http://rsb.epfl.ch/files/content/sites/rsb2/files/Biofuels/Version%202/PCs%20V2/11-03-08%20RSB%20PCs%20Version%202.pdf>); The Climate, Community & Biodiversity (CCBA) Project Design Standards require that companies, "Demonstrate that the project does not require the involuntary relocation of people or of the activities important for the livelihoods and culture of the communities. If any relocation of habitation or activities is undertaken within the terms of an agreement, the project proponents must demonstrate that the agreement was made with the free, prior, and informed consent of those concerned and includes provisions for just and fair compensation." (CCBA. December, 2008. *Project Design Standards*. 2nd Ed. p. 20. <http://www.climate-standards.org>)

<sup>119</sup> Roundtable on Sustainable Palm Oil (RSPO). 2007. *RSPO Principles and Criteria for Sustainable Palm Oil Production*. Criterion 7.6. p. 43. [http://www.rspo.org/files/resource\\_centre/RSPO%20Principles%20&%20Criteria%20Document.pdf](http://www.rspo.org/files/resource_centre/RSPO%20Principles%20&%20Criteria%20Document.pdf)

<sup>120</sup> United Nations Reducing Emissions from Deforestation and forest Degradation Programme (UN REDD). 2012. *REDD+ Social and Environmental Standards (SES)*. Draft REDD+ SES Version 2 (June 22, 2012). p. 6. <http://www.redd-standards.org/files/pdf/redd-docs/Guidelines/REDDSES%20draft%20Version%202%20revised%2006-22-12.pdf>

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- <sup>121</sup> RJC Standards Guidance states that “Resettlement should ensure that re-settlers have improved livelihoods and economic well being and not undermine local food security,” and “Resettlement negotiations should take place with the participation of all affected persons and communities, including women, and be based on full impact assessments. . . All resettlement decisions and plans should be informed by the views and needs of the affected communities.” But consent is not required. (RJC. 2009. *Standards Guidance*. p. 53).
- <sup>122</sup> Extractive Industries Transparency Initiative (EITI) website: “EITI Countries.” <http://eiti.org/countries>
- <sup>123</sup> RJC. 2009. *Standards Guidance*. p. 21.
- <sup>124</sup> For example, AngloGold Ashanti has established a practice of disclosing all payments made to governments, regardless of whether the country is a formal supporter of EITI. <http://eiti.org/supporters/companies/rio-tinto> and Rio Tinto reports on tax payments for each of the main countries where Rio Tinto operates. <http://www.riotinto.com/ourapproach/taxespaidin2011.asp>
- <sup>125</sup> Extractive Industries Review. 2003. “Vol. I World Bank Group and Extractive Industries,” In: *Striking a Better Balance*. Final Report of the Extractive Industries Review. pp. viii, 45, 46. Available at: <http://go.worldbank.org/T1VB5JCV61>
- <sup>126</sup> Olden, P. 2010. *OECD’s Due Diligence for Responsible Supply Chain Management of Minerals from Conflict-Affected and High Risk Areas*. p. 33. <http://www.oecd.org/daf/internationalinvestment/guidelinesformultinationalenterprises/46080654.pdf>
- <sup>127</sup> For example: “Government forces in Zimbabwe’s diamond fields and across Angola have exacerbated rather than diminished the problem of human rights abuse. As of mid-2009, 12 of 13 major tin, tungsten and tantalite mines (the ‘3Ts’29) in the eastern DRC were controlled by military forces – either the Democratic Forces for the Liberation of Rwanda (FDLR), or the Congolese army, the latter mainly for purposes of personal enrichment.” (Ian Smillie and Shawn Blore. 2011. *Taming the Resource Curse: Implementing the ICGLR Certification Mechanism for Conflict-prone Minerals*. Partnership Africa Canada. [http://www.pacweb.org/Documents/icglr/PAC\\_Report\\_on\\_ICGLR\\_RCM-03-2011-eng.pdf](http://www.pacweb.org/Documents/icglr/PAC_Report_on_ICGLR_RCM-03-2011-eng.pdf))
- <sup>128</sup> Goodland, R. 2012. “Responsible Mining: The Key to Profitable Resource Development.” *Sustainability* 4:9: 2099-2126. p. 2113. <http://www.mdpi.com/2071-1050/4/9/2099>
- <sup>129</sup> Human Rights Watch. 2005. *The Curse of Gold*. p. 76. [http://www.hrw.org/sites/default/files/reports/drc0505\\_0.pdf](http://www.hrw.org/sites/default/files/reports/drc0505_0.pdf)
- <sup>130</sup> Prosansky, B. 2007. “Mining Gold in a Conflict Zone: The context, ramifications, and lessons of AngloGold Ashanti’s activities in the Democratic Republic of the Congo,” *Northwestern Journal of International Human Rights*. 5:2 (Spring 2007). p. 246. <http://www.law.northwestern.edu/journals/ijhr/v5/n2/4/Prosansky.pdf>
- <sup>131</sup> Extractive Industries Review. 2003. “Vol. I World Bank Group and Extractive Industries,” In: *Striking a Better Balance*. Final Report of the Extractive Industries Review. p. 39. Available at: <http://go.worldbank.org/T1VB5JCV61>
- <sup>132</sup> Sarei v. Rio Tinto PLC. December 16, 2008. United States Court of Appeals, Ninth Circuit. Nos. 02-56256, 02-56390. Argued and Submitted Oct. 11, 2007. <http://caselaw.findlaw.com/us-9th-circuit/1200985.html> and Oct. 25, 2011. “U.S. court revives human rights case vs Rio Tinto,” *Reuters*. <http://www.reuters.com/article/2011/10/25/riotinto-humanrights-lawsuit-idAFN1E79O15M20111025?sp=true>
- <sup>133</sup> FAFO website: “Business and International Crimes – Category III: War Crimes I.” [http://www.fafo.no/liabilities/part\\_II-3war-crim.htm](http://www.fafo.no/liabilities/part_II-3war-crim.htm)
- <sup>134</sup> Gullo, K. Oct. 25, 2011. “Rio Tinto Genocide Claims Reinstated by U.S. Appeals Court,” *Bloomberg*. <http://www.businessweek.com/news/2011-10-25/rio-tinto-genocide-claims-reinstated-by-u-s-appeals-court.html>
- <sup>135</sup> The current RJC CoP only mentions conflict in the following provisions: “Members must not knowingly buy or sell Conflict Diamonds or assist others to do so.” (CoP 1.3); “Members with Mining Facilities will commit to and support implementation of the Extractive Industries Transparency Initiative (EITI).” (CoP 1.6); and “Members with Mining Facilities will ensure that security risk assessments are conducted and that security personnel receive training and operate in accordance with the Voluntary Principles on Security and Human Rights (2000).” (CoP 2.12)
- <sup>136</sup> RJC. Nov. 2012. *Code of Practices Review – Draft Revision 1*. Provision 2.1.2. p. 18.
- <sup>137</sup> Global Witness. August 12, 2012. “Global Witness comment on SEC conflict minerals rule.” <http://www.globalwitness.org/sites/default/files/Global%20Witness%20Comment%20on%20Section%201502%20Rule.pdf>
- <sup>138</sup> Giersch, C. Oct. 9, 2012. “Supply Chain Due Diligence – the case of conflict minerals and beyond (I),” *Global Risk Affairs*. <http://www.globalriskaffairs.com/2012/10/supply-chain-due-diligence-the-case-of-conflict-minerals-and-beyond-i/>
- <sup>139</sup> OECD Gold Supplement included in the 2012 version of the Guidance. (OECD. 2012. *OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas: Second Edition*. pp. 61-118. <http://dx.doi.org/10.1787/9789264185050-en>)

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<sup>140</sup> RJC. 2009. CoP. p. 20, and Kimberley Process Certification Scheme (KPCS). *KPCS Core Document*. p. 3. <http://www.kimberleyprocess.com/web/kimberley-process/core-documents>

<sup>141</sup> Bell, A. June 7, 2012. "Zimbabwe: Kimberley Process rift expected to deepen over reform calls," *AllAfrica*. <http://allafrica.com/stories/201206080438.html>; and Eligon, J. Dec. 16, 2011. "Millions from diamonds go to Mugabe, observers say," *New York Times*. <http://www.nytimes.com/2011/12/17/world/africa/experts-say-diamonds-help-fill-mugabe-coffers.html?pagewanted=all>

<sup>142</sup> RJC. CoP Provision 1.3.

<sup>143</sup> Doyle, I. and Bendell, J. 2011. *Uplifting the Earth – the ethical performance of luxury brands*. p. 17. <http://www.lifeworth.com/consult/wp-content/uploads/2011/06/UpliftingTheEarth.pdf>

<sup>144</sup> Human Rights Watch. Nov. 1, 2010. "Real progress needed in Zimbabwe Marange Fields before exports proceed." <http://www.hrw.org/news/2010/10/29/kimberley-process-demand-end-abuses-diamond-trade>

<sup>145</sup> Valerio, G. Nov. 30, 2010. "Another RJC resignation over their support for Zimbabwe," Fair Jewelry Action website. <http://www.fairjewelry.org/tag/blood-diamonds-2/>

<sup>146</sup> In 2011, the Kimberley Process drew harsh criticism from civil society groups and governments for allowing Zimbabwe to export diamonds from the controversial Marange region without first fulfilling previous commitments to reform its diamond trade. In June 2011, Mathieu Yamba, chairman of the Kimberly Process, made a unilateral decision to allow exports from Zimbabwe's Marange diamond fields. According to Human Rights watch, "It allows the exports without any monitoring for human rights abuses or evidence that Zimbabwe is complying with the KP standards. . . Civil society groups walked out of the Kimberley meeting that concluded on June 23 in Kinshasa and condemned the decision. The United States, European Union, Israel, and Canada also criticized the decision because it did not follow the KP procedures for approval by consensus. The US urged the continued suspension of Marange diamonds until the problem was resolved." (Human Rights Watch. June 28, 2011. "Zimbabwe Kimberley Process on Brink." <http://www.hrw.org/news/2011/06/28/zimbabwe-kimberley-process-brink>)

<sup>147</sup> Global Witness. Nov. 2011. "Kimberley Process lets Zimbabwe off the hook (again)." <http://www.globalwitness.org/library/kimberley-process-lets-zimbabwe-hook-again>

<sup>148</sup> Ford, L. December 5, 2011. "Global Witness leaves Kimberley Process in protest at 'diamond laundering'." *The Guardian*. <http://www.guardian.co.uk/global-development/2011/dec/05/kimberley-process-global-witness-withdraws>

<sup>149</sup> Horton, R. Dec. 6, 2012. "For Kimberley Process, next challenge is broadening mandate on conflict diamonds," *World Politics Review*. <http://www.worldpoliticsreview.com/articles/12546/for-kimberley-process-next-challenge-is-broadening-mandate-on-conflict-diamonds>

<sup>150</sup> Ibid.

<sup>151</sup> RJC CoP Provision 2.5 says that, "Members shall not practice or condone any form of discrimination in the workplace . . . based on . . . union membership."

<sup>152</sup> RJC. Nov. 2012. *Code of Practices Review – Draft Revision 1*. p. 24.

<sup>153</sup> For example: ILO Convention 87 on Freedom of Association and Protection of the Right to Organize; ILO Convention 98 on the Right to Organize and Collective Bargaining; ILO Convention 29 on Forced Labour; ILO Convention 105 on the Abolition of Forced Labour; ILO Convention 138 on Minimum Age (of Employment); ILO Convention 182 on the Worst Forms of Child Labour; ILO Convention 100 on Equal Remuneration; ILO Convention 111 on Discrimination (Employment and Occupation); UN Convention on the Rights of the Child, Article 32.1; UN Convention on the Protection of the Rights of all Migrant Workers and Members of their Families.

<sup>154</sup> "The guidance does not contain mandatory requirements for members, and is for informational and interpretive use only." (RJC. 2009. *Standards Guidance*. p. 4)

<sup>155</sup> E.g., IFC PS2, paragraphs 24-26 provides measures to protect workers engaged by third parties, and PS2, paragraphs 27-29. (IFC. 2012. *IFC's Guidance Notes: Performance Standards on Environmental and Social Sustainability*. [http://www1.ifc.org/wps/wcm/connect/e280ef804a0256609709ffd1a5d13d27/GN\\_English\\_2012\\_Full-Documents.pdf?MOD=AJPERES](http://www1.ifc.org/wps/wcm/connect/e280ef804a0256609709ffd1a5d13d27/GN_English_2012_Full-Documents.pdf?MOD=AJPERES))

<sup>156</sup> Contractors who are working on Member's Facilities are "required to comply with the member's management and operating systems relevant to the Code of Practices," but other business partners (presumably contractors working off-site, as well as customers, suppliers and partners) are not required to meet RJC's CoP. RJC members, however, are required to "use their best endeavours. . . to promote responsible business practices among their Business Partners." (RJC 2009. CoP. p. 18, 4.3.1, 4.3.2, p. 18.)

<sup>157</sup> The Nov. 2012 proposed revisions to the CoP mention that the UN Declaration on the Rights of Indigenous Peoples will be added to the Guidance document, which is a welcome and overdue addition. (RJC. Nov. 2012. *Code of Practices Review – Draft 1*. p. 38)

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<sup>158</sup> RJC CoP 2.2.1: "Members will not engage in or support the employment of Children (younger than 15 years, or 14 years where the law of the country permits) beyond those circumstances defined in ILO Convention 138 and Recommendation 146 unless sanctioned by national and/or local government. . ."

<sup>159</sup> RJC. Nov. 2012. *Code of Practices Review – Draft Revision 1*. p. 19.

<sup>160</sup> RJC. 2009. *Standards Guidance*. p. 25.

<sup>161</sup> ILO. *R146 – Minimum Age Recommendation*, 1973 (No. 146). Article. II. 6 (2).  
[http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO:12100:P12100\\_ILO\\_CODE:R146](http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO:12100:P12100_ILO_CODE:R146)

<sup>162</sup> U.S. Department of Labor, Bureau of International Labor Affairs. 2011. *List of Goods Produced by Child Labor or Forced Labor*. pp. 31, 32. <http://www.dol.gov/ilab/programs/ocft/PDF/2011TVPRA.pdf>

<sup>163</sup> U.S. Department of Labor, Bureau of International Labor Affairs. 2012. *U.S. Department of Labor's 2011 Findings on the Worst Forms of Child Labor*. p. 296. <http://www.dol.gov/ilab/programs/ocft/2011TDA.pdf>

<sup>164</sup> For example, a 2011 study of 866 diamond cutting and polishing workers from Ahmedabad, India found that more than 5% of the male workers were below 14 years of age. (Harshvardhan, M.H. and Ribadiya, G. 2011. "Morbidity profile and treatment pattern among works of diamond cutting and polishing industry at Ahmedabad City," *Indian Journal for the Practicing Doctor*. Vol. 5, No. 5.  
<http://www.indmedica.com/journals.php?journalid=3&issueid=133&articleid=1755&action=article>)

<sup>165</sup> Rio Tinto. 2009. *Diamonds Annual Review*. p. 29.  
[http://www.riotintodiamonds.com/documents/Final\\_RTD\\_Review\\_2008.pdf](http://www.riotintodiamonds.com/documents/Final_RTD_Review_2008.pdf)

<sup>166</sup> March 14, 2011. "De Beers, Rio Tinto, BHP, benefit from robbing the poor," *The Hindu*. Available at:  
<http://www.minesandcommunities.org/article.php?a=10770> See also: Reserve Bank of India. Dec. 29, 2009. "Advance Remittance for Import of Rough Diamonds." RBI/2009-10/274.  
<http://www.rbi.org.in/scripts/NotificationUser.aspx?Mode=0&Id=5437>

<sup>167</sup> "Rough diamonds, imported by traders pass through a few layers before reaching the cutting and polishing units. These units undertake the work of cutting and polishing only and no purchase / sale is involved in their dealing with the suppliers of diamonds. These units are, generally, not registered." (Task Force for the Diamond Sector. Feb. 2009. *Report of the Task Force to look into distress arising on account of the problem faced by Diamond Industry in Gujarat*.  
<http://www.rbi.org.in/scripts/PublicationReportDetails.aspx?ID=541>)

<sup>168</sup> "Children and young persons under 18 shall not be employed at night or in hazardous conditions." (Ethical Trading Initiative. *ETI Base Code*. Section 4.3.  
[http://www.ethicaltrade.org/sites/default/files/resources/ETI%20Base%20Code%20-%20English\\_0.pdf](http://www.ethicaltrade.org/sites/default/files/resources/ETI%20Base%20Code%20-%20English_0.pdf))

<sup>169</sup> Provision 2.2.4 (2.2.1b) in the Nov. 2012 proposed revisions) fails to require best practices with respect to "the worst forms of child labour." (ILO Convention 182 bans the "worst forms" of child labour for all children under the age of 18.)

RJC COP 2.2.4: "Members will not expose a Child or Young Person to work, which by its nature or the circumstances in which it is carried out, is likely to jeopardise the Health, Safety or morals of persons younger than 18 years (or 16 years subject to authorisation in Applicable Law and the receipt of adequate and specific instruction or vocational training in the relevant branch of activity)."

Proposed revision 2.2.1bi: "Hazardous Child Labour, which by its nature or circumstances is likely to jeopardise the Health, Safety or morals of persons younger than 18 years. Where allowed by Applicable Law and supported by assessment of risks and implementation of controls under COP 2.6.3 Health and Safety, a minimum age of 16 is permitted on condition that the health, safety and morals of the Children concerned are fully protected, and that the children have received adequate specific instruction or vocational training in the relevant branch of activity." (RJC. Nov. 2012. *Code of Practices Review – Draft Revision 1*.)

<sup>170</sup> "The minimum age for hazardous work is not consistent with international standards and may likewise jeopardize the health and safety of young people ages 14 through 17." (U.S. Department of Labor, Bureau of International Labor Affairs. Sept. 2012. *U.S. Department of Labor's 2011 Findings on the Worst Forms of Child Labor*. p. 296.  
<http://www.dol.gov/ilab/programs/ocft/2011TDA.pdf>)

The RJC Guidance mistakenly writes that "Indian labour law does not establish a general minimum age for employment, but the Child Labour (Prohibition and Regulation) Act (1986) prohibits employment of under-18s in a series of hazardous occupations and processes including mining and gem cutting and polishing." (RJC. 2009. *Standards Guidance*. p. 26)

The current Act does not prohibit employment of children under the age of 18, it prohibits employment of children under the age of 14. (*Child Labour (Prohibition and Regulation) Act (1986)*) available at: Government of India. India Code Legislative Department. <http://indiacode.nic.in/welcome.htm>)

<sup>171</sup> PRS Legislative Research. 2012. *The Child Labour (Prohibition and Regulation) Amendment Bill, 2012*.  
<http://www.prsindia.org/billtrack/the-child-labour-prohibition-and-regulation-amendment-act-2012-2553/> Accessed Feb. 5, 2013.

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<sup>172</sup>“For the types of work referred to under Article 3(d) of the Convention and Paragraph 3 above, national laws or regulations or the competent authority could, after consultation with the workers’ and employers’ organizations concerned, authorize employment or work as from the age of 16 on condition that the health, safety and morals of the children concerned are fully protected, and that the children have received adequate specific instruction or vocational training in the relevant branch of activity.” ( ILO. *R190 – Worst Forms of Child Labour Recommendation, 1999*. Article II.4.

[http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO:12100:P12100\\_ILO\\_CODE:R190](http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO:12100:P12100_ILO_CODE:R190))

<sup>173</sup> RJC. 2009. *Standards Guidance*. pp. 25, 26.

<sup>174</sup> Instead, the new provision says: “Where Child Labour is found at a Facility, Members shall develop documented Child Labour Remediation processes that include steps for the continued welfare of the Child and consider the financial situation of the Child’s family.”

<sup>175</sup> The RJC CoP does not have a requirement to assess risks associated with child labour that may be taking place at member’s suppliers or contractors, and there is no explicit requirement for outsourcing contractors to avoid using child labor. Provision 4.3.3 (p. 47) in the Nov. 2012 proposed revisions says that “Contractors working on Members’ Facilities . . . shall be required to comply with the Member’s policies, systems and procedures relevant to the Code of Practices.” It’s not clear if this means these contractors must adhere to the CoP itself.

The RJC guidance suggests that it is not a requirement, as it simply recommends that members, “Develop a written policy against child labour. Explain the importance of the issue, the aims of the policy, and the expectations of . . . contractors.” (RJC. 2009. *Standards Guidance*. p. 26) Consequently, even if contractors on a member’s facility must adhere to RJC’s child labor provisions, suppliers/outsourcing contractors do not.

<sup>176</sup> When RJC members outsource processing the contractor does not have to be CoC-or CoP-certified, and not all contractors are audited through RJC’s CoC process. (See Section 4.1 of this report) RJC members are supposed to perform a risk assessment of outsourcing contractors, but only need to “assess the risk of potential non-conformance with the [CoC] standard.” (RJC. 2012. *CoC Standard*. Provision 3.1b)

<sup>177</sup> According to Rae, “It does ask you be in discussion with your suppliers about these issues, but our capacity as the RJC to direct you, for example, to only deal with RJC members – we can’t do that.” (Fair Jewelry Action website: June 29, 2009. “Greg Valerio Interviews Michael Rae, CEO of the Responsible Jewellery Council.”

<http://www.fairjewelry.org/greg-valerio-interviews-michael-rae-ceo-of-the-responsible-jewellery-council/>)

<sup>178</sup> IFC PS2. “GN12. Supply Chain Workers: These workers are employed by suppliers providing goods and materials to the company. . . With regard to those working in sectors known for involving child or forced labour or significant safety violations, the client will assess if there are any incidents of child labour, forced labour or significant safety issues by applying paragraphs 27–28 of Performance Standard 2. If child labour, forced labour or significant safety issues are identified the company will work with the suppliers to take corrective action. In the event that corrective action is not feasible the company will change to suppliers that are managing the risk of child labour, forced labour and safety issues adequately.” (IFC. 2012. *IFC’s Guidance Notes: Performance Standards on Environmental and Social Sustainability*.

[http://www1.ifc.org/wps/wcm/connect/e280ef804a0256609709ffd1a5d13d27/GN\\_English\\_2012\\_Full-Documents.pdf?MOD=AJPERES](http://www1.ifc.org/wps/wcm/connect/e280ef804a0256609709ffd1a5d13d27/GN_English_2012_Full-Documents.pdf?MOD=AJPERES))

<sup>179</sup> RJC’s suggested management approach is that members: “Develop a written policy against forced labour. Explain the importance of the issue, the aims of the policy, the expectations of employees and contractors, and the main processes established.” (RJC. 2009. *Standards Guidance*. p. 29)

<sup>180</sup> Human Rights Watch website: Feb. 1, 2010. “Blood Diamond.” <http://www.hrw.org/news/2010/02/04/blood-diamond>

<sup>181</sup> See Section 4.1 of this report.

<sup>182</sup> See RJC. 2009. CoP. p. 12. (ETI Base Code was negotiated and agreed by the founding trade union, NGO and corporate members of ETI and contains nine clauses which reflect the most relevant conventions of the International Labour Organisation with respect to labor practices. <http://www.ethicaltrade.org/resources/key-eti-resources/eti-base-code>)

<sup>183</sup> Ethical Trading Initiative. *ETI Base Code*. Sections 2.1, 2.2, 2.3.

[http://www.ethicaltrade.org/sites/default/files/resources/ETI%20Base%20Code%20-%20English\\_0.pdf](http://www.ethicaltrade.org/sites/default/files/resources/ETI%20Base%20Code%20-%20English_0.pdf)

<sup>184</sup> “The importance of collective bargaining has recently been reaffirmed by the ILO Declaration on Fundamental Principles and Rights at Work of 1998, according to which all the ILO’s member States, even if they have not ratified the Conventions in question, have an obligation, arising from the very fact of membership in the Organization, to respect, to promote and to realize, in good faith and in accordance with the Constitution, the principles concerning the fundamental rights including the effective recognition of the right to collective bargaining (Paragraph 2 (a) of the Declaration).” (ILO. 2001. *Labour Legislation Guidelines*. Chapter 3.

<http://www.ilo.org/legacy/english/dialogue/ifpdial/llg/>)

Moreover, “The right of workers to form or join organisations in order to bargain collectively cannot be realised if the employer refuses to recognise the trade union or to engage in collective bargaining.” (ILO Web site: *Q&As on business and collective bargaining*. “How can companies uphold the right to collective bargaining?”

[http://www.ilo.org/empent/areas/business-helpdesk/WCMS\\_DOC\\_ENT\\_HLP\\_CB\\_FAQ\\_EN/lang--en/index.htm#Q2](http://www.ilo.org/empent/areas/business-helpdesk/WCMS_DOC_ENT_HLP_CB_FAQ_EN/lang--en/index.htm#Q2))

<sup>185</sup> ILO web site: “Freedom of association and the effective recognition of the right to collective bargaining.” <http://www.ilo.org/declaration/principles/freedomofassociation/lang-en/index.htm>

<sup>186</sup> In 2012, the Botswana “Government declares more sectors “essential” services to weaken future strikes. . the Minister of Labour classified teachers, diamond workers, and the national vaccine institute as essential services, so that they cannot participate in future strikes. These categories of workers fall outside the International Labour Organisation’s definition of essential services.” (ITUC web site: *Annual Survey of Violations of Trade Union Rights*. 2012. “Botswana”. <http://survey.ituc-csi.org/Botswana.html#tabs-5>)

<sup>187</sup> De Beer’s Debswana operation is included in the company’s RJC certification scope. (Oct. 24, 2012. *RJC Certification Information – De Beers Group of Companies*. [http://www.responsiblejewellery.com/files/RJC\\_Certification\\_Information\\_De\\_Beers1.pdf](http://www.responsiblejewellery.com/files/RJC_Certification_Information_De_Beers1.pdf))

<sup>188</sup> “Debswana’s treatment of striking workers in 2004 demonstrates the fact that Debswana is quite prepared to exploit the fact that technically workers in Botswana do not have the right to strike. Despite being signatory to various international agreements on labour rights neither De Beers nor Debswana have ever protested the fact that workers in Botswana do not enjoy this right.” (Bench Marks Foundation. 2009. *De Beers, Botswana and the Control of a Country*. Policy Gap 5, SADC Research Report. p. 61. [http://indigenouseoplesissues.com/attachments/article/2093/2093\\_Botswana\\_Study\\_Final.pdf](http://indigenouseoplesissues.com/attachments/article/2093/2093_Botswana_Study_Final.pdf))

<sup>189</sup> International Trade Union Confederation (ITUC). 2007. *Annual Survey of Trade Union Rights in the Commonwealth Countries*. p. 16. [http://www.ituc-csi.org/IMG/pdf/survey\\_ctuc.pdf](http://www.ituc-csi.org/IMG/pdf/survey_ctuc.pdf)

<sup>190</sup> ILO Convention 176. *Safety and Health in Mines Convention, 1995 (No. 176)*. [http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO:12100:P12100\\_ILO\\_CODE:C176](http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO:12100:P12100_ILO_CODE:C176)

<sup>191</sup> Ibid. See also ILO. 1981. *Occupational Safety and Health Convention, 1981 (No. 155)*. See Article 19. [http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO:12100:P12100\\_ILO\\_CODE:C155](http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO:12100:P12100_ILO_CODE:C155)

<sup>192</sup> See ILO 176. 13.1(f). Right to collectively select safety and health representatives. (ILO. 1995. *C176 – Safety and Health in Mines Convention, 1995 (No. 176)*. [http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO:12100:P12100\\_ILO\\_CODE:C176](http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO:12100:P12100_ILO_CODE:C176))

<sup>193</sup> Ibid. Article 13.2(b). Right to (i) participate in inspections and investigations conducted by the employer and by the competent authority at the workplace; and (ii) monitor and investigate safety and health matters.

<sup>194</sup> Ibid. Article 13.2(f). Right to receive, relevant to the area for which they have been selected, notice of accidents and dangerous occurrences.

<sup>195</sup> Current RJC CoP 2.7: “Members will not use corporal punishment under any circumstances, and will ensure that Employees are not subjected to harsh or degrading treatment, sexual or physical harassment, mental, physical or verbal abuse, coercion or intimidation in any circumstances.”

Proposed revision to CoP 2.7: “Members shall not subject Employees to corporal punishment, harsh or degrading treatment, sexual or physical harassment, mental, physical or verbal abuse, coercion or intimidation, or threats of these towards themselves, family or colleagues.” (RJC. Nov. 2012. *Code of Practices Review – Draft Revision 1*)

<sup>196</sup> IFC. 2012. *Performance Standard 2: Labor and Working Conditions*. “Non-discrimination and Equal Opportunity.” p. 19. [http://www1.ifc.org/wps/wcm/connect/2408320049a78e5db7f4f7a8c6a8312a/PS2\\_English\\_2012.pdf?MOD=AJPERES](http://www1.ifc.org/wps/wcm/connect/2408320049a78e5db7f4f7a8c6a8312a/PS2_English_2012.pdf?MOD=AJPERES)

<sup>197</sup> IFC. 2012. *Guidance Note 2: Labor and Working Conditions*. GN44. [http://www1.ifc.org/wps/wcm/connect/0d7a4480498007faa1f7f3336b93d75f/Updated\\_GN2-2012.pdf?MOD=AJPERES](http://www1.ifc.org/wps/wcm/connect/0d7a4480498007faa1f7f3336b93d75f/Updated_GN2-2012.pdf?MOD=AJPERES)

<sup>198</sup> Social Accountability International. 2008. *SA8000*. Criteria 5.3. p. 7. [http://www.sa-intl.org/data/n\\_0001/resources/live/2008StdEnglishFinal.pdf](http://www.sa-intl.org/data/n_0001/resources/live/2008StdEnglishFinal.pdf)

<sup>199</sup> In the U.S. the Weingarten right enable workers to have union representatives present during investigatory interviews that may result in disciplinary action. (Teamsters website: “NLRB v. Weingarten, Inc. 420 U.S. 251 (1975).” <http://www.teamster.org/content/three-decades-union-representation>) In the past, this right has been afforded to non-union workers (i.e., the right to have a co-worker present).

<sup>200</sup> ILO. 1967. *R130 – Examination of Grievances Recommendation, 1967 (No. 130)*. [http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:55:0::55:P55\\_TYPE,P55\\_LANG,P55\\_DOCUMENT,P55\\_NODE:REC,en,R130/Document](http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:55:0::55:P55_TYPE,P55_LANG,P55_DOCUMENT,P55_NODE:REC,en,R130/Document) For example: Article III. 13. (1) The worker concerned should have the right to participate directly in the grievance procedure and to be assisted or represented during the examinations of his grievance by a representative of a workers’ organisation, by a representative of the workers in the undertaking, or by any other person of his own choosing, in conformity with national law or practice.” (3) Any person employed in the same undertaking who assists or represents the worker during the examination of his grievance should, on condition that he acts in conformity with the grievance procedure, enjoy the same protection as that enjoyed by the worker under Paragraph 2, clause (a), of this Recommendation.

<sup>201</sup> “National law applicable to the business’ circumstances may vary from the above ILO Conventions and takes precedence under the RJC system.” (RJC. 2009. *Standards Guidance*. p. 45)

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<sup>202</sup> RJC. Nov. 2012. *Code of Practices Review – Draft Revision 1*. p. 30.

<sup>203</sup> SA8000 provision 7.4 says that “In cases where overtime work is needed in order to meet short-term business demand and the company is party to a collective bargaining agreement freely negotiated with worker organisations (as defined above) representing a significant portion of its workforce, the company may require such overtime work in accordance with such agreements. Any such agreement must comply with the requirements above.” (Social Accountability International (SAI). 2008. *SA8000*. p. 7. [http://www.sa-intl.org/data/n\\_0001/resources/live/2008StdEnglishFinal.pdf](http://www.sa-intl.org/data/n_0001/resources/live/2008StdEnglishFinal.pdf)) As explained in SA8000 guidance, “The exceptions in clauses 7.2 and 7.4 have been allowed in order to respect the local context when national laws and freely negotiated collective bargaining agreements permit required overtime [7.4] or work time averaging [7.2]. Both exceptions must, however, be permitted by law and then also by a legitimate collective bargaining agreement.” [emphasis in original text] (SAI. 2011. *SA8000 Abridged Guidance*. p. 23. <http://www.sa-intl.org/index.cfm?fuseaction=Page.ViewPage&PageID=1095>)

Meanwhile, the current RJC CoP only mentions that “Any collective agreement with trade unions or other worker organisations should deal with working hours, overtime, breaks and leave.” (RJC. 2009. *Standards Guidance*. p. 45) The CoP does not require RJC members to negotiate collective agreements, and therefore, worker input is not guaranteed.

The proposed revised CoP 2.8.2a states that, “Required overtime is permitted only where it is within the limits allowed under Applicable Law or collective bargaining agreements.” (RJC. Nov. 2012. *Code of Practices Review – Draft Revision 1*. p. 31) It does not require that both (law and collective agreement) be in place.

<sup>204</sup> The SA8000 Guidance says that, “where a collective bargaining agreement allows for required overtime under certain, clearly defined conditions. Even then however, the company should: ii. Not allow overtime hours to exceed 12 hours per week. Accordingly the commonly referenced “60 hours rule” should be the exception, not the rule, and may, when the state’s legal standard workweek is less than 48 hours, be less than 60 hours.” (SAI. 2011. *SA8000 Abridged Guidance*. p. 23. <http://www.sa-intl.org/index.cfm?fuseaction=Page.ViewPage&PageID=1095>)

<sup>205</sup> SAI. 2011. *SA8000 Abridged Guidance*. p. 23. <http://www.sa-intl.org/index.cfm?fuseaction=Page.ViewPage&PageID=1095>

<sup>206</sup> In the current version of the RJC CoP the normal work week is a maximum of 48 hours, with a maximum of 12 hours of overtime “except under special circumstances.” (RJC. 2009. CoP. Provision 2.8.2.)

<sup>207</sup> RJC. Nov. 2012. *Code of Practices Review – Draft Revision 1*. Provision 2.8.2. p. 31.

<sup>208</sup> “Where Employees operate on a rotational shift basis at Mining Facilities, Members shall ensure that: a. Working hours and overtime that do not meet 2.8.1 and 2.8.2 above shall be in compliance with Applicable Law.” (RJC. Nov. 2012. *Code of Practices Review – Draft Revision 1*. Provision 2.8.5. p. 32)

<sup>209</sup> RJC. Nov. 2012. *Code of Practices Review – Draft Revision 1*. Provision 2.8.4. p. 32.

<sup>210</sup> SA8000 Criteria 7.2: “Personnel shall be provided with at least one day off following every six consecutive days of working. Exceptions to this rule apply only where both of the following conditions exist: i) National law allows work time exceeding this limit; and ii) A freely negotiated collective bargaining agreement is in force that allows work time averaging, including adequate rest periods.” (SAI. 2008. *SA8000*. p. 7. [http://www.sa-intl.org/data/n\\_0001/resources/live/2008StdEnglishFinal.pdf](http://www.sa-intl.org/data/n_0001/resources/live/2008StdEnglishFinal.pdf))

<sup>211</sup> RJC. Nov. 2012. *Code of Practices Review – Draft Revision 1*. Provision 2.8.2b. p. 31.

<sup>212</sup> Peetz, D., Murray, G. and Muurlink, O. 2012. *The Impact of Working Arrangements on the Physical and Psychological Health of Workers and their Partners*. <http://ilera2012.wharton.upenn.edu/RefereedPapers/PeetzDavid%20GeorginaMurray%20OlavMuurlink.pdf>.

For example, the authors found that 21% of survey respondents who said they had ‘some’ or ‘more’ say regarding the hours worked were rated as “not good” on mental well-being tests, but this number rose to 27% for workers who said they had no say. Eight (8%) of those working their preferred hours suffered from depression while 13% of workers who preferred to work fewer hours per week reported depression (p. 6).

<sup>213</sup> E.g., SA8000 guidance says that, “Work time averaging is only permitted when national law and a collective bargaining agreement allow that procedure. When averaging is being used, increased focus must be applied to the legitimacy of the rights to freedom of association and collective bargaining that resulted in hours averaging authorization. Additionally, workers occupational safety and health must be assessed and not compromised as a result of the work hours averaging agreement.” (SAI. 2011. *SA8000 Abridged Guidance*. p. 24. <http://www.sa-intl.org/index.cfm?fuseaction=Page.ViewPage&PageID=1095>)

<sup>214</sup> Ibid. SA8000 guidance explains that, “When applying the terms “freely negotiated collective bargaining agreement” (Sections 7.2(b) and 7.4) and “worker organizations” (Section 7.4), the definition and elements of a recognizable “worker organization” becomes critical. Under ILO provisions, “worker organizations ... shall have the rights to draw up their constitutions and rules, to elect their representatives in full freedom, to organise their administration and activities and to formulate their programs.” (ILO. 1948. *Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87)*. Article 3. [http://www.ilo.org/dyn/normlex/en/f?p=1000:12100:0::NO::P12100\\_ILO\\_CODE:C087](http://www.ilo.org/dyn/normlex/en/f?p=1000:12100:0::NO::P12100_ILO_CODE:C087))

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<sup>215</sup> The Global Compact Human Rights and Business Dilemmas Forum defines this in terms of a wage that enables decent living for workers and their families, and cites Article 7 of the International Covenant on Economic, Social and Cultural Rights, which states that all workers will be provided with “fair wages and equal work for equal value” that provides a “decent living for themselves and their families.” (U.N. Global Compact Human Rights and Business Dilemmas Forum. “Living Wage: What is the dilemma?” <http://human-rights.unglobalcompact.org/dilemmas/living-wage/>)

<sup>216</sup> RJC. 2009. CoP. Provision 2.9.1.

<sup>217</sup> Cunniah, D. 2012. “Social justice and Growth: The role of the minimum wage.” *International Journal of Labour Research*. Vol. 4:1. p. 5. [http://www.ilo.org/wcmsp5/groups/public/---ed\\_dialogue/---actrav/documents/publication/wcms\\_183568.pdf](http://www.ilo.org/wcmsp5/groups/public/---ed_dialogue/---actrav/documents/publication/wcms_183568.pdf)

<sup>218</sup> U.N. Global Compact Human Rights and Business Dilemmas Forum. “Living Wage: What is the dilemma?” <http://human-rights.unglobalcompact.org/dilemmas/living-wage/>

<sup>219</sup> “. . . if there is no applicable law, then determine the prevailing wage via a study on the business’s sector in the relevant geographic location.” (RJC. 2009. *Standards Guidance*. p. 48)

<sup>220</sup> IFC. 2005. *Good Practice Note: Managing Retrenchment*. p. 16. <http://www1.ifc.org/wps/wcm/connect/8b14b6004885555db65cf66a6515bb18/Retrenchment.pdf?MOD=AJPERES>

<sup>221</sup> IFC. 2012. *Guidance Note 2: Labor and Working Conditions*. p. 11. [http://www1.ifc.org/wps/wcm/connect/0d7a4480498007faa1f7f3336b93d75f/Updated\\_GN2-2012.pdf?MOD=AJPERES](http://www1.ifc.org/wps/wcm/connect/0d7a4480498007faa1f7f3336b93d75f/Updated_GN2-2012.pdf?MOD=AJPERES)

<sup>222</sup> IFC. 2012. *Performance Standard 2: Labor and Working Conditions*. “Retrenchment.” p. 4. [http://www1.ifc.org/wps/wcm/connect/2408320049a78e5db7f4f7a8c6a8312a/PS2\\_English\\_2012.pdf?MOD=AJPERES](http://www1.ifc.org/wps/wcm/connect/2408320049a78e5db7f4f7a8c6a8312a/PS2_English_2012.pdf?MOD=AJPERES)

<sup>223</sup> IFC. 2005. *Good Practice Note: Managing Retrenchment*. p. 5. <http://www1.ifc.org/wps/wcm/connect/8b14b6004885555db65cf66a6515bb18/Retrenchment.pdf?MOD=AJPERES>

<sup>224</sup> *Ibid.* p. 11.

<sup>225</sup> “In considering changes in their operations which would have major employment effects, in particular in the case of the closure of an entity involving collective lay-offs or dismissals, provide reasonable notice of such changes to representatives of the workers in their employment and their organisations, and, where appropriate, to the relevant governmental authorities, and co-operate with the worker representatives and appropriate governmental authorities so as to mitigate to the maximum extent practicable adverse effects.” (OECD. 2011. *OECD Guidelines for Multinational Enterprises*. p. 36. <http://www.oecd.org/daf/inv/mne/48004323.pdf>)

<sup>226</sup> IFC. 2005. *Good Practice Note: Managing Retrenchment*. p. 7. <http://www1.ifc.org/wps/wcm/connect/8b14b6004885555db65cf66a6515bb18/Retrenchment.pdf?MOD=AJPERES>

<sup>227</sup> ILO. 1982. *R166 – Termination of Employment Recommendation, 1982*. Article III, 25. [http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO:12100:P12100\\_ILO\\_CODE:R166](http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO:12100:P12100_ILO_CODE:R166)

<sup>228</sup> RJC. 2009. CoP. Provision 2.8. “Hours of Work.”

<sup>229</sup> For example, “FIFO camps have caused a split in the mining industry, with many communities believing the huge number of non-resident workers meant there were few benefits for locals from the mines. However, mining companies believe most projects would never be developed without FIFO.” (McCarthy, J. July 18, 2012. “Plans for specialized mines town as an alternative to the controversial fly-in, fly-out roster,” *The Courier-Mail*. <http://www.news.com.au/business/worklife/plan-for-specialised-mines-town-as-an-alternative-to-the-controversial-fly-in-fly-out-roster/story-e6frfm9r-1226428492230> See also: Lucas, C. Jan. 5, 2013. “Fly-in, fly-out jobs strain families and work loyalty,” *The Sydney Morning Herald*. <http://www.smh.com.au/national/flyin-flyout-jobs-strain-families-and-work-loyalty-20130104-2c8wk.html>

Also: Morris, R. 2012. *Scoping Study: Impact of Fly-in Fly-out/Drive-in Drive-out Work Practices on Local Government*. Australian Centre of Excellence for Local Government, University of Technology, Sydney. pp. 15-17. [http://www.acelg.org.au/upload/program5/1336624408\\_ACELG\\_Scoping\\_Study\\_FIFO\\_May\\_2012.pdf](http://www.acelg.org.au/upload/program5/1336624408_ACELG_Scoping_Study_FIFO_May_2012.pdf)

<sup>230</sup> For example, OECD suggests that enterprises should, “Provide such facilities to workers’ representatives as may be necessary to assist in the development of effective collective agreements.” (OECD. 2011. *OECD Guidelines for Multinational Enterprises*. p. 36. <http://www.oecd.org/daf/inv/mne/48004323.pdf>)

<sup>231</sup> The limited academic study of the impact of FIFO operations on local communities has found some benefits in large urban regions that act as the home-base for FIFO workers, but simultaneously destructive to local communities if they are unable to meet the infrastructure and service demands generated by a non-resident workforce; erosive to local communities where there has been a shift from a permanent resident workforce to a largely FIFO workforce if it reduces the economic viability of local infrastructure, services and businesses; and erosive to communities or regions bordering ‘host’ or ‘home’ communities if workers relocate to take advantage of FIFO work arrangements. See the following study for more potential impacts on communities. (Morris, R. 2012. *Scoping Study: Impact of Fly-in Fly-out/Drive-in Drive-out Work Practices on Local Government*. Australian Centre of Excellence for Local Government,

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University of Technology, Sydney. p. 9.

[http://www.acelg.org.au/upload/program5/1336624408\\_ACELG\\_Scoping\\_Study\\_FIFO\\_May\\_2012.pdf](http://www.acelg.org.au/upload/program5/1336624408_ACELG_Scoping_Study_FIFO_May_2012.pdf)

<sup>232</sup> The metal mining industry has been the nation's largest toxic polluter every year since it was required to report its releases to the EPA's Toxic Release Inventory in 1997. (Earthworks website: Jan. 16, 2013. "EPA: Metal mining industry is nation's top toxic polluter."

[http://www.earthworksaction.org/media/detail/epa\\_metal\\_mining\\_industry\\_is\\_nations\\_top\\_toxic\\_polluter#.UR\\_4r-g1ZFR](http://www.earthworksaction.org/media/detail/epa_metal_mining_industry_is_nations_top_toxic_polluter#.UR_4r-g1ZFR))

<sup>233</sup> Green Cross and Blacksmith Institute. 2012. The World's Worst Pollution Problems: Assessing Health Risks at Hazardous Waste Sites. <http://www.worstpolluted.org/files/FileUpload/files/2012%20WorstPolluted.pdf>.

<sup>234</sup> Fahys, J. Dec. 19, 2011. "Utah pollution fighters sue Kennecott," *Salt Lake Tribune*.

<http://www.sltrib.com/sltrib/news/53145614-78/kennecott-utah-pollution-clean.html.csp>

<sup>235</sup> Utah Physicians for a Healthy Environment, WildEarth Guardians and Utah Moms for Clean Air vs. Kennecott Utah Copper, LLC. Complaint filed in the U.S. District Court, District of Utah, Central Division. Civil Case No. 2:11-cv-01181-SA. Dec. 19, 2011. p. 20. At 77.

[http://www.wildearthguardians.org/site/DocServer/final\\_uphe\\_complaint\\_12\\_19\\_11.pdf?docID=4063](http://www.wildearthguardians.org/site/DocServer/final_uphe_complaint_12_19_11.pdf?docID=4063)

<sup>236</sup> "Utah's chief air regulator, however, acknowledged Kennecott is technically violating a 1994 plan adopted by the U.S. Environmental Protection Agency that limited the company to hauling 150 million tons of ore a year out of the Bingham Canyon Mine." Associated Press, Paul Foy, Dec. 25, 2011. "Doctors, moms take on No. 1 polluter in Utah," *CNSnews.com*. <http://cnsnews.com/news/article/doctors-moms-take-no-1-polluter-utah>)

<sup>237</sup> Ibid. p. 2.

<sup>238</sup> Data from the U.S. Environmental Protection Agency's Toxic Release Inventory. **2009 data** – Concentrator and Power Plant available at:

[http://iaspub.epa.gov/triexplorer/release\\_fac\\_profile?TRI=84006KNNCT12300&year=2009&trilib=TRIQ1&FLD=&FLD=RELLBY&FLD=TSFDSP&OFFDISPD=&OTHDISPD=&ONDISP=&OTHOFFD=](http://iaspub.epa.gov/triexplorer/release_fac_profile?TRI=84006KNNCT12300&year=2009&trilib=TRIQ1&FLD=&FLD=RELLBY&FLD=TSFDSP&OFFDISPD=&OTHDISPD=&ONDISP=&OTHOFFD=) Smelter and refinery available at:  
[http://iaspub.epa.gov/triexplorer/release\\_fac\\_profile?TRI=84006KNNCT8362W&year=2009&trilib=TRIQ1&FLD=&FLD=RELLBY&FLD=TSFDSP&OFFDISPD=&OTHDISPD=&ONDISP=&OTHOFFD=](http://iaspub.epa.gov/triexplorer/release_fac_profile?TRI=84006KNNCT8362W&year=2009&trilib=TRIQ1&FLD=&FLD=RELLBY&FLD=TSFDSP&OFFDISPD=&OTHDISPD=&ONDISP=&OTHOFFD=)

2011 data – Concentrator and Power Plant available at:

[http://iaspub.epa.gov/triexplorer/release\\_fac\\_profile?TRI=84006KNNCT12300&year=2011&trilib=TRIQ1&FLD=&FLD=RELLBY&FLD=TSFDSP&OFFDISPD=&OTHDISPD=&ONDISP=&OTHOFFD=](http://iaspub.epa.gov/triexplorer/release_fac_profile?TRI=84006KNNCT12300&year=2011&trilib=TRIQ1&FLD=&FLD=RELLBY&FLD=TSFDSP&OFFDISPD=&OTHDISPD=&ONDISP=&OTHOFFD=) Smelter and refinery available at:  
[http://iaspub.epa.gov/triexplorer/release\\_fac\\_profile?TRI=84006KNNCT8362W&year=2011&trilib=TRIQ1&FLD=&FLD=RELLBY&FLD=TSFDSP&OFFDISPD=&OTHDISPD=&ONDISP=&OTHOFFD=](http://iaspub.epa.gov/triexplorer/release_fac_profile?TRI=84006KNNCT8362W&year=2011&trilib=TRIQ1&FLD=&FLD=RELLBY&FLD=TSFDSP&OFFDISPD=&OTHDISPD=&ONDISP=&OTHOFFD=)

<sup>239</sup> Used EPA Toxic release data in previous footnote and production data from Rio Tinto's website: *Annual Report 2011*. "Metals and mineral production."

[http://www.riotinto.com/annualreport2011/production\\_reserves\\_and\\_operations/index.html](http://www.riotinto.com/annualreport2011/production_reserves_and_operations/index.html) (Refined gold from the Kennecott decreased from 479,000 oz. in 2009 to 379,000 oz. in 2011.)

<sup>240</sup> There is no mention of mercury in the current RJC CoP.

<sup>241</sup> United Nations Environment Programme. 2008. *The Global Atmospheric Mercury Assessment: Sources, Emissions and Transport*. p. 2.

<http://www.unep.org/hazardoussubstances/LinkClick.aspx?fileticket=YOPHPmrXSuc%3d&tabid=3593&language=en-US>

<sup>242</sup> In 2012, the United Nations Environment Programme (UNEP) issued a draft report that updated their Global Mercury Assessment. It is important to note that the report was preliminary, and was undergoing technical review. Based on updated data and modeling, however, it was estimated that emissions from ASM could account for as much as 37% of total global anthropogenic airborne mercury emissions. (UNEP. 2012. *DRAFT Global Mercury Assessment 2013: Sources, Atmospheric and Aquatic Releases and Transport*. p. 11.

<http://www.unep.org/hazardoussubstances/Portals/9/Mercury/GMA%20Report/Summary%20Report%20for%20Review%20-%2013Nov12.pdf>)

<sup>243</sup> In 2011, metal mines in the U.S. released more than 4.9 million pounds of mercury and mercury compounds, which accounted for 93% of total releases from all industrial sources in the country that year (total 5.3 million pounds). Gold mines in Nevada, alone, accounted for the release of 4.6 million pounds of mercury and mercury compounds, or 88% of mercury releases. (Data from: EPA Toxic Release Inventory. TRI Explorer.

[http://iaspub.epa.gov/triexplorer/tri\\_release.chemical](http://iaspub.epa.gov/triexplorer/tri_release.chemical))

<sup>244</sup> U.S. EPA web site: "Mercury." <http://www.epa.gov/hg/about.htm>

<sup>245</sup> U.S. EPA web site: "Mercury: Health Effects." <http://www.epa.gov/mercury/effects.htm>

<sup>246</sup> Miranda, M., Chambers, D. and Coumans, C. 2005. *Framework for Responsible Mining*. p. 30.

[http://www.frameworkforresponsiblemining.org/pubs/Framework\\_20051018.pdf](http://www.frameworkforresponsiblemining.org/pubs/Framework_20051018.pdf)

<sup>247</sup> For example, the press release related to signing of the Minamata Convention states that, "Nations with artisanal and small-scale gold mining operations will draw up national plans within three years of the treaty entering into force to reduce and if possible eliminate the use of mercury in such operations." (emphasis added) (UNEP. Jan. 13, 2013.

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“Minamata’ Convention Agreed by Nations – Global mercury agreement to lift health threats from lives of millions world-wide.” Press Release.  
[http://www.unep.org/hazardoussubstances/Portals/9/Mercury/Documents/INC5/press\\_release\\_mercury\\_Jan\\_19\\_2013.pdf](http://www.unep.org/hazardoussubstances/Portals/9/Mercury/Documents/INC5/press_release_mercury_Jan_19_2013.pdf)

<sup>248</sup> RJC. Nov. 2012. *Code of Practices Review – Draft Revision 1*. Provision 3.2.5. p. 40.

<sup>249</sup> RJC. Nov. 2012. *Code of Practices Review – Draft Revision 1*. Provision 3.2.5. p. 40. sion compliance programs.” (Miranda, M., Chambers, D. and Coumans, C. 2005. *Framework for Responsible Mining*. p. 30.  
[http://www.frameworkforresponsiblemining.org/pubs/Framework\\_20051018.pdf](http://www.frameworkforresponsiblemining.org/pubs/Framework_20051018.pdf))

In 2011, the United States put in place regulations to limit airborne mercury emissions from gold mining operations. A comprehensive survey was not conducted to see if there are other countries with laws or regulations related to mercury emissions from mining operations, but a cursory look did not reveal other regulations pertaining to mercury emissions from jewellery-supply-chain operations, although there may be some European countries that have them. According to a recent article, “U.S. and European governments have invoked strict regulations in recent decades to reduce mercury emissions. But fresh research by the United Nations Environmental Program and U.S. and European scientists has documented a concurrent rise in mercury emissions in Asia, Africa and the Arctic Ocean region, underscoring that mercury is a global problem in need of a collaborative solution. . . Mercury controls have been practiced on a voluntary basis by leading industrial countries in recent years. . .” (Williams, C. Jan. 23, 2013. “Big deal, little fanfare over global pact on mercury controls,” *Los Angeles Times*.  
<http://www.latimes.com/news/world/worldnow/la-fg-wn-global-mercury-controls-20130118,0,3286036.story>)

<sup>250</sup> U.S. Federal Register. 2011. National Emission Standards for Hazardous Air Pollutants: Gold Mine Ore Processing and Production Area Source Category; and Addition to Source Category List for Standards; Final Rule.  
<http://www.epa.gov/ttn/atw/area/fr17fe11.pdf>

<sup>251</sup> For example, although it is known that there are mercury emissions associated with platinum-group metals, detailed mercury emission inventories are not yet fully developed for these sources. (Pirrone, N. et al. 2010. “Global mercury emissions to the atmosphere from anthropogenic and natural sources,” *Atmos. Chem. Phys.* 10:5951-5964.  
<http://www.atmos-chem-phys.net/10/5951/2010/acp-10-5951-2010.pdf>)

<sup>252</sup> Moran, R.E. 2008. “Mining Submarine Tailings Disposal [STD] – Summary Concepts.” Presented to the International Maritime Organization, Scientific Group of the London Protocol, May 2008. Available at:  
<http://www.sjofartsverket.se/pages/15453/31-INF14.pdf> (see Annex p. 2.)

<sup>253</sup> Ibid. Annex p. 1.

<sup>254</sup> Earthworks and MiningWatch Canada. 2012. *Troubled Waters: How mine waste dumping is poisoning our oceans, rivers, and lakes*. pp. 7 -10. [http://www.earthworksaction.org/files/publications/Troubled-Waters\\_FINAL.pdf](http://www.earthworksaction.org/files/publications/Troubled-Waters_FINAL.pdf) and MiningWatch Canada. 2002. *Submarine Tailings Disposal Toolkit*. <http://www.miningwatch.ca/submarine-tailings-disposal-toolkit>

<sup>255</sup> Earthworks and MiningWatch Canada. 2012. *Troubled Waters: How mine waste dumping is poisoning our oceans, rivers, and lakes*. p. 4.

<sup>256</sup> David Suzuki Foundation website: “Laws against mine tailings in freshwater.”  
<http://www.davidsuzuki.org/issues/freshwater/science/industrial-impacts/mining-waste-in-our-lakes-and-rivers/>

<sup>257</sup> Earthworks and MiningWatch Canada. 2012. *Troubled Waters: How mine waste dumping is poisoning our oceans, rivers, and lakes*. p. 2. [http://www.earthworksaction.org/files/publications/Troubled-Waters\\_FINAL.pdf](http://www.earthworksaction.org/files/publications/Troubled-Waters_FINAL.pdf)

<sup>258</sup> Nov. 2, 2010. “Canada rejects gold-copper mine over environmental concerns.” *Environmental News Service*.  
<http://www.ens-newswire.com/ens/nov2010/2010-11-02-01.html>

<sup>259</sup> BHP Billiton. 2012 *BHP Billiton Sustainability Report*. p. 21.  
[http://www.bhpbilliton.com/home/aboutus/sustainability/reports/Documents/2012/BHPBillitonSustainabilityReport2012\\_interactive.pdf](http://www.bhpbilliton.com/home/aboutus/sustainability/reports/Documents/2012/BHPBillitonSustainabilityReport2012_interactive.pdf)

<sup>260</sup> Goldcorp. 2011 *Sustainability Report*. [http://csr.goldcorp.com/2011/6\\_effluents.php](http://csr.goldcorp.com/2011/6_effluents.php) Gold

<sup>261</sup> Edinger, E. 2012. “Gold mining and submarine tailings disposal: Review and case study,” *Oceanography*. 25(2). p. 189. <http://dx.doi.org/10.5670/oceanog.2012.54>

<sup>262</sup> Moran, R.E. 2008. “Mining Submarine Tailings Disposal [STD] – Summary Concepts.” Presented to the International Maritime Organization, Scientific Group of the London Protocol, May 2008. Available at:  
<http://www.sjofartsverket.se/pages/15453/31-INF14.pdf> (see Annex p. 4)

<sup>263</sup> Edinger (p. 190) writes that, “data are sufficient to demonstrate that the observed dispersal area was more than 10 times greater than the predicted dispersal area based on the tailings modeling and mine closure studies. . . according to the environmental impact assessment, the observed tailings dispersal should not have occurred at all.” See footnote 256.

<sup>264</sup> Ibid. Edinger (pp. 190-194) also found that studies carried out or commissioned by the mine found that tailings did not impact nearby reefs, but that the company’s reef monitoring studies “were all carried out on the fringing reefs outside the bay, and did not include the reef closest to the tailings outfall.” Edinger’s study found tailings in fringing

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coral reefs in water as shallow as 20 m, and corals were smothered in fine-grained sediment resembling tailings in waters as shallow as 10 m.

<sup>265</sup> For example, Robert Goodland, former World Bank environmental advisor, has stated that, “The scientific evidence for and against [submarine tailings disposal] STD is not yet clear. STD might become acceptable in some cases, but science cannot yet predict which situations are acceptable. . . The Precautionary Principle means that STD should not be adopted until the deep-sea ecosystem has been thoroughly studied and understood by independent scientists.” (Goodland, R. 2012. “Responsible mining: key to profitable resource development,” *Sustainability*. 4:2099-2126. p. 2112. <http://www.mdpi.com/2071-1050/4/9/2099/pdf>)

<sup>266</sup> Miningwatch Canada and Project Underground. 2002. “Philippine Case Studies: Marinduque and Mindoro.” *STD Toolkit*. p. 5. [http://www.miningwatch.ca/sites/miningwatch.ca/files/02.STDtoolkit.Phil\\_.pdf](http://www.miningwatch.ca/sites/miningwatch.ca/files/02.STDtoolkit.Phil_.pdf)

<sup>267</sup> May 21, 2007. “Deep-sea mining may pose serious threat to fragile marine ecosystems, according to study,” *Science Daily*. <http://www.sciencedaily.com/releases/2007/05/070517142603.htm>

<sup>268</sup> World Heritage sites represent only 1 percent of the world’s land surface, while strictly protected areas (IUCN I-IV) represent approximately 10 percent. (Miranda, M., Burris, P., Bingcang, J, Shearman, P., Briones, J., La Vina, A., Menard, S., Kool, J., Miclat, S., Mooney, C. and Resueno, A. 2003. *Mining and Critical Ecosystems: Mapping the Risks*. p. 17. [http://pdf.wri.org/mining\\_critical\\_ecosystems\\_full.pdf](http://pdf.wri.org/mining_critical_ecosystems_full.pdf))

<sup>269</sup> Earthworks. 2007. *Golden Rules: Making the case for responsible mining*. p. 22. [http://www.nodirtygold.org/pubs/GoldenRules\\_FINAL.pdf](http://www.nodirtygold.org/pubs/GoldenRules_FINAL.pdf)

<sup>270</sup> Earthworks. 2007. *Golden Rules: Making the case for responsible mining*. p. 21. [http://www.nodirtygold.org/pubs/GoldenRules\\_FINAL.pdf](http://www.nodirtygold.org/pubs/GoldenRules_FINAL.pdf)

<sup>271</sup> Miranda, M. et al. 2003. *Mining and Critical Ecosystems: Mapping the Risks*. p. 16. [http://pdf.wri.org/mining\\_critical\\_ecosystems\\_full.pdf](http://pdf.wri.org/mining_critical_ecosystems_full.pdf)

<sup>272</sup> Ibid. p. 50.

<sup>273</sup> RJC CoP 3.5 allows mining in legally designated protected areas as long as members: take into account their impact on legally designated protected areas, comply with regulations related to those areas, take actions to deliver measurable biodiversity benefits commensurate with the level of impacts, and do not undertake activities that lead to extinction or, as suggested in the proposed CoP revisions, a significant decline of threatened species. The Nov. 2012 proposed revisions to the CoP adds a provision to allow mining in areas of critical habitat if companies can ensure that there is no measurable adverse impact on the ecological criteria used to designate those areas.

<sup>274</sup> According to the EIR, “In 2000, IUCN-The World Conservation Union called on governments to prohibit mining, oil, and gas development in IUCN-protected areas . . . and recommended that any extractive activity in categories V and VI take place only if it is compatible with the objectives for which the protected area was established.” (Extractive Industries Review. 2003. “Vol. I World Bank Group and Extractive Industries,” In: *Striking a Better Balance. Final Report of the Extractive Industries Review*. p. 29. Available at: <http://go.worldbank.org/T1VB5JCV61>)

<sup>275</sup> Miranda, M. et al. 2003. *Mining and Critical Ecosystems: Mapping the Risks*. p. 17. [http://pdf.wri.org/mining\\_critical\\_ecosystems\\_full.pdf](http://pdf.wri.org/mining_critical_ecosystems_full.pdf)

<sup>276</sup> Extractive Industries Review. 2003. “Vol. I World Bank Group and Extractive Industries,” In: *Striking a Better Balance. Final Report of the Extractive Industries Review*. p. 54. Available at: <http://go.worldbank.org/T1VB5JCV61>

<sup>277</sup> Goodland, Robert. 2012. “Responsible Mining: The Key to Profitable Resource Development.” *Sustainability*. 4, no. 9: 2099-2126. p. 2113 and 2114. <http://www.mdpi.com/2071-1050/4/9/2099>

<sup>278</sup> Government of Ghana website: Feb. 2011. “Ghana Gazettes ECOWAS Directive on Mining Sector.” <http://www.ghana.gov.gh/index.php/news/general-news/4853-ghana-gazettes-ecowas-directives-on-mining-sector>

<sup>279</sup> Earthworks website: “The Golden Rules.” <http://www.nodirtygold.org/goldenrules.cfm>

<sup>280</sup> Beaverbrooks, Ben Bridge Jeweler, Birks and Mayors, Boucheron, Cartier, Day’s Jewelers, F. Hinds, Fred Meyer, Hamilton Jewelers, JC Penney, Krikawa Jewelry Designs, Piaget, Signet Jewelers, Tiffany & Co. See Earthworks website: “Retailers who support the Golden Rules.” [http://www.nodirtygold.org/supporting\\_retailers.cfm](http://www.nodirtygold.org/supporting_retailers.cfm) and RJC website: “All jewellery retail members.” <http://www.responsiblejewellery.com/members/?cat=jewellery-retailer> and “All jewellery manufacturer or wholesale members.” <http://www.responsiblejewellery.com/members/?cat=jewellery-manufacture-or-wholesaler>

<sup>281</sup> Earthworks website: “Retailer statements.” [http://www.nodirtygold.org/retailer\\_statements.cfm](http://www.nodirtygold.org/retailer_statements.cfm)

<sup>282</sup> In 2004, IUCN released a report on biodiversity offsets based on interviews with industry, NGOs, etc. Their research found that much work was still needed to ensure that offsets could be done in an equitable, sustainable and cost-effective manner: “Much more work is needed to develop socially acceptable and workable methodologies to measure both biodiversity loss and gain”; “Many of the companies interviewed stated that they would welcome guidance on conservation priorities and described a lack of clarity on this issue as a significant constraint in the design of offsets”; “Many interviewees identified the need for further work to articulate the concepts involved in biodiversity offsets and to develop guidelines and methodologies, particularly on the issue of “currency”: the basis for measuring the loss of biodiversity caused at a development site and the conservation outcomes needed to offset it elsewhere.”

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Specific areas where further work is called for include: More dialogue and a shared vocabulary; pilot projects and case studies to experiment and, if possible, demonstrate net benefits; and support from companies, governments, NGOs and local communities, first in exploring the general approach of “no net loss”, and then in the design of specific offset project.” (ten Kate, K., Bishop, J. and Bayon, R. 2004. Biodiversity Offsets: Views, experience, and the business case. Exec. Summary. Prepared for IUCN.

[http://www.pebls.org/files/Publications/IUCN/IUCN\\_Biodiversity%20offsets%20views%20experience%20business%20summary.pdf](http://www.pebls.org/files/Publications/IUCN/IUCN_Biodiversity%20offsets%20views%20experience%20business%20summary.pdf)

<sup>283</sup> United Nations Global Compact web site: “The CEO water mandate.” <http://ceowatermandate.org/about/>

<sup>284</sup> Miranda, M. and Sauer, A. 2010. *Mine the Gap: Connecting Water Risks and Disclosure in the Mining Sector*. World Resources Institute. p. 2. [http://pdf.wri.org/working\\_papers/mine\\_the\\_gap.pdf](http://pdf.wri.org/working_papers/mine_the_gap.pdf)

<sup>285</sup> For example, De Beers has stated, “Most of our mines are located in semi-arid, water stressed environments in Botswana, Namibia and South Africa. Water, a limited natural resource, is essential for the operation of our mines. It is therefore a priority for us to investigate alternative sources of water and to operate using water resources as efficiently and sustainably as possible to minimise the impact of our water use.” (De Beers. Feb. 2012. *UN Global Compact CEO Water Mandate: Communication on Progress*. p. 1.

[http://www.debeersgroup.com/ImageVaultFiles/id\\_1777/cf\\_5/2012\\_Communication\\_on\\_Progress\\_to\\_the\\_UN\\_CEO\\_Water.PDF](http://www.debeersgroup.com/ImageVaultFiles/id_1777/cf_5/2012_Communication_on_Progress_to_the_UN_CEO_Water.PDF))

<sup>286</sup> Miranda, M. and Sauer, A. 2010. *Mine the Gap: Connecting Water Risks and Disclosure in the Mining Sector*. World Resources Institute. p. 4. [http://pdf.wri.org/working\\_papers/mine\\_the\\_gap.pdf](http://pdf.wri.org/working_papers/mine_the_gap.pdf)

<sup>287</sup> For example, as expressed by World Resources Institute, “All water is local, thus water usage data is only relevant when placed in the context of local water availability. Competing demands from communities, agriculture, and other industrial users must be factored into assessments of local water availability.” (Ibid. p. 13)

<sup>288</sup> Rio Tinto. *2011 Annual Report*. p. 15.

[http://www.riotinto.com/annualreport2011/pdf/rio\\_tinto\\_2011\\_annual\\_report.pdf](http://www.riotinto.com/annualreport2011/pdf/rio_tinto_2011_annual_report.pdf)

<sup>289</sup> AngloGold Ashanti’s website: “Water for consumptive use in operations.” (Click on Americas to find data on AGA Mineracao) <http://www.aga-reports.com/11/sustainability-report/supplementary-data/en-water> Accessed Feb. 23, 2013.

<sup>290</sup> BCS, Incorporated. 2002. *Energy and Environmental Profile of the U.S. Mining Industry*. Report prepared for U.S. Department of Energy Office of Energy Efficiency and Renewable Energy. p. 1-16.

<http://www.netl.doe.gov/keyissues/mining/overview.pdf>

<sup>291</sup> Wurtenberger, L. and Hassan, E. 2011. *Policy Brief: Low carbon option sin the gold mining industry in Ghana*. p. 2. <http://www.ecn.nl/docs/library/report/2011/o11023.pdf>

<sup>292</sup> Energy Efficiency Guide for Utah Businesses. “Industrial Recommendations: Mining.”

<http://www.utahefficiencyguide.com/recommendations/industrial/mining.htm>

<sup>293</sup> In 2002, the total energy required to mine and process gold in the U.S. was estimated to be 472,400 Btu per ton. Mining required 88% of the total energy consumed per ton while processing used the remaining 12%. (BCS Inc. 2002. *Energy and Environmental Profile of the U.S. Mining Industry*. Prepared for U.S. Dept. of Energy. p. 7-17.

<https://www1.eere.energy.gov/industry/mining/pdfs/gold-silver.pdf>.)

<sup>294</sup> Mudd, G. 2007. “Resource Consumption Intensity and the Sustainability of Gold Mining.” Paper presented at the 2nd International Conference on Sustainability Engineering & Science, Auckland New Zealand, Feb. 2007. p. 8.

<http://www.thesustainabilitysociety.org.nz/conference/2007/papers/MUDD-Gold-Mining-v-Sustainability.pdf>

<sup>295</sup> Mackenzie, A. ICMM, 2010. *Mining and Sustainability: Health & Safety, the Environment & Climate Change*. Presentation to the Intergovernmental Forum, Geneva, 1 Nov. 2010. p. 20.

<http://www.globaldialogue.info/AMackenzie%20-%20ICMM%20-%20IGF%20presentation.pdf>

<sup>296</sup> Ibid. p. 22. Based on data from 2004 to 2010, ICMM estimates GHG emissions of gold from ICMM member companies to be 19.4 million tonnes of CO<sub>2</sub>-equivalent (CO<sub>2</sub>-e). Coal and aluminum were estimated to emit 42.8 million and 31.1 million tonnes of CO<sub>2</sub>-e, respectively.

<sup>297</sup> Ibid. p. 23. Based on ICMM data, average GHG intensity of gold is more than 20,000 kg CO<sub>2</sub>-e per kg of gold, and GHG intensity of PG metals is more than 40,000 kg CO<sub>2</sub>-E per kg PGM. GHG intensities of all other metals and coal were less than 50 kg CO<sub>2</sub>-e per kg of product.

<sup>298</sup> Energy use increased from 496 petajoules (PJ) in 2009, to 513 PJ in 2010 and 516 PJ in 2011. Rio Tinto did not report energy intensity, but using the same “unit commodity output” from the GHG intensity, we derive an energy intensity of 233.04 in 2010 and 233.32 in 2011. Greenhouse gas intensity decreased from 92.7 in 2009 to 96.2 in 2010, but then remained at 96.2 in 2011. (Rio Tinto. *2011 Annual Report*. p. 15.

[http://www.riotinto.com/annualreport2011/pdf/rio\\_tinto\\_2011\\_annual\\_report.pdf](http://www.riotinto.com/annualreport2011/pdf/rio_tinto_2011_annual_report.pdf))

<sup>299</sup> Energy consumption (direct and indirect) increased from 0.52 million Gigajoules (GJ) in 2010 to 0.61 million GJ in 2011. (Anglogold Ashanti website: *2011 Annual Report*. “Energy.” <http://www.aga-reports.com/11/sustainability-report/supplementary-data/en-energy> Note: Click on Americas to get information for the Mineracao operation.)

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<sup>300</sup> Data on gold production from AngloGold Ashanti's Mineracao operation from AGA website: Annual Financial Statements / Review of Operations / Americas "Brazil." 2011. <http://www.aga-reports.com/11/financial-statements/review-of-operations/americas/brazil>

Calculation: 52 million GJ ÷ 338,000 oz of gold (2010) vs. 61 million GJ ÷ 361,000 oz of gold (2011) = 154 and 169 GJ/oz of gold, respectively.

<sup>301</sup> Added direct and indirect greenhouse gas emissions for the AGA Mineracao site (Click on Americas to get to that information). (Anglogold Ashanti website: 2011 Annual Report. "Climate Change." <http://www.aga-reports.com/11/sustainability-report/review-compliance/gri-reporting-index>)

<sup>302</sup> Total Energy = 11.59 million Gigajoules (GJ) (2011) and 11.24 million GJ (2010), Total carbon dioxide equivalent emissions = 1.45 million tonnes (2011) and 1.48 million tonnes (2010), Total diamond production = 31.3 million carats (2011) and 33 million carats (2010). (De Beers. 2011 Report to Society. pp. 8, 60. [http://www.debeersgroup.com/ImageVaultFiles/id\\_1874/cf\\_5/De\\_Beers\\_RTS\\_single\\_pages.PDF](http://www.debeersgroup.com/ImageVaultFiles/id_1874/cf_5/De_Beers_RTS_single_pages.PDF))

<sup>303</sup> There are many examples of companies incorporating best practices such as utilizing renewable energy sources in their operations. (E.g., Sept. 7, 2012. "World's miners turning to solar, wind, renewable energy to meet growing power needs," *CleanTechnica*. <http://cleantechnica.com/2012/09/07/worlds-miners-turning-to-solar-wind-renewable-energy-to-meet-growing-power-needs/> and Booyens, Y. June 22, 2012. "Company on the brink of proving solar energy benefits to industry," *Mining Weekly*. <http://www.miningweekly.com/article/company-on-the-brink-of-proving-solar-energy-benefits-to-industry-2012-06-22>)

A 2007 study conducted for the U.S. Department of Energy estimated that the U.S. metal mining industry could reduce energy use by 61% through a combination of best practices and improved mining technology. The corresponding carbon dioxide emissions reductions were estimated to be 20.6 million tonnes/yr. (BCS, Inc. 2007. *Mining Industry Energy Bandwidth Study*. Prepared for the Industrial Technologies Program (ITP), U.S. Department of Energy's Office of Energy Efficiency and Renewable Energy (EERE). pp. 2 and 21. [http://www1.eere.energy.gov/industry/mining/pdfs/mining\\_bandwidth.pdf](http://www1.eere.energy.gov/industry/mining/pdfs/mining_bandwidth.pdf))

<sup>304</sup> For example, the current RJC CoP 3.3.3 related to waste emissions provides a template for how RJC could structure a provision that would be measurable, i.e., by requiring a reduction in greenhouse gas emissions relative to production output.

<sup>305</sup> RJC web site: "Chain of Custody Certified Members." <http://www.responsiblejewellery.com/chain-of-custody-certification/chain-of-custody-certified-members/> Accessed Feb. 24, 2013.

<sup>306</sup> Definition of Eligible Material: "Gold, and/or platinum Group Metals, that is eligible to become CoC Material under the RJC Chain-of-Custody standard." (RJC. 2012. *CoC Standard*. p. 14)

Definition of CoC Material: "Material with an Eligible Material Declaration from a CoC Certified entity that is transferred in accordance with the RJC CoC standard. CoC Material may be one or more of Mined, Recycled, or Grandfathered." (RJC. 2012. *CoC Standard*. pp. 13, 14)

<sup>307</sup> RJC. 2012. *CoC Standard*. p. 4.

<sup>308</sup> RJC. 2012. *CoC Standard*. p. 14.

<sup>309</sup> Fair Jewelry Action website: June 29, 2009. "Greg Valerio Interviews Michael Rae, CEO of the Responsible Jewellery Council." <http://www.fairjewelry.org/greg-valerio-interviews-michael-rae-ceo-of-the-responsible-jewellery-council/>

<sup>310</sup> Solomon, F. (RJC). 2011. *Rountables on Chain-of-Custody Certification Initiative. Jan-Feb.2011*. <http://www.responsiblejewellery.com/files/RJCChainofCustodyRoundtablesJanuary-February2011Presentation.pdf>

<sup>311</sup> CoC Provision 10 says that, "This provision supports the adoption of a policy and risk management framework for conflict-sensitive sourcing practices, drawing on the OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas." (RJC. 2012. *CoC Standard*. p. 11)

<sup>312</sup> CFD-Terre Solidaire, CENADEP, Enough Project, Global Witness, Partnership Africa Canada, UAID. May 26, 2011. "Electronics, auto makers should commit now to due diligence standards to end trade in conflict minerals," Press Release. <http://www.oecd.org/daf/inv/investmentfordevelopment/48269949.pdf>

<sup>313</sup> Kolver, L. Sept. 7, 2012. "Global Witness urges immediate adherence to anticonflict-minerals law," *Mining Weekly*. <http://www.miningweekly.com/article/companies-should-immediately-start-implementing-conflict-minerals-rules-2012-09-07>

<sup>314</sup> "This provision supports the adoption of a policy and risk management framework for conflict-sensitive sourcing practices, drawing on the OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict – Affected and High-Risk Areas." (RJC. 2012. *CoC Standard*. Provision 10. p. 11.)

<sup>315</sup> OECD. 2011. *OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas: Second Edition*. p. 111. <http://dx.doi.org/10.1787/9789264185050-en>

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<sup>316</sup> OECD (2011) requires: Refiner details, the date of the audit and the audit period; The audit activities and methodology, audit conclusions, as defined in Step 4(A)(4), as they relate to each step in this Guidance. (Ibid. pp. 109, 110.)

RJC: Publishes audit recommendations and certification outcomes on the RJC website. (Solomon, F. May 2012. *Presentation at the OECD Gold Supply Chain Implementation Meeting*. May 2-3, 2012. Slide 7. <http://www.oecd.org/daf/inv/investmentfordevelopment/50472027.pdf>)

<sup>317</sup> OECD (2011): In-site investigations should include “The refiner facilities and sites where the refiner carries out due diligence for responsible supply chains of gold from conflict-affected and high-risk areas.” (Ibid. p. 108.)

RJC: “a sampling of Facilities is allowed at the Auditor’s discretion, where there are common management systems applied in similar contexts.” (RJC. 2012. *CoC Certification Handbook*. p. 8.)

<sup>318</sup> OECD (2011): In-site investigations should include: Consultations with relevant local and central governmental authorities, and where they exist, UN expert groups, UN peacekeeping missions and local civil society, as determined by the auditor to be appropriate to the circumstances and risks identified in the gold supply chain. (Ibid.)

RJC: no requirement to consult or interview anyone except for company personnel during audits. (RJC. 2012. *CoC Assessment Toolkit – Assessment Questions and Types of Evidence*.)

<sup>319</sup> See Section 5.1.

<sup>320</sup> Lezhnew, S. and Sullivan, D. 2011. *Certification: the path to conflict-free minerals from Congo*. The Enough Project. p. 8. [http://www.enoughproject.org/files/certification\\_paper\\_0.pdf](http://www.enoughproject.org/files/certification_paper_0.pdf)

<sup>321</sup> For example, CoC 4.2 says that for mined material from conflict-affect areas due diligence must confirm that the production, processing and transportation of the Material did not directly or indirectly finance or benefit Illegal Armed Groups. And CoC 10.4 due diligence requires sourcing according to Know Your Customer systems. KYC due diligence procedures required by RJC are only in place to avoid supplies from ‘illegitimate sources’, which are sources that are contrary to applicable law, and/or involved with illegal mining, funding of conflict, money-laundering, funding of terrorism, or proceeds of crime. (See definitions of Know Your Customer and Illegitimate Sources. RJC. 2012. *CoC Standard*. p. 15) Neither provision mentions human rights abuses.

<sup>322</sup> RJC. 2012. *CoC Standard*. Provision 4.1.c.

<sup>323</sup> CoC Certification Page has list of Responsible Recognised Standards. <http://www.responsiblejewellery.com/chain-of-custody-certification/> The Fairtrade and Fairmined Standard is available at: <http://www.communitymining.org/index.php/en/fairtrade-and-fairmined-standard>

<sup>324</sup> For example, it does not prohibit use of mercury and cyanide; allows mining in protected areas; and does not restrict habitat destruction. (Cardiff, S. 2010. *The Quest for Responsible Small-Scale Gold Mining – A Comparison of Standards of Initiatives Aiming for Responsibility*. Earthworks. p. 5. <http://www.earthworksaction.org/files/publications/Small-scale-gold%20mining-initiatives-comparison-2010.pdf>)

<sup>325</sup> Alliance for Responsible Mining web site: “Why ASM.” <http://communitymining.org/index.php/en/why-asm> Accessed Feb. 24, 2013.

<sup>326</sup> RJC. 2012. *CoC Standard Guidance*. p. 16. Box 9.

<sup>327</sup> RJC. 2012. *CoC Standard*. Provision 4. Eligible Mined Materials includes, “ASM producers operating on the entity’s Mining Facility concessions that have participated in initiatives that enable the professionalisation and formalisation of ASM, and with documented Due Diligence that confirms that the Material comes from such producer’s mining operations on the entity’s Mining Facility concession and not from Illegitimate sources.”

<sup>328</sup> RJC. 2012. *CoC Standard Guidance*. p. 16.

<sup>329</sup> According to RJC, “the key is whether the **initiatives** to support formalisation and professionalisation provide incentives to the ASM to improve performance in priority areas.” (Ibid.)

<sup>330</sup> Eligible Mined Gold and Platinum Group Metals can be recovered by a CoC Certified entity, including a Refiner, as a Mining byproduct from processing residues (such as slimes) arising from metallurgical processing of other metals not within the RJC’s scope such as copper, lead, zinc or nickel. (RJC. 2012. *CoC Standard*. p. 14)

<sup>331</sup> Definition of mining byproduct: Mined Gold or Platinum Group Metals that are produced from other metal mining, e.g., from copper sulphide ore, in which Precious Metals may be a trace constituent. When Mined Precious Metals are a byproduct, the other metal is processed and refined first, and the Precious Metal is then extracted and refined from the final residue of the first metal, such as a copper electrolytic cell slime. (RJC. 2012. *CoC Standard*. p. 16)

<sup>332</sup> “The processing residues may be sourced from CoC and non-CoC Certified Entities.” (RJC. 2012. *CoC Standards Guidance*. p. 18)

<sup>333</sup> Multi-commodity Mining Facilities that produce Eligible Precious Metals along with other metals not covered by the CoC Standard can choose to apply the CoC Standard directly by seeking CoC Certification covering those relevant Mining Facilities. (RJC. 2012. *CoC Standards Guidance*. p. 18) But this is not a requirement.

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<sup>334</sup> RJC. 2012. *CoC Standard*. Provision 4.2 “An Entity issuing an Eligible Material Declaration for Mined Material shall have documented Due Diligence that is able to confirm one of the following: c. The Material is Mining Byproduct with suppliers screened according to the Know Your Customer systems and procedures described in provisions 5.1a,b,c,d and 5.2a,b,c.”

<sup>335</sup> According to RJC CoC Standards Guidance (2012. p. 18): The Refiner makes the Eligible Material Declaration and starts the Chain-of-Custody for Mining Byproduct, as it is the first point at which the Precious Metals are separated. This aims to align with the OECD Due Diligence Guidance – Supplement on Gold on the issue of mining byproduct gold, where for the purposes of due diligence, the origin is considered to be the point where gold is separated, i.e. the Refiner.

<sup>336</sup> RJC. 2012. *CoC Standard*. Provision 7.2 says that, “For Eligible Mined Material, the Entity shall include in the CoC Transfer Document: c. The country or countries where the Mining Byproduct was refined for 4.2c.”

<sup>337</sup> Freeport-McMoran Copper and Gold. Form 10-K for the fiscal year ending Dec. 31, 2011. Filing with the U.S. Securities and Exchange Commission. p. 88.  
<http://www.sec.gov/Archives/edgar/data/831259/000083125912000014/a2011form10-k.htm>

<sup>338</sup> Ibid. p. 5

<sup>339</sup> Ibid. p. 86

<sup>340</sup> Ibid. p. 94.

<sup>341</sup> RJC. 2012. *CoC Standard*. p. 14.

<sup>342</sup> OECD. 2012. *Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas*. Supplement on Gold. pp. 30 and 31.  
<http://www.oecd.org/daf/internationalinvestment/guidelinesformultinationalenterprises/GoldSupplement.pdf>

<sup>343</sup> RJC. 2011. *Discussion Paper 3 and Draft RJC CoC Standard (version 2)*. p. 10.  
<http://webcache.googleusercontent.com/search?q=cache:IDuTFmsCFncJ:www.responsiblejewellery.com/files/RJCStandardCoCJun11.pdf+&hl=en&gl=us>

<sup>344</sup> RJC requires that mined material that originates from a conflict area must have a due diligence summary attached. “The CoC Certified Mining company has conducted Due Diligence, a summary of which is attached, to confirm the production and transportation of the Mined Material did not finance or benefit any Illegal Armed Groups.” (RJC. 2012. *CoC Standard Guidance*. p. 27) The same is not required for recycled material. (p. 28)

<sup>345</sup> RJC. 2012. *CoC Standard Guidance*. p. 33.

<sup>346</sup> Know Your Customer Definition: Principles established to combat money laundering and finance of terrorism. KYC principles require businesses to establish the identity of all organisations with which they deal, have a clear understanding of their business relationships and have a reasonable ability to identify and react to transaction patterns appearing out of the ordinary or suspicious. (RJC. 2012. *CoC Standard*. p. 15.)

<sup>347</sup> Definition of illegitimate sources found in RJC. 2012. *CoC Standard*. p. 15.

<sup>348</sup> RJC. 2010. *RJC Chain-of-Custody certification for the diamond, gold and platinum jewellery supply chain – Discussion Paper 2*. p. 4.

In an RJC presentation Philip Olden raised the question, “‘Scrap’ gold: ‘recycled’, ‘pre-owned’, ‘laundered’?” (Olden, P. 2010. *Gold and Jewellery Supply Chain: a Context*. RJC presentation. Slide 4.  
[http://www.responsiblejewellery.com/files/RJC\\_18\\_May\\_Philip\\_Olden.pdf](http://www.responsiblejewellery.com/files/RJC_18_May_Philip_Olden.pdf))

<sup>349</sup> See definition of Eligible Grandfathered. (RJC. 2012. *CoC Standard*. p. 14)

<sup>350</sup> The RJC considers the use of Grandfathered Material to be consistent with responsible practices, as the use of the Material, if it is supplied by a legitimate source, can provide no incremental negative impact. Eligible Grandfathered Material may be sourced from existing stocks of bullion, such as Precious Metals stocks held in bullion banks, providing the item of Material can be linked to a date prior to 1 January 2012 (RJC. 2012. *CoC Standard Guidance*. p. 25)

<sup>351</sup> Olden, P. 2010. *OECD Due Diligence Guidance for Responsible Supply Chain Management of Minerals from Conflict-Affected and High Risk Areas; Implications for the Supply Chains of Gold and other Precious Metals*. p. 7.  
<http://www.oecd.org/daf/inv/mne/46080654.pdf>

<sup>352</sup> For example, in 1978 Metalor in Switzerland instituted a serial numbering system for its bars that includes six numbers plus year date. Other refiners have done the same. (See: London Good Delivery Bars.  
[http://www.goldbarsworldwide.com/PDF/BI\\_6\\_LondonGoldBars.pdf](http://www.goldbarsworldwide.com/PDF/BI_6_LondonGoldBars.pdf))

<sup>353</sup> “For alloys or jewellery products that are described as ‘Gold’, irrespective of fineness, the inclusion of any Platinum Group Metals in the gold alloy does not need to be identified in the CoC Transfer Document.” (RJC. 2012. *CoC Standards Guidance*. p. 26)

<sup>354</sup> See Gold and Gold Alloys. Key to Metals web site.  
<http://www.keytometals.com/page.aspx?ID=CheckArticle&site=ktn&NM=230>

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- <sup>355</sup> Raw, P. 2001. World Gold Council. "The Assaying and Refining of Gold." [http://www.gold.org/download/pub\\_archive/pdf/WOR8294\\_Assaying\\_and\\_refining\\_of\\_gold.pdf](http://www.gold.org/download/pub_archive/pdf/WOR8294_Assaying_and_refining_of_gold.pdf)
- <sup>356</sup> Ibid.
- <sup>357</sup> RJC. 2012. *CoC Standards Guidance*. p. 30.
- <sup>358</sup> In a mass balance approach, the bullion bank would keep track of the amount of certified product holds, but there is no physical segregation of the CoC material. So the purchaser is not guaranteed to receive gold that is responsibly produced. (RJC. 2011. *RJC Chain-of-custody (CoC) certification for the diamond, gold and platinum jewellery supply chain Discussion Paper 3 + Draft RJC CoC Standard (version 2)*. Draft for Public Comment. June 24, 2011. pp. 6 and 14. <http://www.responsiblejewellery.com/files/RJCStandardCoCJun11.pdf>.)
- <sup>359</sup> Ibid. p. 6.
- <sup>360</sup> Ibid. p. 14.
- <sup>361</sup> Olden, P. 2010. *OECD Due Diligence Guidance for Responsible Supply Chain Management of Minerals from Conflict-Affected and High Risk Areas; Implications for the Supply Chains of Gold and other Precious Metals*. p. 28. <http://www.oecd.org/daf/inv/mne/46080654.pdf>
- <sup>362</sup> Ibid. Definitions of unallocated and allocated gold accounts. p. 8.
- <sup>363</sup> Olden, P. 2010. *OECD Due Diligence Guidance for Responsible Supply Chain Management of Minerals from Conflict-Affected and High Risk Areas; Implications for the Supply Chains of Gold and other Precious Metals*. p. 35. <http://www.oecd.org/daf/inv/mne/46080654.pdf>
- <sup>364</sup> RJC Definition of Outsourcing. (RJC. 2012. *CoC Standard Guidance*. p. 48) and RJC. 2011. *Roundtables on Chain-of-Custody Certification Initiative*. Jan-Feb. 2011. Slide 31. <http://www.responsiblejewellery.com/files/RJCChainofCustodyRoundtablesJanuary-February2011Presentation.pdf>
- <sup>365</sup> It is not a requirement for all outsourcing contractors to be audited by RJC. According to RJC's Assessment Toolkit, "Confirmation that all Outsourcing Contractors and Service Companies included in the Certification Scope, or a sample of Outsourcing Contractors and Service Companies at the auditor's discretion, have been audited for conformance with provision 2 (emphasis added)." (RJC. 2012. *CoC Assessment Toolkit – Assessment Questions and Types of Evidence*. p. 6)
- <sup>366</sup> RJC. 2012. *CoC Standard*. Provision 3.1c. "Any Outsourcing Contractor that takes Custody of an entity's CoC Material shall be included in the entity's Certification scope and shall have a Management system in place that conforms with provision 2 (Internal Material Control) of this standard." (Provision 2 requires Members to maintain segregation of CoC from non-CoC Material).
- <sup>367</sup> "The Outsourcing Contractor can be audited for compliance as part of the entity's Certification Audit. Descriptions and evidence of Outsourcing Contractors' internal material controls should be included in the self Assessment to improve the efficiency of the assessment process and assist auditors to assess risks. (RJC. 2012. *CoC Standard Guidance*. p. 12.)
- <sup>368</sup> Ibid. "Outsourcing Contractors that handle an entity's CoC Material are encouraged to be CoC Certified in their own right."
- <sup>369</sup> Only provision 2 related to Internal Material Controls. (RJC. 2012. *CoC Standard*. Provision 3.1c. p. 8)
- <sup>370</sup> RJC. 2012. *CoC Standard Guidance*. p. 12.
- <sup>371</sup> RJC CoC Standard defines provenance as "Where the Chain-of-Custody for Eligible Material or CoC Material specifically or collectively started." (RJC. 2012. *CoC Standard*. p. 16)
- <sup>372</sup> Bates, R. Feb. 2012. "Chain of Custody Battle: Where do your jewelry materials come from?" *JCK Magazine*. <http://www.jckonline.com/2012/01/25/chain-custody-battle-where-do-your-jewelry-materials-come-from>
- <sup>373</sup> RJC. 2012. *CoC Standard Guidance*. p. 9.
- <sup>374</sup> RJC. 2012. *CoC Standard*. Appendix i. CoC Material Transfer Document. p. 19.
- <sup>375</sup> "Supplementary information . . . can be included in a CoC Transfer Document at the entity's discretion. This could be: Information about origin, such as country of origin of Mined Material, the name of the mine, or the country where Recycled or Grandfathered Materials were collected or processed." (RJC. 2012. *CoC Standard Guidance*. p. 33)
- <sup>376</sup> RJC. 2012. *CoC Standard Guidance*. p. 32.
- <sup>377</sup> RJC. 2012. *CoC Standard Guidance*. pp. 28, 29, 31 and 32.
- <sup>378</sup> Alliance for Responsible Mining and Fairtrade Labelling Organizations International. 2010. *Fairtrade and Fairmined Standard For Gold From Artisanal And Small-Scale Mining, Including Associated Precious Metals*. (Version March 15, 2010). Section 0.2.2. "Scope of mining area. p. 7. [http://communitymining.org/attachments/034\\_Gold%20Standard%20Mar%202010%20EN.pdf](http://communitymining.org/attachments/034_Gold%20Standard%20Mar%202010%20EN.pdf)

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<sup>379</sup> January 31, 2011. Comments by the Secretariat of the International Conference of the Great Lakes Region (ICGLR) on Section 1502 of the Dodd-Frank Wall Street Reform and Consumer Protection Act. File No. S7-40-10. p. 1. <http://www.sec.gov/comments/s7-40-10/s74010-54.pdf>

<sup>380</sup> “The confidentiality of Members’ commercially sensitive information is a core commitment for the RJC (see RJC policies at <http://www.responsiblejewellery.com/about-us/#policies>).” (RJC. 2009. *RJC Certification Handbook*. p. 11)

<sup>381</sup> As of January 1, 2013 Metalor Technologies SA was the only company that had CoC certification for some of its operations: Kwai Chung, Hong Kong, North Attleboro, Maine, U.S., and Marin, Switzerland. Progold S.p.A became the second company to receive RJC CoC Certification on Jan. 21, 2013. (RJC website: “Chain of Custody Certified Entities List.” <http://www.responsiblejewellery.com/chain-of-custody-certification/chain-of-custody-certified-members/>

<sup>382</sup> January 31, 2011. Comments by the Secretariat of the International Conference of the Great Lakes Region (ICGLR) on Section 1502 of the Dodd-Frank Wall Street Reform and Consumer Protection Act. File No. S7-40-10. p. 1. <http://www.sec.gov/comments/s7-40-10/s74010-54.pdf>

<sup>383</sup> Ian Smillie and Shawn Blore. 2011. *Taming the Resource Curse: Implementing the ICGLR Certification Mechanism for Conflict-prone Minerals*. Partnership Africa Canada. pp. 4, 9. [http://www.pacweb.org/Documents/icglr/PAC\\_Report\\_on\\_ICGLR\\_RCM-03-2011-eng.pdf](http://www.pacweb.org/Documents/icglr/PAC_Report_on_ICGLR_RCM-03-2011-eng.pdf)

<sup>384</sup> Ibid. p. 34.

<sup>385</sup> Ibid.

<sup>386</sup> Ibid. p. 26.

<sup>387</sup> See RJC’s Confidentiality Policy. [http://www.responsiblejewellery.com/files/RJC\\_Confidentiality\\_Policy\\_Oct\\_2008.pdf](http://www.responsiblejewellery.com/files/RJC_Confidentiality_Policy_Oct_2008.pdf)

<sup>388</sup> RJC. 2012. *CoC Standard Guidance*. p. 35.

<sup>389</sup> RJC. 2012. *CoC Standard*. p. 12.

<sup>390</sup> Metalor letter to customers. June 2012. [http://unimetal.com/pdf/Metalor\\_Conflict\\_Free\\_Gold\\_Update\\_July\\_2012.pdf](http://unimetal.com/pdf/Metalor_Conflict_Free_Gold_Update_July_2012.pdf)

<sup>391</sup> The RJC considers the use of Grandfathered Material to be consistent with responsible practices, “as the use of the Material, if it is supplied by a legitimate source, can provide no incremental negative impact.” (RJC. 2012. *CoC Standard Guidance*. p. 25) While RJC may adopt that position, there is, in fact, no assurance that the source of the grandfathered gold met any ethical or environmental standards.

<sup>392</sup> Due diligence procedures used by RJC CoC members are not designed to screen suppliers for environmental, labor or human rights abuses. In the RJC system, for CoC refiners that receive recycled materials must employ Know Your Customer (KYC) due diligence procedures. But the procedures required by RJC are only in place to avoid supplies from ‘illegitimate sources’, which are sources that are contrary to applicable law, and/or involved with illegal mining, funding of conflict, money-laundering, funding of terrorism, or proceeds of crime. (RJC. 2012. *CoC Standard*. p. 15.) There is no requirement to screen suppliers for environmental, social, labor or other ethical standards.

<sup>393</sup> If Metalor has used due diligence to know that its sources use practices that are consistent with RJC’s standards, that is a claim that they should make independent of RJC’s CoC certification. RJC’s CoC audits are not designed to evaluate a member’s claims regarding the ethical practices of the suppliers of recycled or grandfathered gold. As mentioned in Section 4, RJC CEO has stated that, “what we are doing is certifying the performance of the links in the supply chain. We are not certifying the stuff that is moving through the chain.”

<sup>394</sup> Members select accredited auditors or auditing organisations from the list and contract their services according to location and availability. (RJC. 2009. *Certification Handbook*. p. 12)

<sup>395</sup> See definition of Certification (RJC. 2009. CoP. p. 19), and definition of Certification Audit. (RJC. 2012. *CoC Standard*. p. 12)

<sup>396</sup> Verification scope is supposed to be representative of the nature, scale and impact of the Member’s business. (RJC. 2009. *Certification Handbook*. p. 34.)

<sup>397</sup> RJC. 2009. *Certification Handbook*. p. 15.

<sup>398</sup> The process of collecting Objective Evidence involves sampling documentation and records, interviewing a representative selection of personnel, and observing the key functions of the Member’s business practices. (RJC. 2009. *Assessment Manual*. p. 7)

<sup>399</sup> RJC CoP Audits: “Auditors can potentially choose any Facility as part of the Verification Assessment.” In addition, “Auditors may select all or a sub-set of the relevant RJC Code of practices and its provisions to assess during the Verification visit.” (Ibid. p. 19.)

RJC CoC Audits: “a sampling of Facilities is allowed at the Auditor’s discretion, where there are common management systems applied in similar contexts.” (RJC. 2012. *CoC Certification Handbook*. p. 8.)

<sup>400</sup> RJC website: “Home.” <http://www.responsiblejewellery.com/>

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<sup>401</sup> RJC. 2009. *Certification Handbook*. p. 25.

<sup>402</sup> The Member's Verification report includes: Executive summary; Background and purpose; Assessment team qualifications and auditing responsibilities; Certification scope as defined by Member; Verification scope including the Code of practices assessed and Facilities visited; personnel interviewed and documents reviewed; Details of levels of cooperation including any conflicts, disputes and disagreements; summary of the Verification Assessment method and any limitations; Detailed log of all non-Conformances; list of suggested business improvement opportunities if requested by the Member; Detailed log of any Corrective Action plans (if any) that have been agreed between the relevant Auditors and Member to address non-Conformances; noteworthy achievements and positive initiatives; Certification recommendation; Concluding statement; Appendices & supporting documentation. "This detailed report must not be submitted to the RJC Management Team." (RJC. 2009. *Assessment Manual*. p. 28)

<sup>403</sup> "The lead Auditor shall prepare a summary report to the RJC summarising the results of the Assessment: Certification Recommendation statement; Assessment team qualifications and auditing responsibilities; Certification scope as defined by Member; Verification scope including the Code of practices assessed and Facilities visited; summary of the Verification Assessment method and any limitations; summary of findings; noteworthy achievements and positive initiatives; General comments and feedback to RJC; Details of levels of cooperation including any conflicts, disputes and disagreements." (RJC. 2009. *Assessment Manual*. p. 28)

<sup>404</sup> RJC. 2009. *Assessment Manual*. p. 7.

<sup>405</sup> RJC. 2009. *Certification Handbook*. p. 13.

<sup>406</sup> Corrective Action is defined as an action implemented by a Member to eliminate the cause of a non-conformance in order to prevent a recurrence. (RJC. 2009. CoP. p. 21)

<sup>407</sup> Doyle, I. and Bendell, J. 2011. *Uplifting the Earth – the ethical performance of luxury jewellery brands*. p. 7. <http://www.lifeworth.com/consult/wp-content/uploads/2011/06/UpliftingTheEarth.pdf>

<sup>408</sup> Lezhnev, S. and Sullivan, D. May 2011. *Certification: The Path to Conflict-Free Minerals from Congo*. Enough Project. p. 8. [http://www.enoughproject.org/files/certification\\_paper\\_0.pdf](http://www.enoughproject.org/files/certification_paper_0.pdf)

<sup>409</sup> Nussbaum, R., Jennings, S. and Garforth, M. 2002. *Assessing Forest Certification Schemes: a practical guide*. (ProForest). [http://environment.yale.edu/tfd/uploads/proforest\\_assessment\\_guide.pdf](http://environment.yale.edu/tfd/uploads/proforest_assessment_guide.pdf)

<sup>410</sup> Fair Labour Association website: "Tracking Charts." <http://www.fairlabour.org/transparency/tracking-charts>

<sup>411</sup> Fair Labour Association website: "Independent External Monitoring Reports." <http://www.fairlabour.org/blog/entry/independent-external-monitoring-reports>

<sup>412</sup> Stanford Law School and Worker Rights Consortium, *Monitoring in the Dark*, February 2013, <http://workersrights.org/linkedddocs/Monitoring-In-The-Dark-Stanford-WRC.pdf>.

<sup>413</sup> For example, see AngloGold Ashanti's 2010 Recertification Summary Audit Report for its EGAP Gold Plant. <http://www.cyanidecode.org/sites/default/files/pdf/AngloEGAFAuditorSum10.pdf> For other reports, click on the signatory company. <http://www.cyanidecode.org/signatory-companies/directory-of-signatory-companies>

<sup>414</sup> For example, see the Rainforest Alliance website: <http://www.rainforest-alliance.org/forestry/certification/transparency/operation-summaries>

<sup>415</sup> FSC Certificate Database. <http://info.fsc.org> (To view an example, enter Aitkin County Land Department in the Certificate Holder box and hit search. Click on the result, and then go to the Reports tab. There you will find the Public Summary reports for this certificate holder.)

<sup>416</sup> Nussbaum, R., Jennings, S. and Garforth, M. (ProForest). 2002. *Assessing Forest Certification Schemes: a practical guide*. p. 34. [http://environment.yale.edu/tfd/uploads/proforest\\_assessment\\_guide.pdf](http://environment.yale.edu/tfd/uploads/proforest_assessment_guide.pdf)

<sup>417</sup> Mining Supplement – Meeting with stakeholders – London, Monday 8 December, 2008

<sup>418</sup> RJC's *Assessment Manual* (2009) provides instructions for auditors on how to complete verification assessments: "Communication with interested parties including neighbours and other stakeholders may be used as objective evidence in RJC verification assessments,"(p. 7.) but there is no requirement for auditors to seek input from these sources. The only documentation that an auditor is required to review is the member company's self-assessment. The manual lists other 'useful' documentation such as, "List of current issues including: interested parties including neighbours and other stakeholders."(p. 20.)

<sup>419</sup> RJC. 2009. *Assessment Manual*. p. 17.

<sup>420</sup> "To gather sufficient evidence for Verification, Auditors carry out on-site reviews of the self Assessment at a representative selection of the Member's facilities chosen by the Auditors. Auditors can potentially choose any Facility as part of the Verification Assessment. In addition, Auditors may select all or a sub-set of the relevant RJC Code of practices and its provisions to assess during the Verification visit." (RJC. 2009. *Assessment Manual*. p. 19)

<sup>421</sup> Roundtable on Sustainable Biofuels. Indicators of Compliance For the RSB EU RED Principles & Criteria. RSB-IND-11-001-20-001 (Version 2). pp. 11, 17. <http://rsb.epfl.ch/files/content/sites/rsb2/files/Biofuels/Certification/RSB%20EU%20RED%20Standards/10-12-13%20RSB-IND-11-001-20-001%20RSB%20EU%20RED%20Indicators%20Overs.%202.0.pdf>

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- <sup>422</sup> Forest Stewardship Council (FSC) Policy and Standards Unit. 2009. *Stakeholder consultation for forest evaluations*. FSC-STD-20-006 (V3-0) EN. p. 3. [http://www.fsc.nl/files/download/418/FSC-STD-20-006\\_V3-0\\_EN\\_Stakeholder\\_Consultation\\_for\\_Forest\\_Evaluation.pdf](http://www.fsc.nl/files/download/418/FSC-STD-20-006_V3-0_EN_Stakeholder_Consultation_for_Forest_Evaluation.pdf)
- <sup>423</sup> FSC Policy and Standards Unit. 2012. *Participation of external observers in on-site FSC audits and/or ASI assessments*. FSC-PRO-01-017 (V1-1) EN. Draft 2-0. <http://ic.fsc.org/download.observers-procedure-second-draft.696.pdf>
- <sup>424</sup> Ibid. pp. 8 and 9.
- <sup>425</sup> Forest Stewardship Council International Center website. "Stakeholder portal." <http://ic.fsc.org/fm-assessments.140.htm>
- <sup>426</sup> "The public summary reports prepared or updated after evaluations (main and surveillance) shall include a systematic presentation of stakeholder comments received together with the conclusions and a description of the follow-up action from the certification body." (FSC Policy and Standards Unit. 2009. *Stakeholder consultation for forest evaluations*. FSC-STD-20-006 (V3-0) EN. p. 11. [http://www.fsc.nl/files/download/418/FSC-STD-20-006\\_V3-0\\_EN\\_Stakeholder\\_Consultation\\_for\\_Forest\\_Evaluation.pdf](http://www.fsc.nl/files/download/418/FSC-STD-20-006_V3-0_EN_Stakeholder_Consultation_for_Forest_Evaluation.pdf))
- <sup>427</sup> ISEAL. 2012. *ISEAL Assurance Code*. V. 1.0. p. 14. <http://www.isealliance.org/sites/default/files/ISEAL-Assurance-Code-Version-1.0.pdf>
- <sup>428</sup> RJC. 2009. *Assessment Manual*. p. 17.
- <sup>429</sup> According to the *RJC Assessment Manual* (2009), "Although interviews are important, and participation should be encouraged, they are not compulsory." (p. 17)
- <sup>430</sup> IndustriALL, the global union federation representing mining trade unions throughout the world, and the United Steelworkers, the main mining trade union in the United States and Canada, have no knowledge of an audit at a mine ever interviewing a union worker or official. (Pers. Comm. Feb. 4, 2013)
- <sup>431</sup> Nussbaum, R., Jennings, S. and Garforth, M. (ProForest). 2002. *Assessing Forest Certification Schemes: a practical guide*. p. 32. [http://environment.yale.edu/tfd/uploads/proforest\\_assessment\\_guide.pdf](http://environment.yale.edu/tfd/uploads/proforest_assessment_guide.pdf)
- <sup>432</sup> RJC. 2009. CoP. p. 19. Definitions of Certification recommendation and Summary report.
- <sup>433</sup> RJC. 2009. *RJC Certification Handbook*. p. 7.
- <sup>434</sup> Forest Stewardship Council. 2009. *General requirements for FSC accredited certification bodies: The application of ISO/IEC Guide 65:1996 (e)*. FSC-STD-20-001 V3-0 EN. <http://ic.fsc.org/download.fsc-std-20-001-v3-0-en-general-requirements-for-fsc-accredited-certification-bodies.186.pdf>
- <sup>435</sup> Marine Stewardship Council website: "Step-by-step Assessment." <http://www.msc.org/get-certified/fisheries/assessment-process/assessment/assessment#step-4-gathering-information>
- <sup>436</sup> Nussbaum, R., Jennings, S. and Garforth, M. (ProForest). 2002. *Assessing Forest Certification Schemes: a practical guide*. p. 23. [http://environment.yale.edu/tfd/uploads/proforest\\_assessment\\_guide.pdf](http://environment.yale.edu/tfd/uploads/proforest_assessment_guide.pdf)
- <sup>437</sup> An auditor accreditation system has been established by the RJC. In addition to meeting the selection criteria for competence, prospective auditors will need to undertake additional training on the RJC system to become accredited. (RJC. 2009. *RJC Certification Handbook*. p. 12)
- <sup>438</sup> "Only accredited certifiers can carry out MSC assessments. (Marine Stewardship Council website: "Become a certifier." <http://www.msc.org/get-certified/become-a-certifier>)
- <sup>439</sup> Forest Stewardship Council website: "Accreditation Program." <http://ic.fsc.org/accreditation.28.htm>
- <sup>440</sup> For examples of audits and audit reports, see ASI web site: "Programs – Forest Stewardship Council." <http://www.accreditation-services.com/programs/fsc>
- <sup>441</sup> "The RJC plans to formally assess auditing quality and consistency and identify where the verification process needs further improvement or support. To this end, an independent Peer Review of a sample of the auditing carried out under the RJC system will be commissioned. This will commence once a sufficient number of verification assessments have been carried out to allow meaningful comparison. The review will comprise, subject to individual Members' agreement for access, desktop evaluation of a sample of completed assessments across the supply chain and the peer reviewer/s participation in a sample of two or more facility visits as an observer. The RJC will continue to commission regular independent peer reviews of auditing quality and auditor training as part of its ongoing quality control. Confidentiality of Member's information will be maintained." (RJC. 2009. *RJC Certification Handbook*. p. 21)
- <sup>442</sup> ISEAL. 2012. *Code of Good Practice for Assuring Compliance with Social and Environmental Standards*. Version 1.0. p. 14. [http://www.isealliance.org/sites/default/files/ISEAL%20Assurance%20Code%20Version%201.0\\_0.pdf](http://www.isealliance.org/sites/default/files/ISEAL%20Assurance%20Code%20Version%201.0_0.pdf)
- <sup>443</sup> Nussbaum, R., Jennings, S. and Garforth, M. (ProForest). 2002. *Assessing Forest Certification Schemes: a practical guide*. p. 32. [http://environment.yale.edu/tfd/uploads/proforest\\_assessment\\_guide.pdf](http://environment.yale.edu/tfd/uploads/proforest_assessment_guide.pdf)
- <sup>444</sup> RJC website: "Complaints Mechanism." <http://www.responsiblejewellery.com/contact-us/rjc-complaints-mechanism/>

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<sup>445</sup> Formal investigation will be conducted under an ad hoc panel, comprised of an RJC staff member, a lawyer, and an independent third party, reporting to the CEO or an office bearer of the Council. The third party would be appointed by agreement between the disputing parties and the RJC (with the RJC reserving the right of appointing an independent third party where an agreement is not possible). The other members of the panel would be appointed by the CEO or an office bearer of the Council. (RJC. 2012. *Complaints Mechanism*. p. 9)

<sup>446</sup> Roundtable on Sustainable Palm Oil website: "Complaints – System Components and Terms of Reference." Provision 2.4. Complaints Panel. [http://www.rspo.org/en/system\\_components\\_and\\_terms\\_of\\_reference](http://www.rspo.org/en/system_components_and_terms_of_reference)

<sup>447</sup> Forest Stewardship Council website: "Dispute Resolution." <http://ic.fsc.org/overview.151.htm>

<sup>448</sup> Roundtable on Sustainable Palm Oil website: "Status of Complaint." [http://www.rspo.org/en/status\\_of\\_complaint](http://www.rspo.org/en/status_of_complaint)

<sup>449</sup> As identified in Section 5.2, there is no requirement for auditors or RJC members to perform outreach to stakeholders regarding the audit process.

<sup>450</sup> RJC. 2012. *Complaints Mechanism*. p. 6.

<sup>451</sup> RJC website: "ISEAL Membership." <http://www.responsiblejewellery.com/standards-development/iseal-membership/>

<sup>452</sup> ISEAL. 2012. *Assuring Compliance with Social and Environmental Standards: Code of Good Practice*. p. 27. <http://www.isealalliance.org/sites/default/files/ISEAL-Assurance-Code-Version-1.0.pdf>

<sup>453</sup> Solidaridad. 2011. *Benchmark Study of Environmental and Social Standards in Industrialised Precious Metals Mining*. p. 59. [http://solidaridadnetwork.org/sites/solidaridadnetwork.org/files/Revised%20Solidaridad\\_Benchmark\\_Study\\_Revised\\_Final%20Dec\\_2011.pdf](http://solidaridadnetwork.org/sites/solidaridadnetwork.org/files/Revised%20Solidaridad_Benchmark_Study_Revised_Final%20Dec_2011.pdf)

<sup>454</sup> RJC. July 10, 2012. *Rio Tinto – RJC Certification*. [http://www.responsiblejewellery.com/files/RJC\\_Certification\\_Information\\_-\\_Rio\\_Tinto2.pdf](http://www.responsiblejewellery.com/files/RJC_Certification_Information_-_Rio_Tinto2.pdf) Accessed Feb. 28, 2013.

<sup>455</sup> Commission on Sustainable London. June 15, 2012. "Commission statement on mining supply chain for London 2012 medals." <http://www.cslondon.org/2012/06/commission-statement-on-mining-supply-chain-for-london-2012-medals/>

<sup>456</sup> Magnay, J. June 19, 2012. "London 2012 Olympics: Rio Tinto allowed to start production of Games medals without audit," *The Telegraph*. <http://www.telegraph.co.uk/sport/olympics/9341456/London-2012-Olympics-Rio-Tinto-allowed-to-start-production-of-Games-medals-without-audit.html>

See also: Commission for a Sustainable London web site: June 15, 2012. "Commission statement on mining supply chain for London 2012 medals." <http://www.cslondon.org/2012/06/commission-statement-on-mining-supply-chain-for-london-2012-medals/>

<sup>457</sup> Ibid.

<sup>458</sup> Rio Tinto web site: "London 2012." <http://www.riotinto.com/london2012/>

<sup>459</sup> For example, The United Steelworkers union (USW), which represents workers at Rio Tinto's aluminium smelter in Alma, Quebec, also filed a formal complaint with LOCOG against Rio Tinto's inclusion in the games. The complaint alleged that the actions of the company in Quebec, where 780 USW workers were locked out, did not meet the standards around ethical procurement that Olympic organizers had pledged to honour." (Mendleson, R. April 26, 2012. "Rio Tinto Lockout: Bruce Kidd, Olympic athlete, joins workers' fight against Rio Tinto," *Huffington Post*. [http://www.huffingtonpost.ca/2012/04/26/rio-tinto-lockout-bruce-kidd-olympics\\_n\\_1456895.html](http://www.huffingtonpost.ca/2012/04/26/rio-tinto-lockout-bruce-kidd-olympics_n_1456895.html))

It is notable, too, that even the union working at the Kennecott mine, which supplied the majority of Rio Tinto's metal, asked the Olympic Committee to remove Rio Tinto as a supplier, saying "It is wrong that Rio Tinto be allowed to associate itself with the Olympic principle of fair play and with the London Games' commitment to sustainability while treating workers in Alma as it has." (Gorrell, M. June 12, 2012. "Kennecott union wants Rio Tinto out of London Games," *Salt Lake Tribune*. <http://www.sltrib.com/sltrib/news/54284193-78/rio-tinto-london-olympic.html.csp>)

<sup>460</sup> Industriall website: July 23, 2012. "Rio Tinto voted worst company linked to Olympics." <http://www.industriall-union.org/rio-tinto-voted-worst-company-linked-to-olympics#.UA0B6tezMRo.facebook>

<sup>461</sup> Radio Australia: Jan 15, 2010. "Concern over giant Mongolian mine." <http://www.radioaustralia.net.au/international/radio/onairhighlights/concern-over-giant-mongolian-mine>

<sup>462</sup> Rio Tinto website: "Oyu Tolgoi." [http://www.riotinto.com/ourproducts/21018\\_oyu\\_tolgoi.asp](http://www.riotinto.com/ourproducts/21018_oyu_tolgoi.asp)

<sup>463</sup> Rio Tinto. Nov. 5, 2012. "Power supply deal agreed for Oyu Tolgoi." Media Release. [http://www.riotinto.com/media/18435\\_media\\_releases\\_22438.asp](http://www.riotinto.com/media/18435_media_releases_22438.asp)

<sup>464</sup> Letter from Robert Court, Rio Tinto, to Michael Rae, RJC. July 12, 2012. Attached to RJC Certification Information – Rio Tinto. [http://www.responsiblejewellery.com/files/RJC\\_Certification\\_Information\\_-\\_Rio\\_Tinto2.pdf](http://www.responsiblejewellery.com/files/RJC_Certification_Information_-_Rio_Tinto2.pdf). Accessed Feb. 28, 2013.

<sup>465</sup> Definition of Mining Facility. (RJC CoP. p. 24.)

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- <sup>466</sup> The Commission for a Sustainable London 2012 reported “We were advised by LOCOG that a Sedex Members Ethical Trade Audit (SMETA) would not be required as the Responsible Jewellery Council certification included an independent audit.” <http://www.cslondon.org/2012/06/commission-statement-on-mining-supply-chain-for-london-2012-medals/>
- <sup>467</sup> Letter from Robert Court, Rio Tinto, to Michael Rae, RJC. July 12, 2012. Attached to RJC Certification Information – Rio Tinto. [http://www.responsiblejewellery.com/files/RJC\\_Certification\\_Information\\_-\\_Rio\\_Tinto2.pdf](http://www.responsiblejewellery.com/files/RJC_Certification_Information_-_Rio_Tinto2.pdf). Accessed Feb. 28, 2013.
- <sup>468</sup> Unless otherwise indicated, examples in this table are from: Oyu Tolgoi Watch, Bank Information Center, CEE Bankwatch, London Mining Network, Accountability Counsel, and Urgewald. December 2012. *A Useless Sham: Review of the Oyu Tolgoi Copper/Gold Mine Environmental and Social Impact Assessment*. p. 8. <http://bankwatch.org/sites/default/files/a-useless-sham-OT-ESIA-review-14Dec2012.pdf>
- <sup>469</sup> Mine Watch Mongolia website: Sept. 25, 2012. “World Bank and others poised to invest in Rio Tinto’s flawed Mongolian mining project.” <http://en.minewatch.mn/2012/09/world-bank-and-others-poised-to-invest-in-riotos-flawed-mongolian-mining-project/>
- <sup>470</sup> Also, RJC CoP. Provision 2.11 says, “where resettlement is unavoidable, its implementation should be consistent with IFC Performance Standard 5.” Guidance for IFC Performance Standard (PS) 5 explains that “the client will develop a resettlement action plan or a resettlement framework based on a Social and Environmental Assessment. (IFC. July 31, 2007. *IFC Performance Standards on Social and Environmental Sustainability*. Guidance Notes for PS 5, p. 20 of 34. [http://www1.ifc.org/wps/wcm/connect/9fb7150048855c138af4da6a6515bb18/2007%2BUpdated%2BGuidance%2BNotes\\_full.pdf?MOD=AJPERES&attachment=true&id=1322804281925](http://www1.ifc.org/wps/wcm/connect/9fb7150048855c138af4da6a6515bb18/2007%2BUpdated%2BGuidance%2BNotes_full.pdf?MOD=AJPERES&attachment=true&id=1322804281925))
- <sup>471</sup> Johnston, L. (USAID/Washington, EGAT/ESP). *Mongolia – Oyu Tolgoi Copper/Gold/Silver Mine Project Trip Report (May-June 2011)*. p. 16. <http://mongolia.usaid.gov/wp-content/uploads/Mongolia-Oyu-Tolgoi-Trip-Report.pdf>
- <sup>472</sup> Oyu Tolgoi Project. July 2012. *Environmental and Social Impact Assessment*. Section D: Environmental [sic] And Social Construction Management Plans. Chapter D15: Resettlement Action Plan. p. 14. [http://www.ot.mn/sites/default/files/documents/ESIA\\_OT\\_D15\\_Resettlement\\_Action\\_Plan\\_EN.pdf](http://www.ot.mn/sites/default/files/documents/ESIA_OT_D15_Resettlement_Action_Plan_EN.pdf)
- <sup>473</sup> Oyu Tolgoi website: “Environmental and Social Impact Assessment.” <http://ot.mn/en/node/2679>
- <sup>474</sup> Johnston, L. (USAID/Washington, EGAT/ESP). *Mongolia – Oyu Tolgoi Copper/Gold/Silver Mine Project Trip Report (May-June 2011)*. p. 16. <http://mongolia.usaid.gov/wp-content/uploads/Mongolia-Oyu-Tolgoi-Trip-Report.pdf>
- <sup>475</sup> IFC. 2007. *IFC Performance Standards on Social and Environmental Sustainability*. Guidance Notes for PS 5, p. 19 of 34. [http://www1.ifc.org/wps/wcm/connect/9fb7150048855c138af4da6a6515bb18/2007%2BUpdated%2BGuidance%2BNotes\\_full.pdf?MOD=AJPERES&attachment=true&id=1322804281925](http://www1.ifc.org/wps/wcm/connect/9fb7150048855c138af4da6a6515bb18/2007%2BUpdated%2BGuidance%2BNotes_full.pdf?MOD=AJPERES&attachment=true&id=1322804281925)
- <sup>476</sup> Compliance Advisor/Ombudsman. *Mongolia / Oyu Tolgoi-01 / Southern Gobi. Complaint*. Filed Oct. 11, 2012. [http://www.cao-ombudsman.org/cases/case\\_detail.aspx?id=191](http://www.cao-ombudsman.org/cases/case_detail.aspx?id=191)
- <sup>477</sup> Oyu Tolgoi Watch. Oct. 12, 2012. “Complaint filed against destructive Oyu Tolgoi mine being considered for World Bank support.” Press Release. Available at: <http://www.bicusa.org/en/Article.12703.aspx>
- <sup>478</sup> Rio Tinto was certified in June of 2012. According to RJC, “After a Member has become RJC certified for the first time, the ongoing frequency of verification assessments for re-certification will be every 3 years.” (RJC. 2012. *Certification Handbook*. p. 9)
- <sup>479</sup> Freeport-McMoran Copper & Gold Inc. 2011 Annual Report. p. 14. [http://www.fcx.com/ir/AR/2011/FCX\\_AR\\_2011.pdf](http://www.fcx.com/ir/AR/2011/FCX_AR_2011.pdf)
- <sup>480</sup> Norwegian Council on Ethics. Feb. 15, 2008. *Recommendation to the Ministry of Finance* (regarding Rio Tinto and the Grasberg mine). p. 6. <http://www.regjeringen.no/upload/FIN/etikk/Recommendation%20RT.pdf>
- <sup>481</sup> Rio Tinto website. March 22, 2004. “Rio Tinto reaches agreement to sell shares in FCX.” Media Release. [http://www.riotinto.com/media/18435\\_media\\_releases\\_3383.asp](http://www.riotinto.com/media/18435_media_releases_3383.asp)
- <sup>482</sup> Rio Tinto website: “Grasberg Joint Venture.” [http://www.riotinto.com/annualreport2007/operationsfinancialreview/copper\\_group/operations/grasberg/index.html](http://www.riotinto.com/annualreport2007/operationsfinancialreview/copper_group/operations/grasberg/index.html)
- <sup>483</sup> Rio Tinto website: “Annual report 2011.” [http://www.riotinto.com/annualreport2011/production\\_reserves\\_and\\_operations/index.html](http://www.riotinto.com/annualreport2011/production_reserves_and_operations/index.html)
- <sup>484</sup> Perlez, J. and Bonner, R. Dec. 25, 2005. “Below a mountain of wealth, a river of waste.” *New York Times*. <http://www.nytimes.com/2005/12/27/international/asia/27gold.html?pagewanted=all&r=0>
- <sup>485</sup> Norway Ministry of Finance. Sept. 9, 2009. “The Government Pension Fund divests its holdings in mining company,” Press Release. <http://www.regjeringen.no/en/dep/fin/Press-Center/Press-releases/2008/the-government-pension-fund-divests-its-.html?id=526030> Accessed Feb. 28, 2013.

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<sup>486</sup> Norwegian Council on Ethics. Feb. 15, 2008. *Recommendation to the Ministry of Finance* (regarding Rio Tinto and the Grasberg mine). p. 8. <http://www.regjeringen.no/upload/FIN/etik/Recommendation%20RT.pdf>

<sup>487</sup> Various reports available at Freeport Files website:  
<http://www.utwatch.org/corporations/freeportfiles/documents.html>

<sup>488</sup> Global Witness. 2005. *Paying for Protection: The Freeport Mine and Indonesian Security Forces*. p. 3.  
<http://www.globalwitness.org/sites/default/files/import/Paying%20for%20Protection.pdf>

<sup>489</sup> Perlez, J. and Bonner, R. Dec. 25, 2005. "Below a mountain of wealth, a river of waste," *New York Times*.  
[http://www.nytimes.com/2005/12/27/international/asia/27gold.html?pagewanted=all&\\_r=0](http://www.nytimes.com/2005/12/27/international/asia/27gold.html?pagewanted=all&_r=0)

<sup>490</sup> Freeport-McMoran Copper and Gold Inc. 2008. *Working Toward Sustainable Development Report*. p. 36.  
[http://www.fcx.com/envir/wtsd/pdf-wtsd/2008/WTSD\\_2008.pdf](http://www.fcx.com/envir/wtsd/pdf-wtsd/2008/WTSD_2008.pdf)

<sup>491</sup> Colley, P. July 30, 2012. "Australia wins Gold! But can the same be said for Rio Tinto?"  
<http://www.publishwhatyoupay.org/newsroom/blog/australia-wins-gold-can-same-be-said-rio-tinto>

<sup>492</sup> Oct. 10, 2011. "Miner shot dead in Indonesian strike." *Al Jazeera*. Available at:  
<http://www.minesandcommunities.org/article.php?a=11236>

<sup>493</sup> Kuhn, A. Nov. 16, 2011. "In Indonesia, anger against mining giant grows," NPR.  
<http://www.npr.org/2011/11/16/142346962/in-indonesia-anger-against-mining-giant-grows> and Oct. 24, 2011.  
"Seven dead in Papua miners' strike," *UPI*. [http://www.upi.com/Top\\_News/Special/2011/10/24/Seven-dead-in-Papua-miners-strike/UPI-38831319450580/](http://www.upi.com/Top_News/Special/2011/10/24/Seven-dead-in-Papua-miners-strike/UPI-38831319450580/)

<sup>494</sup> Walton, A. 2008. "Lessons learned – Case Study regarding the Amungme, Kamoro and Freeport." Testimony before the Senate Judiciary Committee, Subcommittee on Human Rights and the Law. pp. 4 - 7.  
<http://www.antiochne.edu/wp-content/uploads/2012/08/senatesubcommitteetestimony9-08.pdf>

<sup>495</sup> According to the Catholic Church of Jayapura, Hundreds of Amungme people out of a population of about 8000 have died in a pattern of political violence that has developed around the mine. (Catholic Church of Jayapura. August 1995. *Violations of Human Rights in the Timika Area of Irian Jaya (West Papua), Indonesia*. Available at:  
<http://www.utwatch.org/corporations/freeportfiles/bishop-irian-jaya.html#Violations>)

<sup>496</sup> According to Walton, these include: Violation of subsistence rights resulting from seizure and destruction of thousands of acres of rainforest, including community hunting grounds and forest gardens, and contamination of water supplies and fishing grounds; Violation of cultural rights, including destruction of a mountain and other sites held sacred by the Amungme; and Forced resettlement of communities and massive destruction of housing, churches and other shelters. (Walton, A. 2008. "Lessons learned – Case Study regarding the Amungme, Kamoro and Freeport." Testimony before the Senate Judiciary Committee, Subcommittee on Human Rights and the Law. p. 5.  
<http://www.antiochne.edu/wp-content/uploads/2012/08/senatesubcommitteetestimony9-08.pdf>)

Additionally, *Al Jazeera* reports that In 2005, the World Bank found that Papua remained the poorest province in Indonesia, and "with a marked rise in military personnel and foreign staff has come a number of social issues, including alcohol abuse and prostitution such that Papua now has the highest rate of HIV/AIDS in Indonesia. (Taylor, N. Oct. 19, 2011. "West Papua: A History of Exploitation," *Al Jazeera*.  
<http://www.aljazeera.com/indepth/opinion/2011/08/201182814172453998.html>)

<sup>497</sup> See RJC. Jan. 20, 2011. "Metalor Technologies SA Certified by the Responsible Jewellery Council." Press Release.  
[http://www.responsiblejewellery.com/files/news\\_5\\_2839471097.pdf](http://www.responsiblejewellery.com/files/news_5_2839471097.pdf)

<sup>498</sup> RJC. Jan. 11, 2011. *RJC Certification Information – Metalor Technologies SA*.  
<http://www.responsiblejewellery.com/members/documents/CertificationInformation-MetalorTechnologiesSA.pdf>

<sup>499</sup> RJC website: "Chain of custody certified members." <http://www.responsiblejewellery.com/chain-of-custody-certification/chain-of-custody-certified-members/> Accessed Jan. 2, 2013.

<sup>500</sup> See Section 4.3.

<sup>501</sup> See Section 5.

<sup>502</sup> See Section 4.1.

<sup>503</sup> Recycled and grandfathered gold and/or PGM do not need to include any origin information. See Section 4.2.

<sup>504</sup> Recycled and grandfathered gold and/or PGM do not need to include any origin information. Also, RJC's Eligible Materials Declaration and CoC Transfer Document for recycled gold do not require due diligence statements. RJC requires that mined material that originates from a conflict area must have a due diligence summary attached. (RJC. 2012. *CoC Standard Guidance*. p. 27) The same is not required for recycled material. (p. 28)

<sup>505</sup> RJC website discusses reputation benefits at: "RJC Commercial Member."  
<http://www.responsiblejewellery.com/applications/rjc-member/> Accessed Dec. 27, 2012.

<sup>506</sup> Metalor has used its CoC certification as assurance that its recycled gold is conflict-free, which is a valid claim. But it also makes claims that RJC CoC certification provides assurance that CoC gold comes from sources that are not only conflict-free, but that are consistent with RJC's business, ethical and environmental standards. (Metalor. Letter to

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“Valued Metalor Chemicals Customers.”

[http://unimetal.com/pdf/Metalor\\_Conflict\\_Free\\_Gold\\_Update\\_July\\_2012.pdf](http://unimetal.com/pdf/Metalor_Conflict_Free_Gold_Update_July_2012.pdf) Accessed Feb. 28, 2013) As described in Section 4.4, RJC’s CoC standard and verification provide no such assurance.

<sup>508</sup> As of Dec. 2012, CGA indirectly owned the Masbate Gold Project through its 100% ownership of Philippine Gold Ltd, 40% of Filminera Resources Corp. and 100% of Philippine Gold Processing and Refining Co. (CGA mining website: “Masbate Gold Project.” <http://www.cgamining.com/projects.php?id=3>). In late Dec. 2012, B2Gold and CGA shareholders approved a merger of the companies. The merged entity will operate CGA’s existing Masbate gold mine in the Philippines. (Crawford, E. Dec. 24, 2012. “CGA Mining shareholders endorse B2Gold merger.” *Business Vancouver*. <http://www.biv.com/article/20121224/BIV0108/121229981/-1/BIV/cga-mining-shareholders-endorse-b2gold-merger>)

<sup>509</sup> May 26, 2009. “CGA Mining to raise \$17-million for working capital,” *Stockwatch*. [http://www.stockwatch.com/newsit/newsit\\_newsit.aspx?bid=Z-C:CGA-1608705&symbol=CGA&news\\_region=C](http://www.stockwatch.com/newsit/newsit_newsit.aspx?bid=Z-C:CGA-1608705&symbol=CGA&news_region=C)

<sup>510</sup> Philippine Gold process and Refining Corp. (PGPRC) is responsible for the sale of all gold from the Masbate mine. In January 2012, an extension of the refining agreement was entered into between PGPRC and Metalor for the transport and refining of gold dore. (Source: CGA Mining Ltd. 2012. *Annual Information Form*. pp. 8 and 45. <http://www.cgamining.com/docs/TSX/2012/CGA%20Annual%20Information%20Form%202012.pdf>)

<sup>511</sup> Apr. 15, 2007 “More troops deployed to Abra, Masbate.” *GMA News*. <http://www.gmanews.tv/story/38434/more-troops-deployed-to-abra-masbate> Also: National Consortium for the Study of Terrorism and Responses to Terrorism website: “Terrorist Organization Profile: New People’s Army.” [http://www.start.umd.edu/start/data\\_collections/tops/terrorist\\_organization\\_profile.asp?id=203](http://www.start.umd.edu/start/data_collections/tops/terrorist_organization_profile.asp?id=203) AND Armo, C. and Felipe, C. April 4, 2007. “NPA rebels go on a rampage in Masbate.” *Philippine Star*. <http://www.philstar.com/headlines/393076/npa-rebels-go-rampage-masbate>; April 15, 2007. “More troops deployed to Abra, Masbate.” *GMA News*. <http://www.gmanews.tv/story/38434/more-troops-deployed-to-abra-masbate>

<sup>512</sup> April 19, 2007. “Filipino miners ‘supporting’ New People’s Army Militants,” *Mining Journal*. <http://www.mining-journal.com/headlines/filipino-miners-supporting-new-peoples-army-militants>

<sup>513</sup> Evangelista, K. November 2, 2010. “Reelected village chief shot dead in Masbate.” *The Inquirer*. <http://www.inquirer.net/specialreports/inquirerpoltics/view.php?db=1&article=20101102-301109>

<sup>514</sup> Soltes, J. Nov. 22, 2012. “Mining firm guard found dead on post,” *Bicol Mail*. <http://www.bicolmail.com/2012/?p=5001>

<sup>515</sup> Silverio, I. Oct. 11, 2012. “From paradise to wasteland: Environmental destruction, rights violations abound in Bicol’s mining industry,” *Bulatlat.com*. <http://bulatlat.com/main/2012/10/11/from-paradise-to-wasteland-environmental-destruction-rights-violations-abound-in-bicol-mining-industry/2/>; Bandol, E. Mar. 22, 2009. “Aroroy mining chaplain resigns,” *Bikol News*. <http://www.voxbikol.com/story/aroroy-mining-chaplain-resigns>; Feb. 2, 2008. “Despite AFP protection, NPA to continue attacking mining firms,” *GMA News*. <http://www.gmanetwork.com/news/story/79046/news/nation/despite-afp-protection-mpa-to-continue-attacking-mining-firms>; and Apr. 15, 2007. “More troops deployed to Abra, Masbate.” *GMA News*. <http://www.gmanews.tv/story/38434/more-troops-deployed-to-abra-masbate>

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