ICMM
International Council on Mining & Metals

Human Rights in the Mining & Metals Industry

Overview, Management Approach and Issues

May 2009

CONTENTS

Front cover: Artisanal and Small Scale Miners, Siguiri District, Guinea. Image courtesy of AngloGold Ashanti.

In the past decade, the issue of human rights has assumed increasing prominence in discussions concerning corporate social responsibility in general, and the extractives sector in particular. While many leading companies accepted that business had some responsibilities with respect to human rights, the scope of what these responsibilities ought to be has been hotly debated. However, in the early 2000's the discourse over the boundaries between the human rights responsibilities of companies' and host nation states led to a blurring of what ought to be thought of as distinct, as opposed to shared, responsibilities.

The "Protect, Respect and Remedy" framework produced by John Ruggie in 2008 provided some much needed clarity, and outlined in a complete and compelling way the distinctive, albeit complementary, roles of states and corporations. There is now broad acceptance that governments have the primary responsibility for the protection of human rights, and that companies have neither a political nor a shareholder mandate to assume this responsibility. In parallel, however, there is also widespread acceptance that companies have a responsibility to respect human rights. Because this represents a baseline expectation, companies cannot compensate for human rights harm by performing good deeds elsewhere.

ICMM's view is that respect for human rights is a key aspect of sustainable development. One of the principles adopted by our Council of CEO's in 2003 was that members should "uphold fundamental human rights and respect customs, cultures and values". As an organisation, we have committed to helping to advance industry good practice on human rights, and this publication is the first of a number that we have planned to help deliver on this commitment.

Our overall objective here is to provide an overview of the main challenges and dilemmas that companies in the mining and metals sector are often faced with. More specifically we review management approaches that member companies have applied to dealing with human rights challenges.

We do not to attempt to address all dimensions of the multi-faceted human-rights issue in depth. Subsequent efforts will explore issues such as effectively dealing with community concerns and grievances, and ensuring that companies' due diligence efforts address human rights concerns. We look forward to working collaboratively with our members and external stakeholders to advance practice and performance in this important area of corporate responsibility.

R. Anthony Hodge
President, ICMM

BACKGROUND & KEY POINTS

1

1.1   Why has ICMM produced this guidance?

1.2   What should reasonably be expected of companies in this area?

1.3   Are there clear distinctions between the roles of government and of companies?

1.4   If human rights are so broad in scope, why is this guidance so short?

1.5   What are the main points of this guidance?

1.1 Why has ICMM produced this guidance?

Respect for human rights is a key aspect of sustainable development. Promotion of sustainable development, in turn, is a core part of ICMM's mandate. ICMM's members are committed to the ICMM Sustainable Development (SD) Framework which includes, among other requirements, the principle that members should:

Uphold fundamental human rights and respect cultures, customs and values in dealings with employees and others who are affected by our activities [Principle 3]

This publication aims to:

- Outline the various elements of the SD Framework relating to human rights (in addition to a core set of 10 Principles, the Framework also comprises a number of ICMM Position Statements and detailed reporting and assurance requirements[1]);
- Highlight key pressure points of relevance to business and human rights, as well as some relevant external tools and initiatives; and
- Briefly document approaches to dealing with human rights issues adopted by a number of ICMM members in order to facilitate the spread of good practice.

The main audience for the guidance is ICMM's members and other interested companies in the mining industry. ICMM's overall work on human rights, however, has also involved significant external engagement. For example, ICMM has made three submissions to John Ruggie[2], the Special Representative of the UN Secretary-General on the issue of human rights and transnational corporations and other business enterprises (SRSG). The second of these included a commitment that "ICMM members will continue to advance industry good practice on human rights" and also that ICMM would support "sharing and adoption of best practices on human rights-related issues across its members". This publication also aims to help deliver on this commitment.

1.2 What should reasonably be expected of companies in this area?

Human rights are universal values. The key internationally agreed definition of human rights is contained in the United Nations Universal Declaration on Human Rights, proclaimed in 1948 by the UN General Assembly. It is widely recognised that governments have prime responsibility for protecting human rights. Companies cannot and should not be expected to substitute for state responsibility: they have neither the political mandate to do so, nor the mandate from shareholders to devote unlimited resources to this area.

A growing body of corporate good practice on human rights, however, has given a clearer indication of what might reasonably be expected from companies – that is, beyond the minimum requirement that companies comply with host governments' laws and regulations, but also recognising the political and practical constraints that they face. In addition, the report of the SRSG to the Human Rights Council at the end of his first mandate (***Protect, Respect and Remedy: A Framework for Business and Human rights***[3]), helps to further clarify the distinctive yet complimentary roles of governments and companies with respect to human rights, which has met with widespread approval from governments, business and civil society. This guidance aims to help ICMM members interpret what might reasonably be expected in the area of business and human rights.

It also needs to be recognised that companies in the normal course of their business help uphold a variety of human rights. Their contribution to economic growth, for example, provides the support necessary for fulfilments of various economic, social and cultural rights. Responsible mitigation of environmental impacts, close consultation with local communities, and employment procedures – for example, preventing discrimination – also help uphold different sorts of rights.

This means that companies' approach to human rights issues may need to be coordinated across multiple internal departments (including, for example, human resources, business development and security as well as CSR/Sustainable Development functions). But it does not necessarily mean that companies need to conceptualise or even describe their positive efforts in human rights terms: what matters is fair and positive outcomes for individuals concerned, not the label used for corporate procedures which help to achieve this.

For further references, see Appendix 1: Footnotes on pages 28-29

1.3 Are there clear distinctions between the roles of government and companies?

Much of the heat that historically characterized the business and human rights debate was catalyzed by the blurring of the boundaries between what ought to be thought of as distinct (albeit complimentary) as opposed to shared responsibilities. The "Protect, Respect and Remedy" framework outlined in the report of the SRSG clearly outlines a set of different but complementary responsibilities. This comprises three core principles: the state duty to protect against abuses of human rights by third parties, including business; the corporate responsibility to respect human rights, which is positioned as a requirement to "do no harm"; and the need for more effective access to remedies in the event of disputes over the human rights impacts of companies (which is largely a state responsibility, but may also include non-judicial mechanisms such as company complaint mechanisms). The framework also recognises that companies may undertake additional voluntary commitments in relation to human rights, but that the responsibility to respect is the baseline expectation for all companies.

In considering potential impacts on human rights beyond the workplace and in identifying opportunities to support human rights (to go voluntarily beyond the baseline expectation to 'respect'), the concept that companies have concentric "spheres of influence" is potentially useful. This implies that they have most responsibility over issues where they have greatest control, such as treatment of employees and local communities, and less over issues less under their sway, such as the behaviour of state agencies in their region of operations (but even here, companies may potentially exert some legitimate influence). However, the SRSG's report points to the limitations of the spheres concept in defining the corporate responsibility to respect, through effective due diligence. This is because the responsibility to respect is neither based on proximity nor on influence, but depends on the potential or actual human rights impacts of companies' business activities and the relationships associated with these activities. The most appropriate mechanism for determining potential impacts is through effective due diligence.

1.4 If human rights are so broad in scope, why is this guidance so short?

The aim of the guidance is not to cover all potential human-rights issues in depth, nor to cite all the growing number of relevant external initiatives and tools. It is rather to provide a succinct and useful document to members, which is cognisant of the challenges and dilemmas often facing companies in this area. It also sets out some practical potential steps and provides links to more detailed information where most helpful.

The second part of the guidance (Section 2: Overall management approach) highlights some basic elements of good practice for managing human rights in general. Section 3: Focus issues then examines a small set of human rights-related issues which either pose a particular challenge in the mining sector or on which additional clarity on good practice may be helpful. Among the issues not dealt with in this section, to give an example, is environmental management: though protection of the environment is clearly an aspect of upholding human rights, good practice in this area has for some time been well understood and documented.

It is also important to note that the examples given of good practice by ICMM members (see boxes in each section) represent just a sample of the initiatives underway across the membership. Likewise various other ICMM projects, such as the Resource Endowment Initiative[4] and the Community Development Toolkit[5], are not detailed here, but may be useful to members in developing their work on human rights.

1.5 What are the main areas addressed within the guidance?

The primary focus of this publication is on the corporate responsibility to respect human rights. It also deals with how mining companies can ensure that both employees and communities have access to remedy at the operational level, in response to legitimate concerns (whether or not these explicitly relate to human rights). In addition, the value of and approaches to proactive engagement with stakeholders is covered, which is relevant to both the responsibility of companies to respect human rights and improving access to remedy (in addition to being relevant to voluntary action in support of human rights).

Based on the human-rights related elements of ICMM's SD Framework and also the procedures that have been developed among ICMM members, the basic building blocks of an overall good practice approach to human rights are described. In terms of management systems (Section 2), which set the framework within which effective due diligence occurs, companies are encouraged to:

- **Policy and guidance** – Develop clear policies covering all relevant human rights issues facing their operations (these may or may not be explicitly labelled "human rights" policies); communicate these policies clearly internally; and support them with operational guidance for managers and employees where needed (2.1)
- **Governance and implementation** – Build these policies into internal control, governance or other internal management systems (such as HSEC) so as to ensure their implementation (2.2)

For further references, see Appendix 1: Footnotes on pages 28-29

- As part of this, seek to build human rights issues into impact assessment and due diligence processes where these issues are not already adequately assessed (2.3)
- Develop robust complaint mechanisms for local communities and employees (2.4)
- Provide appropriate human rights training to relevant staff, including security personnel (2.5)
- Encourage customers, business partners and suppliers to adopt practices relating to human rights comparable to their own; and in the case of suppliers make this a condition of business, supported by monitoring, where appropriate (2.6)
- Proactively engage and develop partnerships with communities, governments, and other stakeholders, to build trust and help deliver positive outcomes around operations – while keeping within the boundaries of companies' legitimate role and responsibilities on human rights (2.7)
- Publicly report on commitments and outcomes (addressed throughout the publication).

Similarly in terms of particular human-rights related issues (Section 3), which should be considered in the conduct of effective due diligence, to ensure that companies adopt a good practice approach on human rights, they are encouraged to:

- As part of their management of employment issues: define a clear approach to employee representation and union issues, drawing upon relevant legislation and international principles; make clear their prohibition on child and forced labour; and find ways to support diversity, including women's role in mining (3.1)
- Ensure security personnel and contractors follow human rights principles, including restrictions on the use of force; and where feasible, always keeping within the boundaries of companies' legitimate role on human rights, seek to exert legitimate influence over police and state security forces if the rights of employees and local communities are at risk (3.2)
- Avoid involuntary resettlement where feasible, and adopt an approach towards resettlement based on accepted international good practice standards (3.3)
- Ensure alignment of their practices with the commitments in the ICMM Position Statement on Mining and Indigenous peoples (3.4)
- Assess the risks of conflict around, or associated with, projects where appropriate and seek to minimise these risks, always keeping within the boundaries of companies' legitimate role (3.5)
- Build an understanding of potential human rights issues into their approach towards, and interactions with, artisanal and small scale miners around their operations (3.6)
- Enforce their policies against bribery and corruption through robust internal processes; and support countries which endorse and actively seek to implement the Extractive Industries Transparency Initiative (EITI) in ways set out in ICMM position statements on EITI (3.7)
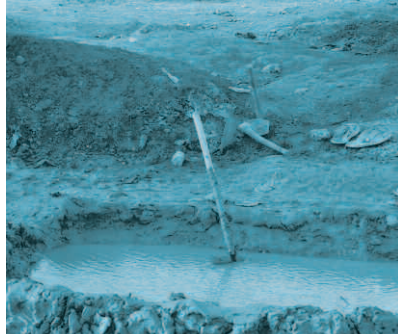
"The baseline expectation of business is that it will respect – that is, not harm – human rights. Exercising due diligence to identify, address and manage human rights risks will help business to respect human rights, including avoiding complicity in human rights abuse."

Georg Kell, Executive Director, UN Global Compact

OVERALL MANAGEMENT APPROACH

2

2.1 Policy and guidance

An obvious starting point for companies on human rights is to set out a policy, or policies, stating their approach on relevant issues (though these need not necessarily be labelled explicitly as "human rights" policies). Issues typically covered include the human rights aspects of community relations, employment policies, and security. Some ICMM members have also developed detailed guidance setting out what commitments in such areas mean in practice for managers on the ground.

Various elements of ICMM's SD Framework are relevant in terms of policy. The ICMM Assurance Procedure[6] – the third element of the SD Framework – requires assurance providers to assure that member companies' policy commitments are in line with ICMM's Principles. This would include the commitment to "Uphold fundamental human rights and respect culture, custom and values in dealing with employees and those who are affected by our activities" (ICMM Principle 3), as well as the specific commitments embodied in the ICMM Position Statement on Mining and Indigenous Peoples[7].

The SD Framework also commits ICMM member companies to report in line with the Global Reporting Initiative (GRI) 2006 Sustainability Reporting Guidelines (G3 Guidelines) and the GRI Mining and Metals Sector Supplement[8]. The GRI Human Rights Performance Indicators require organizations to report on the extent to which human rights are considered in investment and supplier/contractor selection practices. The guidelines for companies on 'Disclosure of Management Approach' specify the following requirements:

"Provide a concise disclosure on the following Management Approach items with reference to the Human Rights Aspects listed below. The ILO Tripartite Declaration Concerning Multinational Enterprises and Social Policy (in particular the eight core conventions of the ILO which consist of Conventions 100, 111, 87, 98, 138, 182, 20 and 105), and the Organisation for Economic Co-operation and Development Guidelines for Multinational Enterprises should be the primary reference points. [Investment and Procurement Practices, Non-discrimination, Freedom of Association and Collective Bargaining, Abolition of Child Labor, Prevention of Forced and Compulsory Labor, Complaints and Grievance Practices, Security Practices, Indigenous Rights]."

The G3 Guidelines include 9 performance indicators (6 core or mandatory indicators and 3 additional ones) relating to human rights, and several additional indicators relating to labor practices. The MMSS also includes supplementary requirements relating to security provision.

NGOs have often argued that company policies ought to refer explicitly to international human rights standards. While ICMM has no formal position on this, several members make reference to the UN Universal Declaration of Human Rights or some of the ILO conventions, which is consistent with the G3 Guidelines. A review of the human rights policy provisions of seven leading extractive sector companies is an additional source of guidance for mining companies to consider in reviewing their policy commitments[9]. A number of ICMM members are also signatories to the Global Compact, whose ten principles cover various key human rights issues[10].

> **"Managing human rights in a proactive manner means managing legal and reputational risks, meeting shareholder and stakeholder expectations and maintaining and motivating staff performance. It also involves companies in having a better rounded appreciation of their impacts – positive and negative; direct and indirect – on the world around them."**

Mary Robinson, President of Realizing Rights
& Mark Moody-Stuart, Chairman, Anglo American plc

For further references, see Appendix 1: Footnotes on pages 28-29

OVERALL MANAGEMENT APPROACH

Policy & guidance: examples

Rio Tinto has developed an explicit human rights policy as well as a number of other policies related to human rights, such as on communities, employment and land access, all of which are contained within the company's overall statement of business practice 'The way we work'[11]. Detailed guidance booklets are available for business units, including on 'business integrity', 'human rights' and a 'communities standard'. The human rights guidance[12] comprises four main sections: the first three focus on local-level human rights considerations in dealing with communities, employees, and security. The final section on 'difficult issues' considers the company's role and tactics in situations where it may have less control, for example where there is a risk of abuses being committed by the government or third parties.

Newmont is among a number of ICMM members to explicitly support the Universal Declaration of Human Rights, in this case in the context of the company's 'social responsibility policy'[13]. The policy is underpinned by 19 management standards and 14 discipline-specific standards, several of which are relevant to human rights[14]. A standard on human rights awareness, for example, requires all facilities to have a process in place for raising such awareness among employees. Others standards cover, for example, the management of significant religious and cultural sites, land access, indigenous employment and business development, and security forces' management. A 'human rights primer' and a 'human rights training guide' are available to sites to build knowledge and capacity to implement the human rights related standards at the operational level.

Other examples include **BHP Billiton's**[15] high-level commitment to human rights in its Sustainable Development Policy which is underpinned by a more detailed Community Standard containing specific minimum and mandatory requirements in relation to human rights. **Xstrata** has developed internal 'human rights guidelines' to help implement the human rights commitments contained in its statement of business principles and HSEC policy[16]. **Goldfields**[17] has also developed a stand-alone policy on human rights.

2.2 Governance and implementation

ICMM's 2nd submission to John Ruggie stated that, as part of ICMM's overall commitment to good practice, "members will continue to strengthen internal management processes to ensure implementation of their policies and commitments relating to human rights"[18]. This is an important area, and the 2nd submission documented how some members are building human rights issues into their existing governance systems in order to achieve this. A variety of approaches are being used by different members, and may be generally suitable, including: incorporating human rights-related issues into HSEC processes at the operational level, building such issues into company-wide internal risk and control systems, and also tasking particular board members or board committees with oversight of human rights. Underlying all this work is often a view that corporate policies and management systems on human rights, as on other issues, need to go hand in hand.

Management systems and approaches are addressed within ICMM's Assurance Procedure, which requires the following 'subject matter' to be considered within the scope of an assurance engagement:

- **Subject Matter 2:** The company's material SD risks and opportunities based on its own review of the business and the views and expectations of its stakeholders [which in almost all cases would include issues relating to human rights].
- **Subject Matter 3:** The existence and status of implementation of systems and approaches that the company is using to manage each (or a selection) of the identified material SD risks and opportunities.

The 'systems and approaches' referred to in subject matters 2 & 3 may include plans, policies, procedures etc. that member companies have in place to manage their risks relating to human rights. ICMM does not require member companies to have ten separate policies and underlying management systems in place to address each of the ICMM SD Principles individually, and these commitments may be reflected in integrated policies and systems. The Assurance Procedure provides further guidance in an annex to inform the design of member companies' management systems and processes aligned to each of the ICMM Principles.

A potentially useful external resource in this area is a guide produced by the Business Leaders Initiative on Human Rights on integrating human rights into management systems[19]. It is important to emphasize however there are no set ways of doing this: members may choose to develop their own implementation approaches tailoring them closely to existing systems.
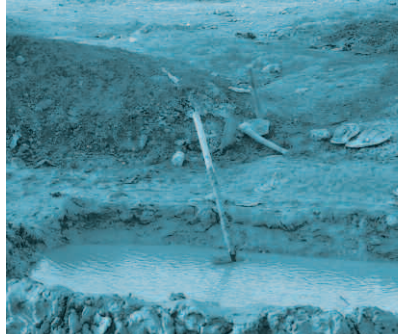
2.3 Due diligence

Building human rights issues into due diligence processes such as impact assessment is an area of growing attention for member companies. John Ruggie has clearly signalled that the corporate responsibility to protect is discharged through due diligence. He outlines three inter-related factors for companies to consider in undertaking due-diligence in the Protect, Respect and Remedy framework, which form the basis for a comprehensive risk-based approach to identifying potential human rights impacts:

• The country context within which mining companies are operating, and specific human rights challenges this may pose;
• The potential human rights impacts of companies' own activities within that context; and
• The potential to contribute (perceived or otherwise) to abuses through the relationships connected to a company's activities (such as through suppliers, state agencies, or security services).

Due diligence ought to be commensurate with the risks, which in turn are a function of the magnitude of potential adverse impacts, with the likelihood of these impacts occurring. In applying this risk-based approach to due-diligence, Ruggie recommends that companies refer to the International Bill of Human Rights (comprising the Universal Declaration of Human Rights, the International Covenant on Economic, Social and Cultural Rights, and the International Covenant on Civil and Political Rights and its two Optional Protocols) and the core conventions of the ILO in undertaking due diligence, as "the principles they embody comprise the benchmarks against which other social actors judge the human rights impacts of companies". The same reference points are flagged as defining "generally recognized human rights" in the GRI G3 Guidelines.

In conducting due diligence, Ruggie has advocated the use of Human Rights Impact Assessments (HRIAs), arguing that "no single measure would yield more immediate results in the human rights performance of companies than conducting such assessments where appropriate".[26] The following, in turn, is from ICMM's 3rd submission to John Ruggie of December 2007:

ICMM supports moves to incorporate human rights issues into Social & Environmental Impact Assessments (SEIAs) or similar due diligence processes for all proposed large-scale projects where there is a legitimate concern that human rights may be adversely impacted.[27]

Governance & implementation: examples

BHP Billiton has embedded human rights into its 'enterprise-wide risk management' approach to ensure that human rights issues are readily identifiable and comparable, alongside the company's social, environmental and financial risks.[20] This is done through a company-wide programme of health, safety, environment and community (HSEC) audits and self-assessments launched in 2001.[21] The programme is designed to monitor implementation of BHP Billiton's HSEC related Standards[22], including its Community Standard.

Rio Tinto has in place various long-standing processes for implementing its human rights related policies including, for example, a system of 'five year communities' plans at each of its operations, and also an annual Internal Control Questionnaire (ICQ). Notably, the human rights element within these internal systems has been bolstered in recent years. The ICQ, which business unit managers are required to complete, now incorporates some 35 detailed human rights related questions across a range of areas, including legal, community relations, human resources, security personnel, business integrity and political involvement.[23]

Freeport McMoRan's Social, Employment and Human Rights (SEHR) Policy[24] includes the provision for a 'human rights compliance officer' (HRCO) to be appointed at all sites, as well as at the corporate level. Among the main responsibilities of HRCOs are to deal with human rights related allegations according to Freeport's compaint procedures. All employees are required to submit to the corporate HRCO an annual Human Rights Assurance Letter regarding compliance with the SEHR Policy. The key findings of this are included in the corporate HRCO's report to the company's board-level Public Policy Committee. Freeport has also appointed US Judge Gabrielle McDonald[25], a respected human rights lawyer, to act as the company's Special Adviser on Human Rights. Currently Freeport is taking stock of lessons learned from the last several years of applying this overall management system on human rights. For example, it has found that many of the concerns raised as "human rights" issues have been traditional human resources or employee issues. One option going forward could be to split the SEHR policy into three separate policies, including on human rights, which may help more clearly define responsibilities in this area.

For further references, see Appendix 1: Footnotes on pages 28-29

Impact assessment: examples

Newmont has carried out stand-alone human rights assessments, the first at its operations at Pajingo (Australia) and the second at Yanacocha (Peru) using tools partly based on that of the Danish Institute for Human Rights and the 'draft UN Norms' framework respectively. Among other outcomes, a 23-point action plan based on the Yanacocha assessment is being followed up with an ongoing human rights training program. Further human rights assessments are also planned for sites in Ghana and Indonesia. A mini human rights assessment tool is also available to sites which have yet to undergo a more in-depth assessment. The tool, included within Newmont's 'human rights primer', takes the form of a checklist based on 63 simple questions in the areas of civil and political rights, economic rights and company policy[31].

BHP Billiton has recently reviewed all its company documents and has now established a set of group level Standards which prescribe minimum and mandatory requirements across all the company's businesses. The Community Standard includes requirements on Planning, Monitoring and Measurement, Community Engagement, Community Investment and Human Rights. The Human Rights requirements include documenting key human rights exposures in a risk-based human rights assessment and, where an exposure is identified, developing and implementing a human rights management plan and ensuring employees and contractors receive training.[32]

In terms of other examples from the membership, **Rio Tinto** states in its Human Rights Guidance[33] that "when a new investment project is planned in a region where there is a context of widespread human rights violations, we should conduct an analysis of the human rights situation in the local area". **Anglo American**, meanwhile, has introduced human rights concepts into a number of assessment tools in its 'socio-economic assessment toolbox' (SEAT)[34]. The SEAT process aims to help operations identify and understand their social and economic impacts, particularly on communities, and particularly for mature operations where a full social impact assessment may not be necessary or feasible.

Many human rights issues are already captured by existing due diligence processes at the project level, such as SEIAs[28] and also community baseline assessments. But other potential issues – such as, for example, the human rights aspects of security provision or relations with state agencies, impacts on artisanal miners, or local employment practices – may not always be adequately covered within such processes. Stand-alone HRIAs may not necessarily be the best solution, however. It may be better to incorporate any such additional human rights issues into existing assessment tools. What matters most is that the relevant issues are captured and adequately assessed, rather than the particular procedure used.

The development of off-the-shelf methodologies for HRIAs is still in its infancy. Among the main initiatives in this area currently is a guide to HRIAs by the International Business Leader Forum and the International Finance Corporation (IFC)[29] (companies are currently being encouraged to road-test this guide) and a "human rights compliance assessment tool" developed by the Danish Institute for Human Rights[30], both of which may be useful resources for ICMM members. Other models that may have merit have been developed by organizations such as International Alert, BLIHR (the Business Leaders Initiative on Human Rights) and Rights and Democracy (an NGO). At the same time, members may prefer to build or adapt their own tools in this area or to incorporate human rights issues into their existing assessment processes (see box).

Building an assessment of human rights issues into internal investment and business decisions is another area of emerging good practice. This is flagged in ICMM's SD Framework: two of the core indicators in the GRI G3 Guidelines for example, are:

• Percentage and total number of significant investment agreements that include human rights clauses or that have undergone human rights screening [HR1]; and

• Percentage of significant suppliers and contractors that have undergone screening on human rights and actions taken [HR2].

During 2009, ICMM intends to develop further guidance with member companies on how human rights considerations can more systematically be captured during the conduct of due diligence.

For further references, see Appendix 1: Footnotes on pages 28-29
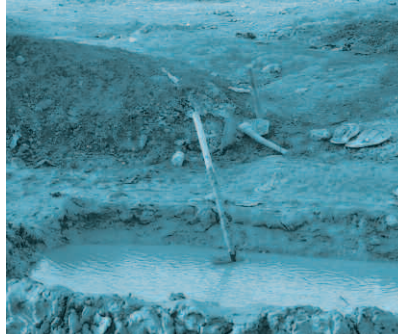
2.4 Complaint procedures and access to remedy

The importance of effective non-judicial complaint mechanisms as a means of redress in the event of disputes between companies and communities (or allegations that human rights have not been upheld) is the third pillar of John Ruggie's *'Protect, Respect and Remedy'* framework, and is also gaining increasing attention across the ICMM membership. Developing robust complaint procedures for local community members and also employees over infractions of company policy (whether these are perceived or real) helps underpin not just the credibility of corporate human rights policies, but also ethical and community relations practices more broadly. ICMM's 3rd submission to John Ruggie of December 2007 noted that "The development and wider use of complaint and dispute resolution mechanisms – provided these are well designed and complement rather than undermine the legitimate role of governments – is both an important means to improve human rights outcomes on the ground, and is also in the interests of leading companies".

In terms of complaint procedures for communities, members' experience is that it makes sense not just to put these explicitly in place at the project level, but also to ensure they are accessible to stakeholders, follow a predictable and, wherever possible, transparent process, and also are seen to be legitimate and fair. In terms of procedures for employees, meanwhile, a recent emphasis among members has been to offer staff the option of anonymous, independently-managed "whistle-blowing" hotlines to receive and handle complaints in confidence.

Various elements of ICMM's SD Framework relate to this area. The G3 Guidelines 'Disclosure of Management Approach' guidance on human rights, for example, requires reporting companies to: "Provide a concise disclosure on ... complaints practices". Annex 1 of ICMM's Assurance Procedure suggests that assurers could look for evidence of, among other things, a:

- System for recording and managing employee complaints and dispute resolution, including a confidential, third-party mechanism to report potential human rights abuses or raise employee complaints; and a
- System to track and respond to community concerns in a timely manner, supported by an independent dispute resolution mechanism.

The *'Protect, Respect and Remedy'* framework highlights an inclusive set of criteria that should be applied in designing non-judicial complaint mechanisms including: legitimacy of governance structures; accessibility to intended users; predictability of process; equitability for all parties; rights compatibility; and transparency. During 2009, ICMM intends to develop further guidance with member companies on how these principles might be practically interpreted and applied at the operational level.

Complaint procedures: examples

BHP Billiton requires all operating sites to maintain a record of all community engagement activities, responses to concerns, outcomes, agreements and commitments. In addition, dispute resolution processes commensurate to the assessed risk level must be available to facilitate resolution of complaints with communities. The company publishes a breakdown of the number and types of complaints in its annual sustainability report (during FY08, for example, sites received a total of 536 complaints, 37% of which were noise-related).[35]

Newmont has developed a rigorous complaint/grievance procedure at its Ahafo mine in Ghana, with a commitment to respond to every complaint/grievance within two weeks. Key responsibilities are assigned to a 'resolving officer' to receive complaints/grievances and propose resolutions, a 'grievance officer' to oversee the overall management of the complaint/grievance system, including maintenance of a complaints/grievances database, and a 'complaints and grievances committee' to authorize resolutions to cases beyond the authority of the resolving officers and forward cases as appropriate to senior management.

Anglo American has recently set out a new 'complaints and grievance procedure' tool in its revised 'socio-economic assessment toolbox' (SEAT).[36] This provides guidance to its mine managers on the recording, handling and resolution of complaints submitted by stakeholders. The tool outlines, for example, the main components of a credible complaints procedure (from recording and processing complaints, to mechanisms for adjudicating complaints and appealing judgments), and principles to consider in the handling of complaints (for example, that the complaint may be an indicator of a wider concern).

There are various examples of anonymous complaints hotlines now in place in member companies which make it easier for employees with legitimate concerns about business conduct to come forward. **Anglo American's** Speak-Up[37] program, for example, routes concerns and complaints to an external service provider which forwards these in anonymous form to a response team within the company. Similarly, **Teck's** Whistleblower Program[38] and **Rio Tinto's** Speak-OUT[39] system are based on a free telephone line available at all times and handled by independent interviewers. **Lonmin**[40] has an anonymous hotline for employees.

Training: examples

Xstrata[41] is implementing human rights training programs at operations in higher risk locations, including Colombia, Dominican Republic, Peru and Tanzania. The training is being provided for security and community relations personnel, as well as community members and local authorities in Colombia and Peru. The program is being rolled out following its success at the Cerrejón coal operation in Colombia – jointly owned by **BHP Billiton, Anglo American** and **Xstrata** – where it was first launched[43]. Over 3,000 people undertook the training at Cerrejón between 2004 and 2006. The 2-day course covers basic principles on human rights and international humanitarian law through a combination of drills, cases, games and awareness-building exercises. The course aims to enable participants to apply human rights concepts in their day-to-day activities, including in potential combat situations, in line with the Voluntary Principles on Security and Human Rights.

Rio Tinto has established an on-line Compliance Training Center to provide training in the form of some 30 modules across a range of policies and specific areas of law and good practice – including several that are directly relevant to human rights, notably on the company's 'business integrity' and 'human rights' guidance. In terms of the content of the human rights module, this includes sections on communities, employees' rights, security and conflict. It illustrates how to approach challenges on the ground, and highlights the practical implications of key policy requirements. Over 2,500 employees have completed the human rights training module to date.[44] [45]

Among other examples of human rights training programmes by ICMM members: **Freeport McMoRan** provided human rights training for some 5,400 local security and community relations staff (over 30% of total employees) at its Grasberg mine in Indonesia in 2004. Improvements to the curriculum and delivery of the training were made based on the findings of an independent audit in 2005.[46] **BHP Billiton** delivered human rights training to 11,900 employees and 14,000 contractors in FY08, mainly in South Africa, Australia, South America. Finally, **Newmont** is carrying out human rights training of its security personnel at a number of locations, including its Yanacocha operation in Peru. A human rights training guide has been distributed to operations to support the training workshops.

2.5 Training

Training employees on human rights issues can help both to raise general internal understanding as to why such issues may be relevant to business, and also to ensure that staff implement specific human rights related procedures, such as on security (see also section 3.2).

Principle 3 of the ICMM SD Framework, includes the following statement as part of its "elaboration", or explanatory text:

Ensure that all relevant staff, including security personnel, are provided with appropriate cultural and human rights training and guidance.

This is supported by two indicators (additional as opposed to core indicators) in the GRI G3 Guidelines:

• Total hours of employee training on policies and procedures concerning aspects of human rights that are relevant to operations, including the percentage of employees trained [HR3, additional]; and
• Percentage of security personnel trained in the organization's policies or procedures concerning aspects of human rights that are relevant to operations [HR8, additional].

Similarly Annex 1 to the ICMM Assurance Procedure indicates assurers could look for evidence of "Documented process to train appropriate personnel in what corporate policy and guidance on employment and human rights mean for them personally and in their day-to-day activities, including their accountability".

ICMM members have developed various training programmes, some aimed at general awareness raising, others at operational issues such as security (see box). Among the external resources potentially useful for awareness raising is an online "human rights and business learning tool"[42] developed by the UN Office of the High Commissioner for Human Rights jointly with the UN Global Compact.

For further references, see Appendix 1: Footnotes on pages 28-29
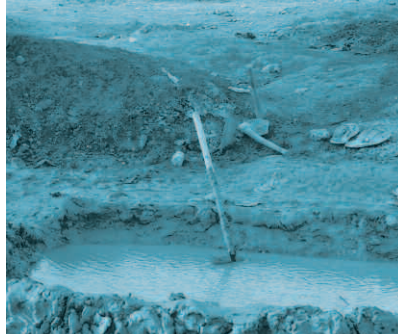
2.6 Business partners, suppliers and customers

Companies may have a degree of influence over the ethical and human rights conduct of their business partners, suppliers and customers, acknowledging that they don't exert direct control over what they do. In recent years this issue of broader influence has gained increasing attention as campaigners have found new ways to target companies by focusing not just on their own behaviour, but the behaviour of companies and other parties with whom they do business.

There are various practical approaches that ICMM members can, and have, adopted in this area, including demanding of suppliers, for example, that they uphold HSE and human rights standards as a condition of business. They may have less influence over business partners and customers, nonetheless issues may arise which demand attention (see example of Vale below).

Principle 2 of ICMM's SD Framework, which focuses on integration of SD issues into corporate decision-making, includes the following statement in its "elaboration", or explanatory text:

Encourage customers, business partners and suppliers of goods and services to adopt principles and practices that uphold HSE and human rights standards.

Annex 1 of the ICMM Assurance Procedure suggests that assurers could look for evidence of company guidance setting out how *"human rights and employment policies should be implemented in relation to business partners, in particular contractors"* as well as across the business itself.

Business partners, suppliers and customers: examples

AngloGold Ashanti states in its Business Principles[47] its commitment to "promote the application of our principles by those with whom we do business. Their willingness to accept these principles will be an important factor in our decision to enter into and remain in such relationships." (Among the company's principles is also, notably, an explicit statement of support for the Universal Declaration of Human Rights and the Fundamental Rights Conventions of the International Labour Organization).

Vale provides an example of management of human rights issues among customers: in 2007 the ICMM member announced that it would stop selling its iron ore to pig iron companies in Brazil which are accused of or prosecuted for using slave labor or violating environmental regulations. This commitment, aimed at helping eradicate slave labor in the country, is supported within Vale by various processes it uses to monitor and seek assurance on the behavior of companies looking to buy its iron ore. It is also part of a wider education campaign by Vale against slave labor.

For further references, see Appendix 1: Footnotes on pages 28-29

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External engagement & partnerships: examples

Freeport McMoRan commissioned an independent NGO, the International Centre for Corporate Accountability (ICCA), to undertake a social and human rights audit of its operations in West Papua, in 2004[48]. The audit involved extensive data collection and over 400 interviews with employees to ascertain their understanding of Freeport's Social, Employment and Human Rights Policy and perceptions of compliance. The findings and the company's response were made publicly available on the ICCA web site. Freeport reports that the audit resulted, among other things, in new management and accountability systems, and improvements to its human rights training programs. A follow-up to the original audit was conducted in 2006, including an assessment of Freeport's implementation of recommended changes from the first audit.

An interesting example of engagement in nation-wide debates on human rights-related issues is the involvement of the **Mining Association of Canada** and the **Prospectors and Developers Association of Canada** in the Canadian government's 'National Roundtables on CSR'[49]. Both ICMM association members formed part of a multi-stakeholder Advisory Group responsible for preparing the initiative's final report. A series of four Roundtables held in 2006 examined measures for Canadian extractive sector companies operating in developing countries "to meet or exceed leading international CSR standards and best practices". The Advisory Group's final report made various recommendations (now under consideration by the Canadian government), including national CSR Standards and reporting obligations, an independent ombudsman office and a tripartite Compliance Review Committee.

The Minerals Council of Australia (MCA), meanwhile, provides an example of engagement within the industry aimed at encouraging the take up of high standards. MCA has developed its own sustainable development framework called 'Enduring Value'[50] which incorporates the ten principles of ICMM's SD Framework, and provides guidance and tools to support implementation. Commitment to Enduring Value is a condition of MCA's own membership. MCA currently has 36 member companies and has also recently introduced a category of 'international associate' for new members based outside Australia. MCA is currently engaging with possible future members, notably in Chile, China and India. The strong expression of interest of a Chinese mining association in adopting Enduring Value has prompted MCA to consider its translation into Chinese.

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2.7 External engagement & partnerships

This is clearly a key area of good practice on human rights, as it is for other sustainable development issues. But on human rights in particular, the often differing perspectives of NGOs and other stakeholders over what companies can be held responsible for, as well as on the facts behind particular cases, mean that a well-designed external engagement programme can be critical to building trust. While this goes beyond the boundaries of what may be considered due diligence, it can also help the design of effective approaches to mitigating risks to human rights identified through the exercising of due diligence.

An aspect of external engagement which also may be important is encouraging the uptake of human rights principles among business partners and other companies. Likewise, there may be opportunities for diplomatically engaging governments in a positive manner – though care needs to be taken here to keep within the boundaries of companies' legitimate role on human rights (which may mean focusing discussions on protecting the rights of employees and local communities). Developing partnerships with NGOs, other agencies and, where feasible, other companies operating in the particular region, meanwhile, may assist with delivering human rights outcomes on the ground, in cases where this cannot be achieved by companies acting alone.

For years many of these areas have been a significant focus of effort both for ICMM members and ICMM itself. Engagement with international and national NGOs as well as local communities, for example, is now the established norm for leading companies in the industry. Clearly, though, challenges remain. It often remains difficult to find effective ways to respond to misinformation about company activities, to overcome general mistrust, and also to define practical solutions which have support across different stakeholder groups. The examples below highlight just a few of the more innovative approaches developed.

This is also a key area for ICMM's SD Framework. One of the core SD Principles is to:

Implement effective and transparent engagement, communication and independently verified reporting arrangements with our stakeholders [Principle 10]

Among the relevant provisions in the Assurance Procedure is that assurers could look for evidence of a "mechanism for identifying and engaging with relevant stakeholders, including public policy makers, on issues relating to employment and human rights", and also for the *"existence of partnerships with relevant stakeholders to assist in implementation of the company's business planning and sustainable development policies"*.

For further references, see Appendix 1: Footnotes on pages 28-29
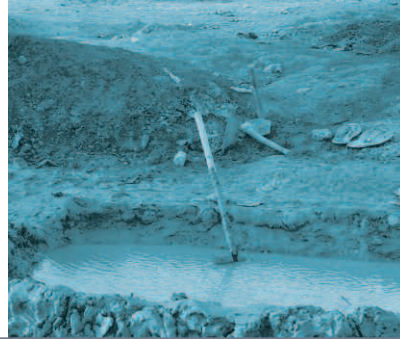
Concerned by internal conflicts in Colombia and their potential impacts, in 2003 Cerrejón Coal* initiated a human rights training program for employees and critical stakeholders, including public security forces, private security contractors and the neighbouring community. The program includes training, awareness, humanitarian actions and communication strategies. To promote the understanding of human rights issues, Cerrejón developed a training and qualification program in collaboration with: The Costa Rican Human Rights Training, Qualification and Analysis Centre, a specialist regional training organisation; The Colombian Red Cross and the International Red Cross Committee;

The Fundación Ideas para la Paz (Ideas for Peace Foundation), a 'think tank' founded in 1999 by Colombian business leaders; and International NGOs.

The training began in 2004 and initially focused on public security forces. In 2005, it was extended to include other state security organisations, private security contractors, the community and Company employees; and in 2006, it was further extended to include Indigenous authorities and leaders and civil and government authorities, as well as greater numbers of public and private security forces. The program provided training for 592 people in 2004, 486 in 2005 and 2102 in 2006.

BHP Billiton 2007 Sustainability Report

* Note: Cerrejón Coal is owned, in three equal parts, by subsidiaries of BHP Billiton plc, Anglo American plc and Xstrata plc.

FOCUS ISSUES

3

3.1 Employment issues

As with other issues tackled in section 3, the aim here is not to cover all human-rights related topics. With employment issues in particular, there are multiple aspects of good practice including, for example, providing training, and ensuring fair remuneration. Nor are such issues necessarily managed most effectively and fairly within organisations by labelling them explicitly in human rights terms. Among the particular employment issues worth briefly emphasizing here from a human rights perspective, however, are employee representation, preventing child and forced labour, and also support for diversity and women's role in mining.

The broad context in this area is set by Principle 3 (on human rights) of ICMM's SD Framework which includes the following clauses in its "elaboration":

- Ensure fair remuneration and work conditions for all employees and do not use forced, compulsory or child labour.
- Provide for the constructive engagement of employees on matters of mutual concern.
- Implement policies and practices designed to eliminate harassment and unfair discrimination in all aspects of our activities.

Similarly, useful points of reference in this area are the four labour-related principles of the UN Global Compact (which are in turn taken from the ILO's Declaration on Fundamental Principles and Rights at Work)[51]. These are:

- Businesses should uphold the freedom of association and the effective recognition of the right to collective bargaining (Principle Three);
- The elimination of all forms of forced and compulsory labour (Principle Four);
- The effective abolition of child labour (Principle Five); and
- Eliminate discrimination in respect of employment and occupation (Principle Six).

Employee-representation issues are highlighted in the GRI G3 Guidelines by core indicators such as:

- Percentage of employees covered by collective bargaining agreements [LA4]; and
- Operations identified in which the right to exercise freedom of association and collective bargaining may be at significant risk, and actions taken to support these rights [HR5].

In line with long-established member policies, the ICMM SD Framework clearly prohibits child and forced labour. This is supported by the following core indicators in the GRI G3 Guidelines:

- Operations identified as having significant risk for incidents of child labor, and measures taken to contribute to the elimination of child labor [HR6]; and
- Operations identified as having significant risk for incidents of forced or compulsory labor, and measures to contribute to the elimination of forced or compulsory labor [HR7].

The UN Global Compact also provides some useful context on these particular issues[52].

Support for diversity and women's role in mining is recognised by ICMM members as an important area, both in terms of eliminating harassment and ensuring equal opportunities. As with other traditional industries, minorities and woman have in the past been under-represented in mining. Among the relevant core indicators in the GRI G3 Guidelines are:

- Composition of governance bodies and breakdown of employees per category according to gender, age group, minority group membership, and other indicators of diversity [LA13]; and
- Ratio of basic salary of men to women by employee category [LA14].

An interesting example of a national-level approach regarding employee representation and collective bargaining comes from ICMM association member the **Chamber of Mines of South Africa**. The Chamber works closely with unions, including the National Union of Mineworkers, undertaking collective bargaining on behalf of its gold and coal mining members as part of a tripartite system involving unions and also government. (This is the only system of bargaining in the South African mining industry where the mines of more than one company are covered in a joint process, though there are numerous instances of centralised company bargaining where all the mines of a particular firm are covered at company-level). As well as discussing wage settlements, the Chamber also negotiates a variety of broader issues with unions. For example, there have been agreements in recent years relating to health care arrangements for dependants, and women in mining.

In terms of preventing child labour, **De Beers** (in which ICMM member Anglo American holds a 45% stake) has put in place processes to eliminate this in the diamond processing chain. De Beers' 'best practice principles' (BPPs)[53], are applicable not just internally but also to the clients of its Diamond Trading Company (known as "Sightholders") and also their contractors. Among other things, the BPPs oblige a responsible approach to eliminate child labour from all activities including cutting and polishing. The BPPs are supported by an assurance program which describes in greater detail the specific requirements of the BPPs and provides a practical framework for implementation and compliance, including a system of internal audits and third party review. If child labour is identified, a material breach of the BPPs is called, leading to either corrective action or sanctions that may result in termination of contract. No instances of child labour were found in Sightholder operations in 2005/6.[54]

In a similar vein, the **Minerals Council of Australia (MCA)** has taken a number of steps towards the overall objective of developing "an industry agenda to substantially improve, over five years [by 2009], the engagement of women in the minerals industry and the communities in which we operate". In 2004 MCA established a Women and Mining Dialogue to engage member companies and external stakeholders (including key government and civil society representatives) on these issues. It also carried out a program of baseline research, published in a major report[55], and developed a handbook and good practice workshops for use at the operational level.

3.2 Security

Conventional security is concerned with the risks to company employees or assets. However, when the actions of security personnel, police or military forces guarding mining operations, or operating in the vicinity of operations, pose a risk to the human rights of local community members or employees, this is clearly a matter of major concern.

Focusing first on directly-employed security personnel, or those employed by contractors, good practice among ICMM members is to ensure they follow clear rules of conduct, supported with sufficient training. These rules of conduct should be based on human rights principles and include guidelines and restrictions on the use of force. It needs to be emphasised, for example, that force should only be used when strictly necessary and should always be proportional to lawful objectives.

Secondly, with regard to other security personnel, police or military forces over whom companies may only have partial influence, good practice among ICMM members is, where feasible, and within the boundaries of companies' legitimate role on human rights to exert their legitimate influence wherever there may be risks to the human rights of local community members or employees. In such cases, company actions may include:

- Seeking to persuade police and army to uphold international standards;
- Seeking to ensure company equipment is not used to violate human rights; and
- Pressing for any credible allegations against state security forces to be investigated[55].

The leading global initiative in this area is the Voluntary Principles on Security and Human Rights[56]. ICMM is one of two industry bodies that are official "observers" to the Voluntary Principles, and six ICMM members are formally "participants" (see box). The Voluntary Principles are structured around three main issues: risk assessment; interactions between companies and public security; and interactions between companies and private security. In 2007, the Voluntary Principles were strengthened with a set of "participation criteria" which include obligations on participants to report on implementation.

Relevant elements in ICMM's SD Framework include the following clause in the "elaboration", or explanatory text, to Principle 3, on human rights:

Ensure that all relevant staff, including security personnel, are provided with appropriate cultural and human rights training and guidance.

The Human Rights Performance Indicators in the GRI Mining & Metals Sector Supplement also cover employee and security forces training on human rights.

"The Voluntary Principles have been successful in creating a platform for addressing complex human rights issues through collaboration between government, business and civil society organisations. To increase impact on the ground, it needs to grow further."

Adam Leach, CEO, IBLF

Security: examples

Anglo American has developed both a manual and training seminar to support its implementation of the Voluntary Principles on Security and Human Rights, which it has formally supported, and has integrated reporting on compliance with the Principles into the group's main assurance process (an annual assurance letter from site managers to the CEO). The manual, developed by a team of managers from across Anglo's business units, offers practical guidance on key implementation processes, for example security risk assessment, human rights awareness training and responding to allegations of human rights abuses. Anglo has also developed a scenarios-based training seminar, with input from legal and political risk experts, which has been rolled out to sites in higher-risk countries.

Freeport McMoRan's security personnel in Indonesia undergo regular training on the Voluntary Principles on Security and Human Rights, as part of an ongoing human rights training programme.[57] As a long-standing supporter of the Principles, Freeport is also taking steps to promote their broader implementation at the in-country level in Indonesia, in response to discussions at Principles' Plenary sessions. Freeport recently organised, for example, a series of meetings with government officials and local business partners on the subject. Following recent acquisitions, Freeport has appointed a Director of Security at the corporate level to oversee implementation of the Voluntary Principles across all sites.

Several other members are also formal supporters of the Voluntary Principles and are taking steps to embed them in internal policies and procedures. For example, **Newmont's** implementation of the Principles is linked to its global management standards, with an explicit standard on 'security forces management'.[58] Both **Newmont**[59] and **Xstrata**[60] have adopted internal screening processes (based on human rights criteria) for hiring security personnel. **Rio Tinto's** human rights guidance[61] which draws explicitly from the Voluntary Principles, contains detailed instructions on security issues, including clear restrictions on the use of force and arms, hiring procedures, and relations with government security forces. As part of **BHP Billiton's** review of its group level documents, requirements in relation to the Voluntary Principles on Security and Human Rights have been included in the Asset Protection Standard.

Newmont has developed a resettlement standard within its suite of global management standards, designed to assist operations to develop and implement resettlement plans "that offset the short and long term adverse cultural and socio-economic impacts, and honor the principles of prior informed consultation"[63]. Newmont took clear steps to put the standard into effect in the resettlement in 2006 of 500 families (2,200 people) from its Ahafo mine in Ghana. A 'resettlement negotiation committee' and a 'crop compensation review committee' were established, comprised of community representatives, NGOs and traditional authorities, to negotiate on land and crop compensation. Community members, often for the first time, obtained legal title (99-year leases) to their new homes and residential plots. Newmont worked with a local NGO to launch a formal Vulnerable Program to support the most vulnerable households.[64]

Anglo American has incorporated a tool on 'resettlement planning and implementation' into its Socio-Economic Assessment Toolbox (SEAT), and is developing a stand-alone resettlement policy. The tool discusses the requirements, risks and complexities associated with a resettlement programme. It sets out the main components of a 'resettlement action plan', from the identification of project impacts, to creating frameworks for compensation, public engagement, complaint procedures, and monitoring/reporting. The tool is not intended as stand-alone guidance but rather to be used "in conjunction with best practice guidelines" also covered in the document, in particular those of the World Bank/IFC. Other ICMM members which have stated their support for the World Bank or IFC policies or directives on involuntary resettlement include **AngloGold Ashanti**, **BHP Billiton**, **Rio Tinto** and **Xstrata**.

3.3 Resettlement

While some projects may require the involuntary resettlement of local communities, experience shows that this has the potential to create adverse socio-economic and cultural impacts, and thus needs to be carefully and responsibly managed. As with security issues, it is also often a focus of intense interest on the part of international NGOs. Involuntary resettlement refers both to the physical displacement of people (relocation or loss of shelter) and to their economic displacement (loss of assets or access to assets that leads to loss of income sources or means of livelihood) as a result of project-related land acquisition.

Among the main sources of good practice guidance in this area is the IFC Performance Standard 5[62] on Land Acquisition and Involuntary Resettlement, upon which a number of ICMM members base their own approaches. The overall objectives of the Performance Standard 5 are as follows:

• To avoid or at least minimize involuntary resettlement wherever possible by exploring alternative project designs;
• To mitigate adverse social and economic impacts from land acquisition or restrictions on affected persons' use of land by: (i) providing compensation for loss of assets at replacement cost; and ii) ensuring that resettlement activities are implemented with appropriate disclosure of information, consultation, and the informed participation of those affected;
• To provide or at least restore the standards of living of displaced persons; and
• To improve living conditions among displaced persons through provision of adequate housing with security of tenure at resettlement sites.

The implementation of Performance Standard 5 is supported by a corresponding IFC Guidance Note and Handbook for Preparing a Resettlement Action Plan.

Relevant elements in ICMM's SD Framework include the following clause in the "elaboration", or explanatory text, to Principle 3, on human rights:

Minimise involuntary resettlement, and compensate fairly for adverse effects on the community where they cannot be avoided .

The relevant indicator in the GRI Mining & Metals Sector Supplement is:

- List sites where resettlements took place, the number of households resettled in each, and how their livelihoods were affected in the process. [MM8]

3.4 Indigenous Peoples

The experience of ICMM members is that projects are more likely to be successful over the long term if they have the broad support of local communities – including of indigenous peoples – from exploration through to closure. Gaining this support may require significant efforts in terms of consultation, development of partnerships to ensure benefits for local people, and responsiveness to community & indigenous peoples' concerns.

Indigenous peoples' concerns are not limited to human rights issues, though they are often described in overall human rights terms. The passing of the UN Declaration on the Rights of Indigenous People by the UN General Assembly in September 2007 was widely viewed as a significant event. John Ruggie has also drawn attention to the rights of indigenous people in his work. In its third submission to Professor Ruggie, ICMM argued that more clarity is needed from governments on companies' obligations in this area, including how to strike the right balance between adapting to local concerns and serving national economic needs (for example how should companies approach projects which do not have full community support but are being encouraged by national governments?).

One of the main sources of good practice guidance in this area is the IFC Performance Standard 7 on Indigenous Peoples[65] (and related Guidance note), which highlights the reality that Indigenous Peoples are often among the most marginalized and vulnerable segments of the population:

"Their economic, social and legal status often limits their capacity to defend their interests in, and rights to, lands and natural and cultural resources, and may restrict their ability to participate in and benefit from development. They are particularly vulnerable if their lands and resources are transformed, encroached upon by outsiders, or significantly degraded. Their languages, cultures, religions, spiritual beliefs, and institutions may also be under threat."

Indigenous Peoples: examples

The **Mining Association of Canada** (MAC) has developed a draft "Framework on Mining and Aboriginal Peoples"[66] as part of its Towards Sustainable Mining (TSM) initiative. Annual reporting against TSM indicators is mandatory for MAC members. Specific commitments in the draft Framework include "undertaking early, timely and culturally appropriate engagement with Aboriginal Peoples throughout the project cycle", "the use of baseline studies", and "negotiating agreements for participation, either directly with local Aboriginal peoples or in conjunction with governments". The Framework is due to remain in draft form over a two-year consultation period (ending in 2008).

ICMM corporate members have put in place various policies and initiatives to respect and promote the rights of indigenous peoples. **BHP Billiton's** Community Standard[67] requires all key community stakeholders, including local and Indigenous communities be identified, analysed and strategies must be developed to address their aspirations and concerns as part of the community planning process. BHP Billiton's iron ore operation in Western Australia, for example, has put in place training and employment programs that go beyond legal requirements and have helped raise the proportion of indigenous employees from 2% to 9%. In another initiative to respond to local needs, **Xstrata** has launched an ID campaign for indigenous peoples around its mine in Peru to help them secure legal recognition as voters by the state.

In other examples, **Newmont** has developed standards[68] on the 'management of significant religious and cultural sites', and 'indigenous employment and business development'. It states that "respect for the social, economic and cultural rights of Indigenous people is the cornerstone of our programs" and emphasises the importance of prior informed consultation[69]. On the issue of consultation with local people and other parties, meanwhile, **Rio Tinto** explicitly recognizes in its policies that "... this may sometimes result in our not exploring land or developing operations, even if legally permitted to do so".[70]

The detailed commitments of ICMM members in this area are set out in a Position Statement on Mining and Indigenous Peoples, approved in May 2008. This includes a number of explicit commitments relating to the interactions between mining companies and indigenous peoples:

• Respect the rights and interests of Indigenous Peoples as defined within applicable national and international laws.
• Clearly identify and (fully) understand the interests and perspectives of Indigenous Peoples when seeking to develop or operate mining/metals projects.
• Engage with potentially affected Indigenous Peoples during all stages of new development projects/mining activities.
• Seek agreement with Indigenous Peoples, based on the principle of mutual benefit, on programs to generate net benefits (social, economic, environmental and cultural) for affected indigenous communities.
• Participate in national and international forums on Indigenous Peoples issues, including those dealing with the concept of free, prior and informed consent.

ICMM is in the process of developing good practice guidance to support members in implementing the position statement, which is scheduled for release in 2009.

In the meantime ICMM's SD Framework contains various core commitments in this area. The "elaboration", or explanatory text, to Principles 3 and 9, for example, contains the following clauses:

- Respect the culture and heritage of local communities, including indigenous peoples; and
- Engage at the earliest practical stage with likely affected parties to discuss and respond to issues and conflicts concerning the management of social impacts.

Among the relevant indicators in the GRI Mining & Metals Sector Supplement is:

• Number and description of significant disputes relating to land use, customary rights of local communities and indigenous peoples. [MM6A]
• The extent to which complaint mechanisms were used to resolve disputes relating to land use, customary rights of local communities and indigenous peoples, and their outcomes. [MM6B]

Also, in Annex 1 of the Assurance Procedure, assurers are advised to look for evidence of: "Guidance on activities to gain and maintain the broad community support of the communities on which operations are located, including the commitments made in relation to Indigenous Peoples".

3.5 Conflict

While the vast majority of mines are located in broadly stable and peaceful regions, in cases where there are risks of civil conflict, basic elements of good practice among ICMM members are to understand in advance the extent and nature of these risks, and also to adapt corporate responses and actions to try to dampen rather than fuel potential tensions.

Operating in a conflict zone presents obvious threats to the security of assets and employees (see also section 3.2). In some cases, operations may also inadvertently create or fuel tensions. Divisions may emerge between parts of the local community perceived to benefit most from mining, and those which feel relatively excluded or, at the national level, between groups competing for control of tax revenues from mining. In worse cases, such revenues also may be used to fund violence or military action. On the other hand, economic opportunities and partnerships created by mining projects also have the potential to help mitigate tensions and contribute to peace-building. The potential links between resources, conflict and peace-building have been a general theme of work among various international NGOs and academics for over a decade.

For further references, see Appendix 1: Footnotes on pages 28-29

Many of the topics covered elsewhere in this guidance constitute basic elements of good practice in the area of conflict-prevention too, including, for example, finding ways to build human rights issues into due diligence processes such as impact assessments where appropriate (2.3), responding to community and indigenous peoples' concerns (3.4), and also the approaches described on security (3.2) and resettlement (3.3). In addition, a number of ICMM members are now using extra impact assessment processes explicitly designed to pick up on conflict risks (see box). In terms of the broader issue of preventing tax revenues from mining being used to fund conflict or disputes over how these are shared sparking violence, there are clear limits to the influence companies working alone and within the boundaries of their legitimate role on human rights can exert in this area. Nonetheless, supporting multi-stakeholder partnerships, involving governments, international agencies, and NGOs, can create the structure within which such peace-building goals can be legitimately pursued. The success of the Kimberley Process to prevent "conflict diamonds", which was backed by De Beers (see box), illustrates what can be achieved in this respect.

There are some external tools which may be useful in this area. International Alert, an NGO, has produced 'guidance' on 'Conflict-sensitive Business Practice' focused specifically on extractive industries[71]. More generic conflict assessment and related tools have been developed by the Global Compact[72], the Fund For Peace[73] (another NGO), and also the OECD[74].

Conflict: examples

Anglo American has introduced a new tool on 'conflict assessment and management' into its Socio-Economic Assessment Toolbox. The tool is intended to enable managers to understand and identify conflict and its causes, the possible impact of local operations on conflict and, conversely, how conflict can affect operations, as well as possible steps to prevent or reduce conflict. It is designed to be used alongside other SEAT tools, particularly on stakeholder engagement.

Newmont has conducted conflict assessments at operations in Peru and Indonesia using the tools developed by the Fund for Peace and International Alert respectively. It has since developed an internal 'conflict identification assessment tool'. Progress is being made towards a target for all sites to complete a conflict assessment (using either internal or external tools), at a rate of about four to five assessments per year.

Also noteworthy is the key role played by **De Beers**, in which ICMM member Anglo American holds a 45% stake, in the establishment of the Kimberley Process[75] – a joint initiative of governments, industry and civil society to stem the flow of rough diamonds used by rebel movements to finance wars against legitimate governments (so-called 'conflict diamonds'). The Kimberley Process Certification Scheme imposes extensive requirements on participating governments and organisations (74 countries are represented) to enable them to certify shipments of rough diamonds as 'conflict-free'. Today, some 99.8% of diamonds are certified 'conflict-free', representing a significant fall in 'conflict diamonds' since the late 1990s. De Beers' compliance with the Kimberley Process is audited by a third party.

> "The scope of [corporate] due diligence should include not only a company's own activities, but also the relationships connected with them – relationships with governments and other non-state actors. That can help companies avoid complicity issues."

John Ruggie, Special Representative of the UN Secretary-General on the issue of human rights and transnational corporations and other business enterprises (SRSG)

Artisanal & small-scale mining: example

Anglo Gold Ashanti is developing a strategy on ASM[79], drawing from external baseline studies of the ASM sector around its operations in the DRC and Ghana, and an internal review in Guinea. The studies aim to identify the key issues and challenges facing ASM, and to provide advice on practical interventions to help formalize and regulate the sector. As part of the strategy, AngloGold Ashanti is in the process of initiating joint programmes with government and other agencies to identify and allocate land to formalised ASM or alternative livelihood programs in Ghana, Tanzania, Colombia and Guinea.

A number of steps have also been taken to address potential human rights concerns associated with security provision. In Ghana, for example, the company is in the process of establishing a joint investigation forum with human rights and community groups to ensure any allegations are properly investigated.

3.6 Artisanal & small-scale mining (ASM)

ICMM members are increasingly aware of the complex human-rights issues raised by ASM activities in the regions in which they operate. Among these are the potential for disputes with artisanal and small-scale miners who may be operating without legal title in their actual concession areas. Finding ways to responsibly deploy security to protect these areas, and also broader concern for the often unsafe and environmentally-hazardous conditions in which such miners work (which, though outside members' control, can rebound on the reputation of the industry as a whole). ASM activities are also sometimes associated with corruption and organised crime. At the same time, it needs to be remembered that ASM may be central to peoples' livelihoods: it directly provides work for over 13 million people worldwide, most of them very poor, with many times that number of people depending on the sector indirectly. So while ASM has a potentially important and legitimate role to play in the social and economic development of many countries, the challenging nature of the issues associated with ASM (social, environmental, economic, health and safety), are often rooted in informality, illegality, and the absence of alternative livelihoods.

At present there are few, if any standard corporate procedures or processes for responding to these complex challenges. As before, the approaches described in other sections of this publication, including on security (3.2), are clearly important. But resolution of many of the specific challenges facing artisanal & small-scale miners depends on government action, such as potential state programmes to assist them, or provide them with alternative livelihoods, and also general enforcement of HSE regulations. Nonetheless a good practice approach emerging among ICMM members is to: first develop a baseline understanding of ASM activity in the area of mining operations; and based on this, to define a strategy – potentially working in partnership with government agencies, NGOs or other bodies – which acknowledges ASM's existence and inevitability, and helps promote the orderly development and control of ASM in ways which complement large-scale mining[76].

Within ICMM's SD Framework, one of the indicators in the GRI Mining & Metals Sector Supplement relates to ASM:

• Number (and percentage) of company operating sites where artisanal and small-scale mining (ASM) takes place on, or adjacent to, the site; describe the associated risks and the actions taken to manage and mitigate these risks. [MM7].

Key external initiatives which may be useful to members include: CASM, or the Communities and Small-scale Mining[77], which is chaired by the UK government's Department for International Development and housed at the World Bank in Washington (and which ICMM collaborates closely with); the Diamond Development Initiative, a multi-stakeholder initiative focused on ASM in the diamond sector[78], and Standard Zero, an effort to develop a Fairtrade Standard for artisanal gold production. ICMM is currently working with CASM and CommDev to develop guidance for managing the interface between large scale and artisanal mining.

"The [ASM] sector is often a major source of employment, but it is also often unlicensed and illegal, and in some areas is a major source of funding for militias, leading to severe human rights abuses through forced labour and militia activities. These issues would benefit from collaboration between government, companies, labour organsiations and NGOs to develop and apply solutions."

Mark Moody-Stuart, Chairman, Anglo American plc

Rio Tinto has produced a detailed 'business integrity guidance'[83] document to support managers implementing relevant ethical policies in its statement of business practice, and which is built into its internal control systems. This sets out clear, and often far-reaching, approaches on key issues. For example, Rio Tinto has explicitly prohibited political payments which it defines in the document as applying not only to political organisations, but also to charities and lobbying firms which channel funds to political parties or individuals. The company's prohibition on bribery applies to, among other things, "all mechanisms for channelling undue payments or other benefits, or for masking their purpose". Agents and other intermediaries, meanwhile, "should only be hired" if Rio Tinto is satisfied "they will not engage in bribery on our behalf". Also, "agents and business partners should be made explicitly aware of Rio Tinto's policies and of our expectations".

BHP Billiton's recently updated 'Code on Business Conduct'[84] sets out similarly clear approaches on a range of areas, several relevant to anti-corruption and transparency, including political contributions, facilitation payments, use of third parties, and gifts and entertainment. The document contains sections on working with communities, government and business partners and cover topics such as bribery and corruption, competition and anti-trust. In addition to its existing internal control systems, BHP Billiton has established a 'global ethics panel', comprised of company and external representatives, to act as an information resource, a mechanism for sharing experience and to report regularly on compliance.[85]

3.7 Anti-corruption & transparency

While not directly a human rights concern, corruption clearly has the potential to significantly impact human rights, for example by undermining development (and the benefits to economic rights this brings) or causing injustices to certain individuals or groups. ICMM members do not tolerate bribery and corruption within their own organisations, and have in place a range of internal guidelines and controls in this area (see box). In addition, their commitment to the Extractive Industries Transparency Initiative (EITI) supports efforts to prevent corruption in the wider environment.

Principle 1 of ICMM's SD Framework commits members to:

"Implement and maintain ethical business practices and sound systems of corporate governance" [Principle 1].

The 'elaboration' of this principle includes the following: "Implement policies and practices that seek to prevent bribery and corruption". The GRI G3 Guidelines contain the following indicators relating to this and to the separate issue of political contributions:

- Percentage and total number of business units analyzed for risks related to corruption. [SO2]
- Percentage of employees trained in organization's anti-corruption policies and procedures. [SO3]
- Actions taken in response to incidents of corruption. [SO4]
- Public policy positions and participation in public policy development and lobbying. [SO5]
- Total value of financial and in-kind contributions to political parties, politicians, and related institutions by country. [SO6]

Among the potentially useful external tools in this area are the Principles for Countering Bribery[80] of the World Economic Forum Partnering Against Corruption Initiative (PACI)[81] (which some ICMM members are signatories of).

ICMM is a strong supporter of the EITI[82], which sets a global standard for the reporting and publication of payments from companies to governments of taxes and other revenues from resources. An ICMM Position Statement on Transparency of Mineral Revenues (May 2009) commits member companies to the following:

- Include a clear endorsement of EITI on their website and/or in their sustainable development reports in support of the process, and submit a completed international level self assessment form to the EITI Secretariat, for posting on the EITI website.

- Engage constructively in countries that are committed to implementing EITI, consistent with the multi-stakeholder process adopted in each country.

- Provide information on all material payments to the body assigned responsibility for reconciling details of payments provided by companies and revenue data provided by government according to the agreed national template, once implementation is sufficiently advanced in candidate countries. Material payments by companies are expected to have been independently audited, applying international standard accounting practices.

- Support the public disclosure (i.e. publication) of relevant data in line with the implementation approach adopted in-country, with the oversight of the committee empowered to oversee the implementation and management of the EITI program (often referred to as the 'multi-stakeholder group' in EITI publications).

- Engage constructively in appropriate forums to improve the transparency of mineral revenues – including their management, distribution or spending – or of contractual provisions on a level-playing field basis, either individually or collectively through the ICMM Secretariat."

All these commitments are supported by the ICMM Assurance Procedure for ICMM's SD Framework. For example, Annex 1 suggests that assurers might look for evidence of, among other things, a:

System for recording and reporting on requests relating to political payments and bribes and subsequent action taken, and regular reporting of all payments made to governments implementing the Extractive Industries Transparency Initiative (EITI), consistent with the ICMM position statements on EITI.

"The initiative [EITI] has made positive progress, but some significant challenges remain. While many countries have instituted high level reforms that have helped attract resource investment, some governments still fail to use tax revenues from mining effectively for basic public services and to foster local and regional development."

Paul Skinner, former Chairman, Rio Tinto

APPENDIX 1: FOOTNOTES

[1] ICMM's Sustainable Development Framework, available at: www.icmm.com/our-work/sustainable-development-framework

[2] Available at ICMM's website, Business and Human Rights page: www.icmm.com/page/225/business-and-human-rights

[3] Report of the SRSG, John Ruggie, to the Eighth Session of the Human Rights Council. **Protect, Respect and Remedy: A framework for Business and Human Rights**. April 2008

[4] Available at ICMM's website, Resource Endowment page: www.icmm.com/page/1409/our-work/work programs/articles/resource-endowment-initiative

[5] Available at ICMM's website, Community Development page: www.icmm.com/document/2

[6] Available at ICMM's website, Sustainable Development Framework page: www.icmm.com/document/292

[7] Available at ICMM's website, Indigenous People's page: www.icmm.com/document/293

[8] The current language is taken from the draft Mining and Metals Sector Supplement (MMSS) which was released for public comment period in January 2009 and is subject to change following the finalization of the MMSS. This document will be reviewed prior to printing to reflect any necessary changes. Available at ICMM's website, Sustainable Development Framework page: www.icmm.com/our-work/sustainable-development-framework/public-reporting

[9] Business and Human Rights: Policy Commitments and Disclosure in the Extractive Industry (IBLF, 2002): www.iblf.org/docs/ExtractBenchmark.pdf

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[11] www.riotinto.com/documents/ReportsPublications/the_way_we_work.pdf

[12] www.riotinto.com/documents/ReportsPublications/corpPub_HumanRights.pdf

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[17] http://www.goldfields.co.za/com_human_rights.php

[18] http://www.icmm.com/document/216

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[21] http://www.bhpbilliton.com/bb/sustainableDevelopment/sustainableDevelopmentGovernance/2008Performance/auditAndSelfassessment.jsp

[22] www.bhpbilliton.com/bbContentRepository/docs/SustainableDevelopment/policiesAndKeyDocuments/HSECManagementStandardsIssue3.pdf

[23] www.riotinto.com/ourapproach/217_features_5922.asp

[24] www.fcx.com/envir/pdf/policies/Social%20Employ%20Human%20Rights.pdf

[25] www.fcx.com/envir/wtsd/pdf-wtsd/2005/global/WTSD%209-10.pdf

[26] Report by SRSG, 9th February 2007, page 21

[27] www.icmm.com/document/215

[28] This is the preferred term which originated with the International Finance Corporation (IFC) Performance Standards and Equator Principles, but other terms such as Environmental Impact Assessment (EIA) or Environmental Assessment (EA) are also widely used.

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[30] http://humanrightsbusiness.org

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[37] www.anglospeakup.com/

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[39] www.riotinto.com/documents/ReportsPublications/corpPub_BIGEnglish.pdf

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[41] www.xstrata.com/assets/pdf/x_sustainability_2006.pdf

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www.unglobalcompact.org/AboutTheGC/TheTenPrinciples/Principle4.html

[53] www.corporateregister.com/a10723/DeBeers06-sus-sa.pdf

[54] www.minerals.org.au/__data/assets/pdf_file/0016/20275/MCA_Women_In_Mining_WebVersion.pdf

[55] The wording from this and the previous paragraph is adapted from Rio Tinto's Human Rights Guidance:
www.riotinto.com/documents/ReportsPublications/corpPub_HumanRights.pdf

[56] www.voluntaryprinciples.org

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[58] www.beyondthemine.com/?l=3&pid=2&pt=81&parent=12&id=413

[59] www.beyondthemine.com/?l=3&pid=4&pt=93&parent=16&id=108

[60] www.xstrata.com/assets/pdf/x_sustainability_2006.pdf

[61] www.riotinto.com/documents/ReportsPublications/corpPub_HumanRights.pdf

[62] www.ifc.org/ifcext/sustainability.nsf/Content/PerformanceStandards

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[64] www.beyondthemine.com/?l=2&pid=240&parent=253&id=303

[65] www.ifc.org/ifcext/enviro.nsf/AttachmentsByTitle/pol_PerformanceStandards2006_PS7/$FILE/PS_7_IndigenousPeoples.pdf

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ACKNOWLEDGEMENTS

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and member companies.

ICMM's vision is for a respected mining and metals
industry that is widely recognized as essential for society
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