

**Effectiveness of Industry-Based Codes in Serving Public Interest –**  
**The Case of International Council on Mining and Metals (ICMM)**

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**INTRODUCTION - PUBLIC CRITICISM OF THE COMPANIES IN THE  
EXTRACTIVE INDUSTRY**

Extractive industries have been the subject of extensive public criticism for the harmful impact of their operations on the planet's physical environment and also with the long-term deleterious impact on all aspects of people's quality of life. The term "extractive industries" includes both mining and minerals, and also oil and gas. The rising public antagonism against the industry, however, goes beyond the general concerns pertaining to the operations of the industry. They pertain to the public concerns that mining, oil and gas companies do not put enough emphasis on minimizing the adverse impact of their operations on the environment and instead sacrifice environmental concerns to corporate profits. In addition, there are also more specific and ominous concerns that are location and situation-specific and involve individual companies in parts of the world.

During the last two decades, most of the new discoveries in mining as well as oil and gas have been made in countries that can best be described as

underdeveloped and suffering from extreme poverty, dictatorial and corrupt governments, ineffective judicial systems, and a history of human rights abuses.<sup>1</sup>

In a large number of cases, these operations also have the potential of harming indigenous populations, whose property rights and cultural traditions are often ignored or brutally suppressed by the local and national authorities through the use of military and police forces (Ellin, 2003; Ryan, 2002; Board on Environmental Studies and Toxicology, Polar Research Board, 2003; Ite, 2004; Beltran, 2000; Korn, 2002; Yoder, 2002; Pellow, 2001; Collingsworth, 2002). The recent wave of globalization and its unique character has created a great divide between the resource producing and manufacturing countries, and the resource utilization and consuming countries. The former group of countries is largely poor and economically under developed, while the latter group is largely industrialized and economically developed. This situation is further exacerbated because of weak and ineffective governments, which lack expertise to monitor their resources efficiently. It yields tremendous economic leverage to the transnational corporations to extract “non-market rent” and a disproportionate share of productivity gains arising from these operations. Whether they like it or not, transnational corporations engaged in these operations invariably find themselves accused of cooperating, or at the very least, benefiting from the environmental degradation and human rights abuses emanating from these operations (Sethi, 2002; Stiglitz, 2002; Sach and Warner, 1995; Rodrik, 1997).

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<sup>1</sup> See recent discoveries in Equatorial Guinea, Kazakhstan, Angola, etc. - O'Brien, 2004; Switzer; Brown, 2002; Reingold, 2004; Ite, 2004; Giri, 2000; Barrientos, 2000; Newell, 2001; White, 2001; De Matteis, 2004; McGillivray and Pillarsetti, 2004; Klein Haarhuis and Leeuw 2004; Newbold, 2003; Redclift, 1997; Jenkins, 2004; Goudie, 1999.

## **SCOPE OF THE PAPER**

The all too apparent hostility against the companies in the extractive industries has serious implications in terms of political and economic risks. They raise the cost of private equity capital and make it difficult to secure large-scale project financing from international and multilateral lending institutions. The industry requires large amounts of capital and very long pay-back periods. The companies in the mining and other extractive industries must have a strong political acceptance and social franchise from the populace of the country to ensure its long-term sustainability. Political instability also lengthens the lead times between project inception and start of operations. It increases operational and security costs due to unrest among local populations and disruption in operations. And finally, adverse international publicity leads to unwanted scrutiny of operations by the news media, activist groups, and financial institutions (See for e.g. Cockburn, 2003; King, 2002; Ansley, 2003; McIvor, 2001; Friends of the Earth, 2004; Wronunghton, 2004; Grolin, 1998; Neale, 1997; Van den Bosch and Van Riel, 1998).

This paper has three objectives:

1. We provide a brief description of the initiatives launched by various international and multilateral institutions and civil society organizations. This is followed by more detailed descriptions of the most recent and substantive response by the extractive industry, i.e., the Sustainable Development Framework developed under the aegis of International

Council on Mining and Metals (ICMM). This discussion includes a review of the consultative process by which the Framework was developed, and its principles and how they are to be operationalized. We analyze the measures by which ICMM's code process intends to evaluate the performance of individual members and the entire group. The next issue has to do with the extent of independent external monitoring and verification, and the manner by which this information would be made public.

2. We create an analytical framework within which to evaluate the relative effectiveness of industry or group-based voluntary codes of conduct. This framework delineates the internal short-comings that are embedded in the industry-based codes. We discuss the necessary preconditions that must be met if an industry- or group-based code of conduct is to fulfill its intended goal by improving industry performance in a manner that would continuously narrow the gap between societal expectations and industry performance.
3. Finally, we analyze the ICMM SD Framework as to its adequacy in terms of what the industry group aims to accomplish. We evaluate the scope, operationalization, and performance targets of substantive issues from the perspective of the impacted communities and other stakeholders. We examine the SD Framework as to its governance structure, operational policies, base-line standards and benchmarks, performance evaluation, procedures for dealing with low performance and non-compliant

companies, monitoring and performance verification, and its disclosure policies to the public.

It is our conclusion that the ICMM SD Framework, and its operationality as currently envisaged, falls quite t of meeting the minimum level of commitment that must be met if the industry is to gain public acceptance and credibility. This would include: changing prevailing operational practices in a manner that that meet societal expectations of protecting the environment, the legitimate economic rights and cultural heritage of the indigenous peoples, and preventing human rights abuses and corruption.

We are concerned that unless ICMM and its industry members undertake substantive new initiatives in addressing these problems, the industry and with it the ICMM would have lost a valuable opportunity. It is unlikely to satisfy public concerns about the adequacy of the industry's response. Nor it is likely to reduce public pressure on the mining companies toward changing its operational practices.

## **I. INSTITUTIONAL RESPONSES BY THE COMPANIES IN THE EXTRACTIVE INDUSTRY**

There has been a growing recognition on the part of mining and oil companies that *status quo* has become untenable. Many multilateral and international lending institutions, and a number of NGOs have advanced their own codes of conduct putting pressure on the companies to improve their

performance in the area of environmental protection, prevention of human rights abuses and fair treatment of the local communities. The most notable of these are The Extractive Industry Review (EIR), The Extractive Industry Transparency Initiative (EITI), Equator Principles, The Kimberly Process (See PricewaterhouseCoopers Report, 2001; Sinclair and Walton, 2003; Lenox and Nash, 2003).<sup>2</sup>

Some companies have responded by engaging in extensive public information exercises through publication of corporate sustainability reports (See for e.g., Green; Annandale, Morrison-Saunders, and Bouma, 2004; Kolk, 2003).<sup>3</sup> They have undertaken extensive lobbying and public relations campaigns to persuade various stakeholder groups as to the socially responsible manner in which these companies conduct their operations.

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<sup>2</sup> **The Extractive Industries Review (EIR)** – project launched by the World Bank Group in 2001 to assess the World Bank involvement in the extractive industries and its role in poverty alleviation through sustainable development. The EIR Final Report released in December 2004 provides industry analysis by civil society, governments and industry representatives, and recommendation for the World Bank's future role in the industry – [www.eireview.org](http://www.eireview.org)

**The Extractive Industries Transparency Initiative (EITI)** was announced by UK Prime Minister Tony Blair at the World Summit on Sustainable Development in Johannesburg, September 2002. EITI process advocates a multistakeholder approach to increase transparency over payments by companies to governments and government-linked entities, as well as transparency over revenues by those host country governments - [http://www.dfid.gov.uk/News/News/files/eiti\\_core\\_script.htm](http://www.dfid.gov.uk/News/News/files/eiti_core_script.htm)

**Equator Principles**, launched in October 2002, is a voluntary set of guidelines developed by the banks for managing social and environmental issues related to the financing of development projects. The Equator Principles are based on the policies and guidelines of the World Bank and International Finance Corporation (IFC) - [www.equator-principles.com](http://www.equator-principles.com)

**The Kimberley Process** – the initiative, launched in May 2000, combines efforts of government, international diamond industry and civil society representatives to stem the flow of conflict diamonds - [www.kimberleyprocess.com](http://www.kimberleyprocess.com). (For a highly critical review of the Kimberly Process, please see Global Witness, 2004).

<sup>3</sup> See also Corporate Responsibility Reports by ChevronTexaco [www.chevrontexaco.com](http://www.chevrontexaco.com), Newmont Mining [www.newmont.com](http://www.newmont.com), UNOCAL [www.unocal.com](http://www.unocal.com).

Another important element has been the promulgation of voluntary codes of conduct by individual companies and industry groups. These codes invariably include a commitment on the part of the sponsoring institution as to how it plans to conduct its operations and also include some measures of evaluating performance, and public disclosure. Unfortunately, all these codes limit performance verification to voluntary self-reporting – a dubious proposition under the best of circumstances and even more so where the sponsoring institutions or groups are the object of intense public distrust and scrutiny.<sup>4</sup>

A similar situation exists in the case of a set of principles initiated by a group of mining companies is sponsored under the aegis of International Council on Mining and Metals (ICMM) and is called Sustainable Development Framework.<sup>5</sup> The intent of the “Framework” appears to be create a uniform set of principles which individual companies may adapt to their own situation either by following the “Framework” as is, or by creating their own codes of conduct which would respond to their specific concerns within the “Framework”.

ICMM “framework” has been promoted by the industry as a major and far reaching effort in creating a cohesive approach to the issues facing the industry where uniformity of standards would facilitate a more effective response to the environmental and other social issues that are universal in character and extend beyond the resources of individual companies. It is also presented as a culmination of, by far the most extensive, consultative process engaging

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<sup>4</sup> For a good summary of codes in the extractive and oil and gas industries, including classificatory scheme describing their conduct, please see Smith, 2004.

<sup>5</sup> See details at [www.iccm.com](http://www.iccm.com)

multitude of stakeholders representing different constituencies in all parts of the world. However, there exists a considerable gap in the “Framework’s” promise and the current and foreseeable efforts on the part of ICMM and its members as to how the Framework would be implemented and made operational. However, given the importance of ICMM as an institutional framework and its very broad-based industry membership, it deserves careful analysis to evaluate its effectiveness for the extractive industries in particular and as a prototype of industry-based approaches in general.

## **II. ANTECEDENTS TO THE ICMM – THE MMSD PROJECT**

In the late 90s, rising public concern over environmental and social harm caused by the extractive industry, induced some of the leading companies in the industry to take additional steps to ensure that their operations were conducted in a socially responsible manner and are compatible with sustainable development. One outcome of this movement was a new Global Mining Initiative (GMI) and through it the creation of the Mining, Minerals and Sustainable Development (MMSD) project.

From its very inception, the GMI effort was spearheaded by three of the world’s largest mining companies, i.e., Rio Tinto, Western Mining Corporation, and Phelps Dodge Corporation. The CEOs of the three companies, Sir Robert Wilson, Mr. Hugh Morgan and Mr. Douglas Yearley, played a leadership role in creating the project. The start-up funds for the MMSD project were provided by 28 companies with each contributing at least US\$150,000 for a total of

approximately US\$4.0 million. However, by the time its initial report was completed, the project had ended up costing over US\$7.0 million.<sup>6</sup>

In one sense, MMSD project was a model of deliberate planning, inclusive participation by all major stakeholders, open dialogue, transparency in external communications and public disclosure (Hamann, 2003). Launched in April 2000, MMSD was conceived as a wide-ranging research and consultation project. According to the project documents, it involved over 5,000 participants from various stakeholder groups from all over the world. MMSD's initial report was an attempt to provide in-depth analysis of societal issues faced by the extractive industry and offer recommendations for improving corporate performance compatible with sustainable development.<sup>7</sup>

The critics of the industry, however, were not impressed. They argued that the process was stage-managed to stretch it over a long period of time so as to avoid the necessity of substantive action by way of changing mining practices. The industry was also accused of selecting NGOs who were friendly to its perspective and who may otherwise be relatively uninformed about the environmental sustainability issues pertaining to the industry. Alternately, well-informed NGOs who participated in the process, complained that their views were not given serious consideration. This led to a boycott of the MMSD project by many NGOs who were considered to be most knowledgeable about the issues pertaining to the extractive industry and sustainable development. MMSD project was also criticized for a similar inadequacy in participation on the part of

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<sup>6</sup> For details on MMSD's Governance and Organization structure, please visit <http://www.iied.org/mmsd/governance.html>

<sup>7</sup> For details on MMSD's Working Papers, please visit <http://www.iied.org/mmsd/wp/index.html>

the indigenous peoples and other impacted groups (Tauli-Corpuz and Kennedy, 2001; Society of St. Columban by Nostromo Research, 2002; Danielson, 2002; Project Underground Campaign; Greenwash Academy Awards Programme, 2002).

One of the key efforts of the MMSD report was to articulate the role and creation of a certification system that would lend credence, and enhance public trust, in the industry's efforts toward improved mining operations and contribution to environment-friendly sustainable development in the mining and minerals sector. Having analyzed existing certification methods, MMSD report suggested that extractive industry certification, among other things, should:

- be based on the existing codes of conduct, policies and procedures;
- provide a global framework, which would be implemented locally;
- provide a structure for stakeholder consideration;
- focus on addressing business needs;
- be initiated as an internal process; and,
- be gradually rolled out to include a wide group of stakeholders.

MMSD report called for a new governance structure that would have industry involvement but would not be dominated by it. Additionally, the report suggested that the industry itself should be the primary provider of funds for the initiative. This approach, however, had its own problems. Without proper

safeguard and transparency, companies providing funds can and do end up exerting pressure on the conduct of the code implementing entity.<sup>8</sup>

### **ICMM's Structure and Modus Operandi**

International Council on Mining and Metals (ICMM) was established in September 2002 by the extractive industry leadership in order to implement the recommendations of the MMSD report. ICMM is governed by its members, which currently include 15 major companies and 27 commodity and regional trade and industry associations.<sup>9</sup> These include, among others, Anglo American, Rio Tinto, BHP Billiton, Alcoa, Noranda, Sumitomo, Mitsubishi, Nippon, Newmont Mining, Freeport McMoRan, and Placer Dome. The trade associations are a veritable group of intra-country industry groups and national and multinational organizations.

ICMM's governance structure incorporates MMSD's viewpoint and goes beyond it. The first Chairman of ICMM was Mr. Douglas Yearley, the retired Chairman and CEO of Phelps Dodge Corporation. He was succeeded by Rio Tinto's CEO, Sir Robert Wilson, who in turn was replaced by former Executive Chairman of Noranda, Inc, Mr. David Kerr, the current Chairman of the ICMM's Council.<sup>10</sup> ICMM has no governance level input from non-industry groups. ICMM's Executive Committee is exclusively comprised of CEOs of 9 corporate members of the Council. Association members are represented by the

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<sup>8</sup> See for example FLA report at [www.fairlabor.org](http://www.fairlabor.org) and ICCA's comments on FLA Report at [http://www.icca-corporateaccountability.org/04\\_reports.php](http://www.icca-corporateaccountability.org/04_reports.php)

<sup>9</sup> See Appendix I for details

<sup>10</sup> For details on ICMM's Governance and Organizational Structure, visit ICMM's website [www.icmm.com](http://www.icmm.com)

Associations Coordination Group. Given the fact that the extractive industry also provides ICCM's entire budget, its independence becomes questionable. ICMM would thus risk its credibility with the external groups. It would also need to carry a higher burden of proof to demonstrate its responsiveness to society's needs where they are found to be inconsistent with and unacceptable to the industry members' economic interests.

Experience with other industry-based codes suggests that a governance structure that is strongly influenced by industry representatives is unlikely to succeed in effective, objective and independent governance. Lacking internal control and external trust, the system is reduced to an exercise in superficial changes, which are unlikely to carry any weight with the stakeholders whose trust in the industry's actions has to be one of its primary goals. It would also result in an erosion in public credibility in the reported outcomes.<sup>11</sup> This phenomenon is also apparent in many other group-based efforts sponsored by multilateral and international organizations, e.g., UN Code of Global Compact, Equator Principles jointly developed by banks and IFC, and the code of sponsored by OECD, to name a few (See also CorpWatch/Tides Center, 2002; BankTrack, 2004; Sethi, 2003; Tesner and Kell, 2000; Jackson, 1999).<sup>12</sup>

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<sup>11</sup> See for example FLA Code [www.fairlabor.org](http://www.fairlabor.org) and World Business Council on Sustainable Development Chemical Industry Code [www.wbcscd.org](http://www.wbcscd.org) (See also Pieschek; Holms Reports, 2002). A half-way approach to shared governance can be found in some industries where industry-NGO joint. Councils have developed certification programs. However, the quality of these programs, and public trust in their credibility, depends largely on the nature of power sharing between the industry and NGO representation, and the reputation of the NGOs who are participants in such arrangements – Rugmark Foundation [www.rugmark.org](http://www.rugmark.org), Rainforest Alliance [www.rainforest-alliance.org](http://www.rainforest-alliance.org), GoodCorporation [www.goodcorporation.com](http://www.goodcorporation.com) (See also Forsyth, 1999; Townsend, 1999; Zaidi, 1999).

<sup>12</sup> For details, visit [www.unglobalcompact.org](http://www.unglobalcompact.org), [www.equator-principles.com](http://www.equator-principles.com), [www.oecd.org](http://www.oecd.org).

### **III. AN ANALYTICAL FRAMEWORK FOR EVALUATING THE EFFECTIVENESS OF VOLUNTARY CODES OF CONDUCT**

A company or industry-based code of conduct is in the nature of a “private law” or a “promise voluntarily made” whereby an institution makes a public commitment to certain standards of conduct. The nature of “voluntaryness,” and by implication the flexibility afforded to a company or companies, depends on the basic premise that the sponsoring organizations (SO) and their critics share a common interest in improving the underlying conditions of the affected groups and regions and that it is in the interest of all parties to resolve the underlying issues within the realistic constraints of financial resources and competitive conditions (Sethi, 2003; Melrose, 2004).

The "private law" character of voluntary codes of conduct gives the sponsoring organization large measure of discretionary action. It imposes a heavy burden to create independent systems of performance evaluation, monitoring and verification, and public disclosure. The voluntary approach provides the SO with an opportunity to “define” the conditions and “establish” standards by which the corporation wishes its performance to be measured. However, in order to be credible, the scope of the code and the SO’s performance standards must meet an acceptable level of societal expectations (Sethi, 2003).

The “private law” mode is used for a variety of purposes. It may fill a gap between perceived societal needs and current public law. This is a proactive stance and perhaps the best of all possible worlds. It provides scope for

experimentation and building consensus, and thereby facilitate the enactment of public law.

A voluntary code of conduct consists of a set of activities that the sponsoring organization commits to undertake. The effectiveness of SO's responses to society's concerns depends upon a number of factors: the sociopolitical environment, public awareness, the emotional intensity generated by the issue, the dynamics of competition and industry structure in which the company operates, and, the institutional character, corporate resources, and management style of a particular corporation.

To be effective, such a code must have a large measure of acceptability from all the relevant stakeholders and must fit within the competitive realities of the marketplace. It must be dynamic and flexible to respond to evolving conditions. A specific action can be socially responsible only if it takes account of time, environment, and the interests of the parties involved. The same activity may be considered socially responsible at one time, under one set of circumstances, and in one culture. It may be considered socially irresponsible when any of these factors change.

In reality, however, most codes of conduct promise and deliver much less because of different interests of individual companies within the group and issue of free rider and adverse selection. Having once established public trust, industry or group as whole, faces strong internal pressures to capitalize on public trust and thus (a) reduce its performance commitments, and (b) conceal poor performance through reduced transparency.

The companies or the industries involved, therefore, must not only create a set of laws - a code of conduct - they must also provide a system by which their performance will be measured, evaluated, and verified. The “private law” character of the code does not reduce the obligations of the companies or industries. It increases their burden to ensure that its skeptical critics and the public-at-large are persuaded that the sponsoring organizations’ performance standards are adequate and that their claims of performance are true. The organization will be expected to implement a system of policing, monitoring, and judging its performance while ensuring that the system is completely independent of the company - both in perception and in reality.

### **Industry or Group-based Codes of Conduct**

Industry or Group-based Codes of Conduct face additional challenges to their credibility and public acceptability (Sethi, 2003). These challenges arise from the built-in conflicts of the industry members toward the creation of such a code. There is the inherent difficulty of finding common ground among member companies who otherwise compete vigorously. The difficulties lie in the diverse nature of problems faced by individual companies, the cost of handling those problems and the extent to which they have been addressed in the common industry code. The second set of difficulties emanate from individual companies’ operational constraints, financial concerns, and above all, their corporate culture and management orientation toward responding to social and environmental challenges.

Group-based “private law” is subject to external societal pressure to deliver a notion of voluntariness as a license toward free lunch. This becomes all too apparent when member companies fail to create objective measures of performance evaluation, independent external monitoring and compliance verification, and full disclosure of member companies’ performance efforts in meeting code standards.

A common refrain among companies under public pressure is to advocate creation of industry-wide or area-wide standards that would be applicable to all companies in that industry/region. The case for an industry or region-wide approach is based on the premise that companies in an industry or region face similar problems, competitive conditions, and external pressures. Therefore, a coordinated approach should be more cost effective. Industry-wide approach creates a level playing field and generates cooperation among all member companies toward achieving their common goal.

At first glance this approach appears logical. In reality, it is quite the opposite. The underlying rationale is flawed both in terms of economic reasoning and as a matter of good public policy. The justification offered by the companies goes against the grain of market competition and the creativity it generates toward solving unusual and apparently difficult problems. Companies contend that too many codes would cause confusion in the minds of the public. A multiplicity of codes would make it hard for others to compare and evaluate performances among different companies. It would make it difficult for local manufacturers to comply with codes from different companies. The proponents of

the group-based approach also suggest that it would give the participating companies a united position from which to respond to the concerns of their critics and public-at-large.

This line of reasoning, however, is specious and self-serving. It can be demonstrated that group-based approach, ostensibly driven by a commonality of issues faced by the companies, is unlikely to succeed. Instead, it is used as a pretext under which the participating companies are more likely to retard meaningful action in developing and implementing a code of conduct.

Companies all over the world compete with each other for customer loyalty, equity capital, talented employees, and favorable regulatory environment. Competition in the marketplace for all kinds of resources allows companies to distinguish themselves through public trust and good corporate reputation. It is hard to imagine that a company, which believes that it has a superior product or a better idea, would delay introducing it in the marketplace until all other competitors can follow suit.

Why should it be any different in the case of codes of conduct? Different companies may develop their codes whose viability would be determined in the marketplace for their relative strengths and weaknesses. The issue of multiple compliance is not that critical. Once the superiority of a particular code has been established in terms of its content and implementation, other companies would be only too willing to accept this code in meeting their own requirements.

There are also other arguments against the group-based approach. For example:

1. In the early phases of creating voluntary standards of conduct, when there are few, if any, commonly accepted performance criteria, an industry-wide approach is likely to deter a company that is willing to take the initiative - in seeking more innovative approaches.
2. Where there are no existing legal and socially acceptable frameworks, an industry-wide approach may tempt companies to “collude” against more socially responsive initiatives.
3. To be successful, an industry-wide or group-based approach requires the largest possible number of companies in a particular industry or region to join the collective effort. It also requires a consensus before any decision can be taken. This situation plays into the hands of the companies that are least inclined to undertake substantive action. Endless discussions, procrastination, and obfuscation may delay any real action indefinitely, which inevitably leads to public ridicule and distrust.
4. The need to keep the largest number of companies in the group pushes performance standards to the lowest common denominator. The companies with the weakest records can force standards down to what they are willing to live with.
5. Another flaw in this approach is that it suffers from the free-rider problem. Individual companies have little incentive to improve their performance because the recalcitrant companies are not interested in doing so in the first place, and the forward-looking have nothing to gain. These industry-wide

efforts depend on “voluntary compliance” and rarely incorporate enforcement measures to ensure that all companies will meet their commitments. This situation admirably suits the poorly performing and recalcitrant companies that stand to gain from enhanced public approval - at no cost to themselves - as a result of the time and resources expended by the best-performing companies. At the same time, the best-performing companies suffer from the taint caused by the actions of recalcitrant companies.

6. Corporate critics can always point to the weakest company’s poor record as symptomatic of all companies in the industry and thus deprive the high-performance companies of public goodwill and credit for their socially responsible conduct.

The proof of this logic is obvious. Despite years of consultation and negotiation, this author knows of no industry group that has developed or implemented a meaningful code, which includes the essential elements of specificity of goals, outcome-oriented performance measures, independent external monitoring for compliance verification, and full transparency in public disclosure. We face the specter of industry associations in toys, apparel, mining and minerals, and a host of other industries that have yet to create meaningful codes - after years of negotiations and consultations.

### **Prospects for Creating a Viable Industry-wide Code of Conduct**

The aforementioned discussion is not intended to suggest that industry-wide codes are unlikely to be viable under any set of circumstances. Instead, it

is suggested that industry-wide codes can be viable only when certain pre-conditions are successfully met. In the early stages of the evaluation of a social issue, e.g., environmental protection, sustainable development, and, human rights abuses, an individual company code has a distinct competitive advantage. Its innovative approach – most suited to its own circumstances – is cost effective and offer the company greater flexibility in responding to societal concerns. Hence it would enhance its reputation and contribute to its social franchise. The corporation would thus receive benefits that are commensurate with the risks that the company took in developing and implementing such a code.

Although rewarding in itself, such an effort alone will not be enough in the long run to engender a hospitable operating environment for the industry in different countries around the world. Therefore, the successful efforts of the innovator company must be expanded to encompass larger segments of the industry. For this to happen, good corporate conduct must become the rule rather than the exception. At this stage, the innovator company can play an important role by helping other companies follow its example and thus establish common standards of conduct that will be congruent with societal expectations.

#### **IV. CREATION OF SUSTAINABLE DEVELOPMENT FRAMEWORK – THE CORE PRINCIPLES**

Between September 2000 and May 2003, ICMM initiated a wide variety of programs and activities that focused on setting standards for industry's performance, creating international policy and collaborative networks, and

catalyzing change for sector-wide action. Most of these programs are in various stages of formulation, development and implementation, and their long-term impact on industry conduct remains as yet undetermined.

Finally, in May 2003, more than three years after the creation of the MMSD project, ICMM announced the result of this enormous effort in the form of “Sustainable Development Framework” that would hitherto guide the actions of the extractive industry. The SD Framework outlined 10 principles against which the ICMM’s members would measure their sustainable development performance.

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Exhibit 1  
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A careful reading of these principles suggests that they are primarily inspirational in character with heavy emphasis on “intent” and call for “commitment” on the part of member companies to improve their performance along indicated dimensions. As such they could have been written by any knowledgeable expert, or a good PR person, in a relatively short period of time. There is little evidence to suggest that these principles benefited in any meaningful manner from the US\$7.0 million MMSD effort in intensive group participation and publication of voluminous reports.

A major flaw of these principles lies in their lack of specificity. For example, the first principle states its goal to “implement and maintain ethical business practices and sound system of corporate governance.” However, there is no

discussion of what constitutes “ethical business practices,” or “sound systems of corporate governance.” While we may all agree with the spirit of these principles, we may be far apart as to their transformation in actual business practices. As we discussed earlier, the system of corporate governance as outlined in the MMSD report and incorporated in ICMM structure fails to meet the spirit of these principles.

To take another example, consider principle 6 which calls for “continual improvement of our environmental performance.” Unfortunately, such a statement begs the question rather than answers it. To wit, what is a company’s current level of environmental performance and what would constitute acceptable level of improvement? Even at a conceptual level, the principle could have been more specific. For example, there could be a minimum level of performance-specific environmental practices to which all industry members would be expected to adhere. From this standard, one could measure “improvement” in two ways: (a) capacity of a company to improve vs. actual performance, and (b) narrowing the gap between a company’s performance and societal expectations. Unfortunately, the principle is silent on this issue. The current approach provides a ‘safe harbor’ for the companies who are lagging in meeting the minimal standards of performance simply because the “minimum level” has not been specified. Under these conditions, “continual improvement” is a meaningless standard and may end-up misleading the public as to a company’s performance on this issue.

Principle 10 calls for effective and transparent engagement with stakeholders, including “independently verified reporting arrangements.” However, ICMM does not provide any information as to of how company performance would be independently verified and results reported to the public. Equally important, ICMM does not suggest any approaches as to what the industry would do in the event that a member company’s verification procedures are lacking in independence. Nor does it indicate what the industry might do in the event that a member company declines to make public its findings with regard to its compliance with the ICMM framework. When viewed in the context of analytical framework presented earlier in the paper, it becomes apparent that ICMM’s process of code formulation, rules of governance, and code provisions fall within the purview what we consider to be drawbacks of group-based code formulation. The overwhelming dominance of industry interests has been pervasive in every aspect of ICMM’s deliberations. Code formulation, when there is no prior established standards, must be largely independent (but not hostile) to industry’s interests in order to have realistic inputs from other segments of society who are adversely impacted by the industry’s current practices.

This certainly has not been the case with MMSD’s consultative process, which involved over 5,000 people representing wide diversity of groups and interests. ICMM’s current guidelines indicate that independent monitoring and public reporting are to be voluntary and at the discretion of individual companies. ICMM’s framework has no provision as to how the industry will monitor member companies’ compliance with principles and how it would persuade the recalcitrant

members to improve their compliance. Unfortunately, given its current governance structure, it is unlikely that ICMM would be able to address such questions. Thus we are left with the conclusion that the SD Framework as currently formulated is like a placebo wrapped in an authentic looking package. Its acceptance, and claims of performance, would depend not on facts but on our perception of facts as presented to us.

It should be apparent that most individual mining companies operating in different parts of the world would be facing different types of environmental and sociological challenges both as to scope and intensity; under different types of political and regulatory regimes; and would require different, and quite often, highly situation-specific approaches to meeting these challenges. The basis for common endeavor, therefore, is to be found in a system that protects current diversity of operational practices of member companies while at the same time resists efforts that would increase industry's costs without commensurate economic benefits. However, for this system to work, ICMM must also address the legitimate concerns of external stakeholders and society-at-large. Otherwise, the system would fail to yield desirable results or even meet industry's expectations.

### **Amplification of the Core Principles**

ICMM has further amplified the ten principles into 46 explanatory statements (Exhibit 2). These are designed to add meaning to the more generalized aspirational type statements that constitute the main principles.

Unfortunately, these explanatory statements suffer from the same flaws as the principles they are intended to clarify. The amplificatory standards are so broad as to cover everything but the kitchen sink. They are also vague enough to accommodate elephantine size variations from the core values of the ICMM SD Framework and still qualify a company as meeting code standards.

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Exhibit 2  
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Our analysis of the amplifications leads to an unsatisfactory conclusion. We believe that rather than alleviating the problem of overly generalized principles, the amplifications have further exacerbated the problem by overly simplistic explanations. Neither the principles nor their amplifications provide any standards that are:

- a) clearly stated as “absolute minimum” in a manner that is quantitatively defined and objectively measured. Is there anything that the industry asks its member companies to do or refrain from doing which leaves no wiggle room? Are there any issues and standards which are considered to be of “zero tolerance” and where less than full compliance is not an option?
- b) Why is it that no amplification indicators call for “outcome-oriented” standards of performance? Why can’t there be minimum quantitative standards with regard to toxic waste, waste water treatment, disposal of mine waste, to name a few?

- c) How does the industry define fair remuneration and working conditions? What if the local government's minimum wages and working conditions are considered grossly inadequate and widely violated? What if the companies themselves have played an important role in encouraging local governments to keep these wages deliberately low and impose working conditions that border on involuntary servitude? And where does the notion of "living wage" fit in this equation?
- d) How does the industry plan to protect the property rights and cultural heritage of indigenous peoples where the host country's governments, with or without the complicit acquiescence of the mining companies, are involved?

In raising these concerns, it is intended to argue that all similar concerns must be adequately addressed *a priori* before an industry-based framework can provide guidance to member companies that would be viable and credible to the industry's external constituencies. What is being suggested here is that any such framework must explicitly recognize the need for outcome-oriented standards and establish different levels of tolerance – from zero to good faith effort – toward achieving these goals.

### **ICMM Work Program – Creating Implementation Guidelines**

Between September 2000 and May 2003, ICMM initiated a wide variety of programs and activities that focused on setting standards for industry

performance, creating international policy and collaborative networks, and catalyzing change for sector-wide action. Most of these programs are in various stages of formulation, development and implementation and their long-term impact on industry conduct remains undetermined.

A review of ICMM's plans, however, indicate that even if all of the proposals currently under review are implemented, they are unlikely to improve the quality of code implementation in terms of delivering results that are meaningful, have direct relation to societal expectations, accurately and objectively measure individual company performance, which is independently monitored and verified, and provide for maximum transparency in public disclosure.

ICMM's implementation procedures currently envisaged also fail to recognize the inherent flaws in the industry-based codes, which were discussed in the previous section. These relate to the free rider problem which takes away the incentive from more enlightened companies to take the leadership in experimenting with innovative programs and policies. The need for attracting the largest possible number of members from the industry group gives added leverage to the recalcitrant members and thus pushes the performance to lowest common denominator. Poor performing members insist on industry-based reporting which has the effect of hiding their conduct from public scrutiny. And yet, in the absence of such information, external groups are likely to conclude that similar problems affect the entire industry and thereby diminish the value of the contributions of better performing companies (Sethi, 2003).

## **V. CONCLUDING OBSERVATIONS**

ICMM's Sustainable Development Framework offers one of the most significant opportunities to demonstrate the effectiveness of an industry-based framework for sustainable development. It has far reaching consequences for the industry's economic and financial health. It can also help in making real progress in protecting the environment and making the planet a more livable habitat. Its potential success has the ingredients of making significant progress in addressing other problems of global magnitude, i.e., oppressive and dictatorial regimes, widespread corruption and waste of national resources while the masses live in abject poverty, suffering from ethnic violence, forced labor that tantamounts to involuntary servitude, and a plundering of nations' mineral wealth and future prosperity.

However, the very voluntary nature of the Framework means that members of the ICMM must press forward to make the general and aspirational Framework set out by ICMM into (1) concrete codes of conduct that address specific countries and sites in which mines are operated and (2) actual deliverable results that can be audited and reported to company management, local communities and the general public. Without such an amplification of the Sustainable Development Framework, the efforts of the ICMM and its members will not only be unproductive, but also will further hurt the reputation of the industry.

Mining companies, even when acting individually, possess tremendous economic leverage to induce host countries into adopting policies advocated by these companies. When acting collectively, they can be a force for positive

change that would generate tremendous aggregate wealth. They can also influence host countries to adopt policies to ensure that this wealth is used prudently so as to benefit both the current and future generations.

To date, the record of companies in the mining as well as oil and gas industries has not been encouraging in this respect. However, this need not be the case for the future. Through ICMM, the extractive industry has recognized the problems that it must confront. It has also established general guidelines to address those issues. Now, the companies that helped to establish those guidelines must be willing to take the next and more difficult step - that is to put the ICMM Sustainable Development Framework into real operational form - company-by-company and site-by-site. They must prove to the world through action and accurate auditing and reporting that the mining industry can walk-the-walk as well as talk-the-talk.

In a recent communication with the author, ICMM provided the following information concerning its progress toward implementation of its sustainable framework.

- Reporting procedures for SD principles: The procedures have been developed in partnership with the GRI through a multi-stakeholder process. It will soon be published by GRI as the Mining and Metals Reporting Supplement and details of the current document are available on both of our web-sites. After a phase in period all ICMM member companies will be required to report against these indicators, making

ICMM the largest industry group reporting "in accordance" with GRI procedures.

- We agree that the mining industry should adopt good practices whenever it is practical and possible to do so. I cannot speak on behalf of the whole mining sector, only ICMM's members, but believe that our members have gone to considerable lengths to better understand good practices and to develop techniques to enable these to be implemented. Examples of this are the MMSD process and joint projects with organizations like the World Bank, UNEP, the GRI and IUCN on a range of key issues including biodiversity, community and national economic development, transparency and public reporting, materials stewardship and responding to emergencies.

The reality is that it takes some time to develop and apply good practices in any economic sector. One example is reporting sustainable development performance; we have adopted a set of SD principles, are just about to adopt a formal reporting arrangement, and in the coming year will develop procedures for verification. Thus this process, undertaken collaboratively with the GRI and a multi-stakeholder group, will take about three years to complete although where possible results have been progressively adopted. I do not believe that any shorter period would have been realistic. In the interim it would be possible to be critical about not following "best practice". However, any fair or pragmatic analysis would have to acknowledge the range of initiatives we are pursuing and compare them to

other sectors nearly all of which are doing much less. The latter is a valid benchmark just as much as a theoretical notion of what might be best practice.

- At present we have no means of pursuing complaints against members other than referring them to our Council for consideration and, possibly, disciplinary action. It is important to note that we have not received any such complaints to date but the Council does have powers to suspend or terminate membership if it felt this was appropriate.<sup>13</sup>

In the opinion of the author, and given the long history of the mining industry, these efforts are too tame and their progress is too slow. The mining industry has had decades of experience in dealing with environmental issues and coping with the problems of corruption, unstable governments, human rights abuses, and protecting the legitimate rights of the indigenous peoples.

For ICMM to be the voice of the mining industry, and in particular its member companies which are amongst the largest and most successful mining companies, it must take steps toward a more meaningful implementation of the Sustainable Development Framework.

1. Establish clear cut standards of conduct that would be the most attainable and best possible standards given in the current state of technology and societal expectations. Furthermore, these standards should not be limited to environmental issues, but must encompass any others, the issues of bribery and corruption, human rights abuses, rights of the indigenous

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<sup>13</sup> Excerpts from various communications between the author and Mr. Paul Mitchell, Secretary General, ICMM

- people, and transparency in its dealing with local governments and especially the army and police in the host country. A starting point in this direction would be the “Voluntary Principles on Security and Human Rights” jointly promulgated by the governments of the United States and United Kingdom on December 19, 2000<sup>14</sup>.
2. Establish “minimum” standards of conduct in the abovementioned areas which would be considered inviolate under any set of condition and the member countries would pledge never to violate them.
  3. Review the current policies and practices of member companies to ensure their total compliance with the inviolate minimum standards of conduct.
  4. Require member companies to develop their own codes of conduct. They would comply with the broad principles enumerated in the SD Framework but would also take cognizance unique conditions prevalent in different countries of mining operations.
  5. Establish criteria for creating standards for performance evaluation and independent external monitoring systems for compliance verification. Any monitoring system must be an integral part of code compliance on a regular basis.
  6. Ensure maximum transparency in public disclosure of member companies performance with its code compliance.

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<sup>14</sup> See Appendix II for Voluntary Principles on Security and Human Rights

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## Appendix I – ICMM Industry and Association Members

### List of industry members

Anglo American Plc	Freeport-McMoRan Copper & Gold Inc.
Mitsubishi Materials Corporation	Placer Dome Inc.
Alcoa	Rio Tinto Plc
WMC Limited	Umicore
AngloGold Limited	Newmont Mining Corporation
BHP Billiton	Sumitomo Metal Mining
Noranda Inc.	Nippon Mining and Metals
Zinifex Limited	

### List of association members

Chamber of Mines of South Africa	Consejo Minero a.g.
Prospectors and Developers Association of Canada	Industrial Minerals Association-Europe
International Lead Zinc Research Organization (ILZRO)	Nickel Development Institute (NiDI)
Instituto Brasileiro de Mineracao	Mining Association of Canada (MAC)
International Aluminium Institute	Camara Minera de Mexico
International Copper Association (ICA)	Sociedad Nacional de Minería (SONAMI)
Sociedad Nacional de Minería y Petróleo (SNMPE)	Japan Mining Industry Association
Eurometaux	World Coal Institute
Minerals Council of Australia	International Zinc Association
International Cadmium Association	Mining Industries Associations of Southern Africa
Indonesian Mining Association	Federation of Indian Mineral Industries
Swedish Mining Association	Euromines
The Cobalt Development Institute	Nickel Producers Environmental Research Association (NiPERA)
	International Wrought Copper Council

## Appendix II - Voluntary Principles on Security and Human Rights

The Governments of the United States and the United Kingdom, companies in the extractive and energy sectors ("Companies"), and non-governmental organizations, all with an interest in human rights and corporate social responsibility, have engaged in a dialogue on security and human rights.

The participants recognize the importance of the promotion and protection of human rights throughout the world and the constructive role business and civil society (including non-governmental organizations, labor/trade unions and local communities) can play in advancing these goals. Through this dialogue, the participants have developed the following set of voluntary principles to guide Companies in maintaining the safety and security of their operations within an operating framework that ensures respect for human rights and fundamental freedoms. Mindful of these goals, the participants agree to the importance of continuing this dialogue and keeping under review these principles to ensure their continuing relevance and efficacy.

**Acknowledging** that security is a fundamental need, shared by individuals, communities, businesses and governments alike, and acknowledging the difficult security issues faced by Companies operating globally, we recognize that security and respect for human rights can and should be consistent;

**Understanding** that governments have the primary responsibility to promote and protect human rights and that all parties to a conflict are obliged to observe applicable international humanitarian law, we recognize that we share the common goal of promoting respect for human rights, particularly those set forth in the Universal Declaration of Human Rights, and international humanitarian law;

**Emphasizing** the importance of safeguarding the integrity of company personnel and property, Companies recognize a commitment to act in a manner consistent with the laws of the countries within which they are present, to be mindful of the highest applicable international standards, and to promote the observance of applicable international law enforcement principles (e.g., the U.N. Code of Conduct for Law Enforcement Officials and the U.N. Basic Principles on the Use of Force and Firearms by Law Enforcement Officials), particularly with regard to the use of force;

**Taking note** of the effect that Companies' activities may have on local communities, we recognize the value of engaging with civil society and host and home governments to contribute to the welfare of the local community while mitigating any potential for conflict where possible;

**Understanding** that useful, credible information is a vital component of security and human rights, we recognize the importance of sharing and understanding our respective experiences regarding, inter alia, best security practices and procedures, country human rights situations, and public and private security, subject to confidentiality constraints;

**Acknowledging** that home governments and multilateral institutions may, on occasion, assist host governments with security sector reform, developing institutional

capacities and strengthening the rule of law, we recognize the important role Companies and civil society can play in supporting these efforts;

We hereby express our support for the following voluntary principles regarding security and human rights in the extractive sector, which fall into three categories, risk assessment, relations with public security and relations with private security:

### **RISK ASSESSMENT**

The ability to assess accurately risks present in a Company's operating environment is critical to the security of personnel, local communities and assets; the success of the Company's short and long-term operations; and to the promotion and protection of human rights. In some circumstances, this is relatively simple; in others, it is important to obtain extensive background information from different sources; monitoring and adapting to changing, complex political, economic, law enforcement, military and social situations; and maintaining productive relations with local communities and government officials.

The quality of complicated risk assessments is largely dependent on the assembling of regularly updated, credible information from a broad range of perspectives - local and national governments, security firms, other companies, home governments, multilateral institutions and civil society knowledgeable about local conditions. This information may be most effective when shared to the fullest extent possible (bearing in mind confidentiality considerations) between Companies, concerned civil society, and governments.

Bearing in mind these general principles, we recognize that accurate, effective risk assessments should consider the following factors:

- **Identification of security risks.** Security risks can result from political, economic, civil or social factors. Moreover, certain personnel and assets may be at greater risk than others. Identification of security risks allows a Company to take measures to minimize risk and to assess whether Company actions may heighten risk.
- **Potential for violence.** Depending on the environment, violence can be widespread or limited to particular regions, and it can develop with little or no warning. Civil society, home and host government representatives and other sources should be consulted to identify risks presented by the potential for violence. Risk assessments should examine patterns of violence in areas of Company operations for educational, predictive and preventative purposes.
- **Human rights records.** Risk assessments should consider the available human rights records of public security forces, paramilitaries, local and national law enforcement, as well as the reputation of private security. Awareness of past abuses and allegations can help Companies to avoid recurrences as well as to promote accountability. Also, identification of the capability of the above entities to respond to situations of violence in a lawful manner (i.e., consistent with applicable international standards) allows

Companies to develop appropriate measures in operating environments.

- **Rule of law.** Risk assessments should consider the local prosecuting authority and judiciary's capacity to hold accountable those responsible for human rights abuses and for those responsible for violations of international humanitarian law in a manner that respects the rights of the accused.
- **Conflict analysis.** Identification of and understanding the root causes and nature of local conflicts, as well as the level of adherence to human rights and international humanitarian law standards by key actors, can be instructive for the development of strategies for managing relations between the Company, local communities, Company employees and their unions, and host governments. Risk assessments should also consider the potential for future conflicts.
- **Equipment transfers.** Where Companies provide equipment (including lethal and non-lethal equipment) to public or private security, they should consider the risk of such transfers, any relevant export licensing requirements, and the feasibility of measures to mitigate foreseeable negative consequences, including adequate controls to prevent misappropriation or diversion of equipment which may lead to human rights abuses. In making risk assessments, companies should consider any relevant past incidents involving previous equipment transfers.

## **INTERACTIONS BETWEEN COMPANIES AND PUBLIC SECURITY**

Although governments have the primary role of maintaining law and order, security and respect for human rights, Companies have an interest in ensuring that actions taken by governments, particularly the actions of public security providers, are consistent with the protection and promotion of human rights. In cases where there is a need to supplement security provided by host governments, Companies may be required or expected to contribute to, or otherwise reimburse, the costs of protecting Company facilities and personnel borne by public security. While public security is expected to act in a manner consistent with local and national laws as well as with human rights standards and international humanitarian law, within this context abuses may nevertheless occur.

In an effort to reduce the risk of such abuses and to promote respect for human rights generally, we have identified the following voluntary principles to guide relationships between Companies and public security regarding security provided to Companies:

### **Security Arrangements**

- Companies should consult regularly with host governments and local communities about the impact of their security arrangements on those communities.
- Companies should communicate their policies regarding ethical conduct and human rights to public security providers, and express their desire that security be provided in a manner consistent with those policies by personnel with

adequate and effective training.

- Companies should encourage host governments to permit making security arrangements transparent and accessible to the public, subject to any overriding safety and security concerns.

### **Deployment and Conduct**

- The primary role of public security should be to maintain the rule of law, including safeguarding human rights and deterring acts that threaten Company personnel and facilities. The type and number of public security forces deployed should be competent, appropriate and proportional to the threat.
- Equipment imports and exports should comply with all applicable law and regulations. Companies that provide equipment to public security should take all appropriate and lawful measures to mitigate any foreseeable negative consequences, including human rights abuses and violations of international humanitarian law.
- Companies should use their influence to promote the following principles with public security: (a) individuals credibly implicated in human rights abuses should not provide security services for Companies; (b) force should be used only when strictly necessary and to an extent proportional to the threat; and (c) the rights of individuals should not be violated while exercising the right to exercise freedom of association and peaceful assembly, the right to engage in collective bargaining, or other related rights of Company employees as recognized by the Universal Declaration of Human Rights and the ILO Declaration on Fundamental Principles and Rights at Work.
- In cases where physical force is used by public security, such incidents should be reported to the appropriate authorities and to the Company. Where force is used, medical aid should be provided to injured persons, including to offenders.

### **Consultation and Advice**

- Companies should hold structured meetings with public security on a regular basis to discuss security, human rights and related work-place safety issues. Companies should also consult regularly with other Companies, host and home governments, and civil society to discuss security and human rights. Where Companies operating in the same region have common concerns, they should consider collectively raising those concerns with the host and home governments.
- In their consultations with host governments, Companies should take all appropriate measures to promote observance of applicable international law

enforcement principles, particularly those reflected in the U.N. Code of Conduct for Law Enforcement Officials and the U.N. Basic Principles on the Use of Force and Firearms.

- Companies should support efforts by governments, civil society and multilateral institutions to provide human rights training and education for public security as well as their efforts to strengthen state institutions to ensure accountability and respect for human rights.

### **Responses to Human Rights Abuses**

- Companies should record and report any credible allegations of human rights abuses by public security in their areas of operation to appropriate host government authorities. Where appropriate, Companies should urge investigation and that action be taken to prevent any recurrence.
- Companies should actively monitor the status of investigations and press for their proper resolution.
- Companies should, to the extent reasonable, monitor the use of equipment provided by the Company and to investigate properly situations in which such equipment is used in an inappropriate manner.
- Every effort should be made to ensure that information used as the basis for allegations of human rights abuses is credible and based on reliable evidence. The security and safety of sources should be protected. Additional or more accurate information that may alter previous allegations should be made available as appropriate to concerned parties.

### **INTERACTIONS BETWEEN COMPANIES AND PRIVATE SECURITY**

Where host governments are unable or unwilling to provide adequate security to protect a Company's personnel or assets, it may be necessary to engage private security providers as a complement to public security. In this context, private security may have to coordinate with state forces, (law enforcement, in particular) to carry weapons and to consider the defensive local use of force. Given the risks associated with such activities, we recognize the following voluntary principles to guide private security conduct:

- Private security should observe the policies of the contracting Company regarding ethical conduct and human rights; the law and professional standards of the country in which they operate; emerging best practices developed by industry, civil society, and governments; and promote the observance of international humanitarian law.
- Private security should maintain high levels of technical and professional proficiency, particularly with regard to the local use of force and firearms.
- Private security should act in a lawful manner. They should exercise restraint

and caution in a manner consistent with applicable international guidelines regarding the local use of force, including the U.N. Principles on the Use of Force and Firearms by Law Enforcement Officials and the U.N. Code of Conduct for Law Enforcement Officials, as well as with emerging best practices developed by Companies, civil society, and governments.

- Private security should have policies regarding appropriate conduct and the local use of force (e.g., rules of engagement). Practice under these policies should be capable of being monitored by Companies or, where appropriate, by independent third parties. Such monitoring should encompass detailed investigations into allegations of abusive or unlawful acts; the availability of disciplinary measures sufficient to prevent and deter; and procedures for reporting allegations to relevant local law enforcement authorities when appropriate.
- All allegations of human rights abuses by private security should be recorded. Credible allegations should be properly investigated. In those cases where allegations against private security providers are forwarded to the relevant law enforcement authorities, Companies should actively monitor the status of investigations and press for their proper resolution.
- Consistent with their function, private security should provide only preventative and defensive services and should not engage in activities exclusively the responsibility of state military or law enforcement authorities. Companies should designate services, technology and equipment capable of offensive and defensive purposes as being for defensive use only.
- Private security should (a) not employ individuals credibly implicated in human rights abuses to provide security services; (b) use force only when strictly necessary and to an extent proportional to the threat; and (c) not violate the rights of individuals while exercising the right to exercise freedom of association and peaceful assembly, to engage in collective bargaining, or other related rights of Company employees as recognized by the Universal Declaration of Human Rights and the ILO Declaration on Fundamental Principles and Rights at Work.
- In cases where physical force is used, private security should properly investigate and report the incident to the Company. Private security should refer the matter to local authorities and/or take disciplinary action where appropriate. Where force is used, medical aid should be provided to injured persons, including to offenders.
- Private security should maintain the confidentiality of information obtained as a result of its position as security provider, except where to do so would jeopardize the principles contained herein.

To minimize the risk that private security exceed their authority as providers of security, and to promote respect for human rights generally, we have developed the

following additional voluntary principles and guidelines:

- Where appropriate, Companies should include the principles outlined above as contractual provisions in agreements with private security providers and ensure that private security personnel are adequately trained to respect the rights of employees and the local community. To the extent practicable, agreements between Companies and private security should require investigation of unlawful or abusive behavior and appropriate disciplinary action. Agreements should also permit termination of the relationship by Companies where there is credible evidence of unlawful or abusive behavior by private security personnel.
- Companies should consult and monitor private security providers to ensure they fulfil their obligation to provide security in a manner consistent with the principles outlined above. Where appropriate, Companies should seek to employ private security providers that are representative of the local population.

Exhibit 1 – ICMM SD Framework – Main Principles

<p><b>Corporate Governance</b> <u>Principle 1</u>: Implement and maintain ethical business practices and sound systems of corporate governance.</p>
<p><b>Corporate Decision-Making</b> <u>Principle 2</u>: Integrate sustainable development considerations within the corporate decision-making process.</p>
<p><b>Human Rights</b> <u>Principle 3</u>: Uphold fundamental human rights and respect cultures, customs and values in dealings with employees and others who are affected by our activities.</p>
<p><b>Risk Management</b> <u>Principle 4</u>: Implement risk management strategies based on valid data and sound science.</p>
<p><b>Health and Safety</b> <u>Principle 5</u>: Seek continual improvement of our health and safety performance.</p>
<p><b>Environment</b> <u>Principle 6</u>: Seek continual improvement of our environmental performance.</p>
<p><b>Biodiversity</b> <u>Principle 7</u>: Contribute to conservation of biodiversity and integrated approaches to land use planning.</p>
<p><b>Material Stewardship</b> <u>Principle 8</u>: Facilitate and encourage responsible product design, use, re-use, recycling and disposal of our products.</p>
<p><b>Community Development</b> <u>Principle 9</u>: Contribute to the social, economic and institutional development of the communities in which we operate.</p>
<p><b>Independent Verification</b> <u>Principle 10</u>: Implement effective and transparent engagement, communication and independently verified reporting arrangements with our stakeholders.</p>

Exhibit 2 – ICMM SD Framework – Explanatory Statements

<p><b>Corporate Governance</b> Principle 1: Implement and maintain ethical business practices and sound systems of corporate governance.</p>	Develop and implement company statements of ethical business principles, and practices that management is committed to enforcing.
	Implement policies and practices that seek to prevent bribery and corruption.
	Comply with or exceed the requirements of host-country laws and regulations.
	Work with governments, industry and other stakeholders to achieve appropriate and effective public policy, laws, regulations and procedures that facilitate the mining, minerals and metals sector’s contribution to sustainable development within national sustainable development strategies.
<p><b>Corporate Decision-Making</b> Principle 2: Integrate sustainable development considerations within the corporate decision-making process.</p>	Integrate sustainable development principles into company policies and practices.
	Plan, design, operate and close operations in a manner that enhances sustainable development.
	Implement good practice and innovate to improve social, environmental and economic performance while enhancing shareholder value.
	Encourage customers, business partners and suppliers of goods and services to adopt principles and practices that are comparable to our own.
	Provide sustainable development training to ensure adequate competency at all levels among our own employees and those of contractors.
	Support public policies and practices that foster open and competitive markets.
<p><b>Human Rights</b> Principle 3: Uphold fundamental human rights and respect cultures, customs and values in dealings with employees and others who are affected by our activities.</p>	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.
	Ensure that all relevant staff, including security personnel, are provided with appropriate cultural and human rights training and guidance.
	Minimise involuntary resettlement, and compensate fairly for adverse effects on the community where they cannot be avoided.
	Respect the culture and heritage of local communities, including indigenous peoples.

<p><b>Risk Management</b> Principle 4: Implement risk management strategies based on valid data and sound science.</p>	<p>Consult with interested and affected parties in the identification, assessment and management of all significant social, health, safety, environmental and economic impacts associated with our activities.</p>
	<p>Ensure regular review and updating of risk management systems.</p>
	<p>Inform potentially affected parties of significant risks from mining, minerals and metals operations and of the measures that will be taken to manage the potential risks effectively.</p>
	<p>Develop, maintain and test effective emergency response procedures in collaboration with potentially affected parties.</p>
<p><b>Health and Safety</b> Principle 5: Seek continual improvement of our health and safety performance.</p>	<p>Implement a management system focused on continual improvement of all aspects of operations that could have a significant impact on the health and safety of our own employees, those of contractors and the communities where we operate.</p>
	<p>Take all practical and reasonable measures to eliminate workplace fatalities, injuries and diseases among our own employees and those of contractors.</p>
	<p>Provide all employees with health and safety training, and require employees of contractors to have undergone such training.</p>
	<p>Implement regular health surveillance and risk-based monitoring of employees.</p>
	<p>Rehabilitate and reintegrate employees into operations following illness or injury, where feasible.</p>
<p><b>Environment</b> Principle 6: Seek continual improvement of our environmental performance.</p>	<p>Assess the positive and negative, the direct and indirect, and the cumulative environmental impacts of new projects – from exploration through closure.</p>
	<p>Implement an environmental management system focused on continual improvement to review, prevent, mitigate or ameliorate adverse environmental impacts.</p>
	<p>Rehabilitate land disturbed or occupied by operations in accordance with appropriate post-mining land uses.</p>
	<p>Provide for safe storage and disposal of residual wastes and process residues.</p>
	<p>Design and plan all operations so that adequate resources are available to meet the closure requirements of all operations.</p>
<p><b>Biodiversity</b> Principle 7: Contribute to conservation of biodiversity and integrated approaches to land use planning.</p>	<p>Respect legally designated protected areas.</p>
	<p>Disseminate scientific data on and promote practices and experiences in biodiversity assessment and management.</p>
	<p>Support the development and implementation of scientifically sound, inclusive and transparent procedures for integrated approaches to land use planning, biodiversity, conservation and mining.</p>

<p><b>Material Stewardship</b> Principle 8: Facilitate and encourage responsible product design, use, re-use, recycling and disposal of our products.</p>	<p>Advance understanding of the properties of metals and minerals and their life-cycle effects on human health and the environment.</p>
	<p>Conduct or support research and innovation that promotes the use of products and technologies that are safe and efficient in their use of energy, natural resources and other materials.</p>
	<p>Develop and promote the concept of integrated materials management throughout the metals and minerals value chain.</p>
	<p>Provide regulators and other stakeholders with scientifically sound data and analysis regarding our products and operations as a basis for regulatory decisions.</p>
	<p>Support the development of scientifically sound policies, regulations, product standards and material choice decisions that encourage the safe use of mineral and metal products.</p>
<p><b>Community Development</b> Principle 9: Contribute to the social, economic and institutional development of the communities in which we operate.</p>	<p>Engage at the earliest practical stage with likely affected parties to discuss and respond to issues and conflicts concerning the management of social impacts.</p>
	<p>Ensure that appropriate systems are in place for ongoing interaction with affected parties, making sure that minorities and other marginalised groups have equitable and culturally appropriate means of engagement.</p>
	<p>Contribute to community development from project development through closure in collaboration with host communities and their representatives.</p>
	<p>Encourage partnerships with governments and non-governmental organisations to ensure that programmes (such as community health, education, local business development) are well designed and effectively delivered.</p>
	<p>Enhance social and economic development by seeking opportunities to address poverty.</p>
<p><b>Independent Verification</b> Principle 10: Implement effective and transparent engagement, communication and independently verified reporting arrangements with our stakeholders.</p>	<p>Report on our economic, social and environmental performance and contribution to sustainable development.</p>
	<p>Provide information that is timely, accurate and relevant.</p>
	<p>Engage with and respond to stakeholders through open consultation processes.</p>