

Second submission to the UN Secretary General's Special Representative on Human Rights and Business

Mining and Human Rights: how the UN SRSG can help spread good practice and tackle critical issues

October 2006

1. Overview and context

ICMM – the mining industry's leadership group on sustainable development – is keen to ensure that the work of the Special Representative of the UN Secretary General (SRSG) on human rights and business creates greater consensus and clarity in this area, and leads to positive outcomes on the ground.

The first submission by ICMM to the SRSG, made in March 2006, set out the broad context of the mining industry's work on human rights, outlining both successes and challenges in this area. This second submission, as well as providing further information on recent steps taken by ICMM member companies and on continuing issues for our industry, sets out a number of high-level recommendations for the SRSG.

ICMM corporate members are committed to continue strengthening their work on human rights and to encouraging the spread of good practice. To summarize the recommendations, ICMM is looking to the SRSG to:

- help focus attention within the overall debate on human rights and business on critical issues such as the fundamental role of governments and how the role of business interacts with this and means of raising the performance of those companies which, for whatever reason, are least advanced on human rights issues;
- urge more rapid take-up of existing, human-rights related, multi stakeholder voluntary initiatives as well broader implementation by governments of existing international commitments; and
- investigate the potential need for strengthened multi-stakeholder initiatives and consensus-building dialogue on two additional important human-rights issues for the mining sector: first, the position of indigenous peoples and how their rights should affect dealings between local communities and extractive companies given the wide variance in the national legislative frameworks in force in this area; and second the problems facing artisanal and small-scale miners (including the policy challenges these miners may pose for governments and the formal mining sector).

As initial context for these points, the main themes of ICMM's first submission are worth briefly restating here. First, ICMM believes that mining's potential contribution to social, economic and other human-rights outcomes is considerable. For example, mining is one of the few sources of significant foreign direct investment in many of the world's poorest countries. With the correct conditions in place, such investment can play a critical role in sparking wider development and reducing poverty – thereby helping to realize many economic and social 'rights' (for a detailed analysis of this issue, please also see ICMM's 'Challenge of Mineral Wealth' initiative).

Secondly, as ICMM's original submission pointed out, significant progress has already been made by leading mining firms on the observance, protection and promotion of human rights in recent years. To support their long-standing commitments in this area, ICMM corporate members have, typically, strengthened internal policies and processes on human rights, including through many playing an important role in best practice voluntary initiatives such as the UN Global Compact, the Voluntary Principles on Security and Human Rights (the 'VPs'), and the Extractive Industries Transparency Initiative (EITI). Support for human rights is also one of the core principles of ICMM's Sustainable Development (SD) framework, to which all its corporate members have committed. A system of reporting, indicators and assurance is being developed to help ensure transparent implementation of the ICMM SD principles (please also see 2.1 below). Results from a survey of Fortune Global 500 firms recently conducted by the SRSG are in line with this broad point: extractive firms which responded on this issue all reported having human rights policies and practices in place.¹

Thirdly, the mining industry as a whole nonetheless faces a number of challenges in this area. As well as the need for strengthened corporate performance in some cases, and more broadly for continuous improvements on some health, safety, environment and community issues, the boundaries of corporate responsibilities are often unclear. In particular there is often disagreement over whether and how companies should tackle problems which have arisen as a result of action – or lack of action – on the part of host governments.

This document takes forward a number of these themes from the first submission, and draws from two additional analyses recently undertaken by ICMM. Firstly, in order to better understand how the challenges facing the sector are seen or conceptualized by third parties, ICMM commissioned a rapid analysis of allegations involving mining companies across a broad sample of 38 human rights complaints. In each of these cases, allegations of human rights incidents or concerns had been raised by non-governmental organizations or other external groups. The aim of this analysis was not to draw any judgment about the truth or falsehood of any of the allegations (and in most of the cases, the alleged facts have been contested by the companies concerned). Its aim was rather to pinpoint any underlying patterns or trends across the allegations, so as to inform ICMM's input to the SRSG (please see annex 1).

The second analysis (please see annex 2) was an examination of emerging best practice among ICMM members in terms of internal management systems being used to implement human rights policies. The aim of this research was to document innovations in this area, and to highlight potential management lessons for other companies and sectors seeking to mainstream human rights in their businesses.

In terms of the rest of the main text of this submission, section 2 below highlights and develops some key findings from these two analyses. Section 3 describes in more detail ICMM's specific recommendations to the SRSG.

¹ 'Human Rights Policies and Management Practices of Fortune Global 500 Firms: Results of a Survey' 1 September 2006

2. Good practice and critical issues

A number of points are worth highlighting based on the analyses undertaken by ICMM described above:

2.1. ICMM members continue to lead the way within the mining sector in developing practical tools to implement human rights policies, and in supporting strengthened voluntary initiatives in this area.

While recognizing ongoing challenges, ICMM members have, in many cases, pushed ahead in mainstreaming human rights into their management systems. Tools used by ICMM companies in this respect include training programs and questionnaires designed to raise employees' awareness of human rights, risk-assessment exercises, and also building human rights issues into internal control systems (see annex 2 for detailed case studies of work by BHP Billiton, Anglo American, Rio Tinto and Newmont). These are in addition to the human rights policies and initiatives described in ICMM's first submission. Given that major companies in some other sectors are still at the stage of proclaiming a basic commitment to human rights, such processes focused specifically on implementation could be usefully replicated elsewhere.

Among the lessons from ICMM members' recent work on human rights is the importance of an initial period of awareness raising and capacity building. In many organizations, employees – while committed to responsible behavior – may be unfamiliar with human rights discourses. Moreover, the fact that many economic and social rights are asserted independent of the resources to deliver them, makes it difficult for business to use human rights as a framework for management. It is also worth emphasizing here that companies may undertake a variety of activities which in effect support human rights – for example, creating benefits for communities, protecting the environment, avoiding workplace discrimination – but do not frame these explicitly in human rights terms. Failing to describe their work in these terms need not imply any neglect of human rights. At the same time, continuous improvements may be required on issues such as health, safety and the environment (HSE) and community relations in order to underpin performance on human rights. ICMM members recognize these areas need to be a continuing focus of their work.

In terms of voluntary initiatives, numerous ICMM members – as well as supporting initiatives such as the Global Compact, the Kimberley Process, the VPs on Security and Human Rights and EITI – are involved in more recently-established alliances to improve performance around particular issues. For example, a number of ICMM companies are members of the recently-founded Council for Responsible Jewelry Practices; a number are either long-standing supporters of Transparency International or have also supported additional anti-corruption initiatives such as the Principles for Countering Bribery of World Economic Forum's Partnering Against Corruption Initiative (PACI).

ICMM members also continue to be actively involved in discussions on how existing initiatives could be strengthened – whether by developing or strengthening reporting and assurance requirements. As mentioned, the processes for ensuring that ICMM's own Sustainable Development principles lead to on-the-ground implementation by its members are already relatively advanced: ICMM has developed a reporting system in conjunction with the Global Reporting Initiative (which includes a number of specific human-rights related indicators), and a pilot system for independent assurance is also shortly due to be rolled out.

2.2. Among the biggest challenges for the sector, however, is that best practice on business & human rights is limited to a relatively small group of companies, and countries. At the same time, the most effective response to this problem, ICMM believes, is promoting broader implementation of targeted voluntary initiatives rather than new widely-cast global legal mechanisms. Host governments, it should be remembered, often lack capacity, or are unwilling, to implement even their existing legal commitments in this area – though clearly they should be encouraged to do this.

Looking first at companies' activities on human rights, relatively few firms within the mining sector beyond ICMM's membership actively support relevant voluntary initiatives such as EITI or the VPs, or have explicitly incorporated human rights issues in their internal management systems. For example, ICMM's analysis of human rights controversies (Annex 1) indicates that relatively few of the companies involved in these particular alleged cases have signed up to relevant initiatives or have explicit human rights policies. Again, this does not necessarily imply any neglect of human rights (see 2.1 above) – and in the same way, implementing voluntary initiatives does not necessarily guarantee that false allegations will be avoided. ICMM takes no position on the allegations studied for the purpose of this analysis. Also, it should be remembered that the vast majority of mines across the world – of which there are many thousands – lead to broadly positive social and economic outcomes. But there does appear to be scope for spreading of good practices which, at the very least, might help to avoid or defuse misunderstandings about a given corporation's track record on human rights matters.

ICMM also notes that sustainable development performance standards among many smaller, privately held or non-OECD based firms, as well as among some State owned enterprises, is less stringent than those observed by ICMM members. Within the international mining sector, firms from rapidly-industrializing developing countries, many of which are State-owned, are playing an increasingly significant role. The growth of nationalist pressures also has the potential to lead to increased State involvement in mining projects. A key challenge is to ensure that all types of mining firms – whether State or privately-owned, and whatever their nationality or size – uphold human rights. Currently, the primary focus of global civil society tends to be on private-sector, high-profile or OECD-based firms.

Similarly, in terms of countries' activities, it is often noted that many governments have failed fully to implement human rights conventions to which they have subscribed. Take up of other conventions has been limited: for example only around 17 countries have ratified ILO Convention 169 (on Indigenous and Tribal Peoples)². Similarly a relatively small proportion of countries have committed to participate in initiatives such as EITI or the VPs (only four 'Northern' countries so far in the case of the VPs even though they are de facto becoming a standard for industry majors and the World Bank Group). Some developing country governments, meanwhile, have criticized these initiatives as 'neo-Imperialist' because they are 'Northern' led; both initiatives are nonetheless delivering results that are good for governance, for combating corruption and for human rights. In this regard, governments should be encouraged to focus upon whether they subscribe to the initiatives' objectives rather than whether they like their parentage.

In terms of the countries in which the mining-related human rights allegations analyzed by ICMM took place, meanwhile, almost all of these controversies occurred in low income or lower-middle income countries. Governance in these countries was also often weak: most of the allegations occurred in countries which score below the 50% percentile mark across the six composite indicators of governance compiled by the World Bank (see Annex 1). Leaving aside the truth or otherwise of the particular allegations, the frequency with which low income countries which suffer weak governance featured in the analysis is consistent with the independent experience of ICMM and its members, that human rights issues are more commonly encountered in such countries.

This underlines an important role for international donor agencies in supporting governance improvements and capacity building, as this should enable governments to implement their human right commitments. It also suggests that the most powerful step forward in this area is likely to be encouraging broader involvement of governments (and companies) in voluntary multi-stakeholder initiatives. As noted above, any new international legal mechanisms, even if drafted in a balanced way, may achieve little in the face of *de*

² Number of ratifications from ILO website page dated 2005

facto weak governance at site level. Well-targeted voluntary initiatives, by contrast, can bring together the different parties whose joint action is needed in order to pioneer new approaches on specific issues and to directly target governance problems. In this respect they may have greater probability of success.

2.3. Another major challenge for the sector lies in defining corporate responsibilities relating to those indirect impacts of mining, where human-rights outcomes are perceived to have links to mining operations, but are not directly the result of company actions

ICMM's first submission to the SRSG described the 'onion skin approach' adopted by some member companies. This is a way of conceptualizing responsibilities on human rights given the absence of any clear international consensus on the boundaries of these responsibilities. In this visual model, the firm lies at the center of a series of concentric circles: the innermost circle represents human rights issues over which the company has complete and direct control and hence responsibility (such as employee safety), and the outermost circle represents issues over which it arguably has minimal if any influence (such as actions of a host government in a part of the country far from the company's operations).

One of the main findings from ICMM's analysis of the mining-related human rights controversies is that most of these cases fell in some way into the middle layer of the 'onion' – that is, they related wholly or partly to the alleged behavior of actors other than the companies themselves (for example, local state bodies), but nonetheless were perceived to have significant links with the mining operations concerned. Put another way, they were neither wholly within – nor, it was argued by critics, wholly outside – the company's control or influence (see Annex 1).

This was found to be a common theme across a range of specific issues raised in the various cases, including civil conflict, security concerns, relations with indigenous peoples, impacts on artisanal miners and the economic consequences of mining. Across all such issues, other parties – particularly State actors or agencies – were often described as being directly responsible for the alleged abuses or problems (and sometimes the relevant actions took place prior to actual investment by the companies). Nonetheless the companies were also perceived to have some influence over outcomes – for example, because the action allegedly took place in the vicinity of, or supposedly on behalf of, the mine.

This aspect of the analysis highlights the challenge that mining companies face in reconciling the expectations that some non-governmental actors may have concerning companies' power to shape human rights outcomes, with what the companies may experience as practical limitations on their influence over problems outside their immediate control. As the analysis suggests, firms may not be able to dissociate themselves entirely from such problems. But equally it is often unclear what exactly their responsibilities are, and the extent to which they can or should exert influence over others. In many developed countries, for example, projects of national importance are identified by central government and, if necessary, local communities may be legally required to move or to accept some sort of compromise regarding their interests. This has been central to the development of many infrastructure or extractive projects. Yet a company's acquiescence in such a national policy in a developing country in the face of local objections may very well give rise to accusations of complicity in an abuse of human rights.

As before, an underlying problem is often weak State capacity, particularly (though not exclusively) in remote regions of developing countries. In many instances, local communities also contest the legitimacy of state institutions, particularly in poorly governed areas. However, they may focus their criticisms against the companies instead as the firms are perceived – fairly or not – to be proxies for State power and as having influence and resources to bring about change or as being more susceptible to concern about reputational damage.

To emphasize, none of this is to point the finger of blame exclusively at governments. Without referring to any particular cases, just as governments can reduce the risk of abuses through improved governance – by, for example, ensuring that State security personnel respect human rights, or that the revenues from mining support local poverty reduction and thereby alleviate potential social tensions – so there are basic actions companies can take to avoid the risk of complicity in abuses. These may include developing an understanding of the local human rights situation prior to making any investment (not all companies have done this in the past), and ensuring that their own policies and management systems adequately cover all potential human rights concerns.

Even so, greater clarity is needed on what companies should and should not be responsible for in situations where State governance is poor. It is also important to steer clear of one particular response advocated by some campaign groups, which is that mining investment should simply be restricted in poorly-governed countries. This could have damaging consequences for many of the relatively poor groups in those societies (whose interests some international civil society groups see themselves as representing) given the potential for mining to help promote economic revival and poverty reduction in some of the least developed countries. The broad solution instead, ICMM believes, lies in building governance capacity, and in more clearly defining states' and companies' respective responsibilities – while also encouraging increased investment in mining.³

2.4. A range of initiatives are helping to tackle at least some of the challenges in this middle 'onion' zone – albeit further take up of these initiatives is required

A number of the voluntary initiatives already mentioned are helping to define legitimate expectations of companies, governments and other actors in precisely the sort of situations where otherwise the boundaries of responsibilities would be blurred.

In the important area of transparency, for example, the EITI provides a framework for governments, companies and civil society to work together to promote transparent reporting of resource revenues. On security, the VPs set out the standards of conduct that companies can legitimately expect and demand from state security forces protecting their assets. On the issue of conflict, the Kimberley Process has provided a critical mechanism in the diamond sector for reducing the risk of violence being fuelled – wittingly or not – by mineral revenues. In terms of economic impacts, ICMM's 'Challenge of Mineral Wealth' project contains recommendations for companies, governments, international donor agencies and civil society, setting out actions required from each party in order to ensure that mineral wealth translates into broad-based economic development (both in mining regions and also at the national level).

There are a variety of other important voluntary standards and initiatives which – provided they are widely implemented – should help improve further the human rights impact of mining. The International Finance Corporation social and environmental standards, for example, help set good practice on various issues, including on land acquisition and involuntary resettlement (private-sector banks which have committed to the Equator Principles also expect their clients to meet these standards, which helps ensure their broader application). ICMM, meanwhile, has recently produced a 'Community Development Toolkit' in partnership with the World Bank to assist companies to promote sustainable development around mines and to apply best practice approaches to consultation with local people; other members have produced their own frameworks. In another initiative, the OECD has recently produced a 'risk awareness tool' for companies operating in weak governance zones (this covers a range of ethical issues). Also, as mentioned previously, there are various initiatives to combat bribery and corruption such as the PACI and also the International Chamber of Commerce's anti-bribery rules.

³ See ICMM's 'Challenge of Mineral Wealth' project for a detailed analysis of this issue

In short, for many of the human rights challenges facing the mining sector, positive initiatives already exist. The focus now needs to be on encouraging a broader range of companies and governments to commit to, and implement, their recommendations as appropriate.

2.5. On two particular issues, however – relations with indigenous peoples (and other especially vulnerable groups) and artisanal and small-scale mining – progress is held back at the international level by a lack of suitably ambitious initiatives, or appropriate fora for agreeing ways forward between governments, companies and other relevant stakeholders

Both these issues present a set of important and complex human rights challenges for the mining sector. Boxes 1 & 2 below provide background information on each topic. In terms of indigenous peoples and other especially vulnerable groups, ICMM's analysis of mining-related human rights controversies shows that this issue was among the most frequently raised across the different alleged cases. Without doubt, indigenous peoples in many regions of the world have been historically disadvantaged, and levels of trust between indigenous groups and mining companies are often low. The same may well be true as between the indigenous groups and the sovereign governments of the modern day nations within which they are located.

In terms of artisanal and small-scale mining (ASM), this sector of the mining industry employs significant numbers of people (over 13 million, according to one estimate), many of whom are very poor and work in dangerous (sometimes both to them and their neighbors) and environmentally hazardous conditions. With their activities unregulated, they may be prey to organized crime, the revenues they generate may help fuel conflicts, and disputes often arise with governments and larger-scale mining operations over access to mineral-rich areas. Also, in certain situations, the people working in ASM may be resourced and organized by 'entrepreneurs' who collude with (national or local) government officials to undertake illegal mining activities to the detriment of the operating company and, indeed, the host government.

For both issues, as with other human-rights related topics, the role of governments is critical: both as a driver of many of the problems that have arisen, and as the key to potential solutions. Indigenous groups in many regions, for example, have suffered a lack of recognition by, or support from, governments over long periods of time. Artisanal and small-scale miners typically operate in the informal economy, beyond the reach not just of regulation but of public welfare systems (where such systems exist). In many countries, governments and development agencies tend to view the ASM sector as a source of potential security problems rather than as a source of livelihoods. As a result, ASM typically gets sidelined in regional development debates.

For both issues, too, leading mining companies often have a broad commercial as well as ethical interest in supporting solutions. For example, improved relations with indigenous groups can help cement support from local communities, creating a more conducive climate for investment over the long term. Encouraging improved production methods by artisanal and small-scale miners can help protect the reputation of mined products (such as gold or diamonds) in the eyes of consumers. However, without more significant involvement and engagement from governments, such efforts are likely to be limited in their impact. In particular, both for artisanal miners and indigenous peoples, much hinges on the extent of legal recognition of their interests by governments. This has begun to change in some countries, but not others.

A specific area where lack of legal recognition is increasingly a concern – and an example of where consensus-building dialogue is needed – is around the concept of 'Free, Prior and Informed Consent' (FPIC) for communities, including indigenous peoples. Mining companies are increasingly asked to observe a requirement for potentially impacted indigenous communities to give their Free, Prior and Informed Consent

to exploration or mine development. This presents significant challenges for mining operations as the concept is not well defined and, with very few exceptions, is not enshrined in local legislation. In most jurisdictions, minerals are vested in the State, and host governments, as touched on previously, have deliberately retained the right to decide how resources are developed and how the benefits are to be shared.

Whether or not FPIC is enshrined in legislation, there can also be practical issues with its implementation. These include defining which communities or which parts of a community need to grant consent and how to determine when this has been secured. There may be many different sub-groups, physical, social and cultural, that make up host communities, some of which may have differing views. Resolving disputes and deciding how to treat groups that may be impacted to differing degrees poses another issue. A related challenge is establishing with host communities the processes that can deliver an outcome in a reasonably timely and effective manner (especially where there is no host government legislative framework). Finally, mineral exploration presents its own unique issues because its activities are generally transient, low impact and in most cases do not lead to mining. Exploration therefore needs a correspondingly efficient process commensurate with the level of activity.

More concerted international-level dialogue on resolving such challenges is needed. It should be emphasized that for both indigenous peoples and ASM issues, just as firms are undertaking their own work around their operations (for example, protecting local cultural heritage), there are already numerous positive multi-stakeholder initiatives covering aspects of both issues. The work of these initiatives needs to continue. In terms of international initiatives, however, ICMM believes these may not always be sufficiently ambitious, integrated, clearly targeted, or broadly supported given the scale of the underlying challenge. Experience shows that governments – and the World Bank's Extractive Industries' Review is a classic example of this – are sometimes not as engaged as they should be in relevant dialogues.

To highlight just a few of the current positive initiatives, in the field of artisanal and small-scale mining, these include: the Communities and Small Scale Mining project (CASM) which is chaired by the UK's Department for International Development, and housed at the World Bank, the Diamond Development Initiative (focused on artisanal and small-scale diamond miners), the Global Mercury Project (focused on mercury use by artisanal and small-scale gold miners), and work by the ILO and other organizations on child labor (ICMM has recently supported 'Minors out of Mining', an ILO led initiative to eliminate child labor in small-scale mining). While all positive and important, however, it would appear that none of these initiatives currently provide a sufficiently resourced, or high-profile fora for tackling ASM issues in an integrated way, and with sufficient government involvement.

Any broader or enhanced initiative clearly needs to be built on an understanding of the complex nature of ASM. ASM may be an important source of livelihoods, for example, and at the same time can involve significant health and safety risks, involvement with organized crime or the financing of local militias in some regions, and significant environmental damage. While companies may wish to develop symbiotic relations with artisanal and small-scale miners, they may also be concerned about becoming associated with such practices, about incurring legal liabilities or about incurring the criticism of host governments who frown upon such mining (for example, because it may be illegal, may be associated with environmental and wider law enforcement problems or fail to produce tax revenues). Successful strategies are only likely to emerge through dialogue and the involvement of governments, donors, companies, community based organizations and the artisanal miners themselves.

On the issue of indigenous peoples, significant initiatives at the UN level (albeit covering a swathe of topics rather than just mining) include the UN Permanent Forum on Indigenous Issues, the Working Group on Indigenous Issues, and the UN Declaration on the Rights of Indigenous peoples.

In terms of initiatives focused on mining, ICMM itself has recently conducted a roundtable with IUCN – the World Conservation Union – on indigenous peoples' issues (as part of the wider work program of an ICMM / IUCN dialogue on mining and biodiversity launched in 2002.) Earlier this year, ICMM released a position statement on mining and indigenous peoples' issues for consultation. As with ASM, however, ICMM believes it is now important for governments to become much more actively involved in, and ideally to lead, the overall dialogue on mining and indigenous peoples issues. Direct discussions between industry and indigenous peoples need to continue, but governments also need to be much more visibly engaged at 'the table'.

Box 1. Indigenous peoples – background information

While there exist many definitions of the term 'indigenous peoples', such peoples can be described as descendants of populations which inhabited a country or region prior to its colonization and identify themselves as a distinct cultural group, having often maintained at least in part their own languages, customs and institutions. Indigenous peoples are characterized particularly by their close attachment to ancestral land and to the natural resources in these areas.

While the exact population of the world's indigenous peoples is open to dispute, some recent estimates range from 300 million⁴ to 350 million⁵, or just under 6% of the total world population. This includes at least 5,000 distinct peoples⁶ in over 72 countries, both developed and developing. Examples of indigenous peoples include the Native Americans or Indians of the Americas (for example, the Mayas of Guatemala or the Aymaras of Bolivia), the Inuit and Aleutians of the circumpolar region, the Saami of northern Europe, the Aborigines and Torres Strait Islanders of Australia, and the Maori of New Zealand.⁷ While many indigenous peoples have undergone a dramatic decline and even extinction, some are currently experiencing an expansion in numbers.

Research suggests that while indigenous peoples' circumstances are improving in some countries, the great majority still live with 'discrimination, oppression, and exploitation'.⁸ This is based on both historical and present day economic and political systems, fuelled in many cases by the concern of some national governments that ceding more power and autonomy may threaten the integrity of the State. It is often experienced in, for example, lack of access to formal political processes and decision-making structures, justice, economic systems (e.g. access to capital) and basic social services, including health and education. Indigenous peoples are also often subject to high levels of discrimination and prejudice from other sectors of society. Land is often another contentious issue and there have been numerous conflicts over use of land between indigenous peoples, government and commercial interests (including those of mining companies).

This situation has led to various efforts at the international and national levels to redress the situation. In terms of international instruments, the ILO is responsible for two international Conventions – no. 107 of 1957 and no. 169 of 1989 – concerning indigenous and tribal peoples. Another important development was the establishment of the UN Permanent Forum on Indigenous Issues in 2000, representing the formal integration of indigenous peoples into the UN system. Also worth highlighting is the Declaration on the Rights of Indigenous Peoples. In June 2006, the UN Human Rights Council adopted this declaration and recommended its adoption by the UN General Assembly.

Sources

- Office of the High Commissioner for Human Rights (UNHCHR). *Factsheet (No. 9, Rev 1) The rights of indigenous people*. <http://www.unhchr.ch/indigenous/main.html> [Accessed July 2006]

⁴ UNHCHR. *Factsheet (No. 9, Rev 1)*

⁵ International Work Group for Indigenous Affairs. *Indigenous peoples – who are they?* <http://www.iwgia.org/sw155.asp>. [Accessed July 2006]

⁶ Ibid

⁷ See 3

⁸ José Martínez Cobo, UN Special Rapporteur to the Sub-Commission on Prevention of Discrimination and Protection of Minorities and Indigenous Communities, quoted in ICMM's *Mining and Indigenous Peoples Review* (2005)

- [International Working Group for Indigenous Affairs](#) website.
- International Council on Mining and Metals (ICMM). Jo M. Render. 2005. *Mining and Indigenous Peoples Review*. http://www.icmm.com/library_pub_detail.php?rcd=175.
- Mining, Minerals and Sustainable Development (MMSD) Project. 2002. *Breaking New Ground*: <http://www.iied.org/mmsd/finalreport/index.html>.

Box 2. Artisanal and small-scale mining (ASM) – background information

Artisanal and small-scale mining (ASM) is carried out mainly in remote rural parts of developing countries. Often driven by poverty, it usually takes place in the informal sector, outside legal and regulatory frameworks. ASM typically focuses on marginal or very small deposits which are not economically exploitable by mechanized mining. It is characterized by its use of simple tools, low-skilled manual labor and poor health, safety and environmental (HSE) standards.

Although there is as yet no universally accepted definition of ASM, a broad distinction can be made between artisanal mining which may involve only individuals or families, and small-scale mining which is on a larger scale with a somewhat higher degree of mechanization and is more likely to operate legally (that is, with a mining title). ASM, by contrast, may often be illegal. ASM is also increasingly taking place alongside very large scale mining operations, within the lease area of these operations, and at times “in competition” with the operator concerned (in other words artisanal miners may illegally enter and mine in operational areas or occupy areas).

According to the ILO, at least 13 million people worldwide from over 30 developing countries⁹ are thought to engage in ASM, of which a significant proportion are women and children, and a further 80-100 million people depend on this sector for their livelihood. With this scale of activity, ASM can account for a material proportion of national mineral production – the ILO estimates that in recent years ASM accounted for 15-20% of the world’s non-fuel mineral production (much of this gold, gemstones and diamonds).

While ASM can generate livelihoods and may assist poverty alleviation and rural development in some areas, it is also associated with a number of social and human rights concerns which need to be addressed both for the benefit of ASM communities and also other stakeholder groups. For example, conflicts have sometimes erupted between artisanal and small-scale miners and both governments and larger companies over issues such as land rights, mining titles, resettlement and relocation practices, and (as mentioned) illegal mining taking place within large-scale mining areas. In worst cases, violence has ensued, with state or company security personnel sometimes accused of human rights abuses. As with larger scale mining, ASM can also sometimes lead to major social change – for example it may be associated with a sudden ‘rush’ into mineral rich areas that causes people to abandon agriculture and leads to conflict over land. Further, ASM enterprises tend not to contribute to the state in the form of tax and royalty payments. The informality of the sector also means it can indirectly help sustain (or become prey to) criminality in the commodities chain including smuggling, money laundering and financing of rebel activities – all of which undermine good governance as well as governments’ ability to uphold the

⁹ Numbers are highest in China, India, southern Africa (Tanzania, Zimbabwe), parts of south-east Asia (Indonesia, the Philippines) and South America (Ecuador, Peru).

rights of other groups.

The ASM sector is also associated with poor HSE standards, due at least in part to a lack of governmental capacity to provide support and supervision to miners. ASM tends to cause greater environmental damage per unit of output than modern mining. Environmental challenges include inappropriate use of mercury and cyanide, direct dumping of tailings and effluents into rivers, and deforestation. ASM is also associated with a higher accident rate and a number of major health risks for workers, notably exposure to dust, mercury and other chemicals, the effects of noise, vibration and poor ventilation, and the impacts of overexertion and cramped workspaces. There are also concerns regarding the large number of children employed in ASM.

Selected sources

- Artisanal and Small-Scale Mining - Chapter 13, Final Report, Mining, Minerals and Sustainable Development (MMSD) Project, 2002.
- Global Report on Small-Scale Mining - Thomas Hentschel, Felix Hruschka, and Michael Priester, Projekt Consult. Prepared for the MMSD Project.
- Towards Building Sustainable Livelihoods in 'Artisanal Mining' Communities - Beatrice Labonne (UN DESA) and Jonathan Gilman (UNDP), Tripartite Meeting on Social and Labour Issues in Small-scale mines, International Labour Organization (ILO), Geneva, 17-21 May 1999.

3. Recommendations

In light of the preceding analysis, ICMM has a number of high-level recommendations to offer. But it is worth emphasizing at the outset that protection of human rights is a core ICMM principle. The industry fully recognizes the need to achieve the highest standards in its own performance in this complex and sensitive area. ICMM members are also aware of the importance of promoting the adoption of the Sustainable Development framework beyond ICMM's corporate membership. Thus it is appropriate to start this section with a commitment from ICMM itself.

3.1. ICMM members will continue to advance industry good practice on human rights

Members will continue to strengthen internal management processes so as to ensure implementation of their policies and commitments relating to human rights. They will also uphold their commitment to the ICMM Sustainable Development principles and framework, part of which includes an explicit commitment to uphold fundamental human rights. Examples of current work in this area are provided in annex 2.

ICMM as an organization will support sharing and adoption of best practices on human rights-related issues across its members, and will continue to communicate progress of its members externally. In addition, ICMM will promote broader adoption of its ICMM Sustainable Development framework – for example, through its national mining and global commodity association members. It should be noted that ICMM already works in a number of ways to encourage adoption of good practices by the mining industry as a whole (for example, it will shortly host an industry conference to promote understanding of good health & safety management practices; similarly, good practice documents – such as the Community Development Toolkit – are translated into numerous languages to aid dissemination.)

Any support the SRSG expresses for ICMM's Sustainable Development framework, including its human rights elements, would assist ICMM in these outreach efforts. ICMM will continue to engage with external parties on a range of human rights issues. With regard to recommendation 3.4, ICMM is also able to offer targeted assistance to the SRSG if he chooses to pursue this option (please see below).

3.2. As a general point, ICMM calls on the SRSG to help focus attention within the overall business & human rights debate – and to help direct the search for practical solutions – on the core of the problem: the role of governments, and the need to raise the standards of the companies with the least advanced human-rights approaches in each industry

ICMM believes that the SGSR's initiative needs to address issues across a range of industries rather just mining, and should also acknowledge that the almost exclusive focus of some civil society groups on the private sector, and industry leaders in particular, can be counterproductive. By deterring investment by more responsible companies in the economies of some of the world's least-developed countries, for example, it may open the way for increased investment by less-responsible firms (whether private or state-owned) or may simply reduce the likelihood of investment which could help to lift specific communities out of poverty.

ICMM looks to the SRSG to steer the overall debate in a more constructive direction, and to suggest practical ways forward which place the central role of governments in upholding human rights at their core. In general, as argued in section 2.2., ICMM believes that a more effective way of raising the standards for all companies lies in promoting broader implementation of voluntary initiatives rather than new global legal mechanisms. States often lack capacity, or are unwilling, to implement their existing commitments in this area. There also needs to be a clear differentiation between the responsibility of governments and

companies in upholding human rights, an issue which has been problematic in proposed international legal instruments in this area.

3.3. ICMM calls on the SRSG to urge more rapid take-up of existing voluntary initiatives (as well as implementation by governments of existing international commitments)

Sections 2.1 – 2.4 have set out the detailed arguments for this point. In general voluntary initiatives have the potential to overcome governance challenges at the heart of many business and human rights problems. However, take up of some of these initiatives is limited to a relatively small group of companies and countries. While a significant proportion of the largest western extractives firms have now committed to initiatives such as the VPs and EITI (and the principles underlying such initiatives are being further spread by other voluntary programs such as the Equator Principles and the Global Reporting Initiative), the extent of take up across all companies in the extractive sector remains limited – as does the level of support from many governments.

As well as encouraging governments to implement their existing human rights commitments, the SRSG should thus urge more governments (particularly of major resource-rich countries) and companies to support initiatives such as the VPs and EITI as well as to implement conclusion of projects requiring responses from multiple stakeholder groups such as ICMM's Challenge of Mineral Wealth project. Donor agencies also have an important role to play in helping governments to commit to relevant initiatives, and generally to build capacity and plug governance gaps in this area

The SRSG could also help explore potential incentive mechanisms to encourage wider take up of voluntary initiatives – including, for example, additional donor support for developing countries considering implementing these initiatives. As a general rule, voluntary initiatives should be as inclusive as possible, drawing in governments and companies from OECD and non-OECD countries, and allowing companies to join even if their home governments have yet to do so. There has been a disappointing response on the part of some home governments which appear to endorse objectives like respect for human rights or greater transparency and yet do not currently participate in the key voluntary initiatives.

ICMM believes the SRSG should also support strengthening individual voluntary initiatives where appropriate so as to ensure their credibility (albeit without diminishing a focus on encouraging wider take up of these initiatives as well). Strengthened procedures around reporting or governance have recently been discussed by various initiatives such as the Global Compact, the EITI and the VPs. The reporting and assurance system being developed for ICMM's Sustainable Development framework is another example of this general trend currently toward strengthening of voluntary initiatives.

3.4. ICMM calls on the SRSG to investigate the potential need for new, more inclusive and effective international initiatives to tackle issues around a) mining and indigenous peoples (and other specially vulnerable groups), and b) artisanal and small scale mining

Again the detailed arguments for this recommendation have been set out previously, in section 2.5. As a starting point, ICMM would suggest that the SRSG review the positive work of existing initiatives in this area, both so as to understand their achievements so far and to pinpoint any significant gaps. If helpful, ICMM would be able to assist the SRSG in this task.

It may be that existing initiatives (such as the UN Permanent Forum on Indigenous Issues and the Communities and Small Scale Mining project, for example) provide suitable institutional vehicles for strengthened approaches in both these areas. Alternatively the SRSG may conclude that new overarching

initiatives are needed. With regard to indigenous peoples, it is important to avoid any risk that existing UN initiatives in this area become focused on mining to the detriment of the range of other important issues facing indigenous peoples.

From ICMM's perspective, a critical point nonetheless is that governments need to become more engaged on both of these mining-related issues. For both issues, the broad aims of any new – or enhanced existing – initiatives could be two-fold: firstly to develop deeper consensus among all stakeholders groups over best practice approaches; and secondly to encourage widespread implementation of these best practices – and not just by companies, but by governments, donors, and other actors (and also by laggards within each of these stakeholder groups, rather than just the leaders).

Focusing on the topic of Free, Prior and Informed Consent as an example, an emphasis on implementation and good practices here could be particularly beneficial. For example, the text of the UN Declaration on Indigenous Peoples Rights refers to the concept of FPIC in detail without delving into implementation issues such as how to identify who needs to grant consent and how to determine when this has been secured. The U.N.'s role in engaging governments with other stakeholders on implementation issues could be instrumental in coming to a better understanding of the meaning and scope of FPIC relative to issues of national sovereignty.

On this particular issue, ICMM is planning to hold a second Roundtable with IUCN on indigenous peoples and mining, with a focus on FPIC. ICMM would welcome the participation and input of the SRSG as a means to help determine the need for any further UN actions in this area. .

The need to engage governments and other stakeholders on ASM issues is equally important. Much debate is needed in order to bring about a shift in the view of the ASM sector so that it is seen not just as a security issue but also as a potential source of alternative livelihood. UN and development agencies can play a key role in this transition which would result in the inclusion of the ASM sector within regional development strategies. One potential starting point for the UN could be to consider developing a statement or position on the ASM sector. Better coordination of the activities of the different organizations involved in ASM, both at a country level and the international level, would also help provide a step in this direction.

Finally it will be important to ensure that new efforts across all these areas do not become focused exclusively on topics where there may remain ingrained differences of opinion but rather that they build on points of consensus and promote increased collaboration and partnership. ICMM believes there exist significant opportunities for such mutually-beneficial approaches on both indigenous peoples issues and artisanal and small-scale mining – and hopes the SRSG can help create or strengthen the mechanisms which will help make this a reality.

ANNEX 1: Analysis of mining and human rights controversies

Overview

This annex sets out the results of a short analysis commissioned by ICMM of a sample of human rights-related controversies relating to the mining sector.

In his interim report the SRSG described a survey he had himself conducted of 65 instances of 'alleged corporate human rights abuses and their correlates ... recently reported by NGOs'. Two thirds of the total, the SRSG reported, related to the extractive sector, i.e., oil, gas and mining.

ICMM made a number of broad points in response to this in its first submission to the SRSG. It argued, for example, that the SRSG had failed to draw a sufficiently clear distinction between issues of poor corporate performance and of abuses of human rights by host governments. Given that the extractive sector operates more than other industries in regions of the world where governance is weak (because that is where resources have increasingly tended to be found in recent years), the survey proved nothing about the intrinsic performance of oil, gas or mining firms compared with other sectors. More emphasis also could have been given to the fact that initiatives supported by leading mining companies (for example, the EITI or the Kimberley Process) often represent global best practice, which could be usefully emulated by other sectors.

ICMM was also interested to understand whether there was any pattern to human rights controversies involving the mining sector specifically. A short analysis was therefore commissioned of the allegations in such cases, which has in turn been used to help inform ICMM's recommendations in this, its second submission to the SRSG.

For the analysis undertaken for ICMM, a sample of 38 cases of NGO or community allegations of mining company involvement in human rights or related abuses was assembled. These included all the mining-related cases in the sample used by Professor Ruggie, plus cases from other sources (please see methodology below).

Importantly, inclusion of cases in the sample did not imply any comment on or endorsement of the allegations made. The purpose of the analysis was simply to pinpoint any underlying trends and patterns in terms of criticism of the sector, whether justified or not. No judgment was made or intended regarding the basis or justification for any of the allegations. ICMM notes, however, that in the large majority of cases the facts alleged have been disputed by the company or companies involved.

Another important point of context is that the cases represent a tiny proportion of the thousands of formal mines in the world. For example, the number of industrial-scale metals-producing mines alone has been estimated at 2,500 (with vast numbers of smaller scale operations). The overwhelming majority of mines have not been the subject of controversy related to allegations of human rights concerns.

For this reason, caution needs to be exercised in drawing simplistic conclusion from the results of the analysis. For example, the fact that many of the allegations relate to activities in poor developing countries where governance is weak may reflect the need for governance improvements alongside continued mining investment. By contrast, restricting all mining investment before certain governance levels have been achieved – as some groups (though not the SRSG) have advocated – risks wiping out the benefits brought by the many non-controversial mines and condemning poor countries to further under-development (please see section 2.3 of the core submission).

In this respect, the rest of this annex sets out simply the factual findings of the analysis. A discussion and interpretation of key points, plus recommendations for the SRSG flowing from this, can be found in the main text of the submission.

Key findings

Each of the cases was classified according to three sets of indicators:

1. The sort of *countries* in which the alleged abuses or incidents occurred
2. The sort of *companies* which were alleged to be involved
3. The sort of *issues* which were raised in the allegations, including the responsibility of different parties as perceived by the complainant or portrayed in material reporting the allegation.

Among the key findings:

- The *countries* in which the alleged cases took place are overwhelmingly low-income or lower-middle income countries and score poorly on World Bank governance indicators (this fits with observations made by the SRSG in his interim report – though please see point above). Moreover, few of the countries are signatories to key voluntary initiatives such as the Extractive Industries Transparency Initiative or the Voluntary Principles on Security and Human Rights, or have ratified ILO Convention 169 on Indigenous Peoples and Tribal Peoples.
- In terms of the *companies* allegedly involved in the cases, most have in place general statements of business principles, and social or community policies. However relatively few have made policy commitments explicitly on human rights. Also few have committed to relevant voluntary initiatives such as the Global Compact and the Voluntary Principles.
- In terms of the *issues* raised in the cases, these were broad ranging. However, the most frequent flashpoint issues were: ‘health and environment’, ‘security’, indigenous people and ‘civil conflict’. Concerns over ‘economic’ impacts and ‘consultation’ were also often raised, though generally as underlying concerns, rather than as flashpoint issues. A common underlying theme across the cases was perceptions of negative impacts on communities around the mine (or at least of insufficient positive impacts).
- In terms of the perceived *responsibility* of different parties, most of the controversies related wholly or partly to the behavior of actors other than the companies themselves (for example, local state bodies) – but which nonetheless were perceived to have direct links with the mining operations. In this sense most of the cases involved issues in the middle ring of the ‘onion’ (i.e., the concentric circles depicting companies’ spheres of influence – as described in ICMM’s first submission). That is, they are neither wholly within – nor, it is argued by critics, wholly outside – the company’s control or influence. Again, please see main text of the submission for a discussion of this.

Methodology and limitations of analysis

The 38 mining-related human rights controversies examined for the analysis comprised:

- a) All the mining related-cases in the sample of 65 cases surveyed by the SRSG (the SRSG provided ICMM with his lists of cases)
- b) Additional mining-related cases cited in a joint NGO submission on human rights and the extractive industry by the International Network for Economic, Social and Cultural Rights (ESCR-Net) in 2005
- c) A number of more recent mining-related cases to have emerged since the SRSG submitted his interim report and which were reported on the ‘Business and Human Rights’ website.

For each of the cases, basic information was gathered regarding: the companies allegedly involved; the countries in which alleged incidents or abuses took place; and the issues cited in the allegations. The research was based on publicly-available information gathered from a search of internet sources and there was no engagement with the complainants or the companies concerned. Also, information used in the analysis, including the identification of issues pertaining to each case, was not verified by the companies concerned. Given that the aim of the analysis was to pinpoint patterns in the criticisms made (rather than whether the criticisms were justified or not), articles and reports by NGOs and news-providers were the primary source of information on the issues raised in the cases. Approximately four to six articles/reports were consulted for each case.

Research was conducted in June-July 2006. Company and country data used were the most recently available, and do not necessarily relate to the actual time period the case allegedly occurred. Most of the cases were in fact very recent. As well as the six of the 38 cases in category (c) above – i.e., which took place between February and July 2006 – for 28 out of the 32 remaining cases (i.e., 88%) the key allegations surveyed in the analysis were made in the period from 2000 onwards.

The 38 cases involved a total of 42 companies/entities with an equity stake in the operation concerned. Thus more than one company/entity is involved in a number of cases (as a financial investor, operator of the mine or minerals' purchaser). A few companies are involved in more than one case. The companies/entities include publicly-listed, private and state-owned enterprises, as well as multilateral institutions.

Among the 38 cases in the analysis were 5 'cross company cases'. These are cases that do not specify particular companies, but cover the mining industry (or an element of it) in a particular country – for example the mining industry in Burma or China, or the diamond/coltan/tin mining industries in the Democratic Republic of Congo (DRC). No information pertaining to one case referenced in the SRS's list was found.

Cases occurred in 25 countries in total. Individual countries where the greatest number of cases occurred are the DRC (5 cases, including 3 'cross-company' cases), the Philippines and Indonesia (4 cases respectively), India (3 cases), and Ghana, Papua New Guinea and Peru (2 cases each).

Company-specific information was not available for 12 of the 42 companies (involved in 12 separate cases) identified in the analysis which do not have active websites – mainly because they are government owned, or because they have been acquired, merged or ceased operating since the case occurred. Half these companies are involved in cases involving other companies for which data is available. Company-specific information is also unavailable / does not apply to the International Finance Corporation (IFC) which has an investment in mines involved in three cases. Company-specific data was not gathered in 'cross-company cases' which are therefore excluded from the corresponding diagrams below.

Looking across all companies cited in the cases, 15 nationalities are represented. Most commonly, companies are incorporated in Canada (9 companies of which 8 are operators), the UK (6 companies of which 4 are operators), the US (4 companies of which 3 are operators) and Australia (4 of which 3 are operators). The nationality of the remaining companies is Botswana (1), Democratic Republic of Congo (DRC) (1), Ghana (1), India (2), Indonesia (1), Japan (2), Mexico (2), Peru (1), Philippines (1), PNG (3) and South Africa (2). These accounts for 40 of the total 42 companies/entities included in the analysis – the remaining 2 companies/entities are the IFC which is considered global, and a company for which no information was found.

1. Findings from country indicators

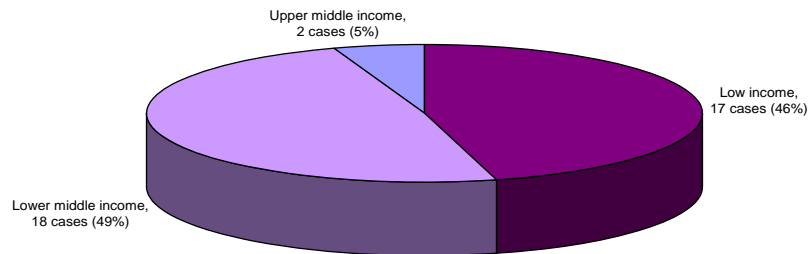
The following statistics relate to the 37 cases (out of 38) for which information are available.

- Most cases occur in the low or lower-middle income countries.

Nearly all the countries in which cases occur fall into the lower income brackets classified by the World Bank (see pie chart below). Overall, 17 cases (46%) occur in low income and 18 cases (49%) in lower middle income countries. Only 2 cases (5%) fall outside the lower income brackets, in the upper middle income category

26 cases (70%) take place in countries ranked 110th or below on the Human Development Index (a total of 177 countries are included on the index).

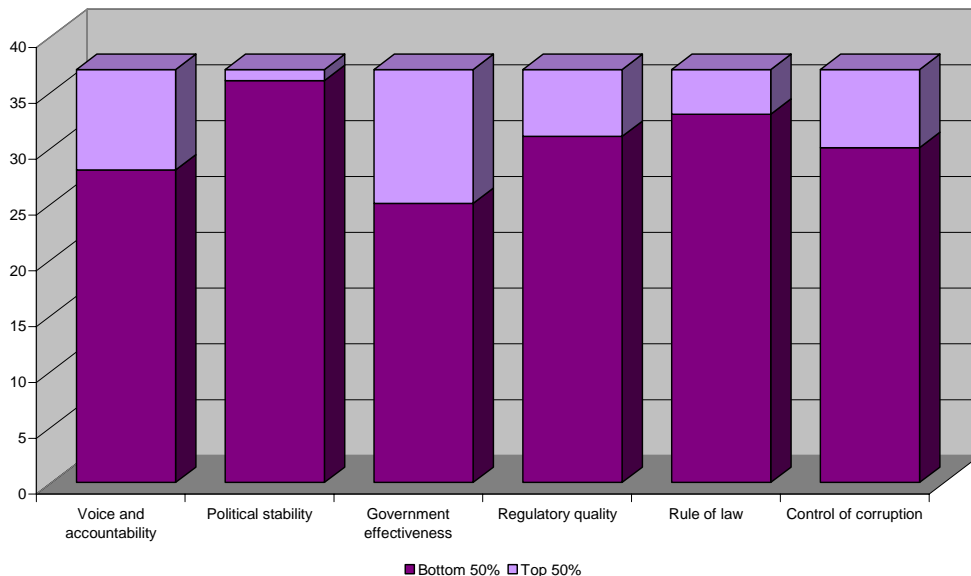
Figure 1: Number of cases occurring in countries according to their income bracket (brackets defined by the World Bank)



- Most cases occur in weak governance countries

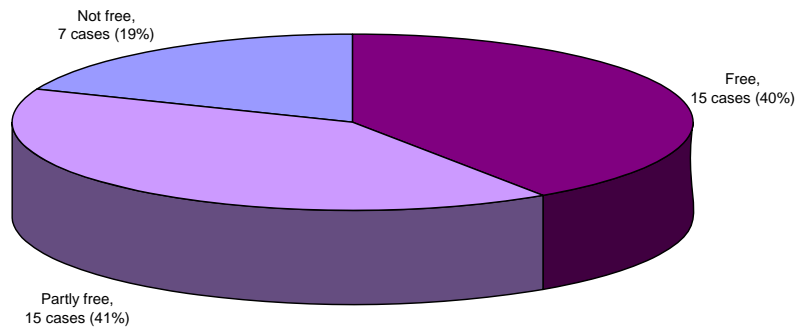
The majority of cases occur in countries ranked below the 50 percentile mark of the six World Bank governance indicators. A strikingly large number of cases occurred in countries considered politically unstable.

Figure 2: Number of cases below and above the 50th percentile mark of the six World Bank governance indicators



- Most cases occur in countries considered by the NGO Freedom House to be either partly or not free.

Figure 3: Number of cases occurring in countries grouped according to their degree of freedom (categories defined by Freedom House)



- Most cases occurred in countries which are not signatories to key voluntary initiatives or international conventions

Only 30% of cases occurred in countries which are declared supporters of the Extractive Industries Transparency Initiative (EITI). None of the countries in which cases occurred are signatories to the Voluntary Principles on Security and Human Rights (albeit this is not surprising since currently no developing country governments are yet signatories the Principles).

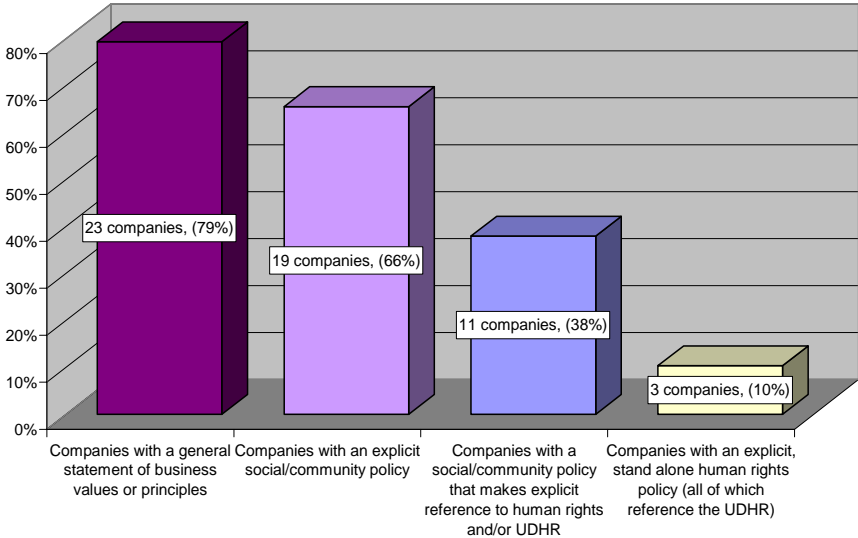
Only 22% of cases occurred in countries which have ratified the 1989 ILO Convention (No. 169) concerning Indigenous and Tribal Peoples in Independent Countries. An additional 16% ratified an earlier version of the Convention (No. 107) in 1958.

2. Findings from company indicators

The following statistics are based on a total of 29 companies for which information is available (see above). Diagrams and data capture only information presented on company websites.

- Many companies have broad ethical, social or community policies – but fewer have policies focusing explicitly on human rights

Figure 4: Corporate policies indicating a commitment to human rights



* Note that companies may fall into more than one category.

- 79% (23 companies) have a stated community investment program
 - 48% (14 companies) produce a company level CSR/SD report
 - 34% (10 companies) have an ethics/HSE/SD board sub-committee
- Relatively few companies have committed to key voluntary initiatives
 - 31% (9 companies) are members of the Global Compact
 - 17% (5 companies) are signatories to the Voluntary Principles on Security and Human Rights
 - 14% (4 companies) explicitly support the Extractive Industries Transparency Initiative
 - 10% (3 companies) report in accordance with the Global Reporting Initiative guidelines (although an additional 3/4 companies have committed themselves to report in accordance with the guidelines in the near future)

3. Findings from issue indicators

- Allegations focus most often on 'health and environment', 'indigenous peoples', 'security' and 'civil conflict' issues – while concerns over 'economic' impacts and 'consultation' are often underlying complaints

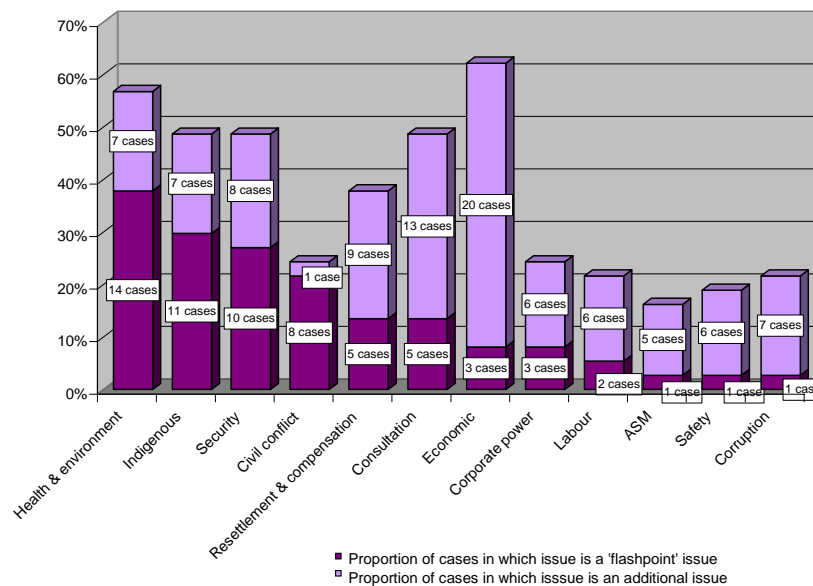
The analysis identified the main human rights concerns that were the subject of allegations / criticisms for each case – in most cases, NGOs or communities drew attention to a range of issues. Definitions of the categories of issues used for this analysis are provided in the table below.

The main concerns dominating the headlines or providing the focus of criticism of each case were identified as 'flashpoint' issues, and all other issues involved in the case were described as 'additional issues'. A maximum of two 'flashpoint' issues were identified for each case. As many additional issues were identified for each case as were explicitly referred to in the allegations / criticisms in the NGO literature or media reports surveyed.

As figure 5 illustrates, the main 'flashpoint' issues relate to alleged or feared adverse health and environmental impacts, alleged infringements of indigenous rights, alleged abuses arising from security arrangements and alleged complicity in civil conflict.

A different set of issues is cited with greater frequency in the 'additional' issues category. These are particularly issues around economic impacts, consultation and resettlement and compensation. Allegations of adverse/inadequate economic impact are present in a strikingly high number of cases – over 60% of total cases.

Figure 5: Proportion of all cases in which issues are cited in allegation / criticism



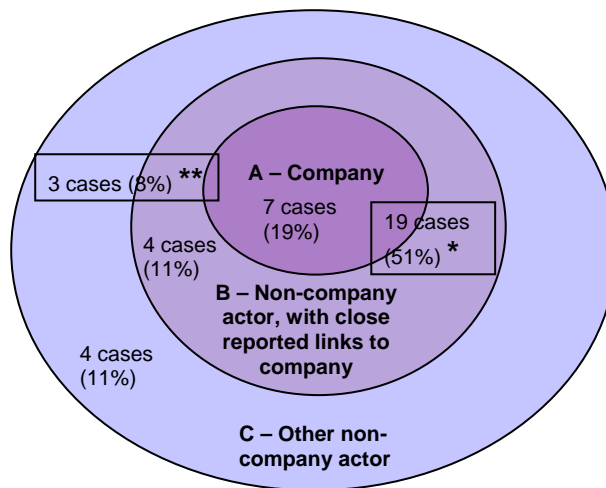
Issue indicators – definitions used	
Civil conflict	Revenues, payments or other support from company allegedly used by government / state entity / rebel group to fuel conflict, or conflict between different groups over distribution of revenues.
Security	Security arrangements – alleged abusive actions of personnel guarding the mines / in region of mines.
Indigenous	Rights of indigenous peoples alleged to be infringed (i.e., group identified as 'indigenous' being allegedly harmed).
Resettlement and compensation	Resettlement alleged to have been undertaken unfairly, or perceived inadequate compensation for land / property
ASM	Interests / position of traditional / artisanal or small-scale miners alleged to be undermined.
Health & Environment	Alleged / feared health and environment failures.
Safety	Alleged / feared safety failures.

Economic	Perceived negative economic impacts, or perceived insufficient local economic benefits, including negative impact on livelihoods.
Corporate power	Perceived undue political influence of company, including both (a) revenues and existence of company as investor allegedly helping to legitimize human rights abusing regime or (b) government allegedly bending to wishes of company.
Consultation	Alleged failure by company to consult meaningfully or secure consent.
Corruption	Alleged corruption or lack of fiscal transparency on part of company or government.
Labor	Alleged labor abuses, including forced labor, child labor, lack of freedom of association or union representation, racial or sexual discrimination, harassment or abuse.

- Most cases relate in some way to actions by state (or other non-corporate) bodies – but with close perceived links to the mine

The analysis also classified cases according to which actors were said to be involved in, or to be responsible for the alleged abuses. In this respect, 70% of the cases fall partly in the middle zone of the ‘onion’ (see section 2.3 of main text of submission) – that is, they are reported as being partly or wholly due to “actions of the government, a state body or other actor in the vicinity of the mine, allegedly on behalf of the mine, or with alleged direct benefit for the mine”.

Figure 6: Number of cases by parties reported to have committed the alleged human rights abuses



Key & full definitions used in analysis

A – Direct actions or behavior of company / contractor to company alone.
B – Actions of government, state body or other actor (not the company itself) either in the vicinity of the mine, allegedly on behalf of the mine, or with alleged direct benefit for the mine.
C – Other actions of government, state body or other actor (not the company itself).
* – Cases involving allegations covering both A and B
** - Cases involving allegations covering A, B and C

ANNEX 2: Good practice cases

Overview

This annex provides examples of innovative management processes and systems developed by ICMM member companies to implement their stated commitments on human rights.

ICMM's first submission to the SRSG Professor John Ruggie has already provided considerable background information on members' work on human rights, including the ICMM Sustainable Development framework, corporate policies and initiatives, and also a series of case studies. These featured, for example, Placer Dome's HIV/AIDS programs, the approach of the Minerals Council of Australia on gender diversity, work by Falconbridge on engaging with indigenous communities, and also cases focusing on safety, integrated landscape management, and enhancing the socio-economic impacts of mining.

The aim of the four additional cases in this second ICMM submission to the SRSG is to focus specifically on ways in which members are strengthening their internal management processes and systems on human rights – as well as to pinpoint basic management lessons in this area. This is highly relevant to the SRSG's mandate which, among other things, calls upon him:

- "To develop materials and methodologies for undertaking human rights impact assessments of the activities of transnational corporations and other business enterprises; [and]
- To compile a compendium of best practices of States and transnational corporations and other business enterprises..."

The aim of these cases is not to suggest that good internal processes are an end in themselves: human-rights outcomes on the ground are the most important indicator of the high standards to which ICMM members are committed. However, processes are critical to ensuring high-level corporate policies actually translate into outcomes. Moreover, the development of management processes specifically to implement human rights policies is a new, and relatively immature, field, with firms in some industries still at the stage of announcing initial commitments in this area. A number of the implementation processes used by ICMM members as described here, on the other hand, are believed to be relatively innovative – and may hold lessons for other companies and sectors.

Also worth emphasizing is that the four cases represent just a sample of the recent work by ICMM members in this area. Among other recent initiatives, for example, the Prospectors and Developers Association of Canada commissioned a detailed study of mining exploration, corporate social responsibility and human rights, focusing on the foreign activities of Canadian exploration and development companies. This was in preparation for PDAC's engagement with a series of roundtables on mining and CSR organized by the Canadian government. Freeport McMoran has developed various processes for implementing its social, employment and human rights policy at its operations in Papua, Indonesia – including an external audit of this policy by the International Center for Corporate Accountability. Lonmin, another ICMM member, has included training on human rights in induction training portfolio, while its security staff are subjected to special training relevant to their line of work.

Given the wide range of issues often categorized under the human rights umbrella, a critical initial focus for companies across all sectors clearly needs to be ensuring they 'do no harm'. Contribution to promoting a broader range of rights is also important, albeit firms also need to balance this with inevitable commercial pressures. ICMM and its members recognize the importance of continuing to push ahead on both fronts. The rest of this annex deals in large part with strengthening internal processes so as to uphold the 'do no harm' concept.

Management lessons

The cases which follow provide detail on the implementation processes developed by particular ICMM members. Looking across the cases, however, three broad management lessons are apparent. Successful implementation of human rights policies and commitments often benefits from:

- *A strong initial focus on building basic awareness, skills and confidence across the organization.* Though committed to responsible conduct, operational managers and employees may not be well versed in human rights debates and dilemmas, potentially regarding these (correctly or not) as outside their sphere of competence, somewhat unrelated to their day-to-day activities, or simply not tractable from a management perspective. There may also be a perception that engaging on, or flagging, human-rights issues within the organization can invite criticism. Basic confidence- and capacity-building tools which have proved useful to overcome such challenges include: clear and practical management guidelines (which also seek to clarify where possible the boundaries of companies' responsibilities), training, encouraging operations to undertake human-rights self assessments, developing tools and processes jointly with operations (rather than simply issuing them from head office), and information sharing with other companies which are operationalizing human rights policies.
- *Tools and processes which are simple, clearly actionable and tailored to existing management systems.* Some human rights tools may be seen to be overly complex, or insufficiently adapted to the pressures of day-to-day management. Simple, easily-understood methodologies, with clear action points, appear to be important to building internal momentum for implementation. More detailed processes can in turn be developed for high-risk operations. Given that most major mining firms have already developed extensive processes for managing community relations and HSE issues as well as for minimizing overall risks to the business, it also may help to integrate human rights issues into these existing systems – filling gaps as necessary, but not creating an entirely separate, duplicative set of processes. Also the fact that human rights issues fall across the remit of numerous divisions with the company (e.g., human resources, HSE, community relations, compliance, government relations) means that it may help to appoint a single manager within each operation to coordinate implementation efforts.
- *An ongoing commitment to strengthen internal capacity and mainstream human rights.* Even best practice companies recognize that further work is sometimes needed before internal processes provide 100% assurance that their policies are being implemented in every part of every operation (and, again, blurred boundaries of responsibility with governments and other actors often complicate matters further – see main text of submission). Long term programs of training and awareness building may help in this respect, with efforts best focused on personnel at the human rights 'frontline', such as community relations, contractors, or security guards. Traditional areas of focus such as HSE management may need to be the subject of continuous improvement too. It may also help to continue to strengthen, and stress test, internal control and reporting systems so as to ensure sufficiently open flows of information between head office and local operations over human rights risks and issues.

Case study 1

Embedding human rights in core management processes at BHP Billiton

Like other ICMC corporate members, BHP Billiton has various long-established policies and processes for health, safety, environment and community (HSEC) issues. However, it has recently bolstered its internal system for managing human rights issues – in particular by developing and rolling out a human-rights self assessment tool. Now completed by 38% of the company's operations, the tool has been developed as a streamlined and practical method to raise local management awareness of human rights, and (in the tool's recently revised form) to set out basic recommended actions to respond to current or potential concerns. With simplicity in mind, the tool has also been developed so as to fit with existing company approaches to rating risk.

BHP Billiton has made a number of corporate-level commitments to human rights. As well as its Sustainable Development policy ("Wherever we operate we will ... uphold fundamental human rights within our sphere of influence"), which is backed by a set of HSEC management standards, the company has publicly committed to the Universal Declaration on Human Rights, the UN Global Compact, the Voluntary Principles on Security and Human Rights, and the World Bank Operational Directive on Involuntary Resettlement. As with other companies, however, BHP Billiton is committed to continually improving the understanding and awareness of managers and employees regarding these undertakings.

The self assessment tool together with a supporting guidance document on human rights has been developed partly to tackle this issue. The guidance document provides a succinct and clearly-written introduction to human rights and its relevance to the company, including explaining the concept of 'spheres of influence' (as also described in ICMC's first submission to the SRSG).

The self assessment tool, meanwhile, has recently been revised and improved based on trials and input from across the company's main business divisions (including seven 'customer sector groups', as well as global supply and exploration). In terms of the basic approach, the tool requires operations to assess the level of human rights risk (or 'consequence severity') for each of a set of 6 stakeholder groups – employees, communities, suppliers, security forces, business partners and governments. The risk level chosen can range from 1 (low) to 5 (critical), which is comparable with how the company categorizes other business-related risks. For each stakeholder group and risk level, a minimum recommended action or set of actions is described in the tool.

For example, if the risk level for 'communities' is judged to be '3', the actions recommended for operations include implementing a community relations and management plan, ensuring indigenous and minority groups are adequately engaged in consultations, and – for any relocations – implementing a management plan consistent with the World Bank directive on resettlement. To give another example, if the risk level for security forces is judged to be '4', operations are expected to, among other things, implement a management plan, including appropriate training, in line with the Voluntary Principles on Security and Human Rights, and immediately escalate the issue for review by senior management.

Though the demands and expectations on management flowing from the self-assessment may turn out to be considerable, the tool is designed to be completed by a team of appropriately skilled employees and stakeholder representatives in about half a day.

Apart from the tool, human rights are being embedded in BHP Billiton's existing systems in other ways too. For example, a set of questions on human rights have been incorporated within general HSEC audit and self-assessment processes (every operation

is required to undergo an internal audit against the HSEC management standards every three years, with self-assessments conducted yearly).

In terms of the initial impacts of these strengthened human-rights systems, there is evidence that overall management awareness of the issue has been raised (in Australian operations for example), and also that sites have recently developed more human rights training and materials (in Colombia and Algeria, for example). Nonetheless BHP Billiton recognizes that challenges remain, including the need to continue to build on-the-ground skills and capacity to manage human rights. Differentiating between human rights challenges faced by exploration teams and operational mines is another area of ongoing internal development.

Even so, the self-assessment tool has clearly provided a useful and easily-understood management framework for implementing the company's human rights commitments. In this sense it provides a critical foundation for ongoing efforts in this area.

Case study 2

The Voluntary Principles on Security and Human Rights: from principles to practice

This case-study sets out two examples of emerging practice in implementing the Voluntary Principles on Security and Human Rights, focusing firstly on Anglo American and secondly on the El Cerrejón mine in Colombia (jointly owned by BHP Billiton, Anglo American and Xstrata (all ICMM members)

Anglo American

A starting point for Anglo American's work in this area is its 'Good Citizenship Business Principles'. These include an explicit endorsement of the Universal Declaration of Human Rights and the following commitment: 'Whilst the primary responsibility for the protection of human rights lies with governments and international organizations, where it is within our power to do so, we will seek to promote the observance of human rights'.

Focusing on the Voluntary Principles on Security and Human Rights, Anglo American has developed tools and systems to support implementation of the Principles which (although still in the process of being rolled out) are among the most advanced of any company. This may be partly due to the groundwork it undertook before committing to the Principles. Anglo signed up in January 2005, more recently than some firms, and only after two years of consideration and preparation of relevant materials. Of particular interest here are a manual and training seminar, and the integration of reporting on the implementation of the Principles into the Group's main assurance process.

In terms of the groundwork, Anglo carried out a security risk assessment across all countries where it has interests prior to signing up to the Voluntary Principles. Anglo considers that this was an important step in making an informed decision and addressing initial management concerns. In the interests of rigor, the assessment was based on a broad interpretation of risk, covering community and industrial relations as well as the core human rights concerns associated with security. The assessment identified a small number of medium/high risk countries, confirming the potential value of the Principles in these areas. Discussions with other companies in the extractive sector about their experiences in operationalizing the Principles, coupled with legal advice, provided further useful internal support for Anglo's decision to move ahead.

A manual on the Voluntary Principles was developed to guide their implementation. As the Principles by their nature cut across a number of company departments (legal, security, human resources, HSE etc.), an individual lead manager within each of Anglo's six managed business units was appointed to take on responsibility for this process. The manual offers a clear explanation of the Principles, and their relevance to the company, together with case-studies. Most importantly, it includes practical guidance on key implementation processes, starting with how to build a network of external stakeholders to assist in carrying out security risk assessments (cross-referenced to Anglo's engagement methodologies contained in its Socio-Economic Assessment Toolbox). Enclosed is an easy-to-use risk assessment tool with four-step guidance, from identifying the underlying and asset-specific sources of risk, to assessing the human rights records of security forces and the strength of the rule of law in the country of operation. Beyond risk assessment, the manual provides specific guidance on issues covered by the Principles, including human rights awareness training, responding to allegations of human rights abuse and recruitment and training of appropriate security personnel.

In addition, Anglo has developed a training seminar, targeting countries identified as medium/high risk by the initial risk assessment. The seminar is tailored to the fact that Anglo's activities in these locations are mainly at the exploration rather than operational phase. Drawing input from legal and political risk experts, the seminar is largely scenario-based. To date, seminars have been held in South Africa, Chile, China and Central Europe and training materials are available to staff on the company information portal.

Finally, Anglo has incorporated compliance with the Voluntary Principles into its principal assurance mechanism, namely an annual letter of assurance from all site managers to the Chief Executive. In 2005, this process was guided by 19 questions for site managers to complete, one of which related to early-stage implementation of the Voluntary Principles. This year, the question will be up-dated to reflect progress.

Cerrejón

Cerrejón is the largest mining operation in Colombia, a country in which long-standing internal conflicts create a challenging security environment. Resettlement of local communities around Cerrejón has also been the source of disputes in the past. Cerrejón recognizes the importance of strengthening relationships with communities. As well as incorporating human rights into its corporate policies, it has advanced its work in the area of security based on the Voluntary Principles on Security and Human Rights.

Specifically, it has initiated a human rights training program targeting four stakeholder groups, including the company's own security personnel, and private and public security forces. Special effort has also been made to involve the local community, particularly members of the Wayuu indigenous population.

Training so far has been carried out in three phases, over three consecutive years. In 2004, training focused on the Colombian public security forces, reaching over 500 members of the national army, navy and police force. In this first phase, training was conducted by the Costa Rican Human Rights Training, Qualification and Analysis Center (CECADH). A further 465 stakeholders received training in 2005, including 150 members of the Wayuu community, 140 state security members and 90 private security personnel. In this second phase, training was carried out by the Colombian Red Cross and the International Committee of the Red Cross. Finally, Cerrejón aims in 2006 to provide training for a further 2,000 people, including 800 army officers, 700 private security personnel and 100 members of civil and governmental authorities.

The 2-day training course covers basic principles on human rights and international humanitarian law through a combination of drills, cases, games and awareness-building exercises. Special attention is given to the respect of vulnerable groups, such as women and the Wayuu ethnic population. The course seeks to enable soldiers, commanding officers and other participants to apply concepts in their day-to-day activities, including in potential combat situations.

Cerrejón's work in implementing the Voluntary Principles is an ongoing process, with further training to be carried out in future. Cerrejón is also currently engaged in a one-year collaborative effort with a human rights NGO to review its approach. However, according to a number of political and civic leaders, the program has already brought about positive changes in the approach of the public security forces and has helped improve community relations – although the long-term impact of training clearly will only reveal itself over time. From the perspective of Cerrejón itself, the potential long-term benefits of the program include improved reputational risk management, reduced litigation and financial risk, and the preservation of the company's social license to operate.

Case study 3

Integrating human rights into group management systems at Rio Tinto

This case-study outlines Rio Tinto's growing internal systems and procedures for implementing its policy commitment on human rights. A broad range of processes have been developed, though the case study focuses in particular on human rights training and internal compliance procedures.

Rio Tinto's statement of business practice, '*The way we work*', contains nine core policies, including a human rights policy that explicitly supports the Universal Declaration of Human Rights, and a number of other policies related to human rights, such as its policies on communities, employment, land access and sustainable development. These policies are overseen at the Group level by a Board sub-committee on 'Social and Environmental Accountability'. Various supporting documents for business units have been developed, including detailed guidance booklets on 'business integrity' and 'human rights' as well as a 'communities standard'. A number of these documents are currently being up-graded from 'guidance' documents to mandatory 'standards'.

Rio Tinto has various long-standing processes in place for implementing its range of policies including, for example, HSE management procedures, a system of 'five year communities' plans at each of its operations (these draw on social baseline assessments and consultation to develop agreed local community initiatives), and also an annual Internal Control Questionnaire. In recent years, however, the human rights element within its internal systems has been bolstered, and also new processes have been developed.

Internal control procedures, for example, have been strengthened to monitor compliance with the human rights policy and guidance. The annual Internal Control Questionnaire (ICQ), which business unit managers are required to complete, has steadily evolved since the late 1990s and 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.

To highlight just a few examples from the ICQ questions, business units are asked whether they have adopted and communicated a local code of conduct (and not only communicated this to employees, but also to associated companies, non-managed joint venture partners, principal contractors and suppliers). Another set of questions call for information regarding representations from local community or interest groups, and details of internal communication and follow-up on these issues. A number of questions relate to the Voluntary Principles on Security and Human Rights, for example regarding screening and training of security forces.

As well as internally reviewing responses to the ICQ, Rio Tinto requires its businesses to confirm that they have implemented the Group's whistle-blowing program called *Speak-OUT*. This provides a confidential and independent avenue for employees to express concerns and complaints (in the local language) regarding a wide range of issues, including – but not limited to – any allegations of potential human rights abuses.

In terms of training systems, these have been supplemented with the introduction of web-based training. Rio Tinto has established an on-line Compliance Training Center to provide training in the form of some 30 individual modules across a range of policies and specific areas of law and good practice – including several that are directly relevant to human rights. Training on a number of modules, including '*The way we work*', is mandatory for all employees. Further, since 2005 training in the *Business integrity guidance* has been required of all employees at manager level and above, while training on the *Human rights guidance* is required of all those at general manager level and above (some 425 employees). The human rights training module is also being cascaded down through the grades – some 2,133 employees have so far completed the course.

In terms of the content of the human rights training 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 – for example, the need to provide security personnel with not only information but practical training, and the elements of an effective community plan. Potential areas of misunderstanding are also clarified. Information is explained simply and effectively, using role-plays and question/answer boxes. First time users must view each page in sequence and pass an interactive set of questions within each section and at the end of the module.

Another recently introduced training program (this one face-to-face, rather than web-based) is a half day training module called 'Valuing Our Differences'. This focuses on workplace diversity and cross-cultural issues, and contains a significant human rights component. The module is mandatory for all employees at Rio Tinto's corporate office and is being rolled out across the Group where it is adapted to local issues. In 2005, it was implemented in Zimbabwe. Plans in 2006 include sites in Canada and Australia. To date, 18 workshops involving 200 employees have been completed at the corporate office.

Internal systems around community based issues are also being refined. Rio Tinto has introduced 'Site Managed Assessments' (SMA), for example, to help ensure all businesses are implementing the communities policy and standard. In contrast to earlier Health, Environment and Community reviews, SMAs focus solely on community issues and are implemented by a site based team rather than corporate level employees, including a senior site manager from a different area within the business and also an external participant. The objective here is to both strengthen local ownership and to drive performance.

Together the processes described above are intended to operate as an integrated internal system of checks upon checks so as to guarantee policy and procedure implementation (but without creating unnecessary internal bureaucracy or micro-management). Integrating human rights' questions into the ICQ has clearly been an important step in highlighting the importance of such issues for business units. Rio Tinto also recognizes, however, that such group-wide processes need to be underpinned by awareness training, proactive community relations work and other rigorous systems at the local level.

Case study 4

Developing fit-for-purpose human right tools at Newmont

This case study provides an overview of Newmont's human rights management system and highlights some new tools currently being implemented – namely a human rights primer, and a number of internal and external human rights and conflict assessment tools.

The company has in recent years been refining its procedures. Together, the newly developed tools covered in this case study aim to raise internal awareness, build internal skills and capacity, and allow human rights to be embedded into the company's broader risk management framework.

At the overall policy level, Newmont's social responsibility policy provides explicit support of the Universal Declaration of Human Rights and key voluntary initiatives such as the Extractive Industries Transparency Initiative and the Voluntary Principles on Security and Human Rights. The policy is underpinned by 19 management standards and 14 discipline-specific standards, several of which are relevant to human rights, directly or indirectly. A standard on human rights awareness, for example, requires all facilities to have a process for raising such awareness among employees in place. Others standards cover, for example, the management of significant religious and cultural sites, land access, indigenous employment and business development, and security forces management.

Implementation of these standards is monitored annually at each operating site by external auditors. This is part of Newmont's 'Five Star Integrated Management System' for social, environmental and health and safety issues, in which the overall performance of sites is ranked on a scale of 1-5.

Supporting this overall system, Newmont has also developed a number of tools to assist in the implementation of its human rights related standards. Its 'human rights primer', for example, distributed to all facilities earlier this year, is designed to build knowledge and capacity at the operational level to identify and manage human rights risk, and to form a basis for developing awareness programs. The primer provides an introduction to human rights and their relevance to the mining industry, with information on key international instruments and business initiatives. It also incorporates a mini human rights risk assessment tool – a 'checklist' based on 63 simple questions in the areas of civil and political rights, economic rights and company policy. Questions range from country-level issues, such as the electoral process and quality of governance, to local factors such as wage levels and company practices regarding indigenous peoples and culturally or religiously significant sites.

In addition to annual 'Five Star' assessments referred to above, Newmont is among the relatively few companies to have undertaken human rights risk assessments based on externally-developed tools. The first assessment was carried out at the Pajingo mine in Australia using a tool loosely based on the assessment process developed by the Danish Institute for Human Rights. The second, carried out at the Yanacocha mine in Peru, produced a detailed report based on the UN 'Norms' framework. A number of outcomes emerged from the assessments including, in the first case, an improved understanding of issues around indigenous rights; and in the second case a 23-point action plan across a range of areas (policy and planning, human rights training, complaints mechanism etc.), as well as a half day senior management training seminar.

Newmont has also developed innovative processes for assessing conflict risks for new and existing operations. Newmont has set the target for all its sites to complete a conflict assessment by the end of 2007, using either a tool it has developed itself (linked to the 'Five Star' management process) or an external tool developed by the Fund for Peace, a Washington-based NGO.

Newmont's own 'conflict identification assessment' tool, presented in a 30-page report format and process-flow diagram, is designed to be a practical instrument for use on-site at mature, ongoing operations. It is based on a five-stage process, from internal and external stakeholder engagement to appraising capacity and designing conflict mitigation measures. A logical sequence of guiding questions is provided at each stage, with information about additional resources, as well as expected outputs.

The methodology developed by the Fund for Peace – the 'conflict assessment system tool' (CAST) – is more narrowly focused than Newmont's own tool and is applied at the pre-investment stage. Newmont has so far conducted six assessments using CAST. It is based on 12 indicators, covering potential conflict-drivers such as demographic pressures, economic inequality and 'delegitimization' of the state. Newmont has adapted the tool for its own use, for example by adding a financial indicator to increase its relevance to its own business development department (which obviously plays a critical role in early-stage projects).

Newmont recognizes the importance of continuing to strengthen its overall work on human rights, raising internal awareness and building capacity, particularly at the operational level. As with all companies, processes ultimately need to be judged by their impact on the ground. Nonetheless, in developing a suite of tools which are both easy to use and tailored to its existing management system, Newmont is clearly helping to mainstream its policy commitments into day-to-day business activities.