REPORT FROM CONSULTATIVE ROUNDTABLE ON:

THE PUBLICATION OF THE DRAFT RESPONSIBLE GOLD MINING PRACTICES BY THE WORLD GOLD COUNCIL

3 AUGUST 2018, JAN SMUTS HOUSE, JOHANNESBURG

EXECUTIVE SUMMARY

The chair opened the event by articulating why the South African Institute of International Affairs (SAIIA) exists – to produce policy-relevant research that contributes towards a peaceful, well-governed and prosperous Africa – and how the publication of the Draft Responsible Gold Mining Principles (RGMPs), produced by the World Gold Council (WGC), fits that purpose. It was therefore SAIIA's privilege to partner with the WGC to host an event that brought as many stakeholders together as possible to provide input on the draft RGMPs. The World Gold Council representatives then articulated the process by which the principles had been constructed and why consultative roundtables had been held in different parts of the world. Each session was introduced with a summary of the principles for discussion and why they were drafted in that particular way. The purpose was to ensure that the final set of principles reflected stakeholder input from a broad range of geographic locations. That purpose was met, with SAIIA and the WGC particularly satisfied that the quality of engagement was sufficient to add value to the finalisation of the principles. Each stakeholder present was fully heard, and extensive notes were taken to ensure that no contribution was overlooked. One of the major value-additions was the diversity of stakeholders, including people from the mining industry, academia, mine-affected communities and civil society. Over twenty people participated in the event.

RECORD OF ENGAGEMENT

Important background information from the World Gold Council: Market development is crucial to the sustainability of the gold mining industry. Sustainability is increasingly determined by industry players' adherence to Environmental, Social and Governance (ESG) best practices. A firm's ESG credentials are critical for ensuring investor confidence, without which market development cannot occur. There are extensive misperceptions around the industry that need to be addressed. Responsible sourcing of gold from mine to market is a critical element of ensuring investor confidence in the integrity of the supply chain. The idea behind the RGMPs is not to simply generate another set of standards to which companies have to comply, and the WGC is fully aware of the need to avoid creating excessive compliance burdens. Rather, an important idea behind the RGMPs is to consolidate a number of different standards that ensure that the RGMPs become part of a company's DNA rather than one more box-ticking exercise. Assurance is nonetheless an important element of creating value from the Principles. The Principles therefore have to be both aspirational and measurable, not an easy feat. Because investors are predominantly the ones who need to be assured that responsible gold mining is occurring, the WGC has engaged in a number of bilateral engagements directly with investors as well as with gold supply chain participants such as gold refiners and technology companies, in addition to the multi-stakeholder engagements that lend further credibility to the process. The exposure draft of the RGMPs is to be completed during the last quarter of 2018 with final changes to ensure 'assure-ability' and the assurance framework itself being finalised during the first half of 2019. Implementation will be independently assured. Arrangements will be made to ensure that if a company is already assured against frameworks such as the International Council on Mining

and Metals' Sustainable Development Framework (ICMM), the Voluntary Principles on Security and Human Rights of the Mining Association of Canada's Towards Sustainable Mining Framework, this will be credited during the RGMP assurance process. The WGC will not be the entity providing assurance; this is likely to be undertaken by independent auditors.

SESSION 1 Discussion on Principles 1, 9 and 10: The WGC made the point that the first bullet point under principle 1 – 'we will comply with all applicable laws' – may seem patently obvious, but sadly it's not always a given, especially in tricky jurisdictions. Therefore, inculcating a culture of respect for the rule of law within the company ethos is what the first part of principle 1 tries to achieve. Beyond that, anti-corruption controls (the third bullet under principle 1) are difficult to achieve in practice and so it will be essential for companies to demonstrate the robustness of their business integrity controls. Under principle 9 (supply chain), Artisanal and Small-Scale Mining (ASM) is increasingly recognised by Large-Scale Mining (LSM) as a sector with which to pursue harmonious relations and support access to markets for those ASM miners who seek formalisation in good faith.

On the principles in general, one stakeholder raised a question around the drafting and consultation process as to whether sufficient meaningful interaction with a broad range of stakeholders had been achieved. The strength of the document was ultimately going to be equivalent to the power held by those who espoused it. A member of a mine-affected community made a similar point about the process and asked whether the WGC would be able to hold its members to account if they did not adhere to the principles. He also noted that he would have liked to have seen more community participation embedded in the construction of the draft RGMPs. Beyond that, the question of how communities could participate in and benefit from beneficiation did not come out clearly enough. He also raised the point that health and safety (principle 2) should not be thought of only in narrow employee terms, divorced from broader health and safety issues in mine-affected communities. A major concern was that the majority of affected community members often fail to understand the language in which the principles are drafted (even if they understand English).

One industry representative from South Africa made the point that the priorities of the Principles would differ in implementation terms from place to place depending on the salience of issues in context-specific locations. For instance, mining in South Africa is particularly difficult with a Department of Mineral Resources (DMR) – which, incidentally, did not attend the roundtable despite numerous invitations – that applies the rules inconsistently. Moreover, there are systemic governance issues that make it difficult to establish harmonious relations between mining companies and the DMR. This creates mistrust between mining and civil society, but more consistent governance would help to reduce this trust deficit. On the matter of trust, one stakeholder mentioned the importance of creating a pan-African basis for addressing illicit financial flows, given that MNCs, including mining companies, had been implicated in extensive tax avoidance through transfer pricing. Credible efforts to harmonise tax regulations across the continent might go some way towards building trust that has been lost.

Also, the distinction between illegal mining and ASM was raised. Illegal mining posed serious problems for legitimate operators and is quite extensive in South Africa. Another

stakeholder representing the industry made similar points regarding ASM, and how this really was a massive issue across the globe but especially in Africa. He also noted the distinction between illegal mining and ASM. Similarly to his counterpart, he raised issues of DMR governance in South Africa in particular. He noted the lack of decent regulations and the presence of deeply embedded interests, with government officials sometimes involved or implicated in ASM/illegal mining.

Stakeholders representing communities also emphasised the need for more transparency around environmental externalities in particular. Though it was meant for a later session, stakeholders mentioned – on the subject of South-Africa specific issues – the importance of cleaning up Acid-Mine-Drainage (AMD). Often unknown or unaddressed, for instance, was the issue of gold's co-occurrence with uranium and the resultant radiation effects of AMD. The risks of disasters like AMD have historically not been well managed and communities living with the externalities tend to be powerless after mines go into care and maintenance. Given that South Africa's gold mining industry in particular is in decline, closure plans need particular attention to avoid future disasters. The government's capacity to regulate in general is questionable, and it was unclear where responsibility lies when it comes to issues such as AMD.

With regard to the embedding of the Principles, industry stakeholders recognised that while the RGMPs should be standard fair for all mining companies, it was nonetheless useful to have an overarching standard. Standards cannot be taken for granted and have to be explicitly stated, especially as not all companies operate in a way that reflects them. Public expression of support for the Principles exhibits a type of 'line in the sand' for companies that purport to uphold them. The Principles should make clear what legitimate stakeholder expectations are and should be the basis for accountability. Industry stakeholders further noted that multinational corporations (MNCs) need to comply with a host of ESG-related indices and expressed concern over how the industry might achieve alignment with all those standards. They noted that assurance had to be aligned too in order to make the adoption of the Principles effective.

One stakeholder from academia made the contribution that mining companies have to answer the question of what kind of legacy they want to leave before they even start mining – the whole business is one of extracting a finite resource, and so leaving a positive development impact was crucial, one that would extend well beyond the life of mine. She noted that the disjuncture between principles and practice often occur at points of transition, for instance, when ownership changes; this raises questions of change management as an essential element of limiting externalities during transitions. An NGO stakeholder representing communities made a similar point that the disjuncture was very real and that invariably communities were just not sufficiently included or adequately engaged in processes that affect them deeply. They tend to have a diminished voice and are therefore disempowered from being able to hold companies to account. A number of stakeholders mentioned, on principle 5 – the subject of a different session but raised in the first – that they were not comfortable with the wording 'to consult with them', as it depicted (perhaps unwittingly) monologue imposition rather than inclusive, participatory consensus-building. Preferable wording may be 'to engage with', or something that reflects partnership rather than 'us vs them'.

The WGC and the chair reflected that these inputs had been heard and would be incorporated into a final report (this document) that would be shared with all stakeholders. It

was also reiterated that it was rather challenging to reflect very context-specific challenges in a document that was designed to be universally applicable. Similarly, the balance between aspiration and workability always had to be borne in mind (especially on questions of assurance and compliance).

SESSION 2 Principles 6, 7 and 8: Some of the issues that were raised in the first session were given more airtime in this session. The WGC introduced the hot topics here. Biodiversity preservation has become an increasingly important dimension of environmental stewardship, along with ensuring contamination-free water. In this respect, the question of mercury use and how to avoid it is crucial. How to engage with non-cooperative stakeholders is a significant sticking point in respect of environmental stewardship. How to reduce greenhouse gas emissions is also critical, along with cyanide use and more responsible tailings management.

A stakeholder from academia made the point that the relationship between mining and the environment had created 'knotty' problems that cannot be addressed by companies in isolation from other stakeholders. There are technological opportunities for intervention, but these are often undermined by a lack of capacity on behalf of governing authorities (and mining companies). She posited the view that mining companies should commit to increasing their research and development (R&D) expenditure to address environmental issues more specifically. Mining should advance the science of how to mine rather than relying on other entities such as universities.

Providing expansion and increased granularity on some issues raised in the first session, one participant raised the importance of recognising the challenge of dealing with appropriate land use on sites of residual tailings. Some sites are not fit for human habitation, yet many areas in South Africa have settlements in tailings areas. The United Nations Programme for the Environment (UNEP) has recognised that mining waste is a major threat to biodiversity preservation. There were repeated suggestions from stakeholders throughout the session that the principles might consider extending no-go mining areas beyond only World Heritage Sites (WHS) (in principle 6). The WGC noted that the Principles faced the difficulty of avoiding the overriding of local governance – some countries allowed mining in national parks, for instance.

Revisiting the question of [mine closure](#), it was noted that in most cases in South Africa, insufficient funds for rehabilitation had been allocated in closure plans. The result is that environmental liabilities are now completely unmatched by funds available for rehabilitation. The apportionment of liability is also a serious challenge, especially with histories of mergers and acquisitions – new partners often resist taking on historical environmental liabilities. Beyond this, closure certificates are often not issued at all. This is particularly problematic when it comes to environmental disasters like AMD that impose high costs on communities long after mines have closed. Intra-and-inter generational equity in host communities needs to be afforded greater consideration in the Principles, so that mining companies think about more than merely providing jobs.

Another little-acknowledged problem was that of rehabilitating underground rivers. This may be related to the problem of sinkholes forming long after mines had disappeared, imposing recurrent or heavy costs on communities. Legacy issues such as this have contributed to a trust deficit, mentioned earlier and repeatedly emphasised by stakeholders at the roundtable. In this respect, because some disasters will occur long after closure, community

stakeholders opined that mines and governing authorities should have to make provision for foreseeable black swans (though black swans are by definition not easily foreseeable). Provision for residual damages, either way, should be a priority.

While there are limitations to processes such as these, stakeholders agreed that the principles should recognise that land use and scarcity pressures are increasingly likely to dominate the discussion. Climate change will increasingly force greater numbers of people into competition for increasingly scarce resources, therefore land use planning should become a critical part of a mine's decision-making processes from start to closure.

Related to the earlier discussion around ASM, mercury usage remains a knotty issue and stakeholders voiced their concern that this has not yet been adequately addressed. One industry stakeholder conveyed experience that his company had from Colombia. Using gravity separation technology – completely mercury-free – for amalgamation, they were able to demonstrate more efficient processing than with mercury. In other words, gold recovery rates from ore-bearing rock was higher and the process was safer than with ordinary mercury methods. Broad-based participation is crucial to ensuring the adoption of new technologies, and ASM miners have to be convinced of the efficiency gain before they would be willing to transition. Formalisation is the way forward for ASM, according to LSM stakeholders, but compromises are necessary from both ASM and LSM stakeholders in the process.

SESSION 3: Principles 2,3,4 and 5: Stakeholders recognised that these principles essentially embodied the notion of 'visible, felt leadership' that demonstrates that the industry cares. In response to concerns raised earlier in the day around whether communities were sufficiently equipped to respond to the effects of mining, reference was made to the UNEP's toolkit for helping communities to engage meaningfully with a large range of developments.

One stakeholder who has extensive experience with local communities offered the view that more 'resettlement consultants' should have been present – companies that mining houses often outsource community resettlement to. One such consultant was in fact present, though they did not arrive until quite late in the day. The specific long-term impact of resettlement on women needed to be more specifically acknowledged in the principles, as human rights abuses often occurred against women in the process of displacement. In the same vein, the oft-touted strategies of 'alternative livelihoods' do not tend to work. A new conversation is now necessary, and greater emphasis has to be placed on long-term impact assessments to evaluate whether a mine should go ahead or not. It was again noted that all too often 'community engagement' is a tick-box exercise of compliance rather than genuine care.

A community representative suggested again that the language of 'consultation' was inadequate, and that negotiation with surface rights holders (traditional communities, etc.) should be emphasised as a more empowering method. Many communities are angry in South Africa, for instance, over how their land has been effectively confiscated from them with little to no compensation. This brought up the more general question of land ownership and restitution, a hot topic in South Africa at present. Communities on the West Rand, for instance, were frustrated at legacy issues from historical mining that still affected them today – dust, silicosis, etc. Because of this and due to the lack of benefit mentioned earlier, they

were demanding land with mineral rights attached and were not satisfied with mineral rights (sub-soil) being owned by the state.

A further point was raised about the lack of clarity over the role and duties of different entities when it comes to closure and rehabilitation. Very South Africa-specific, but a point worth noting nonetheless, was that the Social and Labour Plans (SLPs) within the Mineral and Petroleum Resources Development Act (MPRDA) crowded out communities. In other words, the very intended beneficiaries of the plans were often not participants in their drafting.

With regard to Environmental Impact Assessments (EIAs) - related to principle 6 – communities often did not have sufficient response time. For instance, South African legislation only allows 30 days for comment, which means that the playing field is not level.

On the issue of playing fields not being level, one participant noted that the language on principle 4 should probably be redrafted where it states 'we will allow employees to exercise their legal rights…' The word 'allow' appears to presuppose a level of power in the hands of WGC members that could preclude the practicing of such associative rights by employees, which is probably not the intention. Under principle 5, the sense was that involuntary resettlement is not 'unavoidable' and that members should exercise restraint.

Moreover, grievance mechanisms often operate too slowly – delayed justice exacerbates conflicts. Conflicts may arise from all kinds of matters, not least of which is mining in areas of natural and national heritage. For instance, while it was laudable to see a commitment to not mining in WHS areas, the principles should also reflect a commitment to not mining where community grave sites exist and so forth – places of cultural heritage, essentially. Finally, there was a suggestion that the principles needed to explicitly incorporate a section on how communities could engage with governing authorities, and how to proceed when entities (from corporates to governments) lack sufficient capacity to deal well with community concerns.

Identified Gaps/final comments from stakeholders:

- Under principle 10, the wording pertaining to corporate governance could be stronger (perhaps a reference to the King IV guidelines for good governance were in mind here, as the participant was not specific about what could be enhanced).
- Under principle 2, the health and safety considerations need to be sharper, more measurable and less merely intentional (if the recorder understood the meaning of 'sharper' correctly). The substantiating point was that overly high productivity targets were a cause behind employee deaths and that this needed to be addressed somewhere.
- A gap may be the absence of any mention of technologies that could be used to improve mining processes, rehabilitation and closure, along with retrieving better information from communities. Also, technology could help to integrate the principles with other standards that are recognised by the WGC. Perhaps also necessary to include a line on what the consequences for non-adherence to the principles will actually be.
- Related to the earlier point about inter-generational equity, one participant felt that the wording of the principles could be adapted to reflect a deeper consideration for the wellbeing of future generations.

- Where the principles are too broad, they may be open to misinterpretation, thus it was advised that any workable firming up of language should be pursued to avoid potential non-adherence.
- Under Principle 5, it should really be emphasised that community engagement should be a mainstream function of business and not just lip service. Another stakeholder reiterated this view and suggested a commitment to community capacity-building being reflected in the principles.
- Demonstrated impacts of alternative technologies crucial for reducing externalities associated with ASM. Illegality needs to be crowded out by empowering legitimate players. Closing the trust deficit between all stakeholders needs to be a priority.
- Perhaps related to the point about sharpening up the language, was a view that collaboration and partnership should be emphasised above mere consultation (I think with reference to Principle 5), and that consultation was the bottom of the rung in terms of engagement (which Principle 10 emphasises).
- Principle 6 might be expanded to include issues associated with radioactivity and seismicity.
- A number of stakeholders mentioned the importance of moving from plans/principles to implementation – we 'can't drink plans', etc. The principles therefore now need to be made live, contextualised accordingly and operationalised in practice.
- With the advance of new technologies – robotics, artificial intelligence and so on – the question of how to deal with the resultant disruption perhaps also needs to be reflected in the principles (though no views were specifically offered to how or where this might be done).
- On ASM, it should be emphasised in the principles that even illegal miners will not be ostracised.
- Lastly, there may be new job opportunities that arise from properly-executed environmental rehabilitation programmes, and this might be reflected as an aspiration in principle 6 (possibly?)

Conclusions

The chair and the WGC representatives expressed gratitude to all participants for the time taken to engage meaningfully with the principles and provide substantive inputs. While many of the issues raised were relatively South Africa-specific, most points had at least some level of universal applicability and will contribute materially to the production of the final product. The drafting of principles of this nature is a necessarily difficult undertaking, but a process that can only be strengthened through multi-stakeholder dialogues of this very nature. It was indeed regrettable that no government officials were present to contribute to what was otherwise a highly satisfactory roundtable discussion.

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