STUDY

AN EXAMINATION OF INDUSTRY STANDARDS IN THE RAW MATERIALS SECTOR

HOW DO STANDARDS CONTRIBUTE TO THE IMPLEMENTATION OF ENVIRONMENTAL AND HUMAN RIGHTS DUE DILIGENCE OBLIGATIONS AND HOW DO THEY ENSURE EFFECTIVENESS ON SITE?

GERMANWATCH

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Pursuant to the UN Guiding Principles on Business and Human Rights (UNGP) and the statutory regulations pertaining to due diligence, companies in the processing industries also bear responsibility for human rights risks in their downstream supply chains. Besides, more and more national and international regulatory approaches, like the proposal for a European Corporate Sustainability Due Diligence Directive, address due diligence obligations for environmental risks. This is of great relevance for the mining and raw materials sector, which is linked to a considerable degree with environmental degradation and acute violations of human rights.

Voluntary standards and other industry initiatives for the extraction of raw materials have established themselves increasingly in recent years as an instrument with which companies can implement their due diligence obligations. Yet, the existing standards are marked by a series of systematic, content-related and methodological shortcomings. This paper provides a first assessment of the methodological robustness of the various standards in the raw materials sector. In a first step, we defined the methodological requirements placed on raw materials standards. Following this, we analysed to what extent the selected standards address these requirements.

This study shows that the industry initiatives contribute to very different extents towards implementing due diligence obligations, and our findings suggest that they can never be applied as a sole instrument to this end. This means that:

1 **Purchasing companies cannot outsource their responsibility for human rights and environmental due diligence to standards.**

2 **Clear definitions and minimum criteria must exist for standards and certification systems.**

3 **There must be clear and transparent communication about where the limits of their applicability lie in terms of fulfilling the legally stipulated due diligence obligations.**

This study provides some initial points of reference for defining minimum criteria when industry standards are to be used as one of several instruments for the implementation of due diligence obligations.

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INTRODUCTION

Requirements on companies in terms of their implementation of human rights due diligence alongside global value creation structures have been defined in the *UN Guiding Principles on Business and Human Rights* (UNGP) since 2011. According to these principles, companies are also responsible for human rights risks in their downstream supply chains and lower-level business relationships to the extent that they are obliged to have in place suitable measures to avoid and prevent such risks. The most recently passed German law on supply chain due diligence (LkSG) translates the UNGP into a comprehensive binding legal framework for German companies for the first time. The EU supply chain law and the EU Battery Regulation place binding human rights and also environmental requirements pertaining to the supply chain governance of companies for the months and years to come.

The mining and raw materials sectors in particular are associated with environmental destruction and acute human rights violations (German Institute for Geosciences and Natural Resources 2016, DPLf 2014, German Ministry for the Environment 2016). Especially in countries with lax environmental and mining legislation, poor social conditions and a lack of implementation, the risk to the population and the environment is particularly high. The lack of transparency in global raw materials supply chains also makes it difficult for companies further down the supply chain to implement this due diligence effectively.

MANY STANDARDS ARE DEEMED UNSATISFACTORY FOR ADDRESSING THE MOST IMPORTANT HUMAN RIGHTS AND ECOLOGICAL RISKS OF MINING PROJECTS AND RAW MATERIALS SUPPLY CHAINS

In this context, standards for the procurement of raw materials have developed as non-governmental, private industry incentives and as a reaction to the challenges in the sector outlined above. The standards themselves define human rights/environmental criteria for responsible extraction and/or procurement of raw materials and aim to ensure companies comply with these social and environmental requirements by means of a corresponding certification system. This is verified for the most part through audits. These bodies, which often appear as certification service providers, may be understood as regulatory intermediaries (Fransen, L. & LeBaron, G. 2019), which examine companies for compliance with sustainability criteria and verify them to the public or to supply chain stakeholders.

Academics and civil society discuss the effectiveness and the comprehensibility of standards initiatives critically, as well as their implementation and auditing mechanisms.[1] Sydow and Reichwein (2018) criticised that the content requirements of many standards are already deemed unsatisfactory for addressing the most important human rights and ecological risks of mining projects and raw materials supply chains. According to their analysis, none of the standards looked at in the area of what is known as ‘conflict minerals’ (3TGS), are credible or meaningful. Phung and Utlu (2020) arrived at similar conclusions within the context of palm oil certification. They demonstrated that standards and certification systems in particular only inadequately comply with the

[1] Not least in the context of the Conflict Minerals Law, which was passed in 2017 and which already prescribed a very restrictive due diligence for raw materials supply chains, this was also a hotly contested topic between civil society and company associations.

procedural requirements of the UNGP and thereby neglect the participation principle of the human-rights based approach.[2] The perspective of rights holders, they claim, is often neglected both in the standard design (identified human rights risks, requirements for companies for implementing due diligence, fixed mechanisms for redress and remedy) and also during company monitoring (e.g., audits, grievance mechanisms) (Hardy, T. 2011; Fransen, L. & LeBaron, G. 2019, 261; MacDonald, K. 2018 458-459 in ILO 2021 63, and ibid. 193). At the same time, incorporating the perspective of rights holders in defining the standards, in their implementation locally by companies, and during monitoring is key to improving the effectiveness and comprehensibility of standards and their certification. This is looked at more closely in this analysis.

In the context of what is known as the 'EU conflict minerals regulation', which already made due diligence binding for smelters and importers in a very restricted way, standards initiatives known as *Industry Schemes* have already been ascribed a major role in enabling smelters and refineries to be placed on a whitelist. Civil society was and still is strongly critical of this since it views verification as being the state's responsibility and it is of the opinion that this should not be outsourced to industry. In addition, civil society criticises the insufficient quality of the standards and there is also a fear that companies might thereby surrender their individual responsibility, which however according to the UNGP always rests with the company itself. There is much discussion of their role in the context of the EU Battery Regulation, too. It is also anticipated that, during implementation of the LkSG, companies will increasingly fall back on standards services and on certification systems for compliance with their due diligence measures (Müller-Hoff, C., Leifker, M., Paasch, A. 2021). The discussion about the relationship between voluntary standards initiatives and the individual requirements of human rights due diligence obligations, which companies must comply with according to the UNGP and the LkSG, has not been clarified conclusively. In addition, whether certification is suitable at all as a tool for safeguarding the effectiveness of due diligence obligations locally is still an unresolved issue (Partiti, E. 2021).

Our analysis clearly shows, based on the examination of seven standards for metallic raw materials, that industry initiatives can vary considerably in their contribution to implementation of due diligence, in particular because they involve rights holders to varying degrees. According to the UNGP, the participation of rights holders is however an essential component of the human rights due diligence process. Also for environmental due diligence aspects, the participation of rights holders and for this purpose also the provision of comprehensive and contextualised information is crucial, as mentioned by Heinz and Sydow (2021) and Sydow et al (2021). In this context, the various standards also demonstrate significant

[2] The five principles of the human-rights based approach, also known as PANEL, are: Participation, Accountability, Non-discrimination and Equality, Empowerment and Legality. Not least in the context of the Conflict Minerals Law, which was passed in 2017 and which already prescribed a very restrictive due diligence for raw materials supply chains, this was also a hotly contested topic between civil society and company associations.

INTRODUCTION

differences with regard to the effort they put into ensuring implementation, including in the interest of rights holders among others. This is in turn reflected in the price that companies must pay for an audit or certification. Here, civil society fears that price competition between standards can lead to an erosion of their quality when it comes to implementing due diligence. Accordingly, it is essential that specific demands be placed on standards in order to prevent this. The analysis also shows, however, that none of the raw materials standards looked at is so far able to ensure the compliance of standards criteria at the certified operating sties. On the whole, all standards we examined reveal key weaknesses in implementing due diligence obligations. This underlines the fact that companies have to be aware of the strengths and weaknesses of the standards in order to implement them responsibly in the context of their due diligence obligations. They should not rely on them alone but should undertake supplementary measures as well.

THIS STUDY EXAMINES THE PROCEDURAL REQUIREMENTS OF STANDARD INITIATIVES AND THEIR TRANSPARENCY

This paper provides an initial classification for raw-materials-specific standards within the framework of this discussion. For this purpose, in a first step, requirements for selected raw materials standards have been defined according to the UNGP. In a further step, an analysis was made of the scope to which these requirements are addressed by the relevant standards. In doing this, in particular, the question of how suitable standards initiatives are for adequately addressing human rights risks in specific regions by the involvement and consultation of rights holders is looked at. Likewise, an investigation was conducted into which measures standards deploy to ensure the certified companies adhere to the requirements defined in their guiding principles and disclose the monitoring results in a comprehensible manner to the public (incl. to companies further down the supply chain). This latter is of huge relevance for companies downstream in the supply chain, since transparent communication of certification results is a prerequisite for enabling the extent to which the core elements of their human rights due diligence have been implemented appropriately to be gauged during procurement of certified raw materials or within the scope of business dealings with certified production sites. This analysis therefore is not designed to examine the content requirements of standards, but looks into procedural requirements demanded of standards initiatives. In doing this, it looks in particular at audits, grievance mechanisms and *corrective action plans*. In the conclusion, we derive specific recommendations for political processes such as the German and European supply chain law and the EU Battery Ordinance.

The UNGP do not directly include environmental due diligence which served as the main foundation for the analysis. However, due to our focus on procedural requirements, the findings of this study can largely be applied to environmental due diligence (see Scherf et al. (2020) for the transferability of procedural requirements for human rights due diligence to environment due diligence). For an overview on which of the analysed standards also include requirements for environmental standards, please see table 1 on page 10-12.

PRESENTATION OF THE STANDARD INITIATIVES EXAMINED

Standards define the criteria and procedural requirements for human-rights-related, social, environmental and governance topics (ESG) applied to raw materials companies and/or raw materials supply chains (e.g., mines, processing companies in heavy industry). These are often based on international *Soft Law Standards*, such as the *OECD Guidelines for Multinational Companies* or various ISO norms. At the present time, there is no uniform definition and/or delimitation between industry, multi-stakeholder and company standards, and the terms are often used synonymously. This can easily lead to confusion, as the different initiatives and private organisations behind the terms pursue very different goals, and the requirements they place on their member companies and/or their certifications are also different in their level of strictness. As further analysis shows, not every standard has a certification framework. As industry initiatives are also listed as possible corrective measures in the LkSG and will also play a role in relevant EU law (the sustainable corporate due diligence directive) as well as in the EU Battery Regulation[3], it is urgently necessary that the legislator defines more stringently what is to be understood here (see also section 8).

The raw material standards examined in this study address corresponding ESG topics in different ways along the supply chain. While the IRMA standard evaluated here, for example, currently certifies only individual mines owned by mining companies, the *Due Diligence Standard of the Responsible Mineral Initiative* (RMI) assesses to what extent raw material smelters and refineries implement management processes for human rights due diligence in their supply chains in line with the OECD guidelines without, however, assessing the production sites themselves in terms of their compliance in ESG topics. Figure 1 shows what types of actors (can be) included in the raw material supply chain by which of the standards we examined.

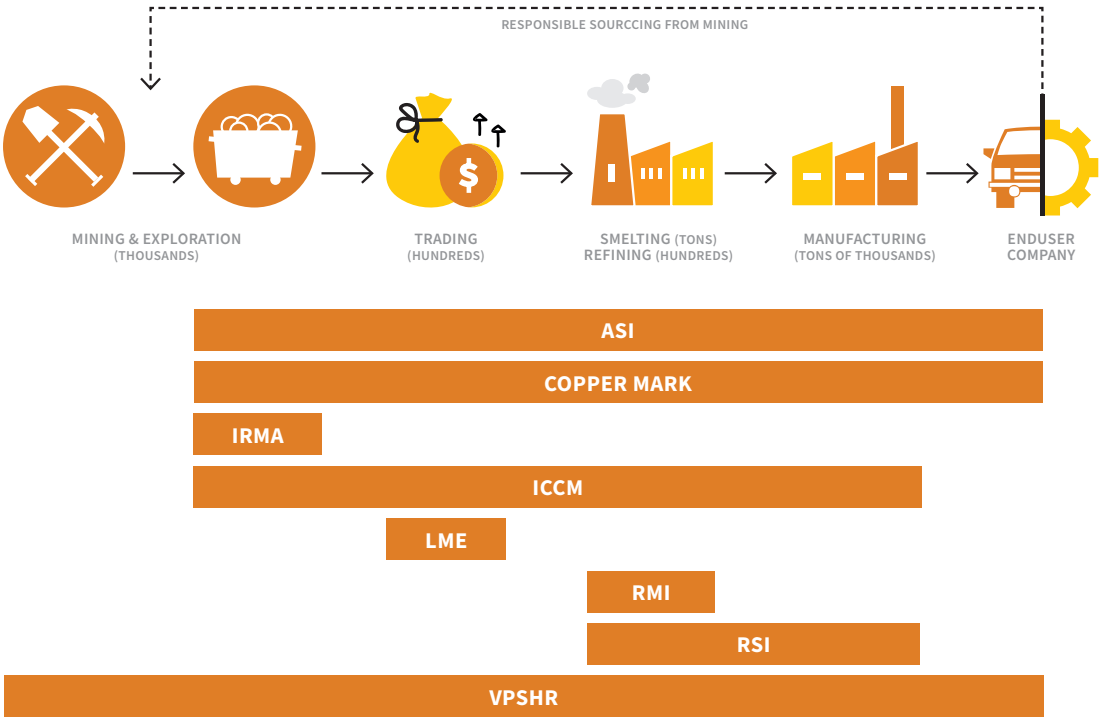
AT THE PRESENT TIME, THERE IS NO UNIFORM DEFINITION AND/OR DELIMITATION BETWEEN INDUSTRY, MULTI-STAKEHOLDER AND COMPANY STANDARDS, AND THE TERMS ARE OFTEN USED SYNONYMOUSLY.

[3] In the battery regulation, the term used is "due diligence schemes".

PRESENTATION OF THE STANDARD INITIATIVES EXAMINED

In the case of RMI, but also the standard of the raw materials stock exchange, the *London Metal Exchange* (LME), the standards' requirements are oriented towards specific company actors in the supply chain, whereby human rights and ESG topics are addressed at other, upstream production sites. This means that the standard does not certify the human rights, environmental or social performance of own production sites, but rather the measures carried out by the companies in order to safeguard human rights requirements on the part of the supplier. The following graphic thus illustrates at which level of the supply chain human rights and ESG topics are addressed by the standard, at least theoretically. This graphic is based on the standards' own self-assessment and their framework of reference. As such, the graphic still does not say anything about how understandable and methodically verifiable human rights (HR) and ESG topics are implemented and adhered to by certified companies along the supply chain.

FIGURE 1
OVERVIEW OF WHAT STANDARDS CAN BE APPLIED BY WHAT SUPPLY CHAIN ACTORS.



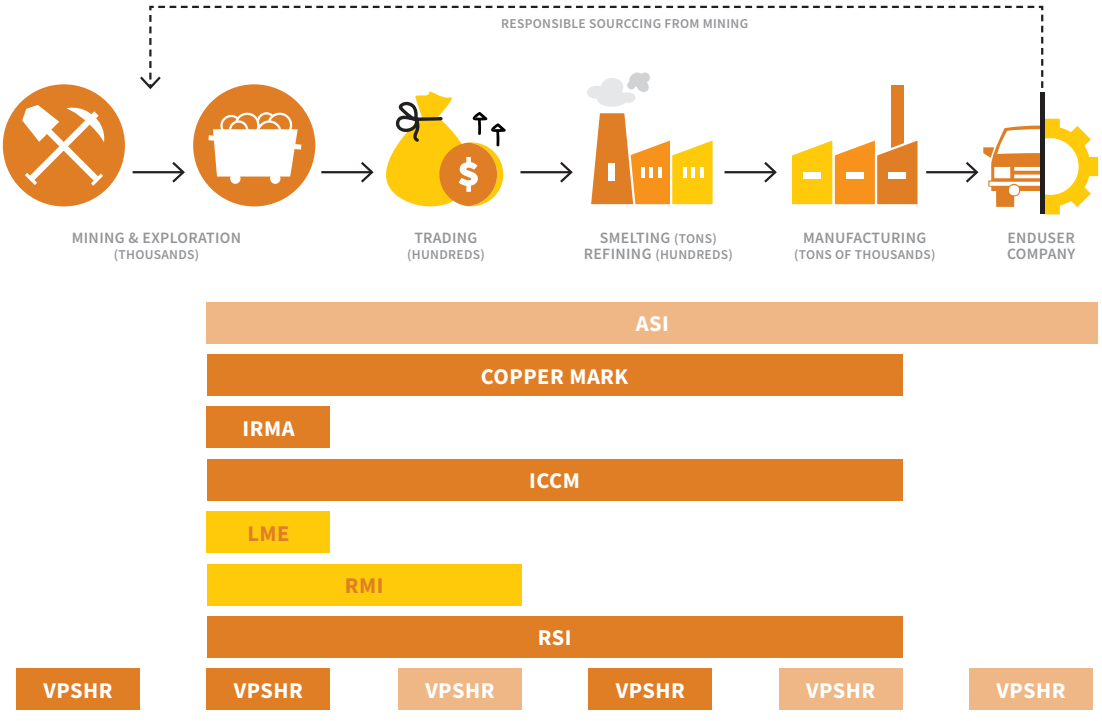
PRESENTATION OF THE STANDARD INITIATIVES EXAMINED

Nevertheless, the graphic helps to provide an understanding about the desired level at which human rights and other ESG risks are potentially addressed by the standard.

In the case of the *Aluminium Stewardship Initiative* (ASI), the assessment and certification of the human rights due diligence processes for companies is optional, which is why no general statement can be made about the degree of coverage provided by the standard. The *Voluntary Principles on Security and Human Rights* (VPSHR) can be applied by all industry actors, but they are primarily used by producing companies at the lower value-creation stage. As the standard does not define any process criteria for avoiding human rights risks in the upstream supply chain, the bar in the diagram is not presented as constant all the way along. The standard addresses only the company or plant level. With the standards of the LME and RMI, it is apparent that the theoretical degree of coverage of human rights risks in the value creation chain is not congruent with the certification level. For companies that procure raw materials from a plant certified by the RMI *Due Diligence Standard*, this means that no potential HR or other ESG risks that might have their origins at the production site level are addressed by the standard. Since the summer of 2021, RMI has also offered ESG certifications. However, this study only examined the *Due Diligence Standard*.

A detailed overview of the standards examined is provided in the table below.

FIGURE 2
VALUE CREATION LEVELS IN WHICH HR AND ESG RISKS ARE THEORETICALLY ADDRESSED BY THE STANDARD.



OVERVIEW OF THE STANDARD INITIATIVES EXAMINED

TABLE 1 Overview of the standard initiatives examined

ALUMINIUM STEWARDSHIP INITIATIVE (ASI)	The ***Aluminium Stewardship Initiative*** (ASI) is a non-profit multi-stakeholder organisation and runs a certification programme for the entire aluminium value chain. The ASI offers two voluntary standards: the ***ASI Performance Standard*** and the ***ASI Chain of Custody Standard***. The ***Performance Standard*** addresses human rights, social, ecological and governance aspects (ESG) that the production sites to be certified must fulfil. All companies and industrial sites that operate in the aluminium value chain can be certified in line with the standard. The ***Chain of Custody Standard*** complements the ***ASI Performance Standard*** and is voluntary for ASI members. It contains requirements concerning the setting up of the value chain monitoring for the entire aluminium value creation chain including the various downstream sectors in which ASI-certified aluminium is produced and processed. ASI was launched in 2018 after many years of development. Various civil society organisations that were also involved in developing the standard are members of ASI. In addition to international civil society organisations, smaller national organisations from the producing countries were also represented. Evaluation and certification are optional.
COPPER MARK	The ***Copper Mark Standard*** certifies production sites in the area of mining, processing, and finishing copper. ***Copper Mark*** offers two different standards – the ***Joint Due Diligence Standard*** and the ***Copper Mark Criteria for Responsible Production***, whereby companies that seek to be certified according to the latter also have to fulfil the ***Joint Due Diligence Standard***. The initiative is relatively new, and companies could only be certified from the end of 2020 onwards. The ***Copper Mark*** logo and certificate is only awarded to companies that fulfil the ***Copper Mark Criteria for Responsible Production*** which include social, environmental and governance criteria. The certification process starts with a self-assessment by the company that is checked by independent reviewers. Building on that, a ***Third-Party Audit*** is carried out at the production site itself. ***Copper Mark*** recognises certain standards as equivalent – either as a whole or in parts. If a certification has already been awarded by this standard for individual criteria of the ***Copper Mark Standard***, these can be taken into account in the certification process of ***Copper Mark***.

OVERVIEW OF THE STANDARD INITIATIVES EXAMINED

INTERNATIONAL COUNCIL ON MINING & MINERALS (ICMM)	***ICMM*** is a federation of 28 mining and metals companies and more than 35 national and regional raw materials associations. As a member organisation, every ICMM company officially undertakes to adhere to the ICMM mining principles, which include environmental, social and governance requirements. The ICMM principles address the mining, processing, and finishing of raw materials, whereby the exploration phase in mining projects is not explicitly included. Compliance is assessed via an auditing of the sustainability reports that the companies publish, and which must correspond to specifications of the ***Global Reporting Initiative*** (GRI). In addition to that, the companies must provide information in a ***self-assessment*** about how they implement the ICMM principles in their respective plants. The mining company carries out a gradual prioritisation of the plants which should then be evaluated by a third-party validation, based on the criteria specified by the members of the ICMM. Since ICMM is a membership organisation, the criteria are set by the same companies that are later audited on them. The validation is only an evaluation of the credibility of the ***self-assessment*** by an audit company of the company's choice. An on-site validation is only carried out in exceptional cases.
INITIATIVE FOR RESPONSIBLE MINING ASSURANCE (IRMA)	Since 2021, mining projects can be certified in line with the ***IRMA Standard for responsible mining***. The basis for this is a very comprehensive ESG audit conducted by a third party. The standard is applicable to all mining materials (except fossil raw materials). IRMA was developed in a process over many years in a multi-stakeholder initiative (MSI). In addition to industry actors and associations, there was intense participation by international and national civil society organisations, including community representatives from the producing countries.
RESPONSIBLE STEEL INITIATIVE (RSI)	The ***ResponsibleSteel Standard*** applies for operative steelworks and other production sites that produce raw materials for steel manufacturing. It does not apply to service companies, mining projects or producers that manufacture end products from steel components. The standard assesses certified companies both on their environmental and human rights due diligence management systems and on their own implementation of human rights, environmental and governance criteria. International civil society organisations as well as the international trade unions federation IndustrialALL are represented in the ***ResponsibleSteel Inititative***.

OVERVIEW OF THE STANDARD INITIATIVES EXAMINED

RESPONSIBLE MINERALS INITIATIVE (RMI)	RMI is an initiative of industry actors, and it defines standards for smelters and refineries that participate in the ***Responsible Minerals Assurance Process*** (RMAP). This study evaluates the ***Due Diligence Standard***, as the ESG standard was not published until after the evaluation and analysis of the study content in summer 2021. According to its own information, the RMI standard translates the requirements of the OECD Guidelines and evaluates their implementation by the certified industrial sites. The ***Due Diligence Standard*** focuses exclusively on the measures that the company undertakes to avoid and prevent human rights violations in the upstream supply chain. This means that environmental risks without a direct link to human rights abuses are not included and that human rights risks that can occur on or around the industrial site of the company to be certified are not addressed by the standard.
VOLUNTARY PRINCIPLES ON SECURITY AND HUMAN RIGHTS (VPSHR)	The ***Voluntary Principles on Security and Human Rights*** is a voluntary code of conduct that was published in 2000 and negotiated as part of an MSI that consisted of government representatives, companies, and various international and national non-governmental organisations (NGOs). The principles address safety and human rights concerns, environmental aspects are not included. They were initially developed for the mining sector and energy companies but are now also being applied by other industry actors. The standard does not have a certification framework, but its member companies must credibly demonstrate that they are willing to implement the standard. However, the extent to which this is done is not verified.
LONDON METALS EXCHANGE (LME)	The ***London Metal Exchange*** is the world's most important raw materials exchange for industrial metals. Raw materials exchanges play an important role in the global trade of metals. It is estimated that 20 to 40 percent of the world trade in iron ore, copper, nickel, zinc (the most important raw materials by volume and value) is conducted through raw materials exchanges (Löf, A. & Ericsson, M. 2019, 66). In the year 2018, the LME was the first raw materials exchange to introduce a process for ***Responsible Sourcing***. The resulting ***LME Approach to Responsible Sourcing*** is based to a great extent on the OECD Guideline for the fulfilment of the Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas. Environmental criteria are not systematically included. LME only states to possibly include them in the future, depending on the development of global industry standards[4]. Since 2020, all companies that want to trade raw materials on the LME are obliged to fulfil one of three possible certification tracks. Based on the concept of the ***Red Flag Assessment*** (RFA) of the OECD Guidelines, all metals (each metal brand must undergo a separate assessment) are subjected to a risk assessment. Depending on the level of risk identified, companies must undergo transparency and external verification by the RFA and/or be certified by a relevant standard initiative. If the requirements of the ***Responsible Sourcing Approach*** are not fulfilled, there is an option for excluding individual product lines from trading on the LME.

[4] https://www.lme.com/Education/Online-resources/LME-Insight/LME-Responsible-Sourcing

SUPERORDINATE PROCEDURAL REQUIREMENTS OF CERTIFICATION IN CONSIDERATION OF THE UN GUIDING PRINCIPLES

This chapter derives corresponding requirements of raw materials standards and certification systems in the sense of the UNGP, the current literature (see below) and a human-rights-based procedure.

PARTICIPATION AND INCLUSION OF RIGHTS HOLDERS IN STANDARD GOVERNANCE, MONITORING, AND IMPLEMENTATION

To satisfy the UNGP, companies should actively include the perspectives of rights holders in their risk assessment and analysis of the effectiveness of the measures taken (UNLP 18 b) (see also Utlu, D. 2019). The inclusion of rights holders – that is, people whose rights are potentially endangered by a company's activities – is an vital prerequisite for assessing regionally specific risk situations, as well as for identifying changes in this respect at an early stage. Also vital for taking appropriate measures to prevent human rights violations and environmental degradation is a clear understanding of the social situation as well as the political and socio-economic framework conditions, to make sure that measures reach their desired effectiveness. That is why the procedural requirements of the UNGP stipulate that human rights impact assessments must be carried out at regular intervals and with the involvement of rights holders or, if this is not possible, representatives (NGOs, human rights advocates), so that dynamic human rights situations and regional specifics are adequately covered.

In their survey, Phung and Utlu (2020) described, for example, that even if certification systems address the most relevant human rights risks through their substantive frameworks of reference, the indicators and monitoring approaches for analysing the requirements are often inadequate[5].

To counteract these effects, it is therefore important to identify rights holders and actively include their perspectives when developing standards and their monitoring approaches, among other things by inclusion/questionnaires in audits and when developing *Corrective Action Plans*. Equally essential is access to grievance mechanisms to provide rights holders with a permanent channel of communication.

FOR EFFECTIVE MONITORING, IT IS IMPORTANT TO IDENTIFY RIGHT HOLDERS AND TO ACTIVELY INCLUDE THEIR PERSPECTIVES

[5] As such, while a ban on child labour is firmly established within the reference framework of the certification providers examined, the data and indicators (evaluation of formal employment contracts) used in the examination were however unsuitable in the specific case to clearly rule out child labour in the certified companies (child labour is an informal activity in the production countries, which is why examining employment contracts provides little useful information in this respect)

SUPERORDINATE PROCEDURAL REQUIREMENTS OF CERTIFICATION IN CONSIDERATION OF THE UN GUIDING PRINCIPLES

THE ENFORCEMENT ABILITY OF STANDARDS VIS-À-VIS CERTIFIED COMPANIES

To be effective, standards must have approaches and instruments that make it possible to sanction companies for non-compliance with criteria and/or that make this transparent. What is more, they should actively support rights holders in their demands for redress when human rights violations or environmental degradation take place.

IF SUCH MECHANISMS ARE NOT IN PLACE, THIS DIMINISHES A STANDARD'S CREDIBILITY, AND THERE IS A RISK THAT CERTIFICATION IS LITTLE MORE THAN AN EMPTY GESTURE THAT DOES NOT BRING ABOUT ANY REAL CHANGE

Discrepancies often occur between the content design of the standard guidelines and the actual possibility for standard initiatives to assert themselves against uncooperative companies. Standards can only become effective if they have mechanisms that really do move companies to make a change (MSI Integrity 2020, 138-140). To make this happen, it is necessary that standards monitor the implementation of *corrective action plans* and, in cases of non-compliance, withdraw certification from the company in question.

If such mechanisms are not in place, this diminishes a standard's credibility, and there is a risk that certification is little more than an empty gesture that does not bring about any real change. It is therefore essential that standards are able to enforce their guidelines and that they can be asserted vis-à-vis member companies.

TRANSPARENCY CONCERNING THE CERTIFICATION PROCEDURE AND RESULTS

Transparency is in place when the public can clearly follow procedures and processes as well as when the corresponding information is available and accessible. Pursuant to the ISEAL credibility criteria (ISEAL sets standards for standards), standards and certification organisations should make important information publicly available and easy to access, while they should protect confidential and private information, for example, pertaining to rights holders or whistle-blowers. The information provided enables companies, as well as rights holders and other relevant stakeholders to understand and evaluate the processes, results, and impact of standards.

Rights holders and other relevant stakeholders (e.g., NGOs, but also companies, as described further below) should therefore, in line with ISEAL criteria, have information or potentially have access to this, that is necessary for playing an active role in decision-making or for expressing concerns (e.g., as part of audits or grievance mechanisms). In this way, for example, grievances can only be submitted if information about access options and grievance procedures has been prepared and made known in a way that is appropriate for the target group (see UNGP 31).

SUPERORDINATE PROCEDURAL REQUIREMENTS OF CERTIFICATION IN CONSIDERATION OF THE UN GUIDING PRINCIPLES

However, the transparency requirements of standards are also of particular importance for companies because they also bear responsibility for fulfilling their human rights due diligence obligations when sourcing certified raw materials or raw materials from certified operating sites, as such obligations cannot simply be transferred to a standard or certification system. If companies avail of certification systems as a human rights due diligence measure, they are responsible for setting up control procedures and/or obtaining information from the standard that allow them to adequately evaluate the effectiveness of the certification system or standard.

That is why one of the decisive questions this study considered when evaluating the standard initiatives was to what extent information is communicated transparently about the monitoring procedures and results, and about the effectiveness of the measures taken. This is important, because only transparent communication of the methodology and results of the certification process allows both companies and rights holders to evaluate and understand the effectiveness of standards. If companies use standards as a measure as part of their due diligence obligations, then they must be able to fully understand what areas and core elements of human rights and environmental due diligence are even covered by a standard or by the certified company. This is important to carry out an adequate evaluation of the benefits and limitations in relation to the UNGP and to take appropriate action based on this. Therefore, standards should report transparently on which criteria and requirements within their reference framework have been implemented by the certified company and to what extent.

ANALYSIS FRAMEWORK

To be able to evaluate the effectiveness and comprehensibility of standard initiatives, we have developed an analysis grid to evaluate the certification processes for the standards. In so doing, we have concentrated in particular on evaluating the methods and mechanisms used for certification. The analysis criteria therefore refer to audits, grievance mechanisms and implementation tools (Corrective Action Plans, CAPs) for the standards. In addition, a rough analysis has been made of the extent to which representatives of potential rights holders are represented in the decision-making and consultation committees of the standard initiatives. The grid and the criteria have been devised as part of comprehensive literature research, which covers both perspectives of German and international academic literature as well of grey literature. In so doing, various case studies regarding human rights and environmentally based due diligence in global (raw material) supply chains have been included (including ACCA 2020; International Labour Organization 2021; Kelly, I. M., Miedema, C., Vanpeperstraete, B., & Winterstein, I. 2019; Müller-Hoff, C., Leifker, M., Paasch, A. 2021; MSI Integrity 2020; Phung, S. & Utlu, D. 2020). Furthermore, cross-subject studies on the role of certification service providers have been evaluated (including Ford, J. & Nolan, J. 2020; Fransen, L. 2011; International Labour Organization 2021; Kultalahti, A. & Vartiala, S. 2016; LeBaron, G. & Lister, J. 2018; Müller-Hoff, C., Leifker, M., Paasch, A. 2021; MSI Integrity 2020; Sydow, J. & Reichwein, A. 2018) and the results of numerous workshops and discussion meetings with experts from civil society/business/the certification industry are incorporated into the design of this analysis grid.

INVOLVEMENT OF RIGHTS HOLDERS IN DECISION-MAKING COMMITTEES FOR STANDARDS

THE INVOLVEMENT OF POTENTIALLY AFFECTED PARTIES AND RIGHTS HOLDERS IN STANDARDS GOVERNANCE AND THEIR FURTHER DEVELOPMENT INCREASES THE CREDIBILITY OF STANDARDS

When it comes to the definition of content-based and normative requirements, many take problematic human rights and environmental situations and risks at sector level as a starting point, which they then translate in aggregated form into global criteria. Especially, human rights risks are not static, however, but demonstrate specific regional characteristics that may change at any time within the scope of political developments. Besides, also environmental risks are dynamic, for example their severity change due to cumulative effects of numerous (third-party) activities and for example by accelerated climate change. For this reason, the procedural requirements of the UNGP envisage the carrying out of human rights follow-up evaluations at regular intervals, the involvement of rights holders or, where this is not possible, of their representatives (NROs, human rights advocates) so that dynamic human rights situations and regional specifics can be grasped sufficiently[6]. We translate these requirements for standards initiatives as follows: The involvement of potentially affected parties and rights holders in standards governance and their further development increases the credibili-

[6] For environmental aspects, rights holders also include environmental associations. However, in the scope of this study, their inclusion in the governance structures, monitoring processes, grievance mechanisms and mitigation requirements of the respective standards was not systemically and separately analysed.

ty of standards since, at least to a certain degree, this ensures a response to the dynamic, regionally varying risks for human rights and the environment and that standards systems and measures are adapted accordingly. We are aware that the involvement of individual rights groups (rights holders and/or their representatives) cannot do justice to all the complex risk situations of an entire sector. Nevertheless, we regard this striving for standards to incorporate corresponding perspectives in their governance structure as an indicator for the credibility of the standard. This assumption also builds on the participation principle of the human rights-based approach of the UN (2019) as well as the credibility criteria of ISEAL (Stakeholder Engagement) (ISEAL Alliance 2013).

With this, standards where national organisations or representatives of rights holders are represented in their governance structure are assigned a positive rating. Standards where several international NROs are represented in the committees but no grass roots organisations among them, are awarded a yellow rating.

REQUIREMENTS FOR AUDITS IN THE CERTIFICATION SYSTEM

Audits play a key role in standards certification. In management literature, audits are defined as a "systematic, independent and documented process for obtaining information and the objective assessment of this to ensure compliance with audit criteria" (Domingues, P., Sampaio, P. & Arezes, P. 2011). This is however less a definition than a description of an ideal state, which is often far removed from reality (Sydow, J., Reichwein, A.). In the past, erroneous audits have had dramatic effects. For instance, 272 people were killed in the dam disaster at the iron ore mine in Brumadinho, which had previously been successfully certified by TÜV SÜD during a technical audit. The quality of an audit depends not only on the methods used and the acquisition and preparation of information but also on which potential conflicts of interest exist between the auditors, the standard, and the company to be certified. During the subsequent course, criteria have been identified which are decisive for the credibility and comprehensibility of audits during the certification process.

ANALYSIS FRAMEWORK

MINIMUM REQUIREMENT

A THIRD-PARTY AUDIT IS PERFORMED ON THE COMPANY PREMISES

Audits comprise various approaches and methods. Within the scope of standards, external (*third* or *second-party audits*) or else internal (*first-party audits*) audits can be used to audit production sites on site within a limited time period. Other standards merely require companies to perform a *self-assessment*, the plausibility of which is then evaluated by an external review – without an auditor ever having to set foot on the company site. A *third-party audit* on the other hand means that the audit is performed by a certification service provider, which is commissioned by the standard initiative or the company. A first important criterion for evaluating the credibility of standards is therefore the extent to which a certification audit can be requested by a third party at all. Standards which do not fulfil this criterion were not recorded by the subsequent analysis since this criterion has been defined as the minimum requirement for the credibility of a standard.

TABLE 2 Criteria: Descriptions and evaluation grid for the audit category

Criterion 1	*Green*	*Yellow*	*Red*
Involvement of rights holders in the audit process and presentation of the results	*Max. one yellow category, no red category*	*Max. two red categories, where each red category is offset by a green category*	*More than two red categories or two red categories that are not offset by green categories*
*a) An **on-site audit** of potential human rights violations (and environmental degradation if addressed by the standard) caused by the operating sites is mandatory at the respective operating sites*	*All operating sites certified by a standard are checked for compliance with human rights and environmental criteria in accordance with the standard in an on-site audit.*	*Although the standard requires the performance of ESG and on-site audits, they are not mandatory for every production site of a company. In other words, companies can obtain certification for themselves and for all of their production facilities although only a selection of the associated units has actually been inspected for compliance with the standard criteria.*	*There is no mandatory audit of compliance with ESG criteria on and around the operating site.*
b) Qualitative surveys of rights holders (external and internal), taking into account local factors (culture, language), are explicitly required by the standard	*The standard explicitly requires the performance of qualitative interviews with various stakeholder groups in the audits. It provides auditors with methodological requirements and guidelines. This includes minimum criteria for the composition and number of actors to be interviewed (workers and community representatives). The positions and perspectives of the interviews are reflected and taken up in the audit reports without violating privacy rights.*	*Interviews are required as part of the audit, but either it remains vague which groups of actors (apart from workers) are to be included in the audit or the results of the interviews are presented in an insufficient and poorly differentiated way in the audit report.*	*Conducting qualitative interviews is not mandatory (including, for example, qualifying formulations such as: "if appropriate").* *There is no discussion of the interview results in the audit reports.*

ANALYSIS FRAMEWORK

Criterion 1	*Green*	*Yellow*	*Red*
c) Audits are announced to rights holders in advance	*A clear and binding timeframe is specified within which all relevant stakeholder groups must be informed about the audit by the auditors. The information must be available in the local language. By publishing and announcing the audit, even unidentified stakeholders are explicitly given the opportunity to register for participation in the survey or to make a written statement.*	*The auditors are obliged to inform the identified stakeholder groups about the audit. The auditors have discretion to decide which stakeholder groups are to be included here (see previous category). There is no reference to which language must be used for the announcement.*	*There is no specific information on when an audit must and/or should be announced to rights holders. Or: The company to be certified must inform rights holders.*
d) Creation of safe spaces and/or trusting framework conditions for interviews with rights holders	*The standard defines clear requirements and criteria for creating safe spaces for the interview so that employees and other stakeholder can describe their perspective free from coercion and fear of retaliation. It defines requirements on how the anonymity of respondents (workers) can be maintained.*	*The standard explicitly states that interviews with employees should take place outside the company premises if necessary (according to the auditors' assessment). Off-site spaces should be established for interviews with external stakeholders, but the precise requirements are not elaborated here.*	*The standard does not address the fact that interviews with employees can potentially take place outside the company premises. There is no information on the subject of safe spaces for the questioning of rights holders.*

ANALYSIS FRAMEWORK

Criterion 2	*Green*	*Yellow*	*Red*
Audit quality assurance defined by the standard	*Max. one yellow category, no red category*	*Max. two red categories, where each red category is offset by a green category*	*More than two red categories or two red categories that are not offset by green categories*
a) The standard initiative checks the audit results through a review of the audit report	*The standard initiative is required to verify the audit report before issuing the certificate.*	*The standard initiative reviews the audit report as appropriate and at its discretion.*	*The standard initiative does not review the audit report.*
b) The standard defines criteria for the professional suitability of auditors	*The standard has clearly defined criteria for professional competence and language requirements and defines minimum requirements for the practical experience of the auditors. The auditor team must be professionally diverse so that the substantive areas of the standard are adequately covered. A training course on the standard is mandatory.*	*The standard requires auditors to be suitably qualified with regard to the contents of the standard and defines minimum requirements for the practical experience of the auditors.*	*The standard defines no or inadequate criteria for the professional suitability of the auditors.*
c) The standard initiative selects a certification service provider	*The standard initiative commissions the certification service provider directly and carries out a suitability test.*	*The standard initiative accredits individual certification service providers; the company can choose between these companies and then commissions them itself.*	*The standard initiative does not limit the selection of certification service providers; the company can choose freely.*

ANALYSIS FRAMEWORK

Criterion 2	Green	Yellow	Red
d) Requirements to avoid conflicts of interest between certification service providers and the company to be certified	The standard defines clear specifications to avoid conflicts of interest by excluding parallel orders and certification service providers who have been responsible in the past for advising the company to be certified within the context of implementing the standard. The standard also has regulations that exclude auditors from certification if there is an employment history between the auditors and the company to be certified in the last three years.	The standard excludes parallel commissioning of the certification service provider by the company (e.g., the certification service provider may not simultaneously act as a consultant for the company, regardless of the subject area).	Requirements to avoid conflicts of interest are not binding or no reference is made to them.
e) Rotation of the auditor team	There is a rule governing the rotation of auditor teams between each audit, i.e., different auditors always certify the respective operating site.	There is a rule governing the rotation of auditor teams after a certain audit interval, i.e., different auditors always certify the respective operating site after a certain interval.	There is no rotation rule.
f) Independent financing of the audit	The financing of the audit is independent of the company.	The auditing costs are partially covered by the standard initiative.	The audit costs are borne in full by the company.

ANALYSIS FRAMEWORK

Criterion 3	*Green*	*Yellow*	*Red*
Transparency regarding audit results	*The audit results are presented in a comprehensible and detailed manner. They reflect the perspectives of the various stakeholders interviewed and a differentiated examination as to how and why a company meets or does not meet the criteria takes place.*	*An aggregated summary of the results for each standard criterion is available, but is insufficiently differentiated or it is not clear, particularly in the case of a positive assessment, why this result was determined. There is an overview of which stakeholders were involved in the audit.*	*There is no audit report available, or it is aggregated in such a way that it is not clear which criteria have been assessed.*
Frequency of audits	*No assessment was made on this question as there are different views in the literature as to how often an audit should be carried out. Elaborate audits in particular also result in increased time demands on rights holders.*		

ANALYSIS FRAMEWORK

STRENGTH OF IMPLEMENTATION MECHANISMS WITHIN THE SCOPE OF THE *CORRECTIVE ACTION PLAN*

Corrective action plans are a measure used by standards to eliminate weaknesses that emerge in audits. They are designed to stipulate how the weaknesses that have been identified in the audit are to be tackled. It is important to ensure that non-conformities are tackled by companies with the standard criteria and that standards are indeed credible enough for their content requirements to be implementable. It is therefore important that implementation of ***Corrective Action Plans*** (CAPs) is verified in the interest of the affected parties, that stakeholders are involved, that transparency exists about implementation, and that exclusion criteria are clearly defined.

TABLE 3 Criteria: Description and evaluation grid for CAPs category

Criteria	*Green*	*Yellow*	*Red*
1) Involving stakeholders in the formulation of the CAPs	*The standard specifically requires that rights holders be involved in the formulation of the CAPs.*	*Rights holders must be included in the audits (according to audit criterion number 1 (green or yellow rating), but thereby only indirectly contribute to the definition of the CAPs target horizon.*	*It is not required that rights holders be involved in the audit and in the formulation of CAPs according to the aspects listed in audit criterion 1.*
2) Involvement of stakeholders in assessing fulfilment of CAPs	*It is explicitly stated that rights holders are involved in monitoring the implementation of the CAPs*	*Rights holders must be involved in the audit and the representation of the results and receive green or yellow in category I of the audit.*	*Rights holders do not have to be explicitly involved in monitoring the implementation of the CAPs or in the audit. However, if inclusion the audits is desired, it does not meet the criteria described in audit criterion 1.*
3) No award of the certificate in the event of non-conformity	*The certificate is only awarded once all non-conformities have been eliminated*	*The certificate may only be issued when major non-conformities have been eliminated and a clear plan with concrete objectives for the implementation of less serious non-conformities is in place and disclosed.*	*Certificate is awarded despite major non-conformities or no plan and deadline for dealing with minor non-conformities is disclosed*

ANALYSIS FRAMEWORK

Criteria	Green	Yellow	Red
4) Binding, clear, and reasonable deadlines for the implementation of the CAPs	Deviations from the standard catalogue (non-conformities) are divided into different categories depending on the degree of severity and serious deviations must be eliminated within no more than 3 months. Otherwise, the certificate must be suspended, or the company suspended. Less serious violations must be remedied within one year.	There is a classification of different degrees of severity of violations and specific deadlines for each. Serious violations must be remedied within half a year; otherwise, the certificate will be suspended. Reasons for extending the deadline for less serious non-conformities are not precisely defined.	With respect to deadlines, no distinction is made in severity of violation and/or no deadline less than one year is provided even for serious non-conformities. Reasons for extending the deadline even for serious non-conformities are not precisely defined.
5) Exclusion or suspension of the company in the event of non-compliance with the CAPs within a reasonable period of time	There are clear deadlines (in the above-mentioned timeframe) for the implementation of the CAPs and the company is excluded if non-conformities are not eliminated in the specified period. Reasons for a possible extension of the deadline for the implementation of CAPs must be defined and non-conformities must be visible to third parties in a differentiated form.	There are clear deadlines for the implementation of the CAPs and the company is excluded if non-conformities are not eliminated in the specified period. There is ambiguity regarding the deadline for correcting minor non-conformities.	There is no clear communication about suspension and unclear flexibility with regard to extending the deadline even in case of serious violations or more than one year to retain a certificate even in case of gross violations.

Criteria	*Green*	*Yellow*	*Red*
6) Transparency regarding the implementation of the CAPs	*The CAP results are presented in a comprehensible and detailed manner. It can be seen which non-conformities must be addressed in which time frame, by which measures, and how they will be implemented. They show where and how stakeholders have been and are involved and are not only available for members to view.*	*The CAP results are published in aggregated form, but it is possible to see where there are non-conformities, by when they need to be addressed, and then whether or not they have been addressed. This information is not only available in case of exclusion or when an extension of the implementation deadline has been approved and is also accessible to non-members of the standards.*	*CAPs are not accessible to non-members even in aggregated form.*

ANALYSIS FRAMEWORK

CONTRIBUTION OF GRIEVANCE MECHANISMS IN CERTIFICATION SYSTEMS

THE GOAL MUST BE TO ENABLE RIGHTS HOLDERS TO INFORM STANDARDS INITIATIVES ABOUT GRIEVANCES AT ANY TIME.

The meaningfulness of audits is for the most part already restricted due to their temporal character, for they only reflect a momentary snapshot of complex working and everyday situations (Locke, R., Amengual, M., & Mangla, A. 2009). For this reason, as well as the performance of intermittent audits, standards should implement a methodical and temporally more open information-acquisition procedure and communication procedure with rights holders potentially affected by negative effects. The goal must be to enable rights holders to inform standards initiatives about grievances at any time. This can also improve recording of the structural causes of human rights violations at certified production sites.

Besides their function as a procedure for mediation and negotiation of correction and compensation measures, grievance mechanisms may therefore themselves be understood in this analysis as an important monitoring tool for implementation of standards with reference to UNGP principles 30 and 31. For, in addition to audits, grievance mechanisms enable rights holders to report abuse by companies and human rights as well as environmental problems to the standards initiative promptly. In this respect, grievance mechanisms constitute an important channel of direct communication between the rights holders and the standards initiative, which is designed to enable the direct involvement of affected parties in the rating of company compliance.

Beyond this, UNGP-conform grievance mechanisms are also a source of permanent learning (UNGP 31, g), the findings of which are additionally designed to make an important contribution to risk analyses of standards and companies. Grievance mechanisms are to be aligned in accordance with UNGP efficiency criteria so that they already address human rights violations in a preventive fashion. This means grievances which might lead to human rights violations or environmental degradation, even if only potentially in future, should be followed up too. According to the effectiveness criteria, a grievance mechanism should be 1. Legitimate; 2. Accessible; 3. Calculable; 4. Balanced; 5. Transparent; 6. Rights-compatible; 7. A source of ongoing learning and 8. Based on exchange and dialogue. The forth criteria of a balanced grievance mechanism is of special importance also for environment-related grievances. Grievance mechanisms should address the fact that proving (the risk of) environmental degradation often requires special technical knowledge and equipment. Thus, the grievance mechanisms' procedure should not require of the complainant to provide substantiated scientific evidence as a pre-condition for that a complaint is accepted.

According to this understanding, as economic stakeholders, standards should subsequently establish their own grievance mechanisms and require the establishment of UNGP-conform grievance mechanisms on the part of companies as well as checking their grievance processes and evaluating grievances received during the compliance audit. Cross-company grievance mechanisms that, for example, have been provided by a standard enable a high de-

gree of independence of individual grievance procedures and of the entire grievance mechanism from the influence of individual companies (Gläßer, U. et al. 2021). The effectiveness of an individual grievance mechanism for a standard is therefore also an important criterion for the assessment of its effectiveness, i.e., the impact level of the standard.

For this reason, this analysis, alongside the audits, also checked the effectiveness of the grievance mechanisms according to the criteria presented here for the following criteria, which are based on the UNGP effectiveness criteria (according to Zagelmeyer, S., Bianchi, L. & Shemberg, A. 2018; MSI Integrity 2020; ACCA 2020 and other expert discussions).

TABLE 4 Criteria: Description and evaluation grid for grievance mechanism category

Criterion 1	*Green*	*Yellow*	*Red*
The standard requires an effective GM according to the UNGP effectiveness criteria from the companies	*The standard requires a grievance mechanism in accordance with the UNGP effectiveness criteria and derived concrete implementation requirements for companies from it.*	*The standard requires a grievance mechanism in accordance with the UNGP effectiveness criteria but did not derive concrete implementation requirements for companies from it.*	*No reference to the UNGP effectiveness criteria.*

ANALYSIS FRAMEWORK

Criterion 2	*Green*	*Yellow*	*Red*
The standard initiative grievance mechanism is legitimate and predictable	*Max. one yellow category, no red category*	*Max. two red categories, where each red category is offset by a green category*	*More than two red categories or two red categories that are not offset by green categories*
a) Independent process management by a third party	*The grievance process is managed by an independent panel of experts and not by the standard initiative itself.*	*Process management is carried out by a consortium of stakeholders in which at least one independent external party is represented. The claimants have the right to object to the selection of the external party.*	*There is no obligation to involve an external and independent party in the process management.*
b) The case may be appealed by the claimants	*The case can be challenged by all parties.*	*The procedure may be challenged by any stakeholder, with limitations, e.g., if new evidence comes to light.*	*The case and the result cannot be appealed.*
c) Grievances concerning particularly serious allegations of HR violations are escalated, i.e., dealt with quickly[7]	*There is a standardised and formulated process that provides assistance and priority grievance handling in the event of particularly serious human rights violations and/or acute threats.*	*The standard refers to a possible ad hoc prioritisation of grievances in the event of particularly serious human rights violations and/or acute threats, without defining a standardised and mandatory approach.*	*There is no reference to prioritising grievances in the event of particularly serious human rights violations and/or acute threats.*

[7] The same applies to particularly serious allegations of environmental degradation. Whether an adequate process of escalation is ensured also for environmental issues was however not examined in the scope of this study.

Criterion 2	*Green*	*Yellow*	*Red*
d) *The standard is withdrawn from companies if they fail to comply with the negotiated remedy*	*According to the standard document, non-fulfilment of the negotiated leads to withdrawal of the standard certificate from the respective companies.*	*According to the standard document, non-fulfilment of the negotiated can lead to withdrawal of the standard certificate from the respective companies but does not have to. The standard refers to other sanction mechanisms and specifies what they are.*	*It does not explicitly mention the withdrawal of the standard as a sanction mechanism.*

ANALYSIS FRAMEWORK

Criterion 3	*Green*	*Yellow*	*Red*
The grievance mechanism in the standard initiative is accessible	*Max. one yellow category, no red category*	*Max. two red categories, where each red category is offset by a green category*	*More than two red categories or two red categories that are not offset by green categories*
a) The grievance mechanism can be used by all potentially affected parties[8]	*Access to the grievance mechanism is open to all potentially affected groups; there is no a priori restriction stipulated in the standard document. Whistleblowers can also lodge grievances about the mechanism, or at a minimum, this option is not ruled out.*	*Access to the grievance mechanism is open to all potentially affected groups; there is no a priori restriction stipulated in the standard document. The grievance mechanism is not open to whistleblowers.*	*The grievance mechanism is limited to individual (potentially) affected groups.*
b) Potential users are made aware of the grievance mechanism	*The standard formulates strategies and measures to publicise its own grievance mechanism to potentially affected stakeholder groups at mines certified according to the standard. In doing so, it refers to specific requirements in order to accommodate the respective context (e.g., linguistic, cultural).*	*The standard refers to measures to publicise the grievance mechanism in the context of the audit, but without defining specific minimum requirements.*	*The standard has no or insufficiently specific requirements (no mention of specific and/or mandatory measures) for raising awareness of the grievance mechanism.*

[8] For environmental aspects, the grievance mechanism should especially be accessible also to environmental associations. In how far this is ensured was not assesses through this study.

Criterion 3	Green	Yellow	Red
c) Digital accessibility of the GM (visible application on homepage and presentation in different languages)	The grievance mechanism is advertised on the standard homepage in different languages and clearly visible, i.e. information about the mechanism is adequate for the target group (in different languages) and simplified.	The grievance mechanism is not promoted prominently via the homepage but can be reached in a few clicks. Information about the GM is presented in a simplified way, without the language barriers being taken into account.	The grievance mechanism is only accessible via subpages or a separate form. No information about the GM is presented; it can only be found in the standard manuals.
d) Analogue accessibility and oral submission of grievances is possible	There is a hotline and a local point of contact near the certified operating sites, where grievances can be submitted orally and/or in writing (e.g., by letter).	There is a functioning telephone hotline for submitting oral grievances.	There is no analogue grievance option; grievance submission via telephone is not possible.
e) Language barriers are addressed and removed	Affected parties may file their grievance in a local language and the company is obliged to provide a translation for submission. The grievance mechanism is advertised to the potentially affected stakeholder groups in documents in the local languages.	Affected parties may file their grievance in a local language and are offered a translation for the purpose of lodging a grievance.	There is no guarantee that grievances filed in a local language will be processed.

ANALYSIS FRAMEWORK

Criterion 4	*Green*	*Yellow*	*Red*
The grievance mechanism in the standard initiative is balanced, i.e., addresses power and information asymmetries	*Max. one yellow category, no red category*	*Max. two red categories, where each red category is offset by a green category*	*More than two red categories or two red categories that are not offset by green categories*
a) The costs of filing grievances are borne by the standard initiative and/or the companies	*The standard initiative covers the costs of the grievance procedure on a pro rata basis for the claimants (potentially affected groups of stakeholders) in order to ensure the execution of a grievance procedure.*	*The standard initiative covers part of the costs of the grievance procedure for the claimants (potentially affected stakeholder groups).*	*No assumption of costs for claimants is guaranteed, so the execution of the grievance procedure depends on the financial capacity of the group concerned.*
b) Support for the grievance process by providing information and expertise	*The standard initiative ensures that independent information is provided for the grievance process by involving experts and/or commissioning expert opinions.* *The standard document explicitly refers to and formulates such measures.*	*Not applicable.*	*The standard document does not list any mandatory measures explaining how the standard provides for independent information for the process.*
c) There is a procedure for anonymous grievances	*Grievances can be submitted anonymously; there is a procedure for ensuring anonymity in the further course of processing.*	*Grievances can be submitted anonymously; there is no procedure for ensuring anonymity in the further course of processing.*	*Grievances cannot be submitted anonymously.*
d) Claimants may be represented in the proceedings by a third party (e.g., lawyers, NGOs)	*Claimants may be represented.*	*Not applicable.*	*Claimants cannot be represented or there is no explicit reference to this in the standard document.*

Criterion 5	*Green*	*Yellow*	*Red*
The grievance mechanism in the standard initiative and its procedure are transparent	*Max. one yellow category, no red category*	*Max. two red categories, where each red category is offset by a green category*	*More than two red categories or two red categories that are not offset by green categories*
a) Information about the GM is easily accessible to potential users and adapted to the cultural context	*The information relevant to the grievance procedure has been prepared in a target group-specific manner and in different languages, is publicly available and is explicitly handed over to the claimants when the grievance is lodged.*	*The information relevant to the grievance procedure has been prepared in a target group-specific manner OR the standard document on the grievance mechanism has been translated into different languages. The documents are public.*	*There is neither a target group-specific preparation of the process steps nor a translation of the standard grievance mechanism document into different languages.*
b) The formal process steps are defined in advance and are publicly accessible	*There is a detailed description of the individual process steps according to different case constellations. The procedure is thus comprehensible to all parties involved and can be invoked in the event of irregularities.*	*There is an aggregated description of the process steps; different case constellations are not discussed.*	*There is no detailed description of the individual process steps. This does not ensure the transparency of the process in different case constellations.*

ANALYSIS FRAMEWORK

Criterion 5	*Green*	*Yellow*	*Red*
c) *The results of the GM are documented and published in aggregated form*	*Grievances are documented and publicly communicated. Claimants are anonymised. The document is easy to find on the standard website and the presentation is plausible and comprehensible, i.e., grievances are discussed and placed in the context of the HR violation and the measures taken. The state of implementation of the measures and the performance of remedies is discussed.*	*Grievances are documented and publicly communicated. Claimants are anonymised. Grievances are discussed and placed in the context of the HR violation and the measures taken. The state of implementation of the measures and the performance of remedies is discussed. However, the document is not easy to find on the standard website of the standard or the reporting is integrated in other reporting formats in an undifferentiated way that makes it impossible to find.*	*No differentiated reporting is provided and/or the document cannot be found.*

Criterion 6	*Green*	*Yellow*	*Red*
The grievance mechanism in the standard initiative is based on exchange and dialogue	*All categories green*	*At least one category yellow, no red category*	*At least one red category*
a) Rights holders (i.e., potential users of the GM) were involved in the development of the GM	*The standard initiative consulted potential users of the grievance mechanism and incorporated their perspectives into the development. The process is clearly addressed in public documents.*	*The standard initiative has involved representatives of potential users/ rights holders in the process of developing the standard. It does not explicitly describe the details of that involvement in designing the grievance mechanism.*	*There was no involvement of rights holders or their direct representatives at the standard level.*
b) Rights holders (i.e., potential users of the GM) are involved in the evaluation and further development of the GM	*The standard has a strategy (e.g., as part of a review process) that delineates ways of involving potential users of the grievance mechanism in its evaluation and improvement.*	*The standard has a strategy for evaluating the grievance mechanism. This should involve representatives of potential users of the GM.*	*There are no public plans to evaluate the mechanism and/or there is no provision for consulting with potential rights holders and/or their representatives.*

METHODOLOGY

To allow us to carry out a fast comparison of the standards, we used a simple table structure in which the standards are displayed along the top line horizontally with the individual criteria listed vertically in the left-hand column. To evaluate the criteria, we applied a simple traffic-light system that awards each of the main categories with either a "green", "yellow" or "red". Yellow signalises that the publicly available documents of the standard are not sufficiently differentiated, i.e., the information and requirements are too unspecific and therefore the scope for interpretation – for the team of authors, for example – is too great to allow for a clear green evaluation. Red is awarded in cases where the publicly available information does not make (sufficient) statements on the fulfilment of the criterion, or it is obvious that the criterion is not fulfilled by the standard. With respect to the analysis process, we firstly evaluated the main documents of the standard, if available. These often include the *standard guidelines* and *guidance documents* as well as specific documents that the audit procedure (e.g., *Assurance Manual*) or the grievance mechanism describe. If necessary, and if accessible, in a second step we analysed further documents, such as the *auditor guidelines* for example, as well as the audit minutes, and ultimately include all other available data sources, like the company website, in the evaluation. Following that, we gave the standard organisations the chance to comment on the evaluation of their standard and, where it made sense and where information was accessible in public documents, these comments were included in the evaluation. Footnotes and explanations in the analysis text highlight in some places where there was another assessment by standard organisations, but why we did not conform with these.

Tables 1-4 above provide an overview of the evaluation grid on these individual analytical criteria with a detailed breakdown of the requirements that the standards had to fulfil to be given a green, yellow, or red evaluation.

OUR COLOUR SCHEME USED IN THE TABLES

Requirements fulfilled

Requirements partially fulfilled

Requirements not fulfilled

EVALUATION

INVOLVEMENT OF RIGHTS HOLDERS AND CIVIL SOCIETY REPRESENTATIVES IN THE DECISION-MAKING BODIES OF THE STANDARDS

Table 2 provides an overview of which standard initiatives involve rights holders and the scope of that involvement.

TABLE 5 Criteria: Description and evaluation grid for grievance mechanism category

	The standard was developed with the participation of rights holders and/or civil society representatives	***Rights holders and/or civil society representatives are represented on the* ***Advisory Board*** *or other governance bodies of the standard and can thus influence the further development of the standard.***
ASI	Numerous civil society organisations are represented at ASI, including international and national NGOs as well as community representatives and organisations of indigenous communities. The *ASI Indigenous Peoples Advisory Forum* elects two representatives who participate in defining and further developing the standard in the *Standards Committee*.	
COPPER MARK	Individual civil society stakeholders have been and are consulted during development of the standard, but have no influence in decisions on defining the standard.	A globally active NGO (Conservation International) is represented on the current *Board of Directors*; no NGO is represented on the *Advisory Board* (except in the role of an observer).
IRMA	The IRMA standard was developed in a years-long process as part of an MSI; civil society stakeholders and community representatives have an equal voting right to industry stakeholders in the standard development process. Decisions are made by consensus.	
ICMM	ICMM is a member-only organisation of industry players from the extractive sector.	

EVALUATION

	The standard was developed with the participation of rights holders and/or civil society representatives	*Rights holders and/or civil society representatives are represented on the **Advisory Board** or other governance bodies of the standard and can thus influence the further development of the standard.*
LME	No information about the governance structure is available.	
RESPONSIBLE STEEL	The Board has equal representation of corporate and civil society members. The Board and members jointly decide on the content of the standard. Civil society organisations represented in RSI include large international NGOs as well as the international trade union organisation IndustriALL. However, there is a lack of civil society representation in closer contact with affected groups (with the exception of IndustriALL, if applicable). One positive aspect is that the standard initiative carried out a broad stakeholder consultation process in the development and revision phases.	
RMI	RMI is a not-for-profit member organisation composed exclusively of industry players, business associations and retailers. RMI st	
VPSHR	The principles were developed with the participation of civil society organisations from the Global North (in particular, the UK and the Netherlands) and the Global South (in particular, Nigeria).	More civil society representatives are appointed to the *Steering Committee* than company representatives.

AUDITS

Minimum requirement: A third-party audit is carried out on the company premises

Not all standards meet the minimum criterion for the certification process defined in the analysis grid (certification audit to check standard implementation at the companies conducted by a third party). The ICMM standard only checks the self-assessments made by the members on individual production sites for plausibility by way of an external review. After a successful review of the documents, the entire company, including all its facilities, is accepted by ICMM as a member. LME carries out a similar procedure. The requirements for members of VPSHR are even less precise. All they have to do is vote in favour of implementing the guidelines and reporting on them. Some audit firms offer auditing in accordance with VPSHR, but the quality of these audits is not ensured by the standard.[9] Although the RMI standard carries out a comprehensive on-site audit, this does not cover (in the case of the *due diligence standard* examined here) ESG issues at the operating site itself, but only assesses the human rights due diligence measures taken by the operating site in the supply chain.

Since ICMM, LME and VPSHR do not meet the minimum requirement for a credible standard, they were excluded from further evaluation.

TABLE 6 Minimum standards

MINIMUM REQUIREMENTS	*ASI*	*COPPER MARK*	*IRMA*	*ICMM*	*LME*	*RSI*	*RMI*	*VPSHR*
The standard initiative carries out a certification	☼	☼	☼	↯	↯	☼	☼	↯
Compliance with the standard criteria is verified by a third-party audit.	☼	☼	☼	↯	↯	☼	☼	↯

[9] https://www.avanzar.biz/security-and-human-rights

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Results on fulfilment of the audit criteria

TABLE 7 Results on fulfilment of audit criteria and requirements

CRITERION 1	*ASI*	*COPPER MARK*	*IRMA*	*RSI*	*RMI*
Involvement of rights holders in the audit process and presentation of the results					
a) An on-site audit of potential HR violations (and environmental degradation if addressed by the standard) caused by the operating sites is mandatory at the respective operating sites.					
b) Qualitative interviews of rights holders (external and internal), taking into account local factors (culture, language), are explicitly required by the standard.					
c) Audits must be announced to rights holders in good time.					
d) Creation of safe spaces and/or trusting framework conditions for interviews with rights holders.					

CRITERION 2

	ASI	COPPER MARK	IRMA	RSI	RMI
Audit quality assurance by the standard					
a) The standard initiative checks the audit results through a review of the audit reports.					
b) The standard defines criteria for the professional suitability of auditors.					
c) The standard selects a certification service provider.					
d) Measures to avoid conflicts of interest between certification service providers and the company to be certified.					
e) Rotation of the auditor team.					[10]
f) Independent financing of the audit.					

CRITERION 3

Transparency regarding audit results					

[10] In its comments, RMI pointed out that there is a rotation of auditors every three years, but no evidence of this was found in the public documents.

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FREQUENCY OF AUDITS

ASI	*COPPER MARK*	*IRMA*	*RSI*	*RMI*
3-year cycle with the possibility of carrying out interim audits in the case of "major non-conformance"	*3-year cycle* interim audits to check the CAPs as necessary	*3-year cycle* mandatory surveillance audit after no more than 18 months	*3-year cycle* mandatory surveillance audit after no more than 18 months	*1-year cycle* with the possibility to extend the cycles to 3 years under certain conditions

On-site audit of ESG criteria is mandatory for 3 of 5 standards

Within the framework of the RMI due diligence standard, no operating sites are certified for compliance with ESG issues, so there is no involvement of rights holders on these topics.

The Aluminium Stewardship Initiative (ASI) certifies companies with multiple production sites, among others. In this case, not all sites are covered by an *on-site audit*; instead, a sampling method based on a human rights risk assessment is applied. In other words, of 10-100 locations, 5-10 are audited. The initiative does state in its *Assurance Manual* that all locations should be audited over the entire certification period but remains vague here. As a result, production sites where no on-site audit has taken place are certified. The ASI standard also certifies a wide range of different supply chain stakeholders. Industrial users and manufacturers are only certified for the *material stewardship* criterion in the standard. This includes requirements for industrial processes to improve the life cycle properties of aluminium, product design and recycling. In this case, the audit does not include an investigation of possible human rights or environmental impacts to which the company under investigation contributes.

Qualitative interviews and timely involvement – concrete examples show that requirements and implementation are usually inadequate

In its *Assurance Manual* (AM), ASI does not specify which groups of rights holders should be involved in the audit. Only the involvement of employees is referred to, and even this very superficially. The methodology is left open as, according to ASI, it depends on the risk profile and the requirements of the operating sites to be certified. AMI also does not specify how rights holders (e.g., employees) are to be informed about the upcoming audit. The auditor must inform the company to be certified about the upcoming audit two weeks in advance and request that the staff be informed about the audit. In other words, it is not within the purview of the auditor team whether rights holders are informed with sufficient lead time or not.

In *Copper Mark*, too, the aspect of timely announcement of the audit to rights holders is not specified in detail. According to the explanations of the *Copper Mark Assurance* process, the auditor team should, where appropriate, interview different stakeholders in the audit process. Conducting interviews with management and workers is mandatory. The requirements that *Copper Mark* places on the auditors here are vague and leave the auditors considerable room for interpretation (e.g.: number of interviews), notwithstanding the explicit provision that the group of interviewees should be socially heterogeneous. This becomes clear when analysing the individual audit reports, as explained in the following box.

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EXAMPLE OF PROBLEMS WITH VAGUE FORMULATIONS AND WIDE SCOPE FOR INTERPRETATION (*COPPER MARK*)

While the audit of the *Oyu Tolgoi* mine[11] in Mongolia verified the *community development* criterion as positive, there were no interviews of community representatives according to the listed activities. In the case of the *Zaldivar* mine of the *Antofagasta Minerals*[12] group in Chile, an ISO 14001 certification of the operating site by *Copper Mark* was rated as sufficient to meet the environmental criteria, among other things. In addition, a further on-site audit took place for the *Copper Mark* criteria not covered by the ISO standard. In a press release dated 20 May 2020, the *London Mining Network* noted that the Peine indigenous community in Chile has been filing complaints about the environmental impact of the *Zaldivar* mine for years (London Mining Network 2020). Nevertheless, no reference is made to these public complaints in the audit report, although the audit was conducted after the allegations were made public. However, the report does refer to interviews conducted with indigenous communities and community representatives as part of the audit. It is noted that the interviewees are consistently positive about the development programs of *Antofagasta Minerals*, but without explaining what the specific activities and the added value are. The failure to address the public allegations in the audit report shows that the *Copper Mark* certification process does not meet its own formal requirements for a risk-based audit process. In any case, the audit report is not sufficiently detailed to understand and evaluate the methodology and the results in the context of public criticism by civil society groups. Similarly, it remains unclear which observations and collected data in the context of the audit lead to a positive assessment of the criteria.

We therefore rate both the aspect of the involvement of rights holders in the audit process and the criterion of publication of the audit report and explanation of the results with a yellow category. Both the description of requirements in the *Copper Mark* standard documents and the description of the contents of the interviews conducted in the audit reports are too vague and leave too much discretionary scope to the certification company.

The requirements of the IRMA standard are different: Here, the auditor team is supposed to ensure that all relevant rights holders are informed about the audit at least 30 days in advance and provided with necessary information. Here, IRMA also defines requirements on how stakeholders must be informed about and involved in the audit. The relevant information must be published in English and in the respective local language.

[11] https://coppermark.org/wp-content/uploads/2020/10/SummaryReport_OT.pdf
[12] https://coppermark.org/wp-content/uploads/2021/10/CopperMark_SummaryReport_Zaldivar_FINAL.pdf

The informational materials must be tailored to the needs of the stakeholder group (e.g., in the absence of internet access). However, IRMA remains very vague in this regard, leaving the nature and scope of the announcement to the discretion of the auditor team. Interested stakeholders are invited to provide information to the auditor team and can proactively register for an interview as part of the audit (*on-site/remote*) as well as suggest other stakeholders who should be contacted or involved in the audit. The auditors must present this information in their audit reports.

IRMA also defines clear guidelines for the type and number of interviews to be conducted with workers as part of an IRMA audit. The auditors must also interview a representative number of minorities and/or other workers affected by discrimination (e.g., migrant workers, temporary workers, etc.). In addition, the audit design must take into account a potential shift-work model. IRMA's requirements for interviews with communities and other external stakeholders are less detailed. However, they are explicitly required in contrast to *Copper Mark* and ASI (also RSI). The scope, selection, and number of stakeholders to be interviewed are at the discretion of the auditor team. IRMA only requires that sufficient information be collected to evaluate the IRMA criteria. In the Annex to the *Certification Body Requirements*, IRMA provides auditors an informational, i.e., non-binding, guideline for stakeholder engagement. These documents and recommendations do, however, show that there has been an intensive discussion of the requirements for the involvement of rights holders. For example, reference is also made to the fact that prior to the publication of the report, all interviewed stakeholders are given feedback on the extent to which their comments were taken into account in the evaluation. Another very positive aspect is that all stakeholders who want to actively participate in the audit process can do so. The interviewed workers also receive the contact details of the auditors and can therefore contact them again after the end of the audit. Although the requirements for involving external stakeholders are less detailed than those for involving employees, IRMA received a green rating. The main reason for this is that an analysis of the first published audit results shows that a large number of different external stakeholders (including representatives of the local population) were involved in the audit.[13] The transparency of the reports also makes it possible to understand which stakeholder groups were involved in the audit.

IRMA ALSO DEFINES CLEAR GUIDELINES FOR THE TYPE AND NUMBER OF INTERVIEWS TO BE CONDUCTED WITH WORKERS AS PART OF AN IRMA AUDIT.

In the case of RSI, the involvement of rights holders in the audit process, at least of workers (see *Assurance Manual*, pp. 40-42), is mandatory and must be announced four weeks in advance. The requirements for the inclusion of workers are explicit and obligatory, but for other stakeholder groups they are less detailed and less clear than in IRMA. In most cases, as the audit reports demonstrate, communities and residents are not interviewed explicitly, but only indirectly, e.g., if workers are also residents, or through contact with community representatives. In general, the audit reports provide a good overview of the stakeholders in-

[13] see https://responsiblemining.net/what-we-do/certification/mines-under-assessment/

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volved, but it is clear that in the case of external stakeholders, it is usually official bodies (e.g., municipalities, environmental organisations) that are involved and not the communities. It should be noted here that the production sites certified so far are located exclusively in Europe, where environmental regulation is strong by global standards. Because of these weaknesses, the involvement of rights holders in interviews was only given a yellow rating. In a similar way to IRMA, RSI has its own, non-binding document on stakeholder engagement. Another positive aspect is that interested stake-holders can register for the audit (as with IRMA) and subsequently submit information to the certification service provider.

An analysis of ASI's audit reports confirms the assumption that internal and external stakeholders are not sufficiently involved in the audit. In the report for *Shanghai Sunho Aluminium Foil Co. LTD.*, for example, the finding of compliance with the criteria of *women's rights* and *local communities* is based on the lack of complaints and an interview with an individual local worker (Aluminium Stewardship Initiative 2019). However, the lack of complaints may instead indicate that grievance systems are inadequately designed and not used by those affected. The presentation of results is also not sufficiently detailed in the ASI report, as it was not transparently argued why and on what basis the positive assessment was made.

Safe spaces for interviews with rights holders are not always required

Although the ASI standard recommends that supervisors should not be present when conducting the interviews, it is ultimately only a recommendation. No reference is made to the fact that interviews can, and in some circumstances should, be conducted off-site. With *Copper Mark*, the requirements and recommendations for auditors remain so vague that this category is rated as inadequate.

With IRMA and RSI, interviews with workers can be conducted *on-site* or, if necessary, *off-site*. IRMA and RSI state that auditors should seek help from local organisations to find suitable spaces where the interviewees feel safe. RSI also refers to the involvement of trade unions if that would make workers feel safer. Overall, however, the description lacks clear criteria that clearly address questions relating to the vulnerability of the affected parties and the extent to which the anonymity of the respondents can be maintained vis-à-vis the certified operating site during and after the audit. IRMA leaves unanswered who decides and on the basis of which criteria it is decided whether an *off-site* or *on-site* interview will take place. This decision is thus at the discretion of the auditors. In the case of RSI, this can also be done at the request of each individual (*Assurance Manual*, p. 40). Since IRMA and RSI nevertheless clearly recommend conducting interviews *off-site*, RSI and IRMA were rated yellow, i.e., sufficient.

Adequate quality assurance for the audits is not provided by the standard

The requirements for auditors are listed in great detail in the ASI, *Copper Mark*, IRMA, RSI and RMI standards. Although IRMA strives for a culturally sensitive audit procedure conducted in the local language, no language requirements are specified for the audit team – in contrast to *Copper Mark* and RSI, for example.

Many of the standards refer to different ISO standards in their standard documents, both with regard to the methodological execution of the audits and the technical requirements for the audit firms, without taking up the specific criteria in their standard versions and representing them in detail. Audit companies that apply the RMI, RSI or IRMA standards must, for example, meet the requirements of ISO 17021:2011; *Copper Mark* refers to ISO 19011:2018; *Aluminium Stewardship* requires certification according to ISO 17021 or ISO 17065; in addition, the auditors must work according to ISO 19011. Many of the ISO criteria are not publicly available but must also be purchased.

This approach makes it difficult for the interested public to understand the specific requirements and regulations between certification companies, the company to be certified and the standard.

According to the standards, all standards carry out a potential review of the audit report. With IRMA, however, this procedure is restricted; the audit report is only sent by the certification company to IRMA for review on request. If a review is carried out, remarks by IRMA must be responded to with explanations. The vagueness of the wording suggests an inadequate quality assurance procedure on the part of IRMA.

ASI, *Copper Mark*, IRMA, RSI and RMI conduct an accreditation of certification service providers according to criteria (see previous paragraph) of varying strictness. This limits the choice of possible certification service providers that can be commissioned by the commodity company to be certified and is regulated by the standard. Only RMI goes significantly further: It directly commissions the certification service provider and therefore also enters into a business and financial relationship with it. In the case of the other standards, by contrast, the audit is commissioned by the company to be certified. RMI's approach is intended to reduce the influence that companies can exert on the certification service provider through the commissioning and financial business relationship. RMI also bears part of the certification costs in order to gain more independence from the certified companies – it is the only standard that applies this practice.

The standards have different requirements for when a possible conflict of interest exists, for example due to parallel assignments with the auditor team or the certification service provider. *Copper Mark* has the most far-reaching regulation in this respect. Auditors may not have had any employment or contractual relationship with the company related to the *Copper Mark* criteria (e.g., orders consulting on the implementation of the *Copper Mark* criteria) in the past three years. During the audit, there must be no further orders with the company or com-

THE STANDARDS HAVE DIFFERENT REQUIREMENTS FOR WHEN A POSSIBLE CONFLICT OF INTEREST EXISTS, FOR EXAMPLE DUE TO PARALLEL ASSIGNMENTS WITH THE AUDITOR TEAM OR THE CERTIFICATION SERVICE PROVIDER.

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panies in its value chain (*Copper Mark Assurance Process*, p. 32). With ASI, auditors who carry out the certification cannot have been involved in setting up the ASI systems in the company, e.g., in the context of a consulting assignment. However, this provision refers only to the auditors, not to the certification service provider as a whole. IRMA requires that conflicts of interest less than five years old between the auditors and the company to be certified be disclosed and addressed. IRMA concedes, however, that conflicts of interest in themselves need not lead to the exclusion of the auditor but should be decided on a case-by-case basis. An individual case decision that is not based on previously defined criteria is incomprehensible and non-transparent for outsiders. IRMA does not exclude parallel orders and therefore does not adequately fulfil the criterion since the requirements of ISO 17021 are merely referred to (see *IRMA Certification Body Requirements*, pp. 18-19). RSI requires the certification service provider to exclude conflicts of interest between the company to be certified and the auditors but does not define what is meant by conflicts of interest. The scope for interpretation and responsibility is thus left to the discretion of the certification service provider (*Responsible Steel Assurance Manual*, pp. 17, 32). Although RMI selects the auditors itself, it does not provide any information on the extent to which the selection is based on the exclusion of conflicts of interest between the company to be certified and the auditors (*RMI Assurance Process*, p. 7).

NONE OF THE STANDARDS REQUIRES THAT AUDITOR TEAMS ROTATE BETWEEN THE AUDITS

None of the standards requires that auditor teams rotate between the audits, an important requirement to pre-emptively address path dependencies and courtesy reports based on the formation of personal relationships.[14]

Presentation and transparency of the audit results as well as comprehensibility of the evaluation

The audit results and the resulting evaluation of the criteria are presented transparently and in great detail in IRMA's audit report. The reader is able to ascertain the informational basis on which the evaluation is carried out, as the examined criteria – in contrast to ASI, *Copper Mark* and RSI – are prepared and presented in a very granular and detailed manner. The arguments used for the evaluation are disclosed and supported by references to the respective informational basis. This ensures that the perspective of the rights holders is represented. In the case of ASI, *Copper Mark* and RSI, the evaluation criteria are only presented in aggregated form in the audit report, so it is therefore often not clear (especially in the case of a positive evaluation) which precise indicators, criteria and information were used for the evaluation. With RMI, there is no published audit report, but only a confirmation of successful certification completed by the auditors. RMI thus offers completely inadequate transparency about how the certified companies implement the substantive requirements of the standard.

[14] According to RMI, the auditor teams rotate every three years, but unfortunately this information could not be verified in the official documents.

CORRECTIVE ACTION PLANS

TABLE 8 Results concerning the fulfilment of the requirements for CAPs

	ASI	COPPER MARK	IRMA	RESPONSIBLE STEEL	RMI
1 Inclusion of affected parties in formulating the CAPs	⚡	⚡	☀	⛅	⚡ [15]
2 Inclusion of affected parties to evaluate fulfilment of the CAPs	⚡	⚡	☀	⛅	⚡
3 No certificate issued in cases of non-conformity	⚡ [16]	⚡	☀	⛅	⛅ [17]
4 Binding, clear and appropriate deadlines for implementing the CAPs	⚡	⛅	☀	☀	☀
5 Exclusion or suspension of the company in case of non-compliance with the CAPs within a reasonable time period	⚡	⛅	☀	☀	☀
6 Transparency concerning implementati on of the CAPs	*Evaluation cannot take place as the standard is too new*				⚡ [16]

All standards check the implementation of the *corrective action plans*. That must be emphasised in a positive light. However, this is done in different ways and with different consequences.

[15] RMI states that stakeholders must be involved in audits and that they are also therefore indirectly involved in the CAPs. However, according to our analysis, the involvement in the audits is also not sufficient (see Table 2 and 3 above)

[16] ASI does not accept our evaluation here and refers to section 6.4 of the Assurance Manual, Table 19 of the Assurance Manual, p. 56: "If Major Non-Conformances are found in the third consecutive Audit (excluding Surveillance Audits), then Certification will be suspended until the Entity can address the Non-Conformances through Corrective Actions". As we understand it, however, this applies after the certificate has been issued.

[17] With RMI too we understand the information in the manual as such that certificates can also be issued when there are still non-conformities. RMI does not accept this evaluation and refers to its 'Assessment Procedures' manual, p. 24: "Any company that has a repeat non-conformance issue identified or was unable to complete closure on open items within the post audit CAP period(s) will be deemed as non-conformant and will be excluded from participating in the RMAP for a period of 6 months, except for cases detailed in Section E on Extended CAP and in Section F on SOR Re-entry." In our opinion, this refers however to the process after the certificate has been issued. And we understand the details provided in the manual as such that the certificate can also be issued when there are still non-conformities, see p. 23.

[18] RMI contradicts this. The standard states on the following website that it lists all companies that have to carry out an Extended Corrective Action Plan: https://www.responsiblemineralsinitiative.org/responsible-minerals-assurance-process/extended-corrective-action-plan. However, on the site referred to, no *Extended Corrective Action Plans* can be found, and neither can normal Corrective Action Plans. Furthermore, the extended CAP processes are pretty vague and only members are informed about that implementation status of the CAPs.

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Including affected parties in formulating the CAPs explicitly required by only one standard

THE CONCRETE REQUIREMENT TO ALSO INVOLVE RIGHTS HOLDERS AND STAKEHOLDERS IN FORMULATING THE CAPS IS, HOWEVER, ONLY FULFILLED BY IRMA.

The inclusion of affected parties in formulating the CAPs is decisive in making sure that the problem is also solved in the best way for the affected parties. The concrete requirement to also involve rights holders and stakeholders in formulating the CAPs is, however, only fulfilled by IRMA. The other standards do not explicitly ask for this and, as already stated above, the inclusion of rights holders is also not necessarily or sufficiently formulated in the audits. This means that it cannot be assumed that their perspective flows sufficiently into formulating the CAPs. ASI commented our critical evaluation with an admonishment, stating that rights holders are included when there are relevant aspects that affect them. This is however not always the case, as non-conformities can also have to do with the internal company management. A clear obligation in this respect is not specified in the manual and it has not been clearly communicated when there is the possibility of inclusion. *ResponsibleSteel* also states that it does not make sense to involve rights holders in all non-conformities, explaining that inclusion is only appropriate in cases of major violations. However, this requirement for drawing up the CAPs is not explicitly mentioned in the standard documents of *ResponsibleSteel*. Nevertheless, as they include rights holders, even if in a slightly limited manner, in audits, this also has an indirect influence on the drafting of the CAPs. They have therefore been rated yellow in our evaluation of this.

Including affected parties is mostly not mandatory to evaluate the fulfilment of the CAPs

In this category too, only IRMA mentions that affected parties must be included in the evaluation concerning fulfilment of the CAPs. In this category, the perspective of rights holders can also be recorded in the CAPs to a certain degree by involving rights holders intensely in the audits. Thanks to its audit requirements, *ResponsibleSteel* also achieved a better result after IRMA here than *Copper Mark*, ASI and RMI.

Awarding certificates even in cases of non-conformity

So that companies can be sure that the criteria specified by the standard for certification are implemented, certificates must not be issued if there are still non-conformities. By introducing graded certification here (IMRA 50%, IRMA 75%, IMRA 100%), IRMA has chosen a transparent system by making clear that only some but not all the standard criteria were fulfilled within the certification process. However, certain core criteria must be achieved for every certification. ASI, by comparison, also issues a certificate for at least one year, even in cases of greater non-conformities (*major non-conformities*). This is followed by another audit, and only if there is still a major non-conformity in the third year, is the certificate suspended (*ASI Assurance Manual,* 56). If critical violations take place, then disciplinary proceedings are instigated. However, a timeframe is not specified, and an exclusion is only one possible measure (*ASI Assurance Manual,* 85). As the audit reports are also not publicly available in detail, a raw material certified by ASI might also be a raw material in relation to which human rights violations currently take place. As such, the certificate provides insufficient assurance that the standard criteria really have been implemented.

COMPANIES NEED TO BE SURE THAT THE CRITERIA SPECIFIED BY THE STANDARD FOR CERTIFICATION ARE IMPLEMENTED. THEREFORE, CERTIFICATES MUST NOT BE ISSUED IF THERE ARE STILL NON-CONFORMITIES

Binding and appropriate deadlines for implementing the CAPs are often interpreted very differently

A classification of different degrees of seriousness in violations makes sense and is also undertaken by the standards. In doing so, a clear and, particularly with serious violations, short-term deadline to remedy the problem is important so that, among other things, the informative nature and credibility of a standard is not compromised. A deadline of more than three months in cases of serious non-conformity is already too long, bearing in mind the potential human rights violations or irreversible environmental degradation in connection with this.

Copper Mark has a very long period of two[19] years to deal with less serious non-conformities. On top of that, extensions may also be granted for minor non-conformities. This can make sense under certain circumstances, as companies may be confronted with external events that make the implementation more difficult, therefore making an extension for good

[19] *Copper Mark* denies an implementation deadline of 2 years. However, we read the text section attached by *Copper Mark* as proof as such that there is a deadline of 2 years: "Participants in the *Copper Mark*: the assessment of the implementation of the improvement plan must be within 12 months of the site assessment. Within 24 months of the Commencement Date, the Participant will have to demonstrate and be independently assessed as fully meeting the *Copper Mark* Criteria. Sites assessed only against the Joint Due Diligence Standard: the site will have to demonstrate and be independently assessed as fully meeting the Joint Due Diligence Standard within 12 months of the Commencement date. The assessment of the implementation of the improvement plan must be scheduled to meet this timeline." (*Copper Mark* Assurance Process, p. 21)

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reasons in line with fixed criteria reasonable. However, *Copper Mark* does not define exactly under what conditions the deadline can be extended. It is written that an extension can be given when there is proof that the non-conformities could not be remedied. But it does not specify what kind of reasons are permissible in such cases. Also problematic, for example, is that *Copper Mark* also assessed a violation like the dismissal of employees for using the grievance mechanism as only a minor non-conformity, which is why in this case a deadline of two years to remedy the problem was given[20]. Even if relevant, due to the scope, we could not generally evaluate more precisely how reasonable and how different the degree of strictness was applied by the standards to classify how serious violations were.

Exclusion or suspension of companies are handled very differently – and there is a difference in the level of information about conformity

All standards maintain that they impose exclusions in cases of non-conformity, at least in the long term. However, as outlined above, non-conformity is defined differently and the quickness with which a suspension is imposed is also different. With ASI, when a major non-conformity is not remedied, the certificate is not suspended until year three (see above). IRMA, *ResponsibleSteel* and RMI apply shorter time periods for suspensions in cases where the non-conformity is not remedied. In IRMA, the grading of the certificates also provides further information about to what extent the mines conform. With *Copper Mark* there is a deadline of two years with the not-very-precisely defined flexibility mentioned above for deadline extensions in cases of minor deviations.

Transparency about the implementation of the CAPs is sometimes difficult to evaluate

All standards, except for RMI, are still so new that it is difficult to evaluate how transparently they deal with their CAPs. RMI, on the other hand, maintains that it publishes the CAPs of companies that do not adequately implement the standard. There is an extra webpage for this[21], but at the time at which this study was written (last checked in March 2022) no CAPs or companies were entered there, and RMI says that it only makes the information about what progress has been made by the implementation of the CAPs accessible to members.

[20] https://coppermark.org/wp-content/uploads/2021/07/CopperMark_SummaryReport_Centinela_FINAL.pdf
[21] https://www.responsiblemineralsinitiative.org/responsible-minerals-assurance-process/extended-corrective-action-plan

ROLE OF GRIEVANCE MECHANISMS IN THE CERTIFICATION SYSTEM

TABLE 9 Results on fulfilment of grievance mechanism requirements

CRITERION 1	ASI	COPPER MARK	IRMA	RESPONSIBLE STEEL	RMI
The standard requires companies to provide an effective grievance mechanism (GM) in accordance with the UNGP effectiveness criteria.					
CRITERION 2					
The GM in the standard initiative is legitimate and predictable.					
a) Independent process management by a third party.					
b) The case may be contested by the claimants.					[22]
c) Grievances concerning particularly serious allegations of HR violations are escalated, i.e., dealt with quickly.					
d) The standard is withdrawn from companies if they fail to comply with the negotiated remedy.					

[22] RMI has indicated in a commentary that audit results can be contested under the GM, but at this point we explicitly refer to contesting the GM result.

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CRITERION 3	ASI	COPPER MARK	IRMA	RESPONSIBLE STEEL	RMI
The GM in the standard initiative is accessible	⛅	⛅	⚡	⚡	⚡
a)) The GM can be used by all potentially affected parties.	☀	☀	☀	☀	☀
b)) Potential users are made aware of the grievance mechanism.	⚡	⚡	⛅	⛅	⚡ [23]
c) Digital accessibility of the GM (visible application on homepage and presentation in different languages).	☀	⛅	⛅	⚡	⛅
d) Analogue accessibility and oral submission of grievances are possible.	⛅	⛅	⚡ [24]	⛅	⛅
e) Language barriers are addressed and removed.	⛅	⛅	⚡	⚡	⚡ [25]

CRITERION 4					
The GM in the standard initiative is balanced, i.e., addresses power and information asymmetries.	⛅	⛅	⛅	⛅	⚡
a) The costs of filing grievances (including translation) are borne by the standard initiative and/or the companies.	⛅	☀	⛅	⛅	⚡
b) The standard supports the provision of independent information and/or expertise.	☀	☀	⚡	⚡	⛅
c) There is a procedure for anonymous grievances.	⛅	⛅	⛅	⛅	☀
d) Claimants may be represented in the proceedings by a third party (e.g., lawyers, NGOs).	☀	⚡ [26]	☀	☀	⚡ [27]

[23] RMI points out that the mechanism is made known in the context of events but also audits. For the latter aspect, however, there is no reference in the Assurance Process Assessment Procedure document.

[24] IRMA plans to introduce a telephone hotline. However, when this analysis was carried out, this had not yet been set up.

[25] RMI has indicated in the commentary that complaints can also be submitted in other languages, but a reference in the standard documents is missing. The website has an automatic translation function of the web content.

[26] *Copper Mark* points out that, although not explicitly mentioned in the documents, rights holders can be represented by a third party in the complaint process. As only public documents could be analysed for the evaluation, this could not be taken into account in the evaluation.

[27] According to RMI, complainants can be represented in the proceedings, but there is no reference to this in the RMI Grievance document.

EVALUATION

CRITERION 5	ASI	COPPER MARK	IRMA	RESPONSIBLE STEEL	RMI
The GM in the standard initiative and its procedure are transparent.	☀	⛅	⛅	⛅	⛅
a) Information about the GM is easily accessible to potential users and adapted to the cultural context.	☀	⚡	⛅	⚡	⚡
b) The formal process steps are defined in advance and are publicly accessible.	☀	☀	☀	☀	☀
c) The results of the GM are documented and published in aggregated form.	Evaluation not possible at this time				⚡

CRITERION 6					
The GM in the standard initiative is based on exchange and dialogue.	⛅	⚡	⛅	⚡	⚡
a) Rights holders (i.e., potential users of the GM) were involved in the development of the GM	☀	⚡	⛅	⚡	⚡
b) Rights holders (i.e., potential users of the GM) are involved in the evaluation and further development of the GM.	⛅ [28]	⚡	⛅	⚡	⚡

CONCLUSION	ASI	COPPER MARK	IRMA	RESPONSIBLE STEEL	RMI
The GM in the standard is UNGP-compliant.	⛅	⚡	⚡	⚡	⚡

Only some of the standards require from the companies to have an effective GM in accordance with the UNGP effectiveness criteria.

IRMA and RSI require from certified companies to provide grievance mechanisms that meet the UNGP's effectiveness criteria. *Copper Mark* and ASI also mention compliance with the effectiveness criteria but remain vague in their requirements from the companies as they do not elaborate on when a mechanism can be assessed as UNGP-compliant (see *ASI Performance Standard*, Guidance V 2, 3.4 and *Copper Mark Criteria Guide*, 13). RMI makes no reference to the UNGP, but requires companies to have a GM.

[28] https://aluminium-stewardship.org/wp-content/uploads/2019/07/IPAF-2019-meeting-report_July2019.pdf

EVALUATION

The grievance mechanisms are not sufficiently legitimate and predictable

For grievance cases concerning the RMI standards and its work, RMI uses an *independent review committee* that meets the ISEAL criteria for impartiality. However, in the case of grievances concerning certified members, RMI carries out its own assessment of the grievance according to the severity of the risk; only in the case of grievances classified as particularly serious is an external expert committee consulted. Through this process, RMI also conducts a prioritisation of serious cases of HR violations and handles them on a priority basis. ASI also defines when grievances must be addressed as a matter of priority through a grievance procedure. *Copper Mark* and ASI use an expert panel comprised of two representatives from *Copper Mark*/ASI and one external expert. Both parties to the dispute must agree to this – but if no agreement is reached, the standard initiatives decide on the composition of the panel. In the case of IRMA and RSI, the procedure is less developed; based on the available documents, the expert committee does not necessarily have to include an external person. In the case of IRMA, four persons are proposed to the claimant for the *conflict resolution committee*, of whom they select two. In the case of RSI, the composition of the ad hoc committee should ideally be based on consensus.

Grievance cases can be appealed under *Copper Mark*. In this case, a new expert committee is assembled, meaning that the appeal process is negotiated with a new set of experts. According to the standard documents, under IRMA, RMI and RSI it is not possible to appeal the outcome after going through all stages of the grievance process. Under ASI, member organisations and auditors can appeal at any time; affected parties (communities, workers) can only appeal if significant evidence was not used in the proceedings and/or new evidence has come to light.

In the case of IRMA and RSI, a lack of implementation of the negotiated measures and remedies by the company results in exclusion from the standard and withdrawal of certification (IRMA IRS, p. 16; RSI IRS, p. 22); in the case of ASI, RMI and *Copper Mark* there are a number of sanction options up to and including revocation of the certificate. Revocation of the certificate is an important prerequisite for establishing that the procedure can result in serious consequences for the company and therefore also represents credible procedure for claimants.

REVOCATION OF THE CERTIFICATE IS AN IMPORTANT PREREQUISITE FOR ESTABLISHING THAT THE PROCEDURE CAN RESULT IN SERIOUS CONSEQUENCES FOR THE COMPANY AND THEREFORE ALSO REPRESENTS CREDIBLE PROCEDURE FOR CLAIMANTS.

The grievance mechanisms are difficult to access

The grievance mechanisms of all standards are open to all potential user groups, at least in theory. In practice, however, means of access are quite limited, as the evaluation of other criteria suggests. The upshot is that submitting grievances at all is made conspicuously more difficult by all standard initiatives.

Both the IRMA and RSI standards state that the mechanism must be announced as part of the audit process, but without formulating more specific requirements for this. In the manual, RSI states that the grievance mechanism should be clearly announced on the website and that information should be presented in languages other than English. Unfortunately, there has been no internet announcement or preparation of documents in other languages so far. ASI and IRMA have prepared the process information in a clear diagram on the website and summarise at least the main information again separately on the website, in the case of ASI also in French and Dutch. *Copper Mark* presents the core information on a subpage. *Copper Mark* and RMI have a submission form on subpages. With IRMA and ASI, the contact form for filing a grievance is rather hidden and can only be accessed via several clicks. With all the standards, a verbal grievance filing is at least theoretically possible, but here IRMA – even one year after the start of the certification process – still lacks an analogue reporting option (telephone, contact office). Moreover, concrete evidence must be submitted to IRMA as part of the grievance filing; otherwise the person runs the risk of having their grievance rejected straight away.

Copper Mark states that grievances can be filed in the local language of the claimant, while IRMA and RSI briefly note that they can provide resources for translating grievance cases if necessary, but do not make a firm commitment to do so. Via ASI Ethicpoints, grievances can be submitted in five languages; in the case of indigenous communities or other local groups, it states that translation costs will be covered or, in the latter case, may be covered at their prerogative.

THE GRIEVANCE MECHANISMS OF ALL STANDARDS ARE OPEN TO ALL POTENTIAL USER GROUPS, AT LEAST IN THEORY. IN PRACTICE, HOWEVER, MEANS OF ACCESS ARE QUITE LIMITED, AS THE EVALUATION OF OTHER CRITERIA SUGGESTS.

EVALUATION

The grievance mechanisms in the standard initiatives are insufficiently balanced

Both ASI and *Copper Mark* state that they will cover the costs of the grievance process where a lack of funding would prevent affected people from using the grievance process, particularly for small NGOs, indigenous groups and local communities. At the same time, ASI restricts this by stating on the website that documents for filing grievances must be translated at the party's own expense (except for indigenous communities and, depending on the case constellation, in consultation with the standard).[30] IRMA and RSI, on the other hand, state that the costs are shared equally between the claimants and the standard; RMI makes no reference to this aspect.

Copper Mark supports the grievance process and resolution by appointing a claims investigator to gather information and assess the grievance case according to their expertise. *Copper Mark* appoints the appropriate expert(s) and refers to its *Grievance Mechanism Manual,* Chapters 3 and 4. RMI may involve external experts in cases of grievances assessed as high risk and commission an investigation by an independent party. ASI states that, in the case of indigenous groups, advice is provided by the *ASI Indigenous Peoples Forum* (*Grievance Mechanism Manual*, Chapter 6), but does not address how this process works for other groups of people. IRMA (*Issue Resolution System IRMA*, Chapter 3) and RSI (*Issue Resolution System*, Chapter 1.4) both state that claimants should be supported in overcoming language barriers, but then sharply qualify the requirement by stating that fulfilment depends on the available resources of the standard initiatives themselves. RMI does not provide any further information on this.

All standards state that it is possible to submit a complaint anonymously, but only RMI is more specific about the process of handling such cases. With ASI, grievances can be reported anonymously, but there is no procedure for enabling affected parties to negotiate grievances anonymously. In the case of the *Copper Mark* and RMI standards, the documents do not state whether and to what extent claimants can be represented by third parties in the process.

ALL STANDARDS STATE THAT IT IS POSSIBLE TO SUBMIT A COMPLAINT ANONYMOUSLY, BUT ONLY RMI IS MORE SPECIFIC ABOUT THE PROCESS OF HANDLING SUCH CASES.

[29] https://aluminium-stewardship.org/asi-certification/asi-complaints-mechanism/

The grievance mechanisms in the standard initiative and its procedures are partially transparent, as they are inadequately prepared for the target group

In the area of transparency, too, the standards' grievance procedures are also inadequate, with the exception of ASI.

The most detailed formal procedures are found in the RMI grievance mechanism. The other standards also provide detailed descriptions and address formal steps for different case constellations. With the exception of the ASI and IRMA standard and to a limited extent *Copper Mark*, the information on the grievance process and mechanism can only be extracted from the respective standard manuals, i.e., there is no summary and simple presentation on the website itself. ASI, which has prepared charts and information in several languages, stands out in a positive sense in this regard.

Although all standards state that a summary of grievance cases should be published, *Copper Mark*, IRMA and RMI do not clearly define which information, at a minimum, should be published. The requirements are elaborated in the greatest detail in ASI, followed by the RSI standard, which, however, only specifies that the publication must include a summary as well as the number of grievances received and processed (RSI, IRS Chapter 1.11). However, no documentation of grievance cases could be found in any of the standards examined. As ASI, *Copper Mark*, IRMA and RSI have only been active for just under a year, this category was not assessed. In the case of the RMI standard, which has been established for years, on the other hand, a red rating was awarded due to the lack of documentation. Together with the *London Bulliton Market Association* (LGMA) and the *Responsible Jewelry Council* (RJC), RMI has developed a joint platform for collecting and handling grievances. However, this can only be viewed by industry players.[31] The only public information is the company's statements on allegations and very general performance indicators, which do not allow any conclusions to be drawn about the human rights risks and negotiation issues associated with the grievances.

IN THE AREA OF TRANSPARENCY, TOO, THE STANDARDS' GRIEVANCE PROCEDURES ARE ALSO INADEQUATE, WITH THE EXCEPTION OF ASI.

[30] https://mineralsgrievanceplatform.org/

EVALUATION

Grievance mechanisms are not adequately based on exchange and dialogue with rights holders

Only ASI has demonstrably involved the Indigenous Peoples Advisory Forum in the development of its mechanism. RSI has indicated on request that NGOs were consulted in the development of the mechanism, but it was not possible to verify to what extent potential user groups were/are represented in it. In its grievance mechanism document, RMI states that findings from the grievance mechanism are incorporated into the improvement of the standard in the context of stakeholder consultations, without mentioning which groups of stakeholders fall under this category. IRMA has received a yellow rating for the categories because, although it has provided for balanced participation of civil society actors and rights holders' representatives in the standard design, as outlined at the beginning of the chapter, it is unclear whether and how involvement in the development of the grievance mechanism has taken place.

In sum, only the ASI grievance mechanism partially meets the effectiveness criteria of the UNGP. Overall, the analysis shows that the IRMA, RSI and RMI GMs have the greatest weaknesses. With ASI and *Copper Mark*, the positive efforts to achieve a balanced process by assuming costs and providing expertise are particularly noteworthy. Due in particular to accessibility limitations, however, the GMs only offer rights holders a suitable communication channel to report potential or actual human rights violations, environmental degradation and/or misconduct by companies to the standards to a limited extent, outside the time-limited framework of the audit. Via such channels, effective grievance mechanisms based on the standards can provide a framework for negotiating appropriate remedies and/or prevention measures and should therefore be improved by the standards.

CONCLUSIONS

Standards so far inappropriate as tools for implementing human rights due diligence

NONE OF THE RAW MATERIALS STANDARDS LOOKED AT ARE TO DATE ABLE TO ENSURE COMPLIANCE WITH THE STANDARD CRITERIA AT CERTIFIED OPERATING SITES

To conclude, we may state that none of the raw materials standards looked at are to date able to ensure compliance with the standards criteria at certified operating sites. In addition, the standards vary in their (in-) appropriateness for identifying and addressing human rights risks in the sense of the UNGP as well as environmental risks.

As the above table shows, only ASI, IRMA and VPSHR actively involve potential stakeholders in their governance structure and in the design of the standard. Inherent to this analysis is the assumption that involving rights holders in the design of the standard is an important prerequisite for defining appropriate content criteria to address the relevant risks of the industry sector from the point of view of the stakeholders. This is, however, an important prerequisite for a credible and effective standard.

Audits

Third-party audits are used by many of the standards to verify implementation of the requirements and certify these. Despite the general problem that third-party audits are, among other things, to a great extent a snapshot, they are defined in this paper as a minimum criterion for the further analysis and evaluation of the standards in line with our study criteria. The industry standards by ICCM, LME and VPSHR however do not implement any certification and do not check the extent to which companies that follow their standard also actually fulfil the requirements. Accordingly, they have also not been analysed in any greater depth here.

THE STUDY IDENTIFIED EVIDENCE OF SIGNIFICANT WEAKNESSES FOR MOST STANDARDS REGARDING THE DESIGN AND IMPLEMENTATION OF AUDITS

Yet, regarding the design and implementation of audits, there is evidence here of significant weaknesses too in some cases. Only IRMA scores a green rating here, while Responsible-Steel attains yellow since some requirements are stated less explicitly and/or less bindingly and the audit report is less detailed.

With respect to quality assurance too, the standards demonstrate considerable weaknesses. In particular it should be emphasised here that, with all standards except for RMI, the companies commission the auditor teams and pay them themselves, i.e., they enter into a direct business relationship with them. Although these have to be accredited by the standards initiative and must comply with technical requirements, the requirements are nevertheless insufficient for preventing conflicts of interest (e.g., avoiding parallel commissions, former employment relationships), as we can see in the example of IRMA.

As regards transparent communication of audit results, we should emphasise in particular here the certification report by IRMA, which provides detailed and differentiated information about the knowledge acquired within the scope of the audit and sheds light on details of the state of implementation by the company. *Copper Mark*, ASI, and RSI on the other hand publish their results in a highly aggregated form, which does not enable sufficient conclusions to be drawn about the methods and assessment of the state of implementation. With RMI, no publicly examinable audit reports could be

found. A lack of transparency with the audit reports makes due diligence difficult for companies further down the supply chain. At the same time, IRMA shows that transparent communication is possible.

Corrective Action Plans

Corrective action plans are plans for corrective measures that the companies seeking certification must undertake within a certain time period in order to address the non-conformities uncovered during the audit. Only the IRMA explicitly involves rights holders in devising and evaluating these *corrective action plans*. As most standards have not been in place for that long yet, it is not currently possible to evaluate to what extent the standards also disclose the *corrective action plans*. This would, however, be important information for those further down the supply chain. RMI is the only standard where a corresponding rating can be made, thanks to the length of time it already has been in place. However, no *corrective action plans* could be found there. Potential and rapid exclusion (after three months) in cases of serious infringements and exclusion when companies have not remedied infringements of the second degree of seriousness within one year without specifying reasons for this are important for the credibility of a standard. As such, the certificate should only be awarded when serious non-conformities have been eliminated. Standards score very differently here. With ASI in particular, there is a significant need for improvement.

Grievance procedures

None of the standards examined in addition incorporates UNGP-conform grievance procedures. According to principle 30 of the UGNP, the legitimacy of cross-industry, multi-stakeholder, and other communal sectoral initiatives is however at risk if they do not provide any effective mechanisms by means of which affected parties or their legitimate representatives can put forward their concerns. This aspect is in our opinion one of the most serious weaknesses of the standards, since in doing so they do not do justice to their own due diligence to protect human rights. What is more, this also means that they miss out on the chance of being addressed about problems outside of the auditing process.

NONE OF THE STANDARDS EXAMINED INCORPORATES UNGP-CONFORM GRIEVANCE PROCEDURES

All in all, the results emphasise that standards cannot act as the sole instrument for companies to implement their human rights and environmental due diligence.

Results at a glance

	ASI	COPPER MARK	IRMA	ICMM
Standard-Governance	The standard actively involves rights holders and can therefore potentially address human rights risks with its criteria.	The standard does not involve rights holders.	The standard actively involves rights holders and can therefore potentially address human rights risks with its criteria.	The standard does not involve rights holders.
The standard has a certification system	The standard has a certification system with clear requirements and on-site audits.	The standard has a certification system with clear requirements and on-site audits.	The standard has a certification system with clear requirements and on-site audits.	The standard carries out no checks as part of certification process.
Third-party audits are carried out in a conclusive manner.	The third-party audit is not suited to adequately record HR and environmental risks or to communicate these transparently in the audit.	The third-party audit is not suited to adequately record HR or environmental risks or to communicate these transparently in the audit.	The third-party audit is potentially suited to adequately record and transparently communicate HR and environmental risks in the audit.	No on-site audit
Corrective Action Plans	Corrective Action Plan is not suitable to ensure enforcement of its own requirements.	Corrective Action Plan does not specify whether the standard criteria have been fulfilled	Corrective Action Plan is suitable to ensure enforcement of its own requirements.	No assessment of the implementation
Grievance mechanism	GM partially UNGP-compliant	GM not UNGP-compliant	GM not UNGP-compliant	No grievance mechanism
Overall evaluation	Standard is not suited to implementing its criteria and thus secure its effectiveness on site.	Standard is not suited to implementing its criteria and thus secure its effectiveness on site.	Standard is suitable to only a limited degree in terms of implementing its criteria and thus securing the efficacy on site.	Standard does not have a certification framework and does not check the implementation of its criteria

LME	RSI	RMI	VPSHR	
The standard does not involve rights holders.	*The standard does not sufficiently involve rights holders.*	*The standard does not involve rights holders.*	*The standard actively involves rights holders and can therefore potentially address human rights risks with its criteria.*	***Standard-Governance***
The standard carries out only one audit of the information submitted in the self-disclosure as part of the certification process.	*The standard has a certification system with clear requirements and on-site audits.*	*The standard has a certification system with clear requirements and on-site audits.*	*The standard carries out no checks as part of certification process.*	***The standard has a certification system***
No on-site audit	*The third-party audit is limited in its suitability for adequately recording and transparently communicating the HR and environmental risks in the audit.*	*The third-party audit is not suited to adequately record HR risks to communicate these transparently in the audit. Environmental risks are not addressed at all.*	*No on-site audit took place*	***Third-party audits are carried out in a conclusive manner.***
No assessment of the implementation	*Corrective Action Plan are limited in their ability to drive enforcement of its own requirements.*	*Corrective Action Plan is not suitable to ensure enforcement of its own requirements.*	*No assessment of the implementation*	***Corrective Action Plans***
No grievance mechanism	*GM not UNGP-compliant*	*GM not UNGP-compliant*	*No grievance mechanism*	***Grievance mechanism***
Standard does not have a certification framework and does not check the implementation of its criteria	*Standard is not suited to implementing its criteria and thus secure its effectiveness on site.*	*Standard is not suited to implementing its criteria and thus secure its effectiveness on site.*	*Standard does not have a certification framework and does not check the implementation of its criteria*	***Overall evaluation***

RECOMMENDATIONS FOR ACTION

RESPONSIBILITY FOR COMPLIANCE WITH DUE DILIGENCE CANNOT BE OUTSOURCED TO INDUSTRY INITIATIVES

THE RESULTS OF THE ANALYSIS CONFIRM THAT THE RESPONSIBILITY FOR IMPLEMENTING HUMAN RIGHTS AND ENVIRONMENTAL DUE DILIGENCE MUST NEVER BE OUTSOURCED TO INDUSTRY STANDARDS. ACCORDINGLY, LEGAL REGULATIONS MUST EXPLICITLY AND CLEARLY SPECIFY THAT THE RESPONSIBILITY FOR THE IMPLEMENTATION OF HUMAN RIGHTS DUE DILIGENCE LIES WITH THE COMPANIES.

The findings of this study are of special relevance with respect to the implementation of the German and the design of the European supply chain legislation, as well as for the EU Battery Regulation. All these envisage a certain role for industry initiatives when it comes to compliance with due diligence. The results of the analysis confirm, however, that the responsibility for implementing human rights and environmental due diligence must never be outsourced to industry standards. Our findings show that none of the initiatives analysed is able to ensure that the member companies fulfil the requirements of the respective standard. Accordingly, legal regulations must explicitly and clearly specify that the responsibility for the implementation of human rights and environmental due diligence lies with the companies. This is also what the UNGPs demand.

Public authorities that inspect the adequate implementation of due diligence obligations must not rely solely on certifications. Instead, they should go beyond that and check and examine what measures – over and above certification – can be taken.

Develop minimum legal requirements for standards and industry initiatives

IN CASE THAT STANDARDS, INDUSTRY INITIATIVES, CERTIFICATIONS OR MULTI-STAKEHOLDER DIALOGUES ARE ASSIGNED A ROLE IN THE IMPLEMENTATION OF DUE DILIGENCE, IT IS IMPERATIVE THAT LEGISLATORS SET DOWN CORRESPONDING QUALITY CRITERIA AS DEFINED IN THIS STUDY AS MINIMUM REQUIREMENTS.

If industry standards are to play a role within the scope of due diligence legislation, it is important to keep sight of their general limitations and to never equate a certification or the membership in an industry initiative with the implementation of due diligence obligations. At the same time, standards do require minimum requirements. These must, among other things, ensure that the content criteria of the standards are actually implemented locally – and in the interest of the affected stakeholders[32]. This task should be performed by government bodies with the involvement of right holders, civil society, trade unions and for environmental concerns local environmental organisations[33].

Our analysis also shows that there are startling weaknesses and that the quality assurance measures differ among the standards examined. There is also no uniform definition as to what might be understood by standard, industry initiative, certification, or multi-stakeholder dialogue – or details about how these might be delimited from one another.[34] As soon as these are assigned a role in the implementation of due diligence, it will be vital to define what constitutes certification by a standard as well as lay down minimum requirements for certification. It is imperative that legislators set down the corresponding quality criteria as defined in this study as minimum requirements. On top

[31] So far, there is the private standard ISEAL, which sets quality standards for standards, but which does not go far enough with its requirements. Moreover, such a review of standards should not be outsourced either.

[32] In the context of the Conflict Minerals Regulation, based on the OECD Alignment Assessment Tool, standards must fulfil certain requirements to be seen as a recognized system for implementation. In the context of the German and the emerging European Supply Chain Act, as well as the Battery Regulation, however, public regulation and the establishment of criteria is still lacking.

[33] As such the industry initiative ICMM does not carry out any onsite certification of its members.

of this, there must be clear communication at all times about what part of the supply chain a standard covers and what function it fulfils in the due diligence process. Companies should also report about what step in their due diligence and what part of the supply chain they use the respective standard for.

Regarding the minimum requirements concerning the quality of the certification system, special attention should be paid to how the standards involve the rights holders in developing the standard and in monitoring (audit and grievance mechanism) as well as in governance, how they assert their criteria vis-à-vis companies, and how they achieve transparency in the certification process and its results. For environmental concerns, environmental organisations also need to be included in these processes.
This study has developed the following quality criteria:

Involvement of rights holders, civil society, and trade unions

- Involvement of rights holders (e.g., communities, trade unions and all other actors who might be affected by a company's activities) and, if applicable, civil society in developing the content of the standard criteria and/or in revising the standard criteria
- Involvement of rights holders and, if applicable, civil society in governance of the standards, that is, they must hold positions on equal terms in the governance committee
- Explicit involvement of rights holders and, if applicable, civil society in the audit process. This means, in concrete terms:
  - Mandatory *onsite audits* of potential human rights violations and environmental damage caused by the operating sites at all certified operating sites
  - Qualitative surveys of rights holders (external and internal) taking into consideration local factors (culture, language) and methodological requirements explicitly required by the standard
  - Rights holders are notified in due time about audits and unidentified actors are also explicitly given the opportunity to contribute their perspective to the audit
  - Protected spaces and/or trustworthy framework conditions are created where interviews with rights holders can be held
- Effective involvement of rights holders in the monitoring, implementation, and development of the Corrective Action Plans

RECOMMENDATIONS FOR ACTION

Quality assurance and promotion of independence of certification by the standard

- The standard initiative checks the audit results by reviewing the audit report before issuing the certificate
- The standard defines criteria for the professional competence of the auditors and trains them accordingly
- Audit teams must be diverse
- The standard initiative commissions the certification service provider directly and carries out a suitability evaluation
- Requirements are set down to avoid conflicts of interest between certification service providers and the company to be certified (among other things, exclusion of parallel contracting)
- Rotation of audit teams
- Audits are financed independently of the company

Grievance mechanism

- The standard demands that companies introduce an effective grievance mechanism and has its own effective grievance mechanism in line with the effectiveness criteria of the UNGPs (see details in the box below)

Effective enforcement

- The certificate is not issued until all non-conformities have been remedied
- Binding, clear, and appropriate deadlines are issued for implementing the CAPs
- Exclusion of suspension of the company when CAPs are not fulfilled within a clear and reasonable deadline

RECOMMENDATIONS FOR ACTION

Transparency

- Transparent and differentiated presentation of the audit process and audit results:
  - The audit results are prepared in a way that is comprehensible and detailed
  - They reflect the perspectives of the different stakeholders questioned and a differentiated discussion takes place concerning how and why a company has or has not fulfilled the criteria
  - The audit reports reflect the positions and views expressed in the interviews, and handle these without violating personal rights

- Transparency as well as understandable and detailed preparation of the results and processes of the Corrective Action Plans (CAPs) specifying
  - what non-conformities must be addressed within what timeframe and how
  - where and how rights holders were included and how the CAPs are implemented

- Transparency in cases of grievances and in grievance procedures:
  - Grievances are documented and communicated publicly. Those reporting grievances are anonymised
  - The document is easy to find on the standard's website and its presentation is plausible and understandable, i.e., grievances are discussed and clearly positioned in the context of human rights violations and the measures taken
  - Information is provided concerning the degree of implementation of the measures and/or to what extent remedies have been achieved

- Transparency about what levels of the supply chain are covered by the certification and what instruments were used for this

RECOMMENDATIONS FOR ACTION

REQUIREMENTS FOR GRIEVANCE MECHANISMS (GM) SPECIFIED IN ACCORDANCE WITH THE EFFECTIVENESS CRITERIA OF THE UNGPS

The standard requires an effective GM according to the UNGP effectiveness criteria from the companies

- The standard requires a grievance mechanism in accordance with the UNGP effectiveness criteria and derived concrete implementation requirements for companies from it.

The standard initiative GM is legitimate and predictable

- The grievance process is managed by an independent panel of experts and not by the standard initiative itself
- The case can be challenged by all parties
- Grievances concerning particularly serious allegations of HR violations are escalated, i.e., dealt with quickly
- The standard is withdrawn from companies if they fail to comply with the negotiated remedy

The GM in the standard initiative is accessible

- The grievance mechanism can be used by all potentially affected parties
- Potential users are made aware of the grievance mechanism
- Digital accessibility of the GM (visible application on homepage and presentation adequate for the target group and in different languages)
- Analogue accessibility and oral submission of grievances is possible
- Language barriers are addressed and removed

The grievance mechanism in the standard initiative is balanced, i.e., addresses power and information asymmetries

- The standard initiative covers the costs of the grievance procedure on a pro rata basis for the claimants (potentially affected groups of stakeholders) in order to ensure the execution of a grievance procedure
- Support for the grievance process by providing information and expertise
- There is a procedure for anonymous grievances
- Claimants may be represented in the proceedings by a third party (e.g., lawyers, NGOs)

The grievance mechanism in the standard initiative is based on exchange and dialogue

- Rights holders (i.e., potential users of the GM) were involved in the development of the GM
- Rights holders (i.e., potential users of the GM) are involved in the evaluation and further development of the GM

What is more, the minimum requirements must of course also address the content of the standards, something which this study does not deal with, however. For example, all standards relating to the extraction of raw materials must refer specifically to human rights, UNGPs, humanitarian law, and environmental standards. Another aspect that must also be ensured in this context is the concrete and meaningful formulation of requirements for content. In this way, they can be translated into audit criteria, among other things, and can be queried in the audit. Inaccurate standard criteria lead to a situation where audits are not meaningful in terms of the information they present.

Those standards covering environmental criteria should furthermore address the burden of right holders to claim their rights resulting out of the need for technical knowledge and equipment for assessing environmental degradation. Those specifics for environmental criteria could not be systematically addressed by this study. However, one suitable approach to cope with this burden is a substantiated inclusion and support of community-monitoring. Sydow et al. (2021) provide valuable insights in this regard.

Another problem arises if the audit reports are shown to be insufficiently transparent and if they have insufficiently detailed breakdowns (see

RECOMMENDATIONS FOR ACTION

STANDARDS MUST CONTRIBUTE TOWARDS TRANSPARENCY IN THE DEEPER-LEVEL SUPPLY-CHAIN (NAME AND LOCATION), WHEN THEY CERTIFY COMPANIES IN THE DOWNSTREAM RAW MATERIALS SUPPLY CHAIN

Quality requirements). This means companies that use standards as a due diligence instrument would only be able to record and assess potential human rights risks to an inadequate extent. This is especially relevant when standards (like ASI, *Copper Mark*, RMI, RSI) that include the deeper-level supply chain in their certification do not create any transparency about the supply chain itself. This, however, is vital if companies are to be able to adequately record and address supply chain risks. That is why standards must contribute towards transparency in the deeper-level supply-chain (name and location), when they certify companies in the downstream raw materials supply chain.

Introduce laws pertaining to auditor liability

A LIABILITY REGULATION FOR AUDITING AND CERTIFICATION WOULD BE AN IMPORTANT PREREQUISITE TO EFFECTIVELY ADDRESS THE SYSTEMIC RISKS OF STANDARDS

At the present time there are only insufficient liability regulations for auditing and certification. A liability regulation would be an important prerequisite to effectively address the systemic risks of standards. These result from the financial dependencies that arise in connection with the complex business relationships between the standard, the auditor, and the companies. When inadequately executed audits – like the one for the Brumadhino Dam in Brazil, for example – lead to a loss of life and immense damage to people and nature, auditors cannot currently be held liable. Usual business practices do not provide for any consequences in such or similar cases and bear the risk of audit results being unjustifiably favourable (Binder, M. 2020). As the evaluation of the audit requirements has shown, the existing standards do not have adequate measures in place to prevent this inherent systemic risk (the company to be certified commissions the audit itself, except for RMI). However, this problem cannot be addressed by the standard alone, and legislators must create the legal foundations for it. The introduction of statutory auditor liability could contribute to improvements, as it would make it risky for auditors to issue unjustifiably favourable reports.[35]

[34] See also: https://www.ecchr.eu/fileadmin/Publikationen/Studie_Zur_Haftung_von_Sozialauditor_innen_FES_ECCHR.PDF

RECOMMENDATIONS FOR ACTION

Companies must:

Know and communicate the limitations of and possibilities offered by standards

The study has shown that no industry initiative can secure the implementation of its own requirements. At the same time, it has also shown that the initiatives cover different areas of the supply chain, and that they have different strengths and weaknesses in terms of asserting their requirements. When using industry initiatives to support the implementation of due diligence, it is vital to have an awareness of the potentials and limitations of industry standards and to see where they can provide support, but also be aware of what they are unable to do. In their communications, companies should report about the fulfilment of the due diligence, about what they use the initiatives for, as well as explain what measures they undertake to support the standards in the execution of their due diligence. Furthermore, companies should always reflect and transparently report on what aspects of due diligence they use certification for and what exactly is certified (see also Quality criteria and Chapter 2).

Undertake additional measures

Due to the systemic risks inherent in the standards (e.g., because of business relationships between auditors, the standard, and the company to be certified), companies must take further measures to fulfil their due diligence. Companies that use certification as an instrument for the implementation of human rights due diligence should therefore, on the one hand, place special focus on the comprehensibility, plausibility and informative value of standards and their certification systems when selecting a standard. As the present study shows, standards have different approaches to ensure the implementation of their criteria vis-à-vis certified companies. On the other hand, companies should take additional measures to do justice to their due diligence obligations. This includes, for example, comparing the audit report of a certified supplier with their own risk analysis and/or comparing the involvement of rights holders so that they can evaluate the credibility of the certification. What is more, companies should include further data sources in their risk analyses, including media reports, NGO reports, and data from community monitoring for example.

DUE TO THE SYSTEMIC RISKS INHERENT IN THE STANDARDS, COMPANIES THAT USE CERTIFICATION AS AN INSTRUMENT FOR THE IMPLEMENTATION OF HUMAN RIGHTS DUE DILIGENCE SHOULD TAKE ADDITIONAL MEASURES TO DO JUSTICE TO THEIR DUE DILIGENCE OBLIGATIONS

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ANNEX

OVERVIEW OF THE STANDARD DOCUMENTS EXAMINED

ASI

ASI Assurance Manual V1 (2017):
https://aluminium-stewardship.org/asi-standards/asi-assurance-manual/

ASI Complaints Mechanism V1.0 (2015):
https://aluminium-stewardship.org/asi-certification/asi-complaints-mechanism/

ASI Performance Standard V2 (2017):
https://aluminium-stewardship.org/asi-standards/asi-performance-standard/

ASI Performance Standard V2 - Guidance (2017):
https://aluminium-stewardship.org/asi-standards/asi-performance-standard/

ASI Auditor Accreditation Procedure V1.0 (2015):
https://aluminium-stewardship.org/wp-content/uploads/2021/09/ASI-Auditor-Accreditation-Procedure-V3-July2021.pdf

Copper Mark

The Copper Mark Assurance Process (2021):
https://coppermark.org/wp-content/uploads/2021/06/The-Copper-Mark-Assurance-Process_1MAY2021_FINAL_rev.pdf

The Copper Mark Grievance Mechanism (2021):
https://coppermark.org/wp-content/uploads/2021/05/Copper-Mark-Grievance-Mechanism_rev2_6MAY2021_FINAL.pdf

The Copper Mark Assessor Management Procedure (2021):
https://coppermark.org/wp-content/uploads/2021/10/Copper-Mark-Assessor-Management-Procedure_v2_12OCT2021.pdf

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ICMM

ICMM Validation Guidance (2020):
https://www.icmm.com/website/publications/pdfs/mining-principles/guidance-validation.pdf

ICMM Assurance and Validation Procedure (2021):
https://www.icmm.com/website/publications/pdfs/mining-principles/assurance-and-validation.pdf

IRMA

The Standard for Responsible Mining V1.0 (2018):
https://responsiblemining.net/wp-content/uploads/2018/07/IRMA_STANDARD_v.1.0_FINAL_2018-1.pdf

Guidance Document for the Standard for Responsible Mining (2019):
https://responsiblemining.net/wp-content/uploads/2019/12/IRMA_Standard-Guidance_Oct2019.pdf

IRMA Certification Body Requirements V1.0 (2019):
https://responsiblemining.net/wp-content/uploads/2020/01/Certification-Body-Requirements_v1.0.pdf

IRMA Issues Resolution System (2020):
https://responsiblemining.net/wp-content/uploads/2020/03/IRMA-Issues-Resolution-System_2020.pdf

Mine Site Assessment Manual:
https://responsiblemining.net/wp-content/uploads/2021/06/IRMA-Mine-Site-Assessment-Manual_June2021.pdf

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RS

ResponsibleSteel Standard Version 1.1 (2021):
https://www.responsiblesteel.org/certification/certification-resources/

ResponsibleSteel Assurance Manual Version 1.0 (2019):
https://www.responsiblesteel.org/wp-content/uploads/2019/12/ResponsibleSteel-Assurance-Manual-v1-0.pdf

ResponsibleSteel Issue Resolution System V2.0 (2020):
https://www.responsiblesteel.org/wp-content/uploads/2020/06/ResponsibleSteel-Issues-Resolution-System-v2-0.pdf

RMI

Joint Due Diligence Standard for Copper, Lead, Nickel and Zinc (2021):
http://www.responsiblemineralsinitiative.org/media/docs/standards/Joint-Due-Diligence-Standard_FINAL_09FEB21.pdf

Responsible Minerals Assurance Process (2021):
http://www.responsiblemineralsinitiative.org/media/docs/RMAP%20Assessment%20Procedure_Revised%20January%2029_2021.pdf

RMI Grievance Mechanism (2017):
http://www.responsiblemineralsinitiative.org/media/docs/RMI_Grievance%20Mechanism_Rev2017_Final_v2.pdf

VPSHR

Voluntary Principles on Security and Human Rights Implementation Guidance Tools (2020):
https://www.voluntaryprinciples.org/wp-content/uploads/2020/08/Implementation-Guidance-Tools.pdf

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