



26 July 2019

Juliane Kippenberg
Human Rights Watch
350 Fifth Avenue
34th floor
New York
NY, 10118-3299
USA

Dear Juliane,

Thank you for taking the time to share your valuable input in the development and consultation process of the 2019 Code of Practices.

As you know the RJC is committed to Human Rights and appreciates our ongoing dialogue with you. We believe in continuous improvement, which has guided the RJC since its creation.

Raising standards is an ongoing process and we look forward to our continued engagement with civil society organisations as we find ways to further advance responsible business practices and drive change across our industry.

Kind Regards,

A handwritten signature in black ink, appearing to read "Iris Van der Veken", with a long, sweeping underline.

Iris Van der Veken

RJC Executive Director

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The New Code of Practices

- Provisions on indigenous people's rights that fall short of international standards. Specifically, the Code of Practices states that members should "work to obtain" (rather than "obtain") free, prior and informed consent of affected indigenous peoples. This language waters down the clear requirements of the UN Declaration on the Rights of Indigenous Peoples.

RJC response:

Use of the language "work to obtain" follows the leading standard program ICMM's performance expectation 3.7.

IFC Performance Standard 7 describes FPIC as something that "builds on and expands the process [informed consultation and participation] and will be established through good faith negotiation between the [company] and the Affected Communities of Indigenous Peoples." At the time of the COP review, "working to obtain FPIC" was considered consistent with this definition.

- The 2019 Code of Practices does not include reference to several key international human rights instruments, notably fundamental ILO conventions on forced labor (No. 105), freedom of association (No. 87) and collective bargaining (no. 98, and non-discrimination (No. 100 and 111); and the UN Basic Principles and Guidelines on Development-Based Evictions and Displacement. Although several other fundamental ILO conventions (e.g. 29, 138, 182) are referenced, we do not believe this is sufficient.

RJC response:

The following international human rights instruments are explicitly referenced in the COP Guidance:

- *Abolition of Forced Labour Convention, 1957 (ILO C105) is referenced on page 168*
- *Freedom of Association and Protection of the Right to Organise Convention, 1948 (ILO C087) is referenced on page 175*
- *Right to Organise and Collective Bargaining Convention, 1949 (ILO C098) is referenced on page 175*
- *Discrimination (Employment and Occupation) Convention, 1958 (ILO C111) is referenced on page 181*
- *UN Human Rights published a set of guidelines (the UN Basic Principles and Guidelines on Development-Based Evictions and Displacement), which is referenced on page 293*

- Provisions on waste, emissions, and tailings that remain too vague and unspecific to provide a reasonable degree of assurance. In June 2018, we recommended that the Code adopt the relevant requirements adopted by the Initiative for Responsible Mining

Assurance (IRMA) on Water Quality and Quantity, Mine Waste Management, Air Quality, Noise, Greenhouse Gas Emissions, Protected Areas, Biodiversity, Cyanide, Mercury, Environmental and Social Impact Assessment and Reclamation and Closure. We continue to believe these are useful and relevant.

RJC response:

The RJC has used a range of international frameworks to address requirements on waste, emissions and tailings using standards that have a track record of on-the-ground implementation: in particular, the ICMM Performance Expectations; IFC Performance Standards; Mining Association of Canada Towards Sustainable Mining.

- Inconsistencies regarding public reporting requirements. In particular, while provision 3.1 states that members shall communicate publicly regarding their businesses practices regarding the Code of Practices, and 7.2 states that members will communicate their supply chain policies publicly, provision 6.1 (d) states that members shall only communicate with stakeholders about their human rights due diligence efforts. This risks confusing the critical requirement for public reporting, falling short of the requirements of Step 5 of the OECD Due Diligence Guidance, which calls for public reporting on companies' supply chain due diligence policies and practices.

RJC response:

The RJC COP Guidance on 6.1 (d) notes "Under both the UN Guiding Principles and the OECD Guidance, companies are expected to communicate about their efforts to prevent and address human rights risks as part of their due diligence process. That means communicating internally (for example, between business units) and externally (including with affected groups, civil society organisations, local communities, topic experts, investors and any other interested party)" (page 46).

Implementation of the new Code

- We understand that the new Code will require a phase-in period, but are concerned that as currently envisioned, some RJC members will not be required to be in full compliance with the new Code until 2024. The current phase-in plan, outlined in the FAQ, states that between April 2020 and 2021, companies will not be assessed by auditors for their conformance with Steps 3 and 4 of the OECD Minerals Guidance. Step 3 requires companies to design and implement strategies to respond to human rights risks identified, and Step 4 requires companies to carry out a third-party audit for supply-chain human rights due diligence. Your May 24, 2019 letter also clarified that diamond and colored gemstone companies will not be fully assessed for conformance with human rights due diligence requirements until 2021. Because certification can be granted for up to three years, this means that some members may not be fully assessed against the new Code of

Practices, including a strategy to respond to identified human rights risks, until 2024, a full five years from now. We find that deeply problematic.

According to the FAQ, between April 2021 and April 2022, the Code of Practices and its audit approach will be evaluated and potentially revised, along with other documents. No information has been provided regarding how revisions may be made. We are concerned that this may result in weakening of the standard. We do not believe any revisions should be made apart from a full, formal review of the Code, including all relevant stakeholders.

RJC response:

With the release of the revised COP, member certification deadlines will not change, and all existing COP certificates remain valid till their expiration dates.

To allow for a smooth transition period, and in accordance with the Iseal Code of Good Practice, a 1-year transition period from 23 April 2019 to 22 April 2020 applies for audits as follows:

- For existing members, the RJC will accept new certifications and re-certifications against either the 2013 or the 2019 COP during the transition year.*
- Members certified against the 2019 COP will have silver and/or coloured gemstones included in their certification scope and comply with the due Diligence provision as described below.*
- New members that join the RJC from 1 July 2019 must use the 2019 COP and comply with the due Diligence provision as described below*
- Members with only silver and/or coloured gemstones in scope must use the 2019 COP, including the due diligence provision as described below.*
- Any audits against the 2013 COP must be completed before 22 April 2020.*
- From 22 April 2020 onwards the RJC will only accept new certifications and recertifications against the 2019 COP.*

To assist Members with the implementation of the 2019 COP and in agreement with the OECD, the RJC is launching a pilot period during which COP conformance assessment shall be phased in. Members scheduled for COP certification or recertification:

1. Between 23 April 2019 and 22 April 2020: shall have the option to use the 2013 or 2019 version of the COP for auditing (as per the defined transition period). If choosing to certify against the 2019 COP, members shall be assessed for conformance with the following elements of Step 1 of the OECD Guidance:

- having a supply chain policy; and*
- assigning responsibility to someone who will lead the development of relevant management systems.*

2. Between 23 April 2020 and 22 April 2021: shall be assessed for conformance with the following elements of Step 1, Step 2, and Step 5 of the OECD Guidance:

- having a supply chain policy and responsible person (as above);*
- preliminary supply chain mapping and scoping efforts; and*
- publicly reporting progress on due diligence efforts covering all elements above.*

Between 23 April 2021 and 22 April 2022: the findings of the pilot projects will be used to inform the COP, guidance, audit approach and related RJC tools as necessary to implement and audit the OECD 5-step framework for the first time ever in the various sectors of the diamond and coloured

gemstone supply chain. At the conclusion of the review and release of updated RJC documents, members undergoing certification and recertification audits shall be assessed for conformance with Steps 1–5 of the OECD Guidance.

The approach recognises that application of the OECD framework in the diamond and coloured gemstone supply chain is still evolving, however the RJC are clear that all member companies must implement this mandatory requirement of the COP.

Due to the exhaustive consultation process and close collaboration with the OECD during the revision and development phase of the 2019 COP, the RJC does not anticipate major revisions to be made to the due diligence requirement as a result of findings from the pilot project. Any such revisions will be implemented as part of the RJC's formal review process that takes place every five years. This is in conformance with the Iseal Alliance Standards Setting Code, to which the RJC adheres.

- On a procedural level, we also are concerned that the decision to create a separate process for companies in the diamond and gemstone supply chain was taken behind closed doors, not in a transparent manner, and without giving civil society groups the option of providing comments.

RJC response:

The proposal to carry out a pilot project was put forward as part of the third round of public consultation on the COP, which is posted on the RJC website (see link below). The comment period was open from 28 September to 27 October 2018. Stakeholders, including civil society organisations, members and leading global standards and assurance bodies were consulted as part of the COP review process, along with the public. All proposed changes, comments received, and responses are documented on the RJC website:

<https://www.responsiblejewellery.com/files/RJC-Code-of-Practices-Round-3-on-due-diligence-for-diamonds-Flinal.pdf>

Certification and Audits

- Despite the significant improvements in the new Code of Practices, we continue to believe that the standard's provisions around auditing and certification could undermine its goals and allow member companies to pursue irresponsible business practices. In particular, members are given two years to comply with the standard after joining the RJC, but they benefit from the reputation of the RJC in the interim. Companies are not required to make the audit reports or summaries publicly available, nor does the RJC disclose information on the certification process and decision. Therefore, the certification process remains opaque. Going forward, we encourage the RJC to reform its auditing and certification process to make it more substantive and transparent. Specifically, we recommend that:
 - The RJC implements all recommendations made by the OECD Alignment Assessment including recommendations relating to the strengthening of audit program requirements and competency of auditors.

RJC response:

Competency of auditors is a high priority for the RJC, as such a programme of auditor training is being developed as well as a programme for auditor oversight.

- Members be required to make audit summaries public, including information on all facilities visited, areas of noncompliance, a description of any identified risks, and the specific measures taken to assess and mitigate risks.

RJC response:

Thank you for this recommendation. The RJC's audit process is confidential to protect commercially sensitive information. Publicly sharing this information could lead to stakeholders penalising suppliers for non-conformances instead of encouraging improvement. This would not encourage the adoption of responsible business practices and a journey of improvement.

- Members should be required to reach full certification against the Code of Practices before they reference RJC membership in their communications, including reports, website, or other published materials.

RJC response:

Thank you for this recommendation. It will be taken into consideration for membership input.

- All members coming up for certification from April 2020 be audited against the new Code, including the full five-step human rights due diligence framework.

RJC response:

The timeframes noted as part of the phased approach to assessing conformance with COP 7 for diamonds and coloured gemstone companies were carefully designed in consultation with the OECD. The RJC believes this is the most effective way to ensure widespread uptake of due diligence in the industry and is consistent with our continuous improvement process.

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