

REALITIES AND PERCEPTIONS OF HUMAN RIGHTS
AND THE MINING INDUSTRY— A CASE STUDY

by

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Abstract

Dealing with realities and perceptions of human rights in the mining industry context is important. Significant socio-economic risks to existing and potential mining operations arise when mining companies are believed responsible for or complicit in human rights abuses. Mining engineers responsible for projects need adequate awareness and sufficient capacity to manage these risks effectively.

This research proceeded in two ways after reviewing the history of the evolution of human rights: It studied important examples of alleged human rights violations associated with mining companies, large and small. Historical data and the evolution of attitudes and perceptions within and about the Rio Tinto mining company's operations worldwide were also examined. Qualitative research based on interviews with former and current executives and staff in Rio Tinto, other companies, government and civil society provided original data and captured perceptions, awareness, attitudes and practices.

A categorized database developed with 178 cases of allegations of human rights abuses shows the breadth of the human rights challenges. Principal reasons why the question of human rights and the mining industry is important, including identified points of conflict between mining and society, were explored. Case studies were organized by point of conflict (use of security forces, indigenous peoples, labour rights, "pariah" or failing states, and national and regional jurisdiction conflict). Existing industry safeguard policies, practices, monitoring, verification and reporting were examined.

The research determined, from recent evidence and allegations of complicity in human rights abuses, that voluntary initiatives alone are inadequate. Failures of host governments and companies to protect human rights necessitate effective mechanisms to investigate, and hold accountable, companies complicit in human rights abuses.

A method was recommended for the industry to engage positively with all stakeholders in the mineral development cycle. Policies, codes, principles, checklists, voluntary initiatives, best practices, monitoring, verification and compliance reporting are recommended to exploration and mining companies serious about making commitments to respect human rights.

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Glossary

AA1000	AccountAbility 1000 Standard
ACFOA	Australian Council for Overseas Aid
ADB	Asian Development Bank
AGA	AngloGold Ashanti Limited
AP	Associated Press
APEGBC	Association of Professional Engineers and Geoscientists of the Province of British Columbia
AS/NZS	Standards Australia/Standards New Zealand
AusAID	Australian Aid for International Development
BBC	British Broadcasting Corporation
BCL	Bougainville Copper Limited
BSR	Business for Social Responsibility
CAO	Office of Compliance Advisor/Ombudsman of the International Finance Corporation and the Multilateral Investment Guarantee Agency
CASM	Communities and Small Scale Mining Initiative
CBMM	Companhia Brasileira de Metalurgia e Mineração
CBO	Community-Based Organization
CEEST	The Center for Energy, Environment, Science and Technology
CEM	Compania Explotadora de Minas S.A.
CEO	Chief Executive Officer
CESR	Center for Economic & Social Rights
CERD	Committee on the Elimination of Racial Discrimination (UN)
CESCR	Committee on Economic, Social and Cultural Rights (UN)
CFMEU	Construction, Forestry, Mining and Energy Union
CI	Conservation International
CIDA	Canadian International Development Agency
CIDSE	International Co-operation for Development and Solidarity
COICA	Coordinator of Indigenous Organizations of the Amazon Basin
COW	Contract of Work
CRA	Conzinc Rio Tinto of Australia
CSI	Corporate Social Investment
CSR	Corporate Social Responsibility
CVRD	Companhia Vale do Rio Doce (now known as Vale)
DFAIT	Department of Foreign Affairs and International Trade Canada
DFID	United Kingdom Department for International Development
DRC	Democratic Republic of Congo
DSD	Defense Signals Directorate (Australia)
ECOSOC	Economic and Social Council (UN)
EIA	Environmental Impact Assessment
EIR	Extractive Industries Review
EITI	Extractive Industries Transparency Initiative
E&MJ	Engineering and Mining Journal
ESCAP	Economic and Social Commission for Asia and the Pacific (UN)
ERA	Environmental Risk Assessment
ETS	European Treaty Series
FCO	United Kingdom Foreign & Commonwealth Office
FFIJD	Freeport Fund for Irian Jaya Development
FI-FO	Fly In-Fly Out

FLA	Fair Labor Association
FNA	Front des Nationalistes et Intégrationnistes (Nationalist and Integrationist Front)
FOE	Friends of the Earth
Footsie for Good	FTSE4Good (an ethical fund index)
FPP/TF	Forest Peoples Program/Tebtebba Foundation
Freeport	Freeport McMoRan Copper & Gold, Inc.
FSU	Former Soviet Union
FTSE	FTSE Group (a company jointly owned by The Financial Times and the London Stock Exchange)
FUNAI	Fundação Nacional do Índio (Brazil: National Indian Foundation)
GAAP	generally accepted accounting principles
GC	Global Compact
GDP	Gross Domestic Product
GFA	Global Framework Agreement
GHG	Greenhouse Gas
GMI	Global Mining Initiative
GRI	Global Reporting Initiative
GSP	Global Sullivan Principles
ha	Hectare
HIV/AIDS	Human Immunodeficiency Virus/Acquired Immune Deficiency Syndrome
HRC	Human Rights Committee (UN)
HRIA	Human Rights Impact Assessment
HRW	Human Rights Watch
IACHR	Inter-American Commission on Human Rights
IBLF	International Business Leaders Forum
ICC	International Chamber of Commerce
ICCA	International Center for Corporate Accountability
ICEM	International Federation of Chemical, Energy, Mine and General Workers' Union
ICFTU	International Confederation of Free Trade Unions
ICME	The International Council on Metals and the Environment
ICMI	International Cyanide Management Institute
ICMM	International Council on Mining and Metals
ICRC	International Committee of the Red Cross
IFC	International Finance Corporation
IGC	Institute for Global Communications
IHRSTAD	Institute for Human Rights Study and Advocacy
IIED	International Institute for Environment and Development
IISD	International Institute for Sustainable Development
IMAZON	Instituto do Homem E Meio Ambiente da Amazônia (Brazil), Amazon Institute of People and the Environment
IMF	International Monetary Fund
ILO	International Labour Organization
IGWG	Intergovernmental Working Group on the Mineral Industry (Canada).
IRA	Irish Republican Army
ISO	International Organization for Standardization
ISO 14001:2004	Requirements for “environmental management systems”
ITUC	International Trade Union Confederation
JATAM	Jaringan Advokasi Tambang (Indonesian: Mining Advokasi Network)
MED	Minera El Desquite

MICCL	Myanmar Ivanhoe Copper Co. Ltd.
MIGA	Multilateral Investment Guarantee Agency
MMSD	Mining, Minerals and Sustainable Development (International Institute for Environment and Development)
MM7	Social Indicator MM7 (Global Reporting Initiative, GRI Mining & Metals Sector Supplement Pilot Version 1.0)
MONUC	Mission de l'Organisation de Nations Unies en République Démocratique du Congo (United Nations Observer Mission in the Democratic Republic of the Congo)
NGO	Non-Governmental Organization
NHO	Næringslivets Hovedorganisasjon (Confederation of Norwegian Business and Industry)
NI 43-101	National Instrument 43-101 (Canadian Securities Administrators)
NLD	National League for Democracy
OIC	Organization of the Islamic Conference
OAS	Organisation of American States
OHCHR	Office of the United Nations High Commissioner for Human Rights (UN)
OECD	Organisation for Economic Co-operation and Development
OPIC	Overseas Private Insurance Corporation (U.S.)
OPM	Organisasi Papua Merdeka—Free Papua Movement
OSHA	U.S. Occupational Safety & Health Administration
PARTiZANS	People Against Rio Tinto Zinc and Subsidiaries
PDAC	Prospectors and Developers Association of Canada
PEO	Association of Professional Engineers of Ontario
PNG	Papua New Guinea
PSAC	Public Service Alliance of Canada
PWBLF	Prince of Wales Business Leaders Forum
QDA	Qualitative Data Analysis
QIT	Quebec Iron & Titanium
QMM	QIT Madagascar Minerals
RAID	Rights & Accountability in Development
RFP	Request for Proposal
RICO	Racketeer Influenced and Corrupt Organization Act
RPM	Rio Paracatu Mineração S.A.
RTC	Rio Tinto Company
RTZ	Rio Tinto-Zinc Corporation
SA8000	Social Accountability 8000
SEAT	Socio-Economic Assessment Toolbox
SEC	Securities & Exchange Commission (U.S. government)
SEIA	Socio-Economic Impact Analysis
SEMA	Socio-Economic Monitoring Agreement
SLORC	State Peace and Development Council
STD	Sexually Transmitted Disease
TCCR	Taskforce on the Churches and Corporate Responsibility
t	tonne(s)
t/y	tonne(s) per year
TI	Transparency International
UNDH	Universal Declaration of Human Rights (UN)
UN	United Nations
UNCHR	United Nations Commission on Human Rights
UNCTAD	United Nations Conference on Trade & Development

UNEP	United Nations Environment Programme
UNEP FI	United Nations Environment Programme Finance Initiative
UN/ESCAP	United Nations Economic and Social Commission for Asia and the Pacific
UNESCO	United Nations Educational, Scientific and Cultural Organization
UNHCHR	United Nations High Commissioner for Human Rights
UNICEF	United Nations Children's Fund (formerly United Nations International Children's Emergency Fund)
UNIDO	United Nations Industrial Development Organization
UN Norms	United Nations Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises with Regard to Human Rights
USC	United States Code
VPs	Voluntary Principles on Security and Human Rights
WBCSD	World Business Council for Sustainable Development
WBG	World Bank Group
WCED	World Commission on Environment and Development (Brundtland Commission)
WSSD	World Summit on Sustainable Development
WTO	World Tourism Organization
WWF	World Wildlife Fund; World Wide Fund for Nature; WWF, the global conservation organization

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Dedication

This work is dedicated to the memory of Keith C. Fahrni, P. Eng, my first supervisor and mentor since I arrived in Vancouver in 1970 to work for The Granby Mining Company Limited. Always modest, one might never guess he had that rare credential of being a geological engineer principally responsible for not just one but several mines in British Columbia. Keith became a good friend and his own high ethical and outstanding engineering standards, coupled with the great respect he showed to everyone he encountered, made a lasting impression and influence on me and my career.

CHAPTER 1: Introduction

1.1 Statement of the Problem

“The last thing that we should desire for the prosperity and permanent welfare of a country would be the discovery of a gold mine in it. Hardly anything can be more certain to repress industry, productive labor, thrifty habits, and social improvement in general. The richest mining soils are peopled by the poorest communities.” (Boston Courier, 1848).

A landmark event, especially significant for the extractive industries, occurred in 1995 when the government of Nigeria executed nine people (among them Ken Saro-Wiwa) who had campaigned against environmental damage by major energy companies, especially Shell Oil. A new dynamic had entered the debate about corporations and human rights. Governments and companies had promoted the idea that expanded business and trade would improve conditions in countries with pervasive violations of human rights. They convinced the public of the concept that corporations would ensure enhanced protection for basic human and labour rights (freedom of association and expression), and eliminate cruelty and reduce ethnicity or gender inequality and discrimination and more. Sensational revelations in 1996 of complicity in human rights violations by major multinational corporations in various sectors, including British Petroleum Company, Carlsberg, Disney, Freeport-McMoRan, Heineken, Nike, Royal Dutch/Shell, Total, and Unocal, undermined their proposition. Initially exposed by the burgeoning activist NGOs, the stories were extensively reported by the international media with significant impact. Most companies opposed demands because of the potential billions of dollars of profits and investments at risk. The extractive industries did not even try to present a façade of being troubled (Ganesan, 1999a).

Since the mid-1990s the linkage of human rights with other concerns has become increasingly apparent. Mining companies might prefer to separate out the technical problems such as tailings disposal, ground water contamination, and other emissions, but there is an unavoidable link between environmental aspects and human rights, the community, the workforce, wealth distribution, indigenous peoples, and other stakeholder concerns. These questions are no longer discussed solely between the company and the national government, or between governments, as increasingly the mining company has to engage with all stakeholders.

There has been a greater public awareness of human rights (which include civil, political, economic, social and cultural rights) since the end of the Cold War, with growing criticism by NGOs and others of both corporations and nation states. Although nation states in the past were able to claim sovereign immunity for domestic actions, they are no longer able to violate human rights and be ignored.

The use of natural resources to fund conflicts has drawn adverse public attention to the mining industry, as in the case of “conflict diamonds” in countries including Angola, Democratic Republic of Congo (DRC), and Sierra Leone (United Nations, 2001i; Leavitt, 2006). One incident involving a major multinational mining company in Brazil concerned people from the local community, who were coming onto property and for gold in the tailings, being shot by security guards. This did nothing to improve the relationship between the company and the community (Hammer, 2000).

Mining companies have had to focus on human rights because of security problems and associated abuses of human rights caused by the use of police and security forces, private security companies and mercenaries in countries as geographically diverse as Angola, Colombia, DRC, Indonesia, Papua New Guinea and Senegal. In the oil and gas sector, companies face similar challenges in some of the same countries such as Colombia and Indonesia, but also in other countries such as Nigeria and the Sudan. When the mercenaries commit human rights violations and the host government is unable to control them, a need is seen “to convict the corporations that have trained them, hired them and in some cases given them instructions on how to conduct their illegal security activities” (Danailov, 1998).

Abuses by contractors, suppliers and partners of mining companies (including government and its agencies, other mining companies, financial institutions) are seen to reflect on the mining company’s own performance (Sullivan and Frankental, 2001). While it is improbable that major mining companies would employ child labour in their operations, the supply chain that sustains or services the operations can be areas of concern, including mine camps, (prostitution, food services with children working in nearby villages), or the use of child labour in such upstream activities as cutting and polishing diamonds in India. The mining company is also held accountable for corruption up and down the supply chain (Marshall, 1999; Petermann et al., 2007).

In the 1990s, mining companies began to recognize the changing relationship between business and society. There was a transformation from a production-based society (capital, land and labour) to a knowledge-based society in the industrialized countries. A shift in values priorities was accompanying that change (Druker, 1993).

Mining companies are becoming more aware of the relationship between their activities and their impact on people, communities and the environment. In the past the view of companies was that it was acceptable for developing countries’ governments not to give priority to civil and political rights, since these would follow after economic development. However, studies of foreign investment and human rights performance failed to support this argument. (Avery 2000). On the

contrary, it is now increasingly clear that sustainable economic development cannot occur without respect for fundamental human rights and the rule of law. The many cases from the research illustrate that as this perception has become clearer, mining companies are being called to account for their complicity in human rights abuses in ways that did not occur prior to the mid-1990s. Globalization and the Internet have spread information about incidents in ways that never occurred in the past.

While some major mining companies have developed human rights policies, others still operate on a case-by-case basis allowing their local business units to develop better understandings of human rights concerns and the implications for their operation. Nevertheless, civil society expects an explicit commitment from mining companies to protect and promote human rights. It appears that the trend will be for all major mining companies to develop and implement codes of conduct related to human rights. Many of them have already developed or released such codes of conduct.

A decade ago, a geologist or mining engineer when asked what would be necessary to establish and operate a mine successfully, would undoubtedly have described proven reserves, ore grade, and myriad engineering necessities (Handelsman et al., 2003). Today asked that same question, the answer would also emphasize such topics as sustainable development, environmental protection, and human rights. Many potentially economic mining operations falter because of social problems as much as geological or engineering challenges. There appear to be two principal reasons. First, local communities are much more aware of their rights to determine their future, to enjoy their land, and to live without fear of violence and degradation. Second, technology now makes information available to local communities and connects even the most remote settlement to the wider world through television and the Internet. In the world today, mining ventures are not hidden but clearly visible to society. Even small operations can, and often do, appear prominently on the worldwide web and on global television broadcasts. Society is demanding that projects are permitted with the prior informed consent of the local community and they receive a “social licence to operate.” Although environmental risk assessments (ERA) and environmental impact assessments (EIA) are not adequate mechanisms to address human rights concerns, their scope could be expanded to include the social and human rights impact components covered in social-economic impact analyses (SEIA) and human rights impact assessments (HRIA).

It is not enough to have a concession for development to proceed, as it was in the past. Today, national, regional and local interests lay claim to revenue sharing, demand worker health and safety standards, preservation of the environment and local and indigenous values. Developers are faced with myriad statutes, regulations, licenses and permits that require compliance, often before starting development. Public participation has advanced from a time when government asserted public values

to the present when civil society has mobilized itself to advance interests in many areas such as, human rights, economic freedom, and environmental protection (Handelsman and Scoble, 2003).

The research examines the intractable problems related to specific points of conflict concerning human rights where mining companies find themselves involved. Categorized case studies provide examples of the breadth and complexity of the subject, contradictory perceptions, and a framework to explore the roles and responsibilities of various stakeholders.¹

To provide a point of reference for the diverse cases, the research focuses on Rio Tinto plc, a major international mining company with geographically widespread operations. The research extracts historical data and the evolution of attitudes and perceptions about that company's operations worldwide. Many people in the company and outsiders (NGOs, Government, etc.) were interviewed to obtain original data and capture perceptions, awareness, attitudes and practices. A review of existing tools and a clear demonstration of their strengths and weaknesses were used to develop a set of principles for companies. In addition reasonable benchmarks are described that could be used by companies, governments and civil society as an evaluation procedure as a basis to improve performance and relationships with stakeholders.

Four research questions posed were:

- What are the underlying problems that the mining industry needs to deal with to relate effectively with local communities?
- What factors create hurdles for the minerals industry to engage positively and make progress with all stakeholders on rights concerns throughout the mineral development cycle?
- What tools and processes could mineral exploration and mining companies adopt to engage positively with all stakeholders in the mineral development cycle to improve the performance and perception of the impact of their activities on human rights?
- What are the views and perceptions held by the various stakeholders and the public about questions of human rights and the mining industry?

1.2 Significance of the Work

This work contributes to a better understanding of what is required for engineers and others to integrate human rights considerations when designing and managing mineral exploration and mining

¹ Types of business stakeholders: employees, contractors, trade unions, consultants, joint-venture partners, suppliers, customers, other companies, investors; types of non-business stakeholders: local communities, local NGOs churches and other community service organizations (CSOs), local government, national government, national NGOs and other CSOs, international NGOs, host country governments, multilateral organizations (Cooney, 2001).

operations. It contributes to understanding how resource wealth might be converted into sustainable development with an economic goal of poverty alleviation and the social goal of enhancing human rights.

The four principal reasons why consideration of human rights and the mining industry is important are as follows (Handelsman, 2001a):

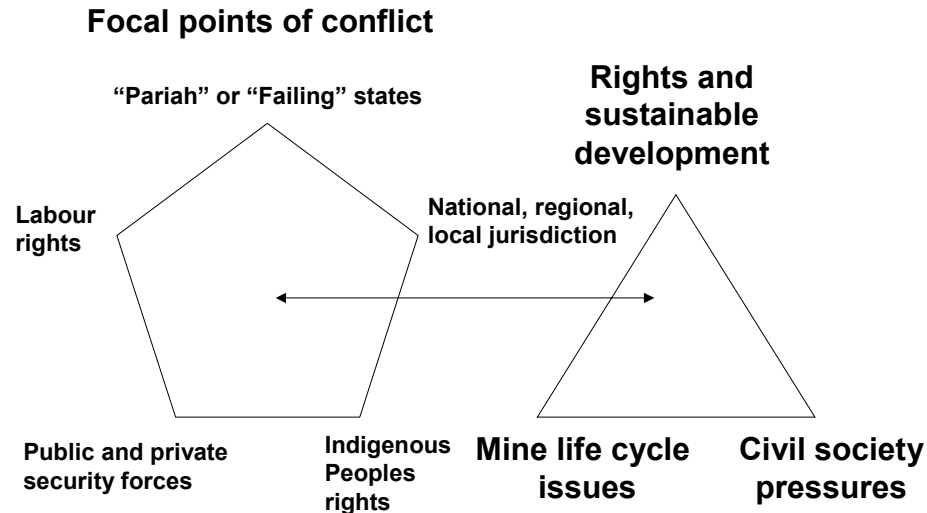


Fig. 1.1 Key Human Rights Challenges (after Handelsman, 2001a)

- The focal points of conflict (Fig. 1.1) concerning human rights where mining companies find themselves involved are varied, interrelated and complex. These include:
 - The use of public and private security forces to protect operations;
 - The rights of indigenous people in the areas of mining operations;²
 - Problems of conflict revolving around labour rights, especially the right to organize;
 - Questions of pariah (or failing) states, such as Burma³, which are human rights abusers;
 - Disputes and conflicts between sub-jurisdictions and national jurisdiction, and to what extent the mining company is subject to one or the other when the two are in conflict.

² Indigenous communities, peoples and nations are defined by the United Nations as “those which having a historical continuity with pre-invasion and pre-colonial societies, consider themselves distinct from other sectors of societies now prevailing in those territories or parts of them. They form at present non-dominant sectors of society and are determined to preserve, develop and transmit to future generations, their ancestral territories, and their ethnic identity, as the basis of their continued existence as peoples in accordance with their own cultural patterns, social institutions, and legal systems.” (United Nations, 1986).

³ In 1989 the government changed the English-language name of Burma to Myanmar. However, this change was disputed and both names continue to be used, both in the country and elsewhere.

- Pressure from civil society organizations and inter-governmental agencies for mining corporations to engage in positive activity for the support of human rights, and civil society's increasing demand for corporate social responsibility and transparency.
- The relationship of rights (especially economic, social and cultural rights) to sustainable community development in the vicinity (impact zone) of mines are cause for concern;
- The rights of a broad group of stakeholders to be engaged in decisions related to mine development, operations and closure, including the development rights of communities, inter-generation rights, rights about relocation, and the right to determine whether resources should be developed.

Because many of the professionals involved in minerals exploration and mining have little formal grounding in human rights, this research reviews the nature and evolution of the basic aspects of this important topic. It then focuses on case studies of mineral developments that have experienced human rights challenges and problems. Finally, suggestions are made to set out practical guidelines for establishing and making operational a human rights program that is sensitive to (1) business and operational needs, (2) local communities, (3) host countries and their laws, and (4) evolving international norms of human rights.

This research demonstrates why dealing with realities and perceptions about socio-economic impacts of human rights concerns is important for the mining industry. It shows that significant risks and socio-economic costs to existing and potential operations are evolving in situations where engineers have fundamental responsibilities, yet generally lack sufficient background and training to manage these risks effectively. This is a contribution to an understanding of the points of conflict between human rights and the minerals industry and the way forward for the minerals industry to engage positively with all stakeholders in the mineral development cycle.

1.3 Objectives

The research objective was to determine what is required for engineers to better understand how to integrate considerations relating to human rights when designing and planning mineral exploration and mining operations. The research and analysis rationale seeks to:

- Identify policies and procedures in companies;
- Identify why companies cannot do or be perceived as doing better; and how these problems can be mitigated and avoided by adopting appropriate policies and procedures.

- Review existing tools available or in use and examine their strengths and weaknesses.
- Collect and analyse original data and the evolution of attitudes and perceptions within and about Rio Tinto plc, a major mining company's diverse operations worldwide.

This analysis formed the basis to confirm a set of principles and measures for mining companies on human rights concerns, including working conditions, security threats, armed opposition to the government, and the company's responsibility beyond the workplace. Reasonable benchmarks with monitoring and reporting are identified that could be used as an evaluation procedure by companies, governments and civil society, and to improve transparency.

1.4 Thesis Organization

This thesis, as shown below, covers three distinct aspects of human rights problems and the mining industry (a) a historical perspective on human rights abuses cases in the mining sector; (b) the case of Rio Tinto; and (c) contemporary questions, perceptions and instruments.

Chapter 1, "Introduction" includes a statement of the problem, explains the significance of the work and its objectives.

Chapter 2. "Methodology" describes the research methodology.

Chapter 3, "Issues of Human Rights and Mining -- Literature Review" concentrates on "What are human rights?" with four research questions and explains the evolutions and expansion of human rights concepts and their importance to mining companies. The inherent points of conflict between mining and society are explored while the role and responsibilities of the major actors are examined.

Chapter 4, "Points of Conflict (Problems of Human Rights and Mining)" includes a description of cases where there had been alleged human rights violations connected to mining projects. Results of interviews are included with the discussion of the cases to provide additional perspective on the questions. Where there were multiple human rights questions with a case, the general operating context was given in the first reference to that case. Subsequent human rights questions were examined without further general descriptions of the operations or operating conditions. The chapter summarized results of an examination of more than 178 cases in over 65 countries where allegations of human rights abuses were reported⁴. The inclusion of any particular case is not an affirmation as to whether the allegations made are credible or not. The type of conflict is a factor used to broadly categorize the cases, providing a focus to examine what can be learned

⁴ Validating or refuting the many allegations of complicity in human rights abuses cited were outside the scope of the research; the large number of allegations in and of itself poses a serious perception problem for the mining industry.

about the evolution of the problems and responses.

The cases discussed in detail are arranged in terms of the principal problems. The use of security forces examines the riots of 1888 at the Rio Tinto mine in Spain, Bougainville Copper, Grasberg in Indonesia, Morro do Ouro in Brazil, Amayapampa in Bolivia and Mongbwalu in DRC. Conflict arising from labour rights concerns cases of forced labour, child labour, labour rights (also the need for effective internal reporting systems are examined in this section), health & safety, HIV/AIDS and gender matters. Conflict questions around problems of failing states are explored with examples from Burma and DRC. Conflicts between national and regional jurisdictions relate to the share of the costs and benefits of mining. Problems that arise from unquestionably trusting a government are illustrated. The question of corruption is included in this section.

The examination of safeguard policies gives an insight into the evolution of safeguard policies and the formalization of business principles, policies, guidance and guidelines, and monitoring, validations and reporting measures taken to ensure they are followed internally. Interviews with major companies, junior companies and advocacy groups indicated that similar approaches were found to be helpful in dealing with the realities and perceptions of issues of concern. Information from the Canadian Round Tables on CSR provides details of recent debates in human rights and the mining industry.

There are many lessons that can be learned from Rio Tinto's experiences, initially at a single operation in Spain, and subsequently as it expanded to many operations and commodities in geographically diverse locations. Some key events were selected for this research that illustrate how the company reacted to events at milestones in the company's evolution and examine the development of its safeguard policies. Despite strong moral and ethical values held by its leaders, the company was embroiled in many social conflicts during its history. In Spain in 1888, a major conflict erupted between the mine, its workers led by a coalition of local communist organizers, Anti-Smoke League officials, local political leaders, and landlords and farmers, whose only common interest was hostility towards the company. Festering labour disputes resulted in a major strike at the Rio Tinto mine in Spain in the 1920s. In Papua New Guinea, disaffection between Bougainvilleans and the copper/gold mine led to the most extreme consequences: the closure of the mine and a civil uprising in which thousands of lives were lost. At Rössing, Namibia (former South West Africa), operating problems and conditions concealed by local management led to a re-engineering of the technical and social aspects of the uranium mine. Experiences with exploration in the U.K. demonstrate pitfalls of following government directives without checking public opinion. Reactions from the investment community in the late 1960s and negative public perceptions and pressure from activist NGOs led the

company to re-examine how it engaged with stakeholders and to become proactive. Recognizing the limitation of what one company can achieve, it took a leadership role promoting positive values. More recent experiences at Diavik diamond mine in Canada and a titanium mine in Madagascar are included to demonstrate how the company has changed its approach to issues of concern to Civil Society.

Together with the examples from Rio Tinto are other incidents typical of points of conflict concerning human rights and mining operations. They are included to provide a better understanding and appreciation of the complexities of the impact on human rights resulting from corporate behaviour. Although the incidents are similar with human rights abuses by state security forces with alleged mining company complicity, they are very different in the corporate responses. Often there is more than a single problem involved in a point of conflict. Many of the conflicts include disputes about land ownership and compensation for its use, environmental impact and political considerations

Chapter 5, “Discussion” represents the writer’s analysis and synthesis of the issues, based on interviews and literature research. The research found there is a broad spectrum of views about mining companies concerning human rights. There has been an evolution in thinking as problems and conflicts have arisen throughout history. While there are leadership companies on the problems, many remain in denial of any responsibility for human rights abuses. Collaborative efforts between mining companies, NGOs and government are essential for corporate social responsibility on the matters. Failures of voluntary initiatives to protect human rights demonstrate the need for a mechanism to investigate allegations of complicity in human rights abuses by mining companies and hold them to account for their actions and a lack of adequate safeguard policies and practices in their operations.

Chapter 6, “New tools and policy recommendations” proposes that it is essential that a holistic approach to human rights be adopted with a clear board policy. Practical approaches are proposed that deal with the need for senior management’s serious commitment supported by a clear Board policy on human rights, risk assessment & management, conflict zones, best practices and the Voluntary Principles on Security and Human Rights.

Chapter 7. “Conclusions.” Among the conclusions from this research is that while there has been a vast improvement in the general sensitivity of the mining industry to human rights concerns during the past 10 years, the reality on the ground has not kept pace with the industry’s aspirational rhetoric, glossy brochures and public relations campaigns. Respect for human rights and protection of vulnerable groups including children, women, and indigenous peoples, although improved somewhat, has a long way to go. Many host countries have failed to fulfill their obligations under

international law to provide human rights protection, thus placing the onus of human rights protection solely on corporations conducting operations in their countries. Recent evidence and allegations of complicity in human rights abuses confirm that voluntary initiatives alone are inadequate. Because of failures of host governments and companies to protect human rights, there needs to be a mechanism to investigate and hold to account companies alleged to have been complicit in human rights abuses.

There are enough examples of policies, codes, principles, checklists, voluntary initiatives, best practices, monitoring, verification and compliance reporting case studies, that refute their absence as an excuse for inaction. Examples are recommended to provide the guidance necessary to mining companies and others who are serious about respecting human rights and adopting a rights-based approach to development. At a minimum, a company should commit to support the core human rights instruments, follow all the World Bank Safeguard Policies, the Voluntary Principles on Security and Human Rights, and the Equator Principles.

The appendices include copies of the key human rights instruments, a checklist for companies wanting to support human rights, and examples of statements of values, business principles, and social, employment and human rights policies.

CHAPTER 2: Methodology

Extracting historical data related to the evolution of the attitudes and perceptions about one company and its operations worldwide was seen as a practical approach to understanding the points of conflict between human rights and the minerals industry, and to allow an analysis of the evolution of safeguard policies, tools, benchmarks, monitoring, verification and reporting. To supplement this analysis, the development of safeguard and monitoring policies by other multi-national and junior mining companies was also examined.

The researcher believed that the corporation to be studied had to have been in existence for many decades, with operations spread over several continents, experience in multiple minerals, and present, not only a significant history, but a current-day involvement in human rights matters to provide the length and breadth of experiences upon which to base this work. Three corporations were identified as possibilities: Anglo American, BHP Billiton and Rio Tinto. Ultimately, Rio Tinto was chosen because of its particularly rich history of mining in countries that were not its home base, since it was originally organized to exploit the rich copper pyrite mine in Spain. It also had the distinction of developing the world's largest and lowest cost copper/gold mine at Panguna, Bougainville Island, in Papua New Guinea. The destruction and closure of that mine, with an accompanying huge loss of life, represents the most extreme financial and human loss flowing from human rights disputes within the mining industry. Rio Tinto's Bougainville mine and Freeport-McMoRan's Grasberg mine, in which Rio Tinto is an investor, are of interest because of alleged indigenous land rights violations, environmental degradation and conflicts caused by government protection of the respective mining operations.

Rio Tinto had taken a leadership role in the Global Mining Initiative (GMI), initiated in 1999, ahead of the 2002 World Summit on Sustainable Development, and in 2001 was a founding member of the International Council on Mining and Metals. Together with the nine mining and metals companies of the GMI, Rio Tinto is acknowledged as a leader in reacting in a positive way to Civil Society's criticism of the industry. When approached, the company responded positively to a request to be the case study subject for this research.

In addition to the cases involving Rio Tinto, some other cases were selected that were located in different regions of the world with companies both major and junior, involving mining operations and exploration activities.

2.1 Company Archives Review

Several cases involving Rio Tinto were identified on a preliminary basis. Next a review was made of material in the company archives kept in London, U.K. The archives available for research covered the period 1874-1954. These archives hold information about the Rio Tinto mine in Spain, including archaeological findings, details of the early history of the mine prior to the organization of The Rio Tinto Company, the company's initial prospectus, annual reports from its establishment, confidential Board minutes, technical reports, correspondence between Head Office and the mine in Spain, copies of unpublished research reports, and investigative reports of incidents at the mine. This material provides a rich source of primary data about the company, its performance, policies and practices as the business developed.

2.2 Cases Database Development

A database of 178 human rights-related mineral sector cases was compiled during a literature search. The data is summarized in a matrix (Appendix I) with the cases categorized by year, country, commodity, project, general category (identified by a letter code), and a brief summary of the human rights problems involved. This database is useful to illustrate and to examine the breadth and complexities of human rights concerns together with implications for actions.

2.3 Qualitative Research

2.3.1 Interviews

To develop new data, this research work focussed on interviews with current and former senior executives and Rio Tinto staff at the director, manager, policy advisor and engineer level. In addition to these interviews, other data and validations were obtained from interviews and discussions with current and former senior executives and staff of:

Major international mining companies, including Anglo American, AngloGold Ashanti, BHP Billiton, Companhia Vale do Rio Doce (Vale, formerly known as CVRD), Freeport-McMoRan Copper & Gold, Newmont Mining, Placer Dome and Teck Cominco Limited.

Other mining companies and junior exploration and development companies including Bougainville Copper Limited, Glamis Gold (subsequently Goldcorp Inc), Hunter Dickinson, Grosso Group, Ivanhoe Mines, Sutton Resources and Vista Gold.

Intergovernmental Organizations including: ILO, UNCTAD, UNDP, UN/ESCAP, UNICEF, UNIDO and The World Bank Group.

Government Agencies including: British Embassy (Washington), Canadian Department of Foreign Affairs and International Trade, Canadian Embassy (Washington), Chile Ministry of Mines, Thailand Department of Mineral Resources, and U.S. State Department.

NGOs including: Amnesty International; Business for Social Responsibility; Earthworks (formerly Mineral Policy Institute); The Fund for Peace; Global Witness; Human Rights Watch; International Alert; International Council on Mining and Metals (ICMM); International Federation of Chemical, Energy, Mine and General Workers' Union (ICEM); Justiça Global; Mining Watch Canada; Oxfam; Prince of Wales International Business Leaders Forum (IBLF); RAID; Rights and Democracy; Rights and Humanity; Social Accountability International, and Transparency International.

Academics including: University of Alberta, Baruch College - New York, University of British Columbia, Columbia University, George Washington University, London School of Economics, University of Minnesota, Simon Fraser University, and University of Warwick.

Others including additional extractive sector companies: BP-Amoco, Chevron, Occidental Petroleum, Shell Oil, and Texaco; various consultants, trade and industry groups, ethical investment fund analysts, other private sector organizations, and the press (correspondents).

Supplementing the case study corporate interviews, were interviews with a wide range of stakeholders groups concerned with human rights and the mining industry. These stakeholders, selected by purposive and directed sampling, were program manager or researcher level with local and international NGOs that focus on mining industry and others with broader human rights focus; policy advisor and director level with government; academic experts in human rights, international law, conflict and resources; trade union executives that focus on mining industry labour and human rights questions; director, policy advisor, specialist level people with multilateral agencies, indigenous peoples, people at director, manager, or engineer level with other corporations. As indicated, included amongst the interviewees were those who focused on the mining industry as well as others with a broader focus on human rights, such as Human Rights Watch and Amnesty International; and aid agencies.

The UBC Behavioural Research Ethics Board process was adhered to and approval was obtained for this research (a copy of the current certificate of approval is included as Appendix VIII). The interview design was modeled on the intensive, semi-structured interview format as opposed to structured formats with specific wording and sequences of questions. Intensive interviews permitted more in-depth discussions (with fewer interviewees), while the semi-structured approach allowed

deeper probing of the problem, greater flexibility and a mixture of more or less structured questions (Merriam, 1998). To obtain specific information from the interviewees, there were highly structured portions of the interviews, although the majority of the interview used questions or topics to guide the discussion without precise wording or pre-determined questions.

While there were specific goals established for each interview, the intensive format allowed for flexibility in the questions and how they were asked. A list of questions was used as a guide and as each interview was completed, the next interview was adapted to take advantage of the knowledge gained or questions raised in previous interviews (Williamson et al., 1977; Fraenkel and Wallen, 2000). The interviews were tape recorded unless an interviewee was unwilling; in which case notes were taken during the session, and expanded upon after the interview was completed. Verbatim transcripts of the recorded sessions provide “the best database for analysis” (Merriam, 1998).

The interview questions were based on preliminary research into the problems of human rights and the minerals industry, the literature review, and preliminary conversations with human rights specialists as well as upon the researcher’s more than thirty years experience of the industry and his current studies.

Questions and topics used to guide discussions were:

- What issues in the company led to develop human rights code?
- What human rights issues are encountered at the operational level?
- What type of management training does the company provide?
- How could companies deal more effectively with host governments to provide a positive human rights atmosphere?
- How could current policies and procedures be improved?
- Which are the more important rights issues facing the company and the mining industry?
- What could the company specifically do to improve outside perception of its behaviour?

The interviews captured each stakeholder groups’ differing perceptions of human rights problems. They probed each groups’ distinctive knowledge and experiences and different understandings of mineral exploration and mining projects’ social and economic costs, benefits and impacts.

Groups of problems were of varying priority to different stakeholders, e.g.: **Labour** (Disputes, Salary, Unions, Slavery, Child Labour); **Respect** (Cultural, Gender, Ideology, Sexual

Preference); **Land** (Access, Ownership, Relocation, Use); **Political Regime** (Degree of Democracy, Governance, Weak or Strong Institutions, Regulatory Framework, Power Structure); **Security Forces** (Security Risks, Potential for Violence, Human Rights Records, Rule of Law, Conflict Analysis, Security Arrangements); **Benefits** (Revenue Sharing between Company/Government, Revenue Sharing between Central/Regional/Local Government, Development Benefits, Education/Training, Poverty Alleviation); **Health & Safety** (Environmental Health & Safety, Well-being of Workers, Protective Equipment, Facilities, Safety Procedures/Negligence, Accident Rate); **Public Participation** (Transparency, Corruption, Information Dissemination, Advisory/Monitoring Role of the Public).

2.3.2 Data Analysis

Computer programs were used to input the audio recording (Audacity⁵) and transcribe the interviews (ExpressScribe⁶). To assist with the qualitative data analysis (QDA) the computer program Atlas.ti⁷ was used. The analysis identified recurring meaningful and accurate patterns (categories, factors, variables, themes).

The approach taken was to analyse cases where there have been alleged human rights violations that have been connected to mining projects. The case studies were categorized by problem (e.g., the use of government and/or private security forces at a mining operation where alleged human rights violations took place) rather than by company or mining operation. The problems were ranked by first the most public and pressing concerns on the human rights agenda: human rights violations alleged to have taken place at the hands of security forces protecting mine property and mine operations; next indigenous land rights; labour rights; health & safety; and the right to share in the benefits of mining by local communities and at the regional and national level. Other aspects analysed included corruption and the development of safeguard policies.

2.3.3 Validation/Reliability

To validate historical information obtained from documents in the company archives, other contemporary sources were reviewed including the U.K. National Archives, academic research publications, etc. Information obtained from the interviews was triangulated by examining information in the company archives, National Archives and from other interviews.

Information about the early history of Rio Tinto located in the company archives was

⁵ Audacity® is free, open source software for recording and editing sounds.

⁶ Express Scribe is free professional audio player software that assists the transcription of audio recordings.

⁷ ATLAS.ti is a software package to develop, support and manage qualitative data analysis (QDA) that require the analysis of unstructured data including interviews, other text documents, graphical, audio and video data.

crosschecked with additional correspondence between the Foreign Office and the British Embassy in Madrid and other documents of a primary and secondary nature at the National Archives, Kew, England.

Data obtained from interviews was augmented through experience gained from more than thirty years as a professional mining engineer working globally with an in-depth knowledge and experience of human rights questions from many years of interaction with mining companies, multilateral agencies, governments, the Press, human rights NGOs, and other stakeholders. The researcher's experience includes decades of research and fact-finding assignments about mineral exploration and mining in many countries throughout the world. Experience of developing countries includes in Asia: Afghanistan, Bhutan, Brunei Darussalam, Burma, Cambodia, China, Fiji, India, Indonesia, Laos, Malaysia, Mongolia, Nepal, North Korea, Pakistan, Papua New Guinea, Philippines, Singapore, South Korea, Thailand, and Viet Nam; in Africa: Botswana, Burkina Faso, Burundi, DRC (formerly Zaire), Ethiopia, Ghana, Malawi, Mali, Mauritius, Morocco, Namibia, Tanzania, Uganda, and Zimbabwe; and in the Americas: Argentina, Brazil, Chile, Ecuador, Guyana, Jamaica, Paraguay, Peru, Suriname, Uruguay, and Venezuela. During a ten-year period the researcher participated in over 100 United Nations projects in forty-four developing countries in which human rights were always a consideration. Experience brought to this research includes participation in a meeting with a Human Rights Experts Group, and during the research at conferences, seminars and workshops. This research builds on an extensive assessment of problems of human rights and the minerals industry, and examined trends and the changing dynamics. The researcher examined the effects of human rights violations in two countries, typical of many of the conflicts and disputes in developing countries (Handelsman, 2003). United Nations and private sector experience coupled with an engineering background allowed for effective analysis and the application of creative thinking to develop strategies that respond to new challenges from issues of concern in complex political contexts. While always making every effort to be objective, it is acknowledged there is an inherent bias caused by seeing things through one's own lens of experiences and beliefs.

CHAPTER 3: Issues of Human Rights and Mining – Literature Review

This chapter provides a historical perspective on human rights concerns and the mining sector.

3.1 What Are Human Rights?

Early statements of rights are contained in the English *Bill of Rights* (England, 1689) that ended the divine rule of kings, and declared that citizens possessed “indubitable rights and liberties.” *Habeas Corpus*, with its origin in predominantly Anglo Saxon common law, formalized the right safeguarding liberty by requiring a person in custody to be brought into court where sufficient cause had to be shown as to why that person was being held, otherwise the court was required to order the person’s release. *The Charter of Liberties*, (England, 1100) granted to noblemen and church officials by Henry I in 1100 to curb abuses of royal power set the stage for the rule of law; it read much the same as *Magna Carta*, (England, 1215) (conceded Church freedom, provided a means of obtaining a fair hearing of complaints against the king, his agents and lesser feudal lords), and was the model for the *Great Charter* (England, 1297). It was some five hundred and seventy years after *Magna Carta* when the French *Declaration of the Rights of Man* (France, 1789) affirmed “men are born and remain free and equal in rights” and the U.S. *Bill of Rights* (US, 1789) precluded Congress from enacting laws prohibiting the free exercise of religion, freedom of speech, of the press, the right of assembly, to petition the government for a redress of grievances, etc.⁸ Later Pope Leo XIII stated the rights and duties of capital and labour (Leo XIII, 1891). The *Geneva Conventions* and their additional protocols (Geneva, 1864, 1906a, 1906b, 1929a, 1929b, 1949) established humanitarian international law for the care of wounded soldiers and it expanded to cover how wars may be fought, to protect people not taking part in the fighting (civilians, medics, chaplains, aid workers), and to protect those no longer able to fight (wounded, sick and shipwrecked troops, prisoners of war).

Human rights that impact people’s lives comprise civil, cultural, economic, political and social rights (including property, development, health and safety, and environmental concerns), as clearly articulated in the *Universal Declaration of Human Rights* (UDHR)⁹ included in Appendix II

⁸ US National Archives and Records Administration clarifies: “On September 25, 1789, the First Congress of the United States proposed to the state legislatures 12 amendments to the Constitution that met arguments most frequently advanced against it [that it had no declaration of rights]. The first two proposed amendments, which concerned the number of constituents for each Representative and the compensation Congressmen, were not ratified. Articles 3 to 12, however, ratified by three-fourths of the state legislatures, constitute the first amendments of the Constitution, known as the Bill of Rights.”

⁹ The Allies had adopted the Four Freedoms: freedom of speech, freedom of assembly, freedom from fear and freedom from want, as their basic aims during World War II. At the UN Conference on International Organization in 1945, it was suggested the United Nations Charter should include a bill of rights, but there was not enough time. The Charter “reaffirmed faith in fundamental human rights, and dignity and worth of the human person” and committed all member states to promote “universal respect for, and observance of, human rights and

(United Nations, 1948). These rights, along with two covenants – one on civil and political rights (plus two optional protocols), the other on economic, social and cultural rights are included in Appendix II (United Nations, 1966a, 1966b) – and the Core Conventions, i.e., rights of the child (United Nations, 1989), elimination of discrimination against women (United Nations, 1979), elimination of racial discrimination (United Nations, 1965), and against torture (United Nations, 1984) have been accepted by most national governments worldwide. There are also many International Labour Organisation (ILO) conventions that define human rights, including those concerning forced labour (ILO, 1930, 1957a), freedom of association and protection of the right to organize (ILO, 1948, 1949, 1971), health and safety (ILO, 1981, 1995), and indigenous and tribal people's rights (ILO, 1957b, 1989)¹⁰.

Human rights were formally accepted by various regional organizations, and many countries have specific human rights acts (Canada, 1976-7). The *European Convention on Human Rights* (Council of Europe, 1950)¹¹ was expanded and modified by thirteen Protocols¹² (treaties). The *European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment* came into effect in 1989; the *European Social Charter* was adopted in 1961 and amended in 1988. There are also the *European Charter for Regional and Minority Languages*; a *Framework Convention for the Protection of National Minorities*; and *European Convention on Nationality*. The Council of Europe established a Commissioner of Human Rights with general responsibility for protecting and promoting human rights, but not to hear individual cases; the Human Rights Commission of Bosnia and Herzegovina; and the Court of Justice of the European Communities hears human rights cases. In the Americas, the *American Declaration on the Rights and Duties of Man* was adopted in 1948 (OAS, 1948); the *American Convention of Human Rights* came into force in 1978

fundamental freedoms for all without distinction as to race, sex, language, or religion". The United Nations Commission on Human Rights drafted the UDHR. Although the states had contradictory positions on some issues, they agreed to include principles of non-discrimination, civil and political rights, and social and economic rights; and agreed the Declaration had to be universal. (United Nations, 1950).

¹⁰ ILO international Conventions concerning indigenous and tribal peoples are "Convention No. 107 of 1957 concerning Indigenous and Tribal Populations, and Convention No. 169 of 1989 concerning Indigenous and Tribal Peoples. Although Convention No. 107 contains a strong protective element, it was revised because its provisions are now considered outdated because of its rather integrationist approach. However, it remains in force for [15] countries, and is often the only element of international protection available. Convention No. 169, which revised Convention No. 107, has been ratified by" 20 countries (as of September 2008): Argentina, Bolivia, Brazil, Chile, Colombia, Costa Rica, Denmark, Dominica, Ecuador, Fiji, Guatemala, Honduras, Mexico, Nepal, Netherlands, Norway, Paraguay, Peru, Spain and Venezuela (ILO, 2005 a, b, c, 2008).

¹¹ The "European Convention on Human Rights" sets forth a number of fundamental rights and freedoms (right to life, prohibition of torture, prohibition of slavery and forced labour, right to liberty and security, right to a fair trial, no punishment without law, right to respect for private and family life, freedom of thought, conscience and religion, freedom of expression, freedom of assembly and association, right to marry, right to an effective remedy, prohibition of discrimination). More rights are granted by additional protocols to the Convention (Protocols 1 (ETS No. 009), 4 (ETS No. 046), 6 (ETS No. 114), 7 (ETS No. 117), 12 (ETS No. 177) and 13 (ETS No. 187)).

¹² Protocol No. 1, amended by Protocol No 11, 1994 (property, education, elections); Protocol No 4, amended by Protocol No 11, 1994, (detention for contract obligation; freedom of movement; expulsion and exile); Protocol No. 6, amended by Protocol No. 11, 1994, (abolition of death penalty); Protocol No. 7, amended by Protocol No. 11, 1994, (protection of aliens; appellate review in criminal cases; compensation for miscarriage of justice; double jeopardy; spousal equality); Protocol No. 11, amended by Protocol No. 11, 1994, (abolition of Commission and reconstitution of Court; revision of Convention and Protocols; Protocol No. 12 (general prohibition of discrimination); Protocol No. 13 (banning the death penalty in all circumstances, including for crimes committed in times of war and imminent threat of war).

(OAS, 1969). The Inter-American Commission on Human Rights publishes an annual report, and the Inter-American Court of Human Rights hears cases. The *African Charter on Human and Peoples' Rights* was adopted in 1981; the *Arab and Islamic Charter on Human Rights* followed *Resolution No. 49/19P at the Cairo Declaration on Human Rights* in 1990, and the *Casablanca Declaration of the Arab Rights Movement* in 1999. Although there is no formal human rights treaty in Asia-Pacific region, NGOs drafted an *Asian Human Rights Charter* (AHRC, 1995) to “promote political, social and legal reforms for ensuring human rights in the countries of the region.” The *British Human Rights Act 1998* came into force in 2000, making the *European Convention on Human Rights* enforceable in U.K. courts. The *European Aarhus Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters*, ratified in 2001, has global implications for the rights to public participation (United Nations, 1998; Zillman et al., 2002). *OECD Guidelines for Multinational Enterprises* (OECD, 2002) are voluntary recommendations¹³ covering, among other things, human rights, information disclosure and combating bribery that all 30 OECD governments and nine non-member countries agreed to promote adoption by companies operating in or from their countries. The United Nations *Declaration on the Rights of Indigenous Peoples* was adopted by the General Assembly in 2007 (UN, 2007).

The term “human rights” implies that all people have them (Vincent, 1986). Secular ethicists discuss rights in the context of freedom and the common good concerned with protecting human integrity, freedom and equality (Cooney, 2000; Eide et al., 1995). Under international law, the Nation State has the prime responsibility for human rights, although the Universal Declaration of Human Rights proclaims that “every individual and organ of society” shall promote respect for human rights (United Nations, 1948). However, the concept of human rights has many different connotations and implications for different countries, international organizations, NGOs, and corporations. There are UN bodies linked to economic/social rights, and other rights (the Office of the United Nations High Commissioner for Human Rights, (OHCHR), United Nations Human Rights Council *formerly* United Nations Commission for Human Rights; the Human Rights Committee (HRC) – a body of experts that monitors implementation of the International Covenant on Civil and Political Rights, and the United Nations Economic and Social Council). In 2005, the United Nations Secretary-General appointed a Special Representative on the issue of human rights and transnational corporations and

¹³ Mining companies have agreed to adopt codes of conduct and follow voluntary principles on human rights and other social issues in response to pressures from human rights NGOs, trade unions and others thereby forestalling legislation (HRW, 2002). Voluntary codes are not legislative requirements and lack enforcement mechanisms. However, as explained by Industry Canada, “they operate within a legal environment that includes consumer, competition, health and safety, labour and environmental legislation and regulations, and contract and tort (personal injuries) law. Codes may supplement legislation. Failure to adhere to the terms of voluntary codes may have legal implications, including regulatory or civil liability. In some cases, an individual or organization may use a voluntary code to help demonstrate or refute due diligence in prosecutions or establish reasonable care or negligence in civil litigation.” (Canada, 2008).

other business enterprises, for an initial period of two years.

A British Government report provides a comprehensive description of the nature and inter-relationship of rights, and making clear the responsibility of states, or their representatives, to legislate and enforce respect for human rights (FCO, 2000). The British Government does not say that corporations are responsible for enforcing rights. However, since an organization or group can abuse rights, the question then arises: what is the corporation's obligation if a state does not respect human rights? The current debate is whether the obligation to enforce rights rests only with the State or includes other entities, such as corporations that may have the power to influence respect for rights. The British Government explained human rights in the following way (FCO, 2000):

“Human rights are the rights that all individuals are entitled to by virtue of their humanity, regardless of their gender, race, colour, religion, political or other opinion or social status. The rights we strive for are enshrined in the Universal Declaration of Human Rights ... Those rights are embedded in International Law through the United Nations human rights treaties. They consist of civil and political rights – such as equality before the law, freedom from torture, freedom of opinion and expression, freedom of thought, conscience and religion, and the right to take part in the government of one's own country – and economic, social and cultural rights – including the right to employment, and to a decent standard of living, health and education. Human rights include the most fundamental right of all – the right to life. [emphasis in original]

Human rights represent universal values that transcend cultural and national boundaries, and reflect principles and teachings in all the major faiths. The human rights treaties were not dictated by Western governments, but were drafted by experts from around the world. States from all parts of the world, representing all the major religious and cultural traditions, have voluntarily ratified these treaties, committing themselves to protect and promote the rights they enshrine.

Human rights are indivisible. Civil and political rights should not be given greater weight than economic, social and cultural rights. Nor should a government's failure to ensure full enjoyment of economic and social rights be used to justify its denial of civil and political rights. History has repeatedly shown that the distinction too often made between these sets of rights is an unreal one. Economic, social and cultural rights are not in conflict with civil and political rights, but are instead mutually reinforcing. To take one example, the right of everyone to the enjoyment of just and favourable conditions at work (Article 7 of the International Covenant on Economic, Social and Cultural Rights) is clearly linked in practice with the right that no one shall be required to perform forced or compulsory labour (Article 8 of the International Covenant on Civil and Political Rights).

Human rights are legal obligations on States. It is the State that has the primary obligation to protect and promote human rights for all individuals within its jurisdiction. States must not themselves violate those rights or, through inaction or negligence, allow those rights to be abused by non-state actors. Only States or their representatives can violate human rights obligations, since only they can sign and ratify the human rights treaties. But any individual or group can abuse the rights of others.” (FCO, 2000)

3.2 Evolution and Expansion of Human Rights Concepts and Why They Are Important to Mining Companies

Until the “modern age” human rights have not been a concern for society in general, and

mining in particular. A set of clearly articulated, generally accepted human rights are defined in the UDHR, two International Covenants and the Core Conventions mentioned above. Within the broad spectrum of human rights instruments, virtually every economic, social or political problem could be identified with some rights dimensions. Human rights language is potentially very powerful because it is absolute (not allowing tradeoffs). Hence, if one can project a problem as right, then its case will have the strongest justification, and be more capable of action and gaining respect than framing it in terms of say, an ethical framework or corporate social responsibility. However, this debases the language of rights and weakens the implication of what rights convey. Rights are easy to state but it is difficult to demonstrate a cogent justification for rights in every circumstance where they are adduced. There are philosophical questions as to where rights originate (Cooney, 2000). There are several putative origins of rights (Cooney, 2000):

- a) Divine endowment of rights; e.g., the American Declaration of Independence's assumption of divinely bestowed rights;
- b) The humanist view that rights are based on the dignity of human nature;
- c) Utilitarian optimism suggesting that "things go better with rights," and
- d) Arbitrary decisions of legislative bodies, (who are basically arbitrating rights).

Corporations can only work in the context of the fourth origin cited since they do not have the theological wisdom to accept divine endowment; they do not have the humanitarian instincts to accept notions of human dignity; nor the wisdom and foresight to accept utilitarian optimism. Corporations are more comfortable talking about rights coming from relative power than from some abstract notion. Arbitrary rights originate in a world where might makes right.

It is important to consider the tension between the developed and the developing world around the notion that rights are a Northern invention being imposed on the South, and are a pretext to dictate decisions in developing countries that are in conflict with the developing countries' values or structures. Is it only the relative power of Northern states that enables them to globalize the concept of rights? In fact, the Universal Declaration of Human Rights was adopted in 1948 by the United Nations General Assembly by the Northern states together with the developing countries of Africa, Latin America, the Middle East and Asia in favour of the resolution, no votes against it and eight abstentions recorded (from the Soviet block).

Arbitrary rights depend on the type of government. A mining company has to operate within the reality it faces in the host country. It may look at the universality of rights, but it has to deal with the specificity of where it operates in a particular jurisdiction. The Universal Declaration of Rights is

an “ideal” against the practical world where, although generally accepted, it is not universally applied. The concerns are broader than mining companies and relate in general to corporations and multinationals. The problem of mining and multilateral companies in the arena of global transparency is subject to inconsistency. Ideally mining companies will operate with a global consistency. However, in many cases mining companies will be exposed to a tension between rights enacted by their home governments and the absence of such enactment or enforcement by their host governments.

Since almost everything can, and often is, defined in terms of rights, it is necessary for this research to consider the question of rights from a broad and comprehensive arena with the objective of narrowing the focus. Although the United Nations General Assembly adopted a resolution stating the interdependence of all human rights, geopolitical pressures forced the adoption of two conventions rather than one (Eide et al., 1995). Western nations endorsed civil and political rights, but were uncomfortable with economic, social and cultural rights. However, as discussed above, now it is increasingly accepted that rights “consist of civil and political rights and economic, social and cultural rights,” and they are seen to be indivisible and complementary (Eide et al., 1995).

The many ILO conventions illustrate that there is a huge set of problems: collective rights, rights of states (sovereign); questions as to which rights to consider, and which to prioritize. There is a proliferation of institutional approaches including, for example, the United Nations Global Compact (initially nine principles, expanded to ten), which has been criticized by several human rights NGOs (Annan, 1999; Global Compact, 2000; HRW, 2001).¹⁴

Although some companies have a long history of taking their social responsibility seriously, human rights did not become a major concern for corporations until the mid-1990s. In 1995, when Nigeria executed nine people including Ken Saro-Wiwa who had campaigned against environmental damage by major energy companies especially Shell Oil, a new dynamic entered into the debate about corporations and human rights (Ganesan, 1999b). Business and government has asserted that a positive benefit of business and trade would be an enhanced respect for essential human and labour rights (e.g., freedom of association, freedom of expression, ending cruelty and ethnic or gender discrimination and inequality) in countries where widespread violations occurred. However, across sectors (e.g., extractive industries, footwear, apparel, entertainment, brewing) major multinational

¹⁴ The Global Compact was “criticised ... because it did not contain any independent monitoring mechanisms to assess the conduct of corporations; the guidelines were too vague and did not adequately ensure that companies complicit in human rights violations would be barred from partnership with the U.N.” (Human Rights Watch, 2001, 474) Although a mechanism was introduced in 2003 to address these deficiencies, criticisms continue: “BHP-Billiton has signed on to the United Nations Global Compact and its ten principals which include workers rights. But it makes individual contracts, which exclude unions, a condition of employment at its iron ore mines in Western Australia. The global compact office at first said that what BHP-Billiton was doing was in breach of the global compact but then withdrew criticism when pressure was put on the office by BHP-Billiton and the Australian Government.” (Maitland, 2004)

corporations' complicity in many human rights abuses were publicized with positive impact (although most corporations resisted pressure and the extractive industries remained unconcerned) (Ganesan, 1999b).

There has been a greater public awareness of human rights since the end of the Cold War, with growing criticism by NGOs and others of both corporations and nation states. Although nation states in the past were able to claim sovereign immunity for domestic actions, they are no longer able to violate human rights and be ignored.

There is an emerging dialogue between mining corporations and NGOs with a realization of what some of the interviewees called "the breakdown of distance and deference" that companies sometimes behave differently overseas than they behave at home. With the emergence of global politics since 1990, the distance between national politics and international arguments has reduced. Human rights is an international concern that has growing implications for national governments. To some extent this has been fuelled by the dramatic increase in the number of interested NGOs.

Globalization has inspired a new criticism of national sovereignty. More than half of the largest economies comparing corporate sales to GDP are corporations, not countries (Anderson and Cavanagh, 2000). The resurgence of capitalism has inspired a new anti-capitalism. Nation states now have to face criticism from anywhere and corporations are caught in the middle. States are criticized because of their openness to capital and corporations; and corporations are criticized for operating in states that abuse human rights. Corporate control of substantial capital provides these companies with major potential influence on government officials and politicians (Mokhiber and Weissman, 1999). It is no longer enough for corporations to maximize shareholder value within local laws. Mining has always had a global dimension with companies based in one country operating elsewhere without constraints. Some mining companies realize that they are becoming accountable for human rights and need to take meaningful action. Globalization is being challenged as multinational corporations expand their operations and corporate human rights practices are receiving increasing scrutiny, as shareholders and other stakeholders demand more transparency and accountability (United Nations, 2000), and "companies need to build long-term trust with shareholders and stakeholders by reporting on their progress on human rights issues" (Avery, 2000).

The privatization of functions formerly the exclusive domain of Governments, together with deregulation to attract investment and competition between countries to attract mineral exploration and mining have resulted in an "increase in the role and responsibility attributed to private actors" (United Nations, 1998b). Government's power is seen to be "weakening to the advantage of other sources of authority that have been shown to influence, and sometimes even threaten what we call

fundamental human rights...we can then argue that these entities should be called upon to respect human rights obligations towards the individuals” (Danailov, 1998). As government functions are taken over by the private sector, there is a view that the private sector is accountable to respect human rights obligations, but “there is a lack of legal accountability vis-à-vis allegations of human rights abuses” (Danailov, 1998).

One reason mining companies have had to focus on human rights is because of security problems and associated abuses of human rights caused by the use of police and security forces, private security companies and mercenaries in countries as geographically diverse as Angola, Colombia, Indonesia, Papua New Guinea and Senegal. In the oil and gas sector, companies face similar challenges in some of the same countries such as Colombia and Indonesia, but also in other countries such as Nigeria and Sudan. When mercenaries commit human rights violations and the host government is unable to control them, a need is seen to bring the companies involved to account (Danailov, 1998). During the course of the research for this thesis new allegations of mining companies’ complicity in human rights abuses arose from incidents in several countries including China, DRC, Ghana, Guatemala, India, and the Philippines (see Appendix I). The use of natural resources to fund conflicts has drawn adverse public attention to the mining industry, as in the case of “conflict diamonds” in Angola, DRC, Liberia, Sierra Leone, etc.

The linkage of human rights with other problems is increasingly apparent. Mining companies might prefer to separate out the technical matters such as tailings disposal, ground water contamination, and other emissions, but there is a link between environmental aspects and human rights, the community, the workforce, wealth distribution, indigenous peoples, and other stakeholders concerns. These problems are no longer discussed solely between the company and the national government, or between governments, as increasingly the mining company has to engage with all stakeholders.

Some major energy companies support the view that “business has a role to promote and protect human rights” and their investment decision-making processes screen proposals for problems such as human rights (Shell, 2000). They recognize that “business is part of, not separate from, society,” and recognize that “regular business activities raise human rights questions” for their operational activities in such areas as employment, security, economic development, environment, and community/societal responsibilities (Shell, 2000).

As a practical matter the research cannot deal with all rights and focuses on a core group of rights relevant to the activities of mining companies where they find their main points of conflict. These rights can best be identified in the proposals put forward by civil society organizations and

inter-governmental organizations - such as Amnesty International as shown in Table 3.1, and the Global Compact - with respect to the role of corporations in respecting rights; these proposals can overlap as shown in Table 3.2 (Amnesty, 1998; Global Compact 2000).

Table 3.1 Rights Mining Companies Should Ensure (Amnesty International)
(Sullivan & Frankenthal, 2001).

- Right to no discrimination	- Right to freedom of opinion
- Right to life and liberty	- Right to freedom of association
- Ban on slavery	- Right to protection of labour standards
- Ban on torture	- Ban on interference with course of government (except normal lobbying and representations) and non interference in legitimate internal affairs or inter-governmental relations of host country
- Right to security of person	
- Right to privacy	
- Right to property	
- Right to freedom of religion	- Ban on bribery

The Confederation of Norwegian Business and Industry examined human rights and business concerns and produced a checklist for companies devising strategies for dealing with human rights that is included in Appendix III (NHO, 1998). In academic spheres efforts have been undertaken to identify core human rights. Ten fundamental rights that corporations need to respect are identified and included in Table 3.2 (Donaldson, 1989). In 1997, the Rev. Leon H. Sullivan developed a code of conduct for companies (the *Sullivan Principles*) initially as an effort to end workplace discrimination in South Africa. The Global Sullivan Principles of Corporate Social Responsibility (GSP) include a monitoring and reporting mechanism (Global Sullivan, 1999). Extractive industry sector companies (mining, oil and gas) were amongst those charter organizations endorsing the GSP.

The rights concerning labour and indigenous people and commonality include a subset of some twelve rights. Indigenous peoples' rights are a culture-specific subset of several of the general rights. Interestingly, the resolutions on sovereignty of peoples and nations over natural wealth and resources focused on the rights and duties of States and did not directly focus on questions of the rights of local communities and indigenous peoples (United Nations, 1962). The OECD has released revised guidelines for corporations that include references to respect for human rights (OECD, 2000).

Taking local communities into consideration is a relatively new concern. For example, in the mid-1990s, when The World Bank Group was encouraging countries to attract foreign direct investment in the mineral sector, the Bank did not suggest this factor needed attention (World Bank, 1994). Community concerns were excluded from The World Bank's guidance to help countries understand what mining companies sought as conditions for investment, and to determine which areas should be of concern to host governments.

Table 3.2 Human Rights Principles for Corporations

Amnesty International ^a	Global Compact Principle/number ^b	Confederation of Norwegian Business and Industry ^c	Fundamental Rights (Donaldson) ^d
1. Company policy on human rights	1. Support and respect protection of international human rights within sphere of influence		
2. Security: ensure security arrangements protect human rights	2. Make sure not complicit in human rights abuses.		Freedom of physical movement
3. Community engagement: avoid negative impact on human rights in the community; discuss role of company in the community			
4. Freedom from discrimination (ethnic origin, sex, color, language, national or social origin, economic status, religion political or other beliefs, birth or other status, recruitment, promotion, remuneration, working conditions, etc.)	6. Uphold the elimination of discrimination in respect of employment and occupation.	Freedom from discrimination Right of minorities and indigenous peoples to protect their identity Right to education	Non-discrimination Basic education
5. Freedom from slavery: company and suppliers, partners and contractors (forced labor, exploitative child labor, coerced prison labor)	4. Uphold the elimination of all forms of forced and compulsory labor. 5. Uphold the effective abolition of child labor.	Ban on slavery Ban on torture	Freedom from torture
6. Health and safety: safe and healthy working conditions, (avoid corporal punishment, mental or physical coercion, or verbal abuse)	7. Support a precautionary approach to environmental challenges.	Right to personal safety and security	Physical security
7. Freedom of association and the right to collective bargaining with company, suppliers, partners, contractors (ensure these rights if not protected in local law)	3. Uphold freedom of association and the effective recognition of the right to collective bargaining.	Freedom of opinion and expression Freedom of peaceful assembly and association Right to free participation in political life	Freedom of speech and association Political participation
8. Fair working conditions: (conditions of work, reasonable job security, fair and adequate remuneration and benefits		Right to work Right to rest and leisure Right to adequate standard of living	Subsistence
9. Monitor human rights: establish effective, independent verification and monitoring mechanisms			Fair trial
	8. Undertake initiatives to promote greater environmental responsibility. 9. Encourage the development and diffusion of environmentally friendly technologies.		Property ownership

^aHuman Rights Principles for Companies, Amnesty International, 1998.

^bThe Global Compact, United Nations, January 1999.

^cChecklist for corporations/enterprises interested in investing strategic efforts in human rights issues, Confederation of Norwegian Business and Industry (NHO), 1998.

^dDonaldson, Thomas. *The Ethics of International Business*. New York: Oxford University Press, 1989.

Amnesty International, a human rights NGO, suggested that mining companies have specific responsibility for their own activities but this imposes an obligation on companies to ensure that they do not condone or promote the infringement of these rights by other parties (Sullivan and Frankental, 2001).

The examples above are illustrative of the many checklists and guides readily available to companies that have serious concerns about respecting, supporting and protecting human rights.

Mining companies, like all private sector corporations, are naturally concerned with freedom of association to function as a corporation, and with property rights that allow them to develop their projects and accumulate wealth. They are interested in benefiting from rights to non-discriminatory treatment, physical security, free speech and expression and participation in the political process, especially where fiscal and regulatory questions are concerned (Cooney, 2000). Rights-related problems mining companies face in the field include the rights of unions to associate and engage in collective bargaining, ethnic and other forms of discrimination, conflict between local communities and regions with the central government, entitlement to benefits, freedom of expression, security and property. A mining corporation can approach rights from general principles that should be observed or from actual company experience of what problems it encounters in the field, i.e., from an *a priori* or an *a posteriori* stance.

Human rights, environmental, and development NGOs and community-based organizations (CBOs) have become more concerned with economic, social and cultural rights. Public pressure during the 1990s focused attention on questions of human rights, food security, and development leading multilateral agencies to adopt new policies and programs paying attention to human rights and human development. This pressure led the World Bank, the World Trade Organization, and global corporations to deal with the human rights impacts of their economic policies. Nevertheless, most lists of fundamental rights lag behind this evolution and still tend to focus on civil and political rights, more than economic, social and cultural rights.

3.3 Rights and Sustainable Development

The *World Commission on Environment and Development* (WCED), (Brundtland Commission), in its report *Our Common Future* (known as the Brundtland report), focused on sustainable development and required policy changes (Brundtland, 1999). It provided a definition of sustainable development:

“...development that meets the needs of the present without compromising the ability of future generations to meet their own needs” (Brundtland, 1999).

Brundtland's introduction to the WECD report noted the challenge of dealing with the relationships between sustainable development and human rights:

"The question of population - of population pressure, of population and human rights - and the links between these related issues and poverty, environment, and development proved to be one of the more difficult concerns with which we had to struggle" (Brundtland, 1997).

The very first item in the report's section on General Principles, Rights, and Responsibilities addresses human rights:

"Fundamental Human Right

1. All human beings have the fundamental right to an environment adequate for their health and well being" (Brundtland, 1999).

Accepting the concept of sustainability means that mining companies need to take precise actions to avoid unsustainability. The relationship of rights (civil and political rights, as well as economic, social and cultural rights) to sustainable community development in the vicinity (impact zone) of mines is cause for concern for geoscientists and mining engineers. Conceptually, mining activities in the context of sustainable development raise a number of questions about human rights, such as the rights of stakeholders to be engaged in not only the recognition of community rights but also in decisions related to mine development, operations, and closure, and the right to benefit from mine developments in their local area. This encompasses questions about a country's capacity to exercise its rights, of local community rights versus those of a broader group of stakeholders, the economic development rights of communities, inter-generation rights, and the right to determine whether resources should be developed.

3.4 Mine Life Cycle Questions

The earliest impact of the minerals cycle on human rights in a country occurs at the exploration stage. During initial prospecting, geoscientists and others require access to the land to make preliminary technical assessments (Thompson and Joyce, 1997). Human rights concerns at this stage relate to the question of adequate compensation for access and any damage caused. Compensation to landowners for their losses of property rights may need to take into account the right to a similar standard of living as that which the land had previously provided. Communities may also have unrealistic expectations about the potential benefits they could receive from a project, and exploration personnel may be tempted to exaggerate the potential benefits to local communities in order to facilitate access. The traditional view of the prospector might be someone who is used to working alone in remote areas, and such people may not have experience in engaging with communities to build good public relations.

In the past, local community rights to lands and resources were frequently ignored by

industry. Some were accused of taking advantage of local conflicts to deflect local dissension, and others of engagement in bribery and corruption to gain favour with community leaders or influential individuals in order to bypass legitimate procedures to obtain title. Throughout the mine life cycle, some local politicians, private landowners, wealthy and powerful business people, and church and other leaders may be exerting improper influence or intimidation. Human rights, conflict, and corruption problems intersect and overlap. The consequences of corruption (as a means to obtain resources) are conflicts that lead to human rights abuses. A detailed examination of conflicts and corruption over natural resources merits separate studies.

At the development stage there are increased impacts on the local community including environmental concerns, disruption of traditional cultures, relocation, and increased business activities supporting the project that distort the local economy. Legislation is evolving that recognizes public participation rights in decision-making about natural resource projects in the context of human rights (United Nations, 2001c).

During mining operations, new questions such as workers' rights, community development, the share of economic rent, and the use of security forces become important. Major concerns during mine closure include dealing with post-closure expectations, the impact on the community, and the sustainability of the economy.

3.5 Roles and Responsibilities for Human Rights

It is the primary responsibility of states, or their representatives, to legislate and enforce respect for human rights (FCO, 2000). Nevertheless, there is an interpretation that the Universal Declaration of Human Rights is applicable to corporations since it proclaims, "every individual and every organ of society ... shall strive ... to promote respect for these rights and freedoms and ... to secure their universal and effective recognition and observance." Corporations are definitely part of society, although they generally do not refer to themselves as organs of society (Sullivan and Frankental, 2001).

3.5.1 Role and Responsibilities of Companies

Human rights cover a broader scope of topics than corporate responsibility, broader even than the question of how mining can contribute to sustainable development (Warhurst, 2001). Mining companies have to consider the implication of their operation's development right, and what they should do to contribute toward positive good (doing no harm in the first instance, but proactively bringing about improvements as a longer term goal). Mining companies want their operations to be

seen as contributing to the well-being of local communities, and need to decide to what extent the promotion of human rights should be included in that objective. The driver for this is the growing realization that in countries with weak or undemocratic governments, the taxes and revenues from mining operations are not benefiting the local communities, and may not even be providing benefits to the economic and social development of the country. The liberalization of investment rules and taxes by developing countries competing to attract mineral exploration and mining, and the consequential expansion of foreign direct investment have focused attention on human rights abuses in target countries and particularly on the development rights of communities. Mining companies that ignore the problems of weak institutions and their social responsibility to respond to the human rights challenges will do so at their peril in terms of reputation and perhaps of the security of their social license to operate (Warhurst, 2000). The implication is that this could also put at risk the viability of their operations and the sustainability of their investments. A traditional corporate objective is to protect the bottom line. Companies are aware that questions of corporate responsibility and human rights have direct links to the security and viability of their investments.

Many of the current problems faced by mining companies are caused by a breakdown in public trust with respect to mining companies' decision-making processes. One reason that the public negatively perceives mining companies' reputations is because of the inconsistency in the patterns of governance amongst mining companies. Some seem to be totally under the control of their senior management, while others are subject to direction by their Board of Directors; still others are so decentralized that decision-making appears to be done at the mine site level. Mining companies do not make clear to the public the relative roles and responsibilities of the independent members of their boards and corporate and operational management with respect to corporate decisions. Some regional business units appear to have a high degree of autonomy and not totally subjected to decision-making processes at the senior corporate level. Therefore, those elements of the civil society that wish to influence mining company decisions are often uncertain where and how to exert leverage. NGOs trying to influence company decisions at its business operations, i.e., mines, may find leverage at the corporate level is relatively ineffective.

In recent years the articulation by some mining companies of global principles related to sustainable development sometimes including specific commitments to human rights has provided a more coherent decision-making framework, and a greater predictability to the consistency of global management decision-making among a corporation's many decentralized operations (KPMG, 2002; Rio Tinto, 2001; Anglo American, 2002). This coherence is attained when a mining company has succeeded in making an overall corporate policy part of its corporate culture.

Some still question the mining industry's credibility in the area of human rights because it has "strongly and vehemently opposed any efforts to define responsibilities for the industry or to include human rights ... into legislation." (Sullivan and Frankenthal, 2001) Mining industry performance is judged by the actions of the worst company and the industry may have to take up questions of sanctions against those companies.

3.5.2 Role and Responsibilities of NGOs

There is a diminished deference to transnational corporations that has heightened their exposure and risk. NGOs (Non-Governmental Organizations) have defined the human rights concerns and challenged whether corporate decisions should only be based on the bottom line. One of the roles of NGOs is to generate massive publicity around a campaign topic to raise funding to get their views heard and accepted which gives them political influence (Steinberg, 2003; Mane, 2004).

NGOs have a major role in human rights questions, including, Amnesty International, Human Rights Watch and others directly concerned with monitoring human rights, and those concerned with problems of human rights and development, conflict, and monitoring mining activities. NGOs have reported many human rights abuses in mining, for example the use of child labour in Viet Nam, complicity in human rights abuses in DRC and Ghana (Theis and Hoang, 1977; HRW, 2005; RAID et al., 2007; ICEM, 2005).

In the past the traditional relationship between NGOs was one of critic/adversary (Chandler, 2008). Corporations are now looking for external monitoring and are looking at ways to cooperate with NGOs. The current debate concerns the changing role of NGOs and their relationship with companies who want NGOs to take responsibility and put their reputation on the line (Compa, 2004). Corporations applaud good efforts and their natural thinking is about rewards for success and good behaviour. NGOs value their imprimatur, and the last thing that they want is to be seen as too supportive of corporations. NGOs see the danger in saying nice things about a corporation and having to deal with problems later. NGOs have their own core interests and mission that they will not cede to companies when progress has been made. Also NGOs have the concern that if they provide endorsement or praise a company, this may be misused. However, if that occurred, the NGO could always publicly dissociate itself from the misused material.

There is also no solidarity amongst NGOs since they adopt different political approaches: from those who genuinely want a dialog with corporations, to activists who "believe that just talking to corporations is a sell-out, and that only violent revolution will change the world" (Elliott, 2001).

A dialogue continues in civil society to re-define the role of NGOs – or not-for-profit

companies independent of the company — that have a connection or relationship with the local community and stakeholders.

In the developed countries, U.K. and Canadian companies find it easier to engage with NGOs, whereas U.S. corporations have an obvious reluctance to engage together with a deep-seated suspicion of the United Nations based on memories of failed guidelines, the formerly anti-multinational CTC activist think tank, and a suspicion of codifying everything. Some U.S. companies do talk to NGOs, e.g., at the Fund For Peace's Roundtable for Human Rights where mainstream human rights NGOs and corporations get together in a forum (without extremist groups, environmental or development NGOs) that is able to accommodate criticism, but all discussions and decisions are non-binding (Fund for Peace, 2001). Its first step was to educate the participants; the NGO members were surprised that there was not one single approach to corporate governance but there were many different focuses and interests and decision-making processes. Also there are many differences between the human rights groups. Corporations understand that not all human rights groups are operating a conspiracy against them.

The human rights round table uses a case study approach in which the participants bring a specific set of problems for advice and activities (Fund for Peace, 2006). There is parity in decision-making between the participants who provide joint input on how they work. It is not suggested that this is the only possible form of partnership tailored to human rights problems. The round table is trying to get to a point for joint advocacy, but is not sure if it will achieve that. Its members' problems are so complex that there is a lot of work required to solve them. This approach comes from a strongly articulated need but there is a limit to what can be done. Usefully the model could be replicated. It is more effective when companies engage with human rights organizations to avoid problems like Bhopal and the Nigerian delta.

Some NGOs, such as The Fund For Peace, are exploring ways of achieving a more visible partnership project, and how to find reliable NGO partners on the ground by establishing criteria to identify them. There is a requirement for capacity building in such areas as understanding human rights concerns and developing corporate policy and practices. Human rights NGOs that specialize in this type of activity are able to identify capacities that are lacking. One way forward is for human rights NGOs and companies to talk together and identify their capacities and deficiencies and determine how to build any capacity that is lacking. It will help get the debate moving by involving academics and stakeholders to identify strengths and weaknesses and then ask for help.

In terms of human rights it is necessary to look at what organizations need bearing in mind that some are more transparent than others. In the past, NGOs were not held accountable. Now

questions are raised about all areas including the source of funding comes and their legitimacy.

A major difficulty is to achieve a balance between the expectations that NGOs have concerning corporate power over governments in countries where there are problems and the reality of how much influence the corporations actually have, and where to draw the line. If the NGOs and corporations could agree on the dimensions of a problem, then they could explore ways to solve the problem. It is better to be on the same side of the table rather than remaining as adversaries. Corporations and NGOs are now participating in a number of initiatives together such as the U.S.-U.K. Voluntary Principles on Security and Human Rights, and the United Nations Global Compact.

Corporations want NGOs to engage and take some responsibility. In some cases there may be a lack of expertise and resources to respond to corporate requests, and often NGOs do not want corporate funding. One approach would be for companies to provide funding and have the funds administered by a human rights organization or a multilateral agency. Mining companies in Brazil have established relationships with NGOs that they fund to increase each company's capacity and effectiveness (CVRD, 2001). They also fund partnerships with government agencies and foundations (CBMM, 2007). With the change in the NGO/corporate relationship, NGOs are cooperating with corporations (Porter et al., 2001). Pressure in the NGO community is to maintain a balance, and demonstrate that NGOs have not been bought off. Other pressures from within related to how to engage: should local groups be paid to be monitors, since they are not flush with resources, and it is suggested that trusts or intermediaries could be used to fund external verification. Whatever happens needs to be transparent.

3.5.3 Role and Responsibilities of Governments, Legal Instruments and Decision Making Processes

International law has placed responsibilities on states to establish national legislation and regulations to protect human rights and assess penalties against those found guilty of human rights violations and complicit in human rights abuses.¹⁵ For longer than two hundred years, international law has held individuals responsible for certain human rights violations. For example, international treaties specify responsibility for genocide, some types of terrorism, slavery, and for some types of pollution. More recently, courts have determined that private parties are so entangled with government or government activities that international legislation applies (Steinhardt, 2001)

The argument against legislation holding corporations accountable for human rights

¹⁵ This section is based on remarks on the use of the courts to enforce human rights norms by corporations at a June 2001 Global Dimensions Seminar on Corporate Responsibility and Human Rights by Professor Ralph Steinhardt, Arthur Selwyn Professor of Law, The George Washington University Law School see also (Steinhardt, 2001).

violations and/or complicity in human rights abuses is that voluntary initiatives and self-regulation are more effective and more achievable. The rationale is that legislation is difficult to enforce in some countries where the regulatory role is in the hands of weak institutions at the national level in jurisdictions and/or there is inadequate local legislation.

Problems in remote areas that have not experienced any development are different from those in areas with previous development. A major question arises as to whether the business unit is held to local/host country legal standards, or to company-wide home country. Conflicts between the different standards need to be identified and a suitable approach to problems developed.

A mining company's home country legislation could be used to provide a universal standard which can be applied around the world to protect human rights, especially in those countries where host country laws are inadequate to meet recognized international good practice. The mining company's home country legislation may not be the most strict that it has to follow when it also operates in another country with more stringent legislation such as Sweden. These questions are fundamental to the debate about whether home country legislation is required. Home country legislation complements voluntary efforts and ethical codes. Another argument for home country legislation is that human rights abuses require legal redress to ensure accountability.

As mentioned above, existing international law provides a direct obligation on states to take appropriate steps to protect human rights. There is pressure to create obligations for companies to take positive steps to protect human rights in the countries where they operate (Canada, 2005b). Voluntary codes of conduct attempt to define acceptable corporate practices in the area of human rights; for example, the draft UN guidelines for corporate conduct developed by the Commission for Human Rights was one such attempt (United Nations, 2001a). Courts hearing cases of alleged human rights violations will consult such voluntary codes of conduct and abuses to establish generally accepted best practice.

The advantage of a direct obligation under home country legislation occurs when the host state is unable or unwilling to take action when human rights violations or abuses occur. The disadvantage is that there is only agreement on a limited set of core obligations. There is the risk that the existence of corporate responsibility under home country legislation will continue to be used to excuse failing states from exercising their responsibilities to protect human rights.

Corporate legal accountability for complicity in human rights abuses is in its early days, but may be an indication of a tendency for International Law obligations to be covered by home country legislation. The problem lies with some host governments, their regulations and judicial systems.

There has been a move away from activism and pressuring corporations towards litigation. Companies that do not adopt voluntary codes or principles, or those that violate these codes, while not subject to direct penalties, face some risks. Potential litigation arises from four aspects of corporate responsibility for violations of human rights and complicity in human rights abuses:

- a) Market place: companies compete for consumers by complying with evolving voluntary principles on human rights behaviour, statements of codes of conduct; industry coalitions with accountability standards as with the apparel industry in the U.S. (FLA, 2001). Self-regulation is a mechanism to avoid regulations and consequent liability for complicity in human rights abuses.
- b) Home country legislation, (as in the U.S.), uses human rights concerns in countries such as Burma, Libya and Cuba (and in South Africa under the 1986 Anti-apartheid Act) as foreign policy considerations to control corporate activities. However, such home county legislation may conflict with the legislation in other countries where a corporation does business. For example, it is a violation of Canadian law for a Canadian company doing business in the U.S. to follow U.S. government legislation or directives against operating in Cuba.
- c) Emerging international regulations and soft law instruments encompassing human rights include the OECD guidelines for multilateral enterprises (OECD, 2002); the United Nations Global Compact (Annan, 1999); the UN draft code of conduct for corporations (United Nations, 2003); and requirements of international and commercial financial institutions (Equator, 2003; IFC, 2006).
- d) Prospect of civil liability in domestic litigation; courts have found defendants liable for human rights abuses by governments in countries where they operate and in which they were complicit.

Action in these areas is not mutually exclusive. Voluntary marketplace initiatives that define minimum conditions may be appropriate in certain circumstances. However, there is a need to establish standards against which to judge human rights records in court actions. Common law offers very little guidance for litigation. The relationship between litigation, regulation and the market is evolving and will respond to the needs of the marketplace to determine best practices and legal norms. The collapse of financial markets in 2008, attributed to lax regulation and corruption, highlights the inherent weakness and failures of self-regulation and voluntary initiatives. This underlines the need for legislation, appropriate regulations and effective enforcement.

More lawsuits are being filed in U.S. courts under special statutes in California and New

York that permit legal action to obtain redress in cases of human rights abuses. Actions brought in the California Supreme Court include, for example, the following:

- A deceptive practices action claim on human rights where a public statement by a company that made a commitment to human rights was misleading– the case was dismissed on procedural grounds, and the argument (in the area of unfair business practices) was not tested – this case did not involve international law.
- A move to cancel a corporate charter for abuse of public trust.
- The power of the SEC to release disclosure regulations for companies seeking to raise capital creates a need to disclose. The SEC could use its powers to pressure corporations to make disclosure in the area of social responsibility which could lead to litigation.
- Racketeer influence and corrupt practices (RICO): the use of this with a human rights dimension would create a criminal form.

The U.S. Judiciary Act, 1789 established a federal court system, which had jurisdiction for “all causes where an alien sues for a tort¹⁶ only in violation of the law of nations or a treaty of the United States” (U.S. S, 1789). It was long established in English law that the victim of a tort could follow anyone who committed the wrong from one country to another and sue in the other country to obtain redress. This law was originally enacted to allow court cases to be brought against pirates. Pirates are the modern analogy of human rights abusers in the case of torture. The U.S. judicial system is being used to enforce corporate accountability globally of both U.S. and non-American companies.

There has been a series of actions under the U.S. Alien Tort Claims Act, 1789, (Section 1350) which offers a mechanism to test the legal standard of norms (Harvard, 2008). In 1980, this statute was used as a vehicle for human rights cases. The jurisdiction was confirmed and expanded in the 1991 Torture Victim Prevention Act, 28 U.S.C. §1350 App. The two qualifying factors where international responsibility occurs are:

- Certain activities do not require action to be taken by a state: genocide, war crimes, piracy, private corporate actors in the case of economic plunder and slavery (Nuremberg), and attacks on and hijacking aircraft. War crimes, genocide and crimes against humanity include a wide series of actions outlawed under international criminal, humanitarian, and human rights law. These fall within the jurisdiction of the International Criminal Court

¹⁶ A tort is a private wrong done against an individual arising independent of contract and unauthorized by law.

(Day, 2005).

- Activities that by virtue of the relationship between the private actor and the State can trigger constitutional responsibilities.

Extractive industry cases that test this mechanism and the reach of the law include:

- Royal Dutch Shell was accused of complicity in human rights abuses in Nigeria: the law suit was dismissed on grounds that it could be better filed in a U.K. or Dutch court and the U.S. was an inconvenient venue for the case. The appeal allowed the case to proceed since there were U.S. interests involved. The U.S. Supreme Court declined to review the case. A trial date has been set for 2009 (Neumeister, 2008).
- Unocal is part of a joint venture in Burma where the army cleared the way for the project with cheap labour, forcefully relocating villages, torture, rape, and forced labour. Unocal allegedly knew about the human rights abuses that would be continued to make the project economic, and the company benefited from the human rights violations. The court denied a motion to dismiss. However, after the discovery phase, the court granted a summary judgment that the facts against Unocal were insufficient to connect it to the acts. This raised the questions of what facts are needed. Following a successful appeal against that decision the case was settled out of court (Chambers, 2005).
- Chevron was alleged to have provided helicopter support and paid the Nigerian military to violently end a peaceful occupation by Nigerians of an offshore rig in which 200 protesters were injured and two killed; it was also accused of complicity in an attack on Niger Delta villages in which at least four were killed. Nine Nigerians filed a case in May 1999, against the company in U.S. District Court in San Francisco (AP, 2007a). In March 2007, a federal judge dismissed the racketeering portion of the claims against Chevron, but not the charges of crimes against humanity and eight charges under California law. In August 2007, a federal judge allowed the main claims about Chevron's complicity in human rights violations to proceed (Reuters, 2007a).
- Exxon-Mobil was accused of complicity in human rights abuses by Indonesian state security forces protecting its natural gas field in Aceh, which was closed in March 2001 because of the danger to its employees after a series of attacks. A lawsuit filed in U.S. Federal District Court in June 2001 claimed that during the past year villagers and their families were victims of murder, torture, kidnapping and rape by the Indonesian military unit that was protecting the gas field. It also claimed that Exxon-Mobil provided

barracks where the military tortured detainees, and lent heavy equipment that was used to dig mass graves. In October 2005, a federal judge allowed claims for wrongful death, theft by coercion and assault and battery to proceed under DC state law, but dismissed claims under the Alien Tort Claims Act and the Torture Victim Protection Act. After a series of appeals, in June 2008, the U.S. Supreme Court declined to hear the case. In August 2008, the U.S. District Court ruled that the case should proceed and a trial date would be set (Oberdorfer, 2008).

- Drummond Company was accused of complicity in the deaths of three union leaders after paramilitary troops had forced them from a company bus taking them from its coal mine in Colombia in 2001. In 2007, this, the first case to go to a trial under the Alien Tort Claims Act found that Drummond was not liable. The company acknowledged that, at the time, conditions at the mine were primitive and the union had legitimate grievances. Insufficient evidence was presented during the two-week trial to link the company to the troops responsible for the torture and killings (Whitmire, 2007). Although the case was unsuccessful, it is remarkable that the allegations were aired in an open court.

Among the objections to litigation in the U.S. is the one that corporate social responsibility encroaches on a company's responsibility for the bottom line, and that corporate concern for human rights is not good business. There is a complaint that the threat of litigation places U.S. corporations at a disadvantage to their competitors. Such a threat places a greater human rights obligation on those companies that adopt voluntary codes. Whereas other companies not adopting such codes can operate more freely. When a case does not have a direct connection to the U.S. it becomes a unilateral action criticized as U.S. legal imperialism (Glaberson, 2001). However, when a corporation is more than half-owned by the government it could be deemed to be an agent of the State, hence a case could proceed against it if human rights were abused.

Corporate responsibility as a concept is analogous to the development of best practices to accommodate the interests of merchants that led to a mercantile law in the 1700s. There are international legal standards in many UN treaties and other international agreements that obligate companies, their officers and workers to respect international human rights.¹⁷

¹⁷ UN treaties and other international agreements with such obligations include: the Convention on the Prevention and Punishment of Genocide; the International Convention Against Torture and Other Forms of Cruel, Inhuman or Degrading Treatment or Punishment; the International Convention on the Elimination of All Forms of Racial Discrimination; the Convention on the Elimination of All Forms of Discrimination Against Women; the International Covenant on Economic, Social and Cultural Rights; International Covenant on Civil and Political Rights; the Convention on the Rights of the Child; the four Geneva Conventions for the Protection of Victims of Armed Conflict; the Nuremberg Charter; the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms; the Rome Statute of the International Criminal Court; the Convention Against Transnational Organized Crime; the Convention on Civil Liability for Oil Pollution Damage; the Convention on Civil

Under international law governments have the primary responsibility to respect, ensure respect for, and promote internationally recognized human rights that were discussed above. The responsibility for legislation rests with the host country. However, when the institutional framework and local laws are weak the host country needs to have a commitment to the rule of law, whereas the state may be unable or unwilling to take action, it may have weak capacity to enforce legislation, and it may well have corrupt systems.

When a company is operating overseas, legal liabilities may arise from (a) the laws in its host country; and (b) the laws and norms in the company's home country. This is a multi-level situation in which the corporation will have to reform its local practices in the host country to comply with home country laws. Otherwise, the corporation may face consumer strikes or lose the support of financial institutions, either of which cause shareholder values to suffer.

There may be a false sense of geographic distance. Operating in the many states that do not comply with the Universal Declaration of Human Rights leads to problems; corporations may find themselves operating in countries with "bad" governments that were not that way when the company first went into the country. If the mining company misunderstands the situation there will be problems that are not just of an abstract nature, but can result in expensive lawsuits. While there are laws in place, there is still a lot of uncertainty in the global area. Not many years ago human rights concerns were not matters that corporations had to consider. The general public perception, when there are problems, is that corporations are bad and the government is good; but there are other situations.

An example of countries extending the reach of their domestic law for war crimes is that of Spain and Chile with the arrest of Pinochet in the U.K., but this reach has not yet been extended to corporate responsibility. Legal actions filed in the U.S., U.K., Canada and Australia attempt to hold parent companies accountable for actions of their subsidiaries in developing countries.

Human rights legislation in Australia is under scrutiny. Although a proposed corporate code of conduct was rejected in the Senate, it gained public attention and the attempt to regulate Australian companies working overseas through home country legislation shows momentum.

A survey of sixteen countries found that eleven had domestic international criminal law statutes that applied violations committed by their nationals abroad (Argentina, Australia, Belgium, Canada, Germany, Japan, Norway, South Africa, the U.K., and the U.S.) (Ramasatry and Thompson, 2006).

Liability for Damage Resulting from Activities Dangerous to the Environment; the Charter on Fundamental Rights of the European Union, the OECD's Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, etc.

“Foreign direct liability” is the corollary to foreign direct investment and part of the globalization process (Ward, 2001). It offers a mechanism to assign responsibility between private sector parties rather than between governments. Claims have been brought under common law. Foreign direct liability can create foreign policy concerns as the litigation is seen as infringing on national sovereignty in the host country. The cases raise questions of governance in the host country where the courts may be corrupt and biased. The threat of liability could motivate business change.

Although the concepts of complicity and responsibility through business partners and spheres of influence may be vague, a company may have a legal responsibility for abuses by its government partner. The standard is: if an actor, including a corporation as a private actor, knowingly provides substantial support to the commission of certain human rights violations, and they know that what they are doing is likely to have an impact on the way these abuses are committed, they are legally responsible for the abuses, even if they did not want them to happen, but they knew their own acts were likely to contribute to the abuses. The law holds actors responsible for what they knew their partners would do (Orentlicher, 2005).

3.5.4 Roles and Responsibilities of Others

United Nations

In 2006, the *United Nations Human Rights Council* replaced the *United Nations Commission on Human Rights* to become the primary multilateral organization responsible for strengthening the promotion and protection of human rights. The *United Nations Human Rights Committee*, a group of experts, is the body that monitors implementation of the International Covenant on Civil and Political Rights. The *United Nations Working Group on the Working Methods and Activities of Transnational Corporations*, (a sub-group of the *United Nations Sub-Commission on the Promotion and Protection of Human Rights*), prepared “Draft Universal Human Rights Guidelines for Companies” (United Nations, 2001a). After reaching a consensus in 2003 in the Working Group and the United Nations Sub-commission on Human Rights, there was an impasse between their proponents and opponents that precluded their adoption by the former United Nations Commission on Human Rights at its April 2004 session (United Nations, 2003). In 2005, the United Nations Secretary-General appointed John Ruggie as a Special Representative on The Issue of Human Rights and Transnational Corporations and Other Business Enterprises, for an initial period of two years. Ruggie’s characterization of the Norms as “a distraction” being guided by “doctrinal excesses” was not appreciated by human rights NGOs who saw the need for the “establishment of clear, global standards of corporate responsibility and of effective mechanisms for holding companies to account.” In a letter responding to his initial report, 107 NGOs pointed out the importance of the Norms (NGOs, 2006). Ruggie’s initial report

referred to 65 allegations of complicity by companies in human rights abuses reported by NGOs of which two thirds were in the extractive sector (United Nations, 2006).

A more recent report by Ruggie, noting early NGO criticism, refers to 320 cases of allegations made since February 2005 of human rights abuses related to corporations in all regions of the world of which the largest proportion (28%) were in the extractive industries sector (United Nations, 2008). He concluded, “companies may face censure in the court of public opinion for contributing to or benefiting from such abuses and failing to take steps to stop it, even if actual courts might not necessarily find liability under current tests.” In response to Ruggie’s 2008 report, major human rights NGOs stressed that his “focus should not close doors to other necessary analysis and action at the UN level, including, ultimately, *the need for clear global standards adopted by governments.*” [emphasis added] (NGOs, 2008).

In its second response to Ruggie’s initial report, an industry group found that “among the biggest challenges for the sector...is that best practice on business & human rights is limited to a relatively small group of companies, and countries” (ICMM, 2006).

Several United Nations bodies examine violations of indigenous peoples rights including CERD, HRC and CESCR. According to an NGO submission to the Special Representative, three United Nations Committees found violations associated with the extractive industries as shown in Table 3.3 (FPP/TF, 2006).

Since 2000, the United Nations invited corporations to adopt The Global Compact, and has invited corporations to engage in a dialogue on human rights. The ILO Conventions, Declarations and Recommendations have established principles for the protection of vulnerable groups including indigenous peoples and recommend responsible behaviour for multinational companies and their joint-venture partners, and suppliers.

In the area of mining, ILO has a specialist who examines areas of concern in the minerals industry, including the use of child labour. Eighty per cent of the 80 to 100 million people working in small-scale mining fall outside a legal or regulatory framework. While impoverished communities are attracted by the prospect of income, the reality is “a vicious cycle of appalling working conditions, significant environmental damage and poverty” (ILO, 1999). To encourage small-scale mining ILO recommends introducing best practices for mining, and health and safety, and environmental protection. There remains a challenge for the minerals industry to find ways to improve the health and safety conditions under which small-scale miners operate while many governments (e.g. francophone Africa, Cambodia) neither regulate them nor want them. The use of

child labour is reported in countries as widespread as Ghana, Guinea, Niger, Peru, Tanzania and Philippines (ILO, 1999).

Table 3.3 – Extractive Industries’ Violations of Indigenous Peoples’ Rights –Countries Identified by UN (1996-2006)

CERD	HRC	CESCR
Guatemala, May 2006 USA, April 2006 Suriname, August 2006 Peru, August 2006 Dem. Rep. Congo, August 2006 Guyana, April 2006 Nigeria, November 2005 Suriname, November 2005 Suriname, April 2005 USA, August 2005 Sweden, May 2004 Suriname, March 2004 Bolivia, December 2003 Suriname, March 2003 Ecuador, March 2003 Costa Rica, March 2002 USA, August 2001 Sweden, May 2001 Finland, May 2001 Chile, March 2001 Colombia, August 1999 Finland, March 1999 Cambodia, March 1998 Philippines, October 1997 Panama, March 1997 Colombia, March 1996 Russian Fed., March 1996 Finland, March 1996	United States, July 2006 Canada, April 2006 Brazil, December 2005 Thailand, July 2005 Finland, October 2004 Colombia, May 2004 Suriname, May 2004 Philippines, December 2003 Sweden, April 2002 Venezuela, April 2001 Guyana, April 2000 Chile, March 1999 Ecuador, August 1998	Norway, June 2005 Canada, May 2006 Mexico, May 2006 Ecuador, June 2004 Russian Fed. December 2003 Brazil, May 2003 Colombia, November 2001. Panama, September 2001 Venezuela, May 2001 Honduras, May 2001 Bolivia, May 2001 Cameroon, December 1999 Canada, December 1998 Nigeria, May 1998 Russian Fed., May 1997 Peru, May 1997 Paraguay, May 1996

Notes: Countries shown with direct or indirect reference by UN Committee to extractive industries’ rights violations. Only shows states that are party to the instruments and reported to the Committees. Many situations are not included where no information was available or presented to Committees; hence this “most likely represents only a small proportion of the actual violations taking place.”

CERD is the Committee on the Elimination of Racial Discrimination, HRC is the Human Rights Committee, and CESCR is the Committee on Economic, Social and Cultural Rights

Source: FPP/TF, 2006

ILO convened a workshop to focus on working conditions for cutting and polishing gemstones with all the major countries in this industry (Belgium, U.S., Israel, South Africa, India, Sri Lanka and Thailand) (ILO, 2001). Child labour was one aspect considered. The Indian government specified gem cutting and polishing as one of the worst forms of child labour, and in its commitment to end the practice has designated it to be eradicated. Following continued complaints of contravention in Colombia of the right of freedom of association and the right to collective bargaining, the ILO governing body has started to deal with the problems.

UNICEF promotes and protects children's rights on the basis of the *Convention on the Rights of the Child*, and focuses on situations where violations of these rights seem to be linked to private sector activities. It receives reports of violations caused by both legal and illicit operations, such as

situations where children are forcibly employed in mining, children being used as soldiers to guard resource operations, and children forcibly displaced as a consequence of mining operations and resources control (United Nations, 2001d, 2001e, 2001f). UNICEF has collaborated with the private sector for over fifty years and developed specific guidelines and a manual for working with the business community that are used to screen acceptable partners (UNICEF, 2001). These guidelines look for positive criteria that demonstrate corporate responsibility and a company's positive contribution to society. It seems that other UN agencies may adopt the same approach for partnerships and alliances with the private sector.

The United Nations Conference on Trade and Development (UNCTAD) examined the social impact of mining in 1996, reviewed the interests and objectives of stakeholders in 2000, and is considering how to structure alternatives for mining-dependent areas, but lacks the funding and staff for a major program.

After functioning effectively for more than thirty-five years, the United Nations main technology transfer and support to developing countries on problems of mineral resources development (located within the UN Secretariat's Natural Resources and Energy division) was effectively abolished. This occurred when it eliminated its substantive capacity during an internal restructuring in 1994 in a move towards peace keeping and peace enforcement and away from economic and social development. There is still some capacity at the United Nations Regional Commissions, but mineral resources questions are not a high priority for funding and have limited staffing available to deal with them. Other United Nations specialized agencies with limited mineral sector capacity have mining-related programmes, including UNIDO which has activities focused on artisanal and small scale mining

World Bank

The extractive sector accounts for about 2.5% of International Finance Corporation (IFC) loans. However, it generates about 50% of the complaints that are made to the IFC/World Bank Ombudsman (CAO, 2006). The World Bank Group (WBG) is dealing more with questions of corporate responsibility since it receives complaints about IFC mining projects' impact on environment, health and communities. There was a problem with a spill of mercury being transported from the Yanacocha mine, which most likely would not have happened if procedures adopted in North America, had been followed (CAO, 2000). Some guidelines on project developments were developed by the World Commission on Dams, which could be helpful to the mining industry since the problems it faces are analogous (World Commission on Dams, 2000; Dubash et al., 2001).

In 2001, in response to specific criticism that the World Bank Group's support of projects in the extractive industry sector (oil, gas and mining) had led to negative environmental and social impacts and not resulted in poverty alleviation, the Extractive Industries Review (EIR), was initiated to examine the role of the WBG and the key problems in the extractive industries (EIR, 2003). This review included a wide range of consultation with stakeholders, including government, business and industry, NGOs and civil society representatives. It developed recommendations to guide the World Bank Group's involvement in the oil, gas and mining sectors within the Bank's objectives of poverty reduction and promoting sustainable development. Unfortunately, the WBG ignored most of the EIR recommendations (Sohn, 2004; Mainhardt-Gibbs, 2006).

The World Bank's revision of its Operational Directive on Indigenous Peoples, OD 4.20, is part of a Bank-wide process and effort for better compliance with its policies. Its independent evaluation units review the performance of past and present projects in oil, gas, and mining (World Bank, 2007). Nevertheless, investigations by the IFC/World Bank Ombudsman into complaints continue to identify shortcomings in the way mining projects are assessed and the problems with the behaviour of companies involved in WBG projects in various countries including amongst others DRC, Guatemala and Peru. IFC and the Global Compact supported the publication of a methodology for human rights impact assessment that is being tested (IBLF, 2007). The widely-adopted IFC performance standards and Equator Principles have been criticized for their shortcoming in terms of the limited scope their standards include, inadequate due diligence and grievance procedures (Herz et al., 2008).

During the interviews, discussion of artisanal and small-scale mining AngloGold Ashanti (AGA) mentioned its participation in the Strategic Management Advisory Group of the World Bank's Communities and Small Scale Mining Initiative (CASM) which is part of an ongoing process to provide a better understanding of good practice in artisanal and small-scale mining. During 2008, the International Finance Corporation (IFC) had been expected to publish: *Artisanal and Small-scale Mining Tools and Guidance for Large-scale Mining Companies*.

ICMM

In 1999, nine of the largest mining and metals companies formulated the concept of the Global Mining Initiative (GMI) to prepare a contribution for the World Summit on Sustainable Development (WSSD) to be held on the tenth anniversary of the Rio Earth Summit (in 2002). The GMI's Mining, Minerals and Sustainable Development Project (MMSD) was managed by the International Institute for Environment and Development (IIED) (KPMG, 2002). The International Council on Mining and Metals (ICMM), the successor to the International Council on Metals and the

Environment (ICME) was established in 2001 as a leadership-led organization that would take up concerns. The industry wanted a constructive engagement with Civil Society to ensure there was an understanding about the essential need for mining's products (new metal) and that the answer to Civil Society's concerns does not lie in infinite recycling. ICMM has enunciated ten principles that it committed its corporate members to implement and against which to measure performance. The extent of ICMM's position; policy and priority concerning human rights are enunciated in Principle 3: "Uphold fundamental human rights and respect cultures, customs and values in dealings with employees and others who are affected by our activities." As of July 2008, ICMM has made three submissions to the *Special Representative of the UN Secretary General on Human Rights and Business* that stress voluntary approaches on business and human rights.

ICMM has been working on a resource endowment project to counter the negative perception that by exploiting a country's natural resource inevitably the country is going to be worse off at the end in terms of environmental degradation, poverty, corruption, and enrichment of the few. There are relatively few positive examples of where resource endowed countries were built on mining: Botswana, the United States, Canada, Australia, Europe. The U.K. in the 16th Century was the world's largest producer of base metals.

Others

In 1999, nine of the largest mining and metals companies formulated the concept of the Global Mining Initiative (GMI) to prepare a contribution for the World Summit on Sustainable Development (WSSD) to be held on the tenth anniversary of the Rio Earth Summit (in 2002).

3.6 Formal Codes of Practice, Guidelines, Voluntary Initiatives, Monitoring

Codes of practice, guidelines and voluntary initiatives are approaches to regulate corporate behaviour that have five origins (Danailov, 1998):

- Individual governments
- Multilateral or regional organizations
- Trade Unions
- Corporations and industry associations
- International NGOs

The hierarchy of codes and principles progresses from voluntary initiatives; engaging in

dialog; following guidelines, subscribing to codes of conduct; through to regulatory requirements. The Voluntary Principles on Security and Human Rights and the International Cyanide Management Code are examples of voluntary initiatives developed as a reaction to specific situations. In both cases their weaknesses lie in the areas of accountability, for example the International Cyanide Management Code, (developed since 2000 after the public became alerted to the dangers of cyanide in gold mining as a result of the harm caused by the tailings dam failure at the Aurul mine, Baia Mare, Romania, early in 2000), has not eliminated such accidents as evidenced by those from Bogosu Gold Ltd mine tailings dam in Ghana (Anane, 2006; ICMI, 2008). Cyanide use to recover gold has been banned in some communities, and further prohibitions are likely should major spills occur again.

The wide variety of codes causes difficulties for companies in determining which to adopt. Some only have general principles while others have detailed implementation procedures. Others are intended to provide a general toolbox that can be adapted to deal with the specific conditions encountered in different countries. Although many of codes and principles are not legally binding, there are pressures from many NGOs to make corporations directly responsible for human rights abuses. Codification is being driven by international organizations and NGOs.

The OECD examined 246 voluntary codes of corporate conduct (OECD, 2001a and 2001b). Of these, 118 codes were associated with separate corporations (frequently multinational), 92 codes were prepared by industry and trade associations, 32 codes developed by stakeholders partnerships (e.g., NGOs and Unions) and 4 codes were released by inter-governmental organizations. Extractive industries prepared 23 of the codes. Of those, 17 were associated with separate companies, industry associations developed 4, one was an agreement between a company and a union, and the other an agreement between a company and governments. The topics encompassed by those twenty-three codes (with the number of codes covering each topic in parentheses) were: environment (23), labour (21), comply with law (20), work environment (19), internal reporting (17), performance audit (17), continual improvement (17), community welfare (17), annual environment report (13), human resource development (13), bribery (9), discrimination (6), competition (6), disclosure (6), technology transfer (6), indigenous rights (5), monitoring system (5), freedom of association (4), and forced labour (2). These are represented graphically in Fig. 3.1.

The analysis shows that although all codes include environmental commitments, companies are seen to be reluctant to deal with and show the least concern about the more difficult and important matters. Contrasting with the apparel industry, only two codes mention forced labour and child labour. Less than forty percent of the codes deal with bribery and even fewer are concerned about monitoring systems, discrimination or freedom of association (OECD, 2001b).

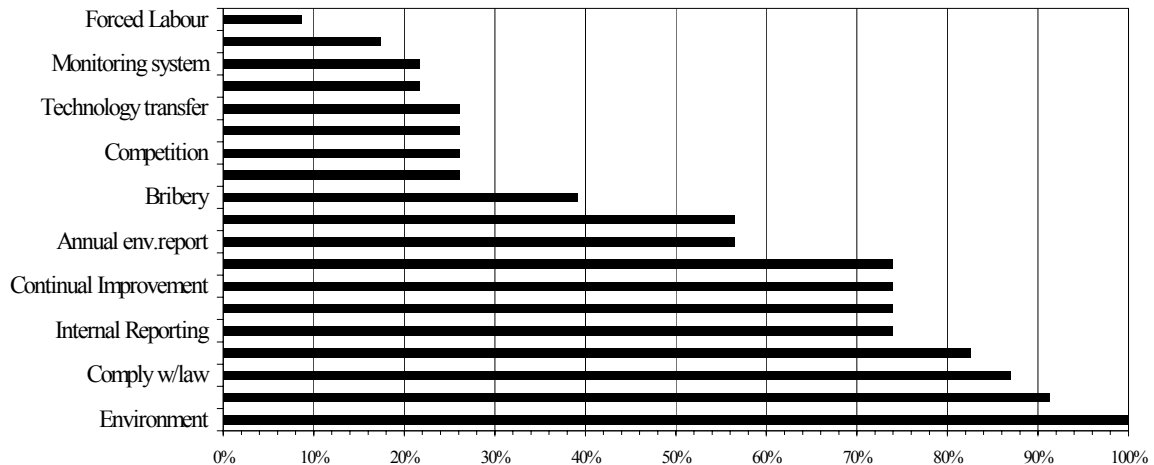


Fig. 3.1 Attributes of 23 Extractive Industry Codes (OECD, 2001a)

An OECD analysis of public statements by 59 extractive industry companies (29 oil and gas and 30 mining companies) was made to examine how companies perceive their role in society (OECD, 2002a). The results, shown graphically in Fig. 3.2, illustrate the reluctance of mining companies to focus on important difficult questions. Although 40 percent of the mining companies mentioned community development and 37 percent their charitable donations, only 17 percent mentioned respect for human rights and as few as 3 percent mentioned security forces.

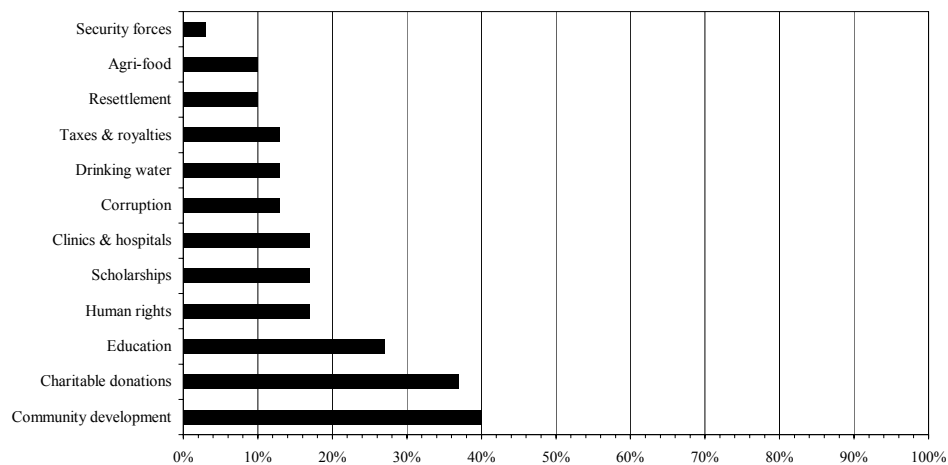


Fig. 3.2 Mining Companies Perceived Role in Society (OECD, 2002a)
(i.e. where mining companies mention they have an impact)

Several human rights impact assessment toolboxes have been developed to help companies identify human rights challenges, for example, *Human Rights Compliance Assessment* developed by the Danish Institute for Human Rights (Danish Institute for Human Rights, 2006), *Guide to Human Rights Impact Assessment* (IBLF, 2007), *Human Rights Impact Assessment Initiative* of Rights and

Democracy (Rights & Democracy, 2007), and *Human Rights Guidance Tool for the Financial Sector* (Mining and Metals) from the United Nations Environment Programme Finance Initiative – UNEP FI (UNEP, 2007). There are said to be more than 300 corporate responsibility tools (ethics tools, principles, guidelines and standards, etc.) that encourage good practice and attempt to define notions of corporate social responsibility and sustainable development. Goel and Cragg examined sixteen widely used tools in a guide for investment fund managers (Goel and Cragg, 2005).

- AccountAbility 1000 Assurance Standard (AA1000 - 1999)
- Ceres Principles (1989)
- Equator Principles (2003)
- Extractive Industries Transparency Initiative (EITI - 2002)
- Global Reporting Initiative Sustainability Reporting Guidelines (GRI -1997)
- Global Sullivan Principles (1999)
- Greenhouse Gas Protocol (GHG Protocol) –2004)
- International Labour Organization Declaration on Fundamental Principles and Rights at Work (ILO Declaration - 1998)
- ISO 14000 (2004)
- MacBride Principles (1997)
- Organisation for Economic Co-operation and Development Guidelines for Multinational Enterprises (OECD Guidelines – 2000)
- Social Accountability 8000 (SA8000 - 1998)
- United Nations Global Compact (GC - 1999)
- United Nations Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises with Regard to Human Rights (UN Norms - 2001)
- Universal Declaration of Human Rights (UDHR - 1948)
- Voluntary Principles on Security and Human Rights (VPs - 2000)

This list demonstrates that there is no shortage of appropriate voluntary initiatives that companies could adopt. However, codes and principles are seen to be ineffective unless there is provision for effective independent monitoring and verification of compliance. Recent evidence from Canadian Parliamentary hearings and elsewhere has led to the conclusion that voluntary initiatives are inadequate (Canada, 2005a and 2005b). Since many host countries are failing to fulfill their

obligations under international law to provide human rights protection, there are demand for legislation in companies' home countries to hold corporations liable for complicity in human rights abuses in their operations overseas. Responding to a request for a debate on corporate responsibility, the Leader of the British House of Commons agreed there was a "need to monitor how British companies act overseas" and would "bring the matter to the attention of ... the Secretaries of State for Business, Enterprise and Regulatory Reform and for International Development" (Hansard, 2007, col 445).

Although standards exist under existing codes and voluntary principles, the question is how to make them applicable. It is difficult to establish social accountability standards. There are no GAAP (generally accepted accounting principles – the financial accounting standards) for social audits, and there are no established benchmarks, though some standards protect vulnerable groups, such as children. There is a need for adequate independent monitoring and verification. The Social Accountability 8000 standard (set by the New York-based Social Accountability International) deals with social responsibility in nine core areas: child labour, forced labour, health and safety, compensation, working hours, discrimination, discipline, free association and collective bargaining, and management systems (Social Accountability International, 2001).

Currently ad hoc standards, benchmarks and compliance reports are being developed to make sure a corporation complies. The Global Reporting Initiative (GRI) provides an evolving sustainability reporting framework and guidelines that organizations can use on a voluntary basis to measure and report their economic, environmental, and social performance. In 2005, a mining and metals sector supplement was added (GRI, 2005). According to the GRI, any significant incidents involving security personnel, or affecting communities, and incidents involving land rights should be reported under Social Indicator MM7 of the mining and metals sector supplement. Reporting should also include the grievance mechanisms used to resolve any incidents affecting communities and their outcomes. However, to ensure accurate and complete reporting independent monitoring and verification is essential.

The Global Compact invites companies to "embrace, support and enact, within their sphere of influence, a set of core values in the areas of human rights, labour standards, the environment, and anti-corruption" including among other things to "support and respect the protection of internationally proclaimed human rights; and ... make sure that they are not complicit in human rights abuses" (Global Compact, 2004). The Extractive Industries Transparency Initiative was viewed hopefully as an approach to improve transparency not just at the national level but at the regional and sub-regional levels where revenue sharing and distribution problems are perceived to be more significant.

Some corporations have developed guidelines on social and environmental concerns, and have developed, or are developing, guidelines to handle security internally, and human rights questions. In Australia, a group of NGOs developed principles for mining companies that included topics of human rights, land rights, ownership and indigenous peoples (AAPMN, 1998).

The International Confederation of Free Trade Unions (ICFTU) has developed a basic code of conduct for labour practices that can be used as a benchmark in analyzing voluntary codes of labour practice adopted by companies (ICFTU, 1997). Codes of conduct generally define minimum standards of behaviour but there are concerns that companies that are not signatories ignore them without any consequence. Some NGOs say that some companies, signatories or not, are not willing to permit independent monitoring or verification of their operations (Sullivan and Frankental, 2001). Professional organizations have started to introduce guidelines and requirements for their members to take on the responsibility to respect human rights (PEO, 2000).

3.6.1 Establishing Benchmarks

Performance in the human rights area is very difficult to measure. It is simpler to measure environmental performance. NGOs are working with companies on questions of stakeholder engagement in monitoring and benchmarking to help decide which benchmarks should apply.

An approach described to establish benchmarks, in general terms, is to consider three sets of questions: (a) working conditions (use U.S. government occupational safety and health standards as a basis (OSHA, 2008); (b) wages; (c) security.¹⁸

The first step in establishing benchmarks is to examine local laws and determine whether these laws are poorly or effectively enforced. Secondly, examine whether the laws are adequate, borderline or inadequate. It is helpful to ask the question: are the indicators useful? One can use a mechanism that establishes categories and then examine the statistics of incidence in each category.

- (1) Zero Tolerance: this is where one cannot violate the standard, whether the violation is once or many times is irrelevant. One will be highly critical of any breaches.
- (2) Minimum criteria, but not best practice; here there will be a question of training or changing the company's standards, which will inevitably need a transition period, to achieve compliance with standards
- (3) Maintenance, proper standards, operating safety.

¹⁸ Developed from a January 2001 discussion about establishing benchmarks, standards, monitoring and verification with Dr .Prakash S. Sethi, Distinguished Professor, Zicklin School of Business, Baruch College, New York.

There may be legal agreements on living conditions but these are a most subjective matter. However, in the case of personal security several questions arise at any operation: Is there any protection for the workers? Or, do they fear reprisals for their actions or words? Does the local militia cooperate with the company to help keep indigenous people away from the operations? What are ground rules on workers rights for those who refuse to cooperate? If there are unions, what are the standard procedures for grievances? Is there a forum for consultation and for discussing disputes? Is the company operating in a free environment, or do they use their own security forces, or local police, or militia? Indeed, is the corporation operating in a free environment itself?

If there are local military: Are they there to protect the facilities? Or to cooperate and act as an agent of the company that wants a docile local population? Does the government exploit conflict between local groups in the historical model as a colonial-type diversion mechanism to divide and conquer?

If local laws are adequate they can be used as a baseline, but in difficult situations, standards need to be established. Even if there are adequate laws and regulations, it is necessary to ask if the existing regulatory and administrative frameworks are adequate to enforce regulations? What training was given to the people locally who are running operations? There should be a framework for training in case incidents occur. It is necessary to examine the tolerance rate of abuses, and whether local management is encouraged to provide implementation in the case of incidents or to remain silent.

3.6.2 How to Make Standards, Codes and Voluntary Principles Applicable

Multinational company statements or codes not based on internationally recognized standards or lacking clarity and transparency could be criticized as public relations statements designed to avoid responsibility. Multinational company statements or codes that say they only abide by national laws are also criticized as a way to avoid social responsibility.

The adoption of existing standards supported by jurisprudence with established interpretations may avoid this problem. Established standards include the United Nations Universal Declaration of Human Rights, and the ILO Declaration of Principles and the OECD Guidelines of responsible behaviour for multinational companies and their joint-venture partners and suppliers, as well as the international standards in the Conventions and Recommendations of the ILO. It is essential that mining companies' statements of principles include specific mention of the Universal Declaration of Human Rights and the two Covenants (on civil and political rights, and on economic, social and cultural rights), and core Conventions (rights of the child; elimination of discrimination

against women, elimination of racial discrimination, and against torture), as well as the principal ILO conventions (freedom of association, etc.). It is also essential that they make their activities and operations available for independent monitoring and verification.

As mentioned above, including negotiated standards in labour agreements is a step on the way to putting them into practice. The key challenges for mining corporations in their performance are accountability, transparency and their relationships with civil society.

3.6.3 Skills Challenges

There are skills challenges in all aspects of human rights. Mining companies need to educate their employees in codes of conduct on various topics including, respect for human rights, rules about discrimination and sexual harassment, conditions of work and wages, and development opportunities. Weak government institutions also need training in monitoring and inspection tasks. Additionally, some NGOs need training and capacity building in the areas of establishing benchmarks, monitoring and verifying compliance. Some NGOs train local groups to combat human rights violations and provide human rights training programs with instruction on gaining access to international legal mechanisms and the media (see Justiça Global, information available at www.global.org.br)

3.6.4 Social Audits, Status in Other Sectors, Developments in Mining Industry

Sectors other than mining have already developed codes of conduct, established standards and implementation methods, although some NGOs are critical of progress. For example, after The World Tourism Organization (WTO) held consultations with representatives of the industry, workers, and various NGOs interested in the process it approved a Global Code of Ethics for Tourism that include principles stating stakeholders' obligations, and covers the rights of workers and entrepreneurs in the industry (WTO, 1999a). Its inclusion of an article concerning redress of grievances was the first time that a code of this type included a mechanism for enforcement based on conciliation through the creation of a World Committee on Tourism Ethics including representatives of each region of the world and representatives of each group of stakeholders in the tourism sector — governments, the private sector, labour and non-governmental organizations (WTO, 1999b).

Media and consumer pressure about child labour and sweatshops induced companies such as Levi Strauss, Reebok, and Liz Claiborne to develop corporate codes of conduct for their overseas contractors, each with its own list of unacceptable abusive practices (Golodner, 1997). These company codes of conduct did not deliver as intended and lost credibility. Without assurances of independent monitoring and publicly available reports, there was no guarantee that these codes of conduct were implemented and verified. As a result of public and media pressure U.S. President

Clinton in 1996 invited apparel industry leaders, unions, and non-governmental organizations to form a task force on sweatshops to determine appropriate measures “to ensure that the products they make and sell are manufactured under decent and humane working conditions.” He also challenged them to “develop options to inform consumers that the products they buy are not produced under those exploitative conditions.” This group (the Apparel Industry Partnership) developed an industry standard code of conduct with standards that could be adopted by the industry (Fair Labor Association) including both internal and independent external monitoring and verification of compliance (FLA, 2001).

An example of responding to public demands for guarantees that products are made under decent conditions, the RugMark Foundation label certifies carpet manufacturers who meet requirements that assure no child labour is used in Indian and Nepalese handmade carpets. It includes systematic independent monitoring and unannounced inspections of manufacturers by non-industry RugMark representatives. The project also supports schools in India and Nepal educating more than 1,000 children. In 1997, RugMark carpets represented nearly 15 per cent of all Indian production and nearly 70 per cent of Nepalese production (Golodner, 1997). The number of children working illegally as weavers in India, Nepal and Pakistan has declined to 360,000 in 2007, from one million in 1995 (RugMark, 2008).

Standards to be used for monitoring and verification should be agreed upon with the corporation in advance. If it is not acceptable to the corporation or to the consultant doing the monitoring, the assignment is not viable. A serious company will generate trust that will lead to credibility.

A proposed audit protocol is to take a statistical sample of workers and interview them against a detailed questionnaire on a one-on-one basis. To prepare the protocol it is necessary first to get information from management using the questionnaire. Then ask workers the same questions. If there is any pressure or coercion, experience has shown that the sets of data will differ somewhat. Then the results should be interpreted to understand any divergences.

An audit will not succeed if the company is hiding information because problems cannot easily be identified in three or four days. Many serious professionals will not work with companies to provide a cover for them, and will have to be convinced there will be total credibility, with the audit report content publicly disclosed. If a firm misrepresents findings an auditor can always dissociate him or herself publicly from the report.

Where there are tensions between the local population and the regional or central government

they can create problems. The auditor does not act as an advocate and wants to be sure the procedures being used are correct. The company needs to have an internal mechanism to ensure any conflicts or incidents with various levels of government are reported internally.

There is a challenge whether one can create standards for benchmarks and audits. The first task is to define standards and the questions to ask. The difficulty is to create a questionnaire to obtain objective data from which two people should be able to come to a similar conclusion. Next, the main work is data acquisition (keeping the identity of the interviewees confidential), interpretation, and obtaining the best professional opinion. Then, what is the mechanism for conflict resolution? The company will have to pay for the audit but should not control its direction, which will depend on the control. If an adequate system is in place, the audit is protected. The company has to decide how it will distribute the reports – perhaps as an item in its Annual Report or as a separate publication as Shell Oil (Shell, 2000). Apparently the first of its kind in the mineral sector, an independent social audit was commissioned by Freeport that examined human rights concerns at and around its Grasberg operation (ICCA, 2005).

Vale (formerly CVRD), the Brazilian iron ore company, included a social report with its annual report that showed nine per cent of 2000 revenue was spent on “social indicators.” It described programs with indigenous peoples to preserve their culture and create opportunities for agricultural production, forest management and the production and sale of local graphics, as well as projects with other local communities for services such as health, citizenship, education, culture, art and sports (CVRD, 2001). CBMM, a Brazilian niobium mining, processing and manufacturing company supports foundations that work with the community in such areas as the treatment and rehabilitation of alcohol and drug addicts, in geriatric and psychiatric care, and supports a community centre that provides professional skills and assistance to the community. The school offers vocational training for teenagers and provides basic elementary and secondary education in addition to vocational training for those who missed it as youths (CBMM, 2007).

3.6.5 Standards to Protect Vulnerable Groups

There are many ILO conventions and recommendations to protect vulnerable groups including children, women, and indigenous peoples. These include guidelines for multinational corporations by ILO, OECD and the United Nations (Global Compact, 2000; OECD, 2000; ILO, 2006). The United Nations Commission for Human Rights drafted guidelines for companies to take responsibility for human rights where they operate which emphasize that companies “monitor and verify their compliance... in a manner that is independent, transparent, and includes input from

relevant stakeholders” (United Nations, 2000, 2001a and 2003).¹⁹ As mentioned above, organized labour proposed global standards on labour rights, which were adopted by Statoil in its collective agreement (Statoil et al., 2001). The OECD has established corporate responsibility on human rights and principles of corporate governance.

U.S.-U.K. Voluntary Principles on Security and Human Rights - Guidelines to Handle Security Internally, and on Human Rights Questions

Security and human rights abuses are the most clearly defined set of problems where there are relations with state or private security forces. The broader set of corporate relationships in connection with security and human rights include the company’s relation and interaction with the community and with questions of land rights, access to resources, and revenue benefits to the community (as distinct from the regional and national government) This section draws extensively from remarks made during 2001 by Bennett Freeman, former U.S. Deputy Assistant Secretary of State for Democracy, Human Rights and Labor (Freeman, 2001 and 2001a; Freeman and Uriz, 2003).

During the 1990s, the NGOs were critics and adversaries of extractive companies for their impact on human rights and indigenous communities. There was a convergence of interest between NGOs, companies experiencing operations interruptions in different countries, with wider U.S. interests at stake. In the mid-1990s U.S./U.K. companies were alleged to be complicit in human rights abuses with security forces in Nigeria (e.g. Chevron and Shell), Indonesia (e.g. Freeport-McMoRan in West Papua and Exxon-Mobil in Aceh) and Colombia (e.g. BP and Chevron). There was extensive news coverage about the allegations, some of which are discussed below. Whether it was true, fair or not, this coverage caused a problem for U.S. foreign policy. Reputations were at risk while the companies had willingness and ability to remain engaged in “difficult” countries. The U.S. Government was concerned about the combination of media and NGO attention, the impact of operations and the extent to which governance was a backdrop in some countries with broader U.S. interests at stake. Since the case of Nigeria companies were seen to have an impact on human rights abuses despite their distance from the actions, and international companies were seen to have a responsibility when operating in countries with repressive regimes.

In Indonesia there were tensions in West Papua and Aceh with the political question of local and regional relationships and their relation with the central government, in addition to relations between companies and civil society and tribal groups. There were social, infrastructure, health,

¹⁹ The norms were accepted in 2003 by the Sub-Commission on the Promotion and Protection of Human Rights (former Sub-Commission on Prevention of Discrimination and Protection of Human Rights). Opposition industry lobbyists was defused in 2005 when the Secretary-General appointed of a Special Representative for human rights who rejected the norms. Nevertheless, some companies used them to help develop their own human rights policies.

education, and transport problems. Newmont Corporation encountered these problems in Peru and Indonesia. Human rights and labour rights are intertwined.

Although companies had guidelines to handle security internally, they generally did not deal with human rights concerns. Some companies, including, for example, Anglo American, AngloGold Ashanti, BP, Freeport-McMoRan, Rio Tinto and Shell have now incorporated human rights considerations.

The U.S. State Department was looking at questions of corporate responsibility and human rights in general. Of approximately a dozen countries with human rights and security problems three countries were the most visible – Colombia, Indonesia and Nigeria. In 1999, the U.S. Government decided to take a direct role in the problems. Encouraging factors were government efforts to review policy and practices and bring in some fresh thinking from such NGOs as Human Rights Watch, Amnesty International, International Alert, IBLF, etc. At the same time there was a growing interest in the problems at the U.K. Foreign Office. Working together to deal with mutual problems, governments, companies and NGOs had the focus and opportunity to develop a dialogue on a specific set of questions and find common ground. The process produced the Voluntary Principles on Security and Human Rights (see Appendix II).

Major oil and mining companies, human rights and corporate responsibility organizations, and the U.S. and U.K. governments recognized that security and respect for human rights could and should be consistent (Freeman, 2001 and 2001a). The companies recognized that there was a difficult and sensitive confluence of human rights and security concerns. In life and death situations they needed practical guidance on human rights, and there was a willingness on the part of companies to get practical guidance both at headquarters and for company managers at the site level on how to handle problems. Since the two governments had economic and political interests that the companies continue to operate in difficult countries, (e.g., Nigeria, Indonesia and Colombia) they used their convening power, which was the key factor to bring the parties together for a dialogue.

Voluntary Principles on Security and Human Rights

In March 2000, responding to pressures, seven major oil and gas companies (of which five were publicly identified, see Table 3.4), two mining companies, nine NGOs, and two governments decided to concentrate on what could be accomplished within a year. The discussion was kept broad enough to develop voluntary principles on security and human rights applicable beyond the countries causing most concern (i.e., Colombia, Indonesia and Nigeria).

Table 3.4 Participants Initially Identified with the Voluntary Principles on Security and Human Rights, December 2000

Governments	Oil Companies ^a	Mining Companies	NGOs	
United States United Kingdom	Shell BP-Amoco Chevron Texaco Conoco ^b	Freeport-McMoRan Rio Tinto	Amnesty International Human Rights Watch International Alert Safer World ^b Council for Economic Priorities ^d Prince of Wales International Business Leaders Forum Business for Social Responsibility Fund for Peace ^b Lawyers Committee for Human Rights (Human Rights First) ^c	International Federation of Chemical, Energy, Mine and General Workers (ICEM) ^b

Notes: ^a Enron & Occidental Petroleum first participated in the 2nd Meeting (May 2000). ^b Safer World withdrew at the time of the 3rd meeting (July 2002) at which ICEM, the Fund for Peace and Conoco joined the process. ^c Joined the dialogue process in March 2001. ^d Council for Economic Priorities & Enron withdrew in December 2001.

This group developed and wrote Voluntary Principles on security and human rights to crystallize the best emerging practices and good policy (e.g., Shell Oil and BP) and meld them together with NGO recommendations (particularly those of Human Rights Watch, International Alert and Amnesty International) to develop a framework that balanced the companies' need to deal with serious security threats in dangerous places, with the NGOs' insistence on avoiding abuses and having a respect for human rights (VPs, 2000).

Anything other than voluntary non-binding principles would have made the discussion unacceptable to the companies and governments since the companies did not want to be subject to litigation, and the governments were pragmatic. The NGOs had to decide if it was worth engaging in the process to develop voluntary principles. It would be worthwhile if the principles became the basis for standards "that could then become the baseline for best practice and further scrutiny" (Freeman, 2001). If the voluntary non-binding principles would contribute to the protection of human rights, even if not fully observed, was not a bad second choice to legislation. It was remarkable that about thirty people from diverse backgrounds (i.e., human rights activists and company security chiefs) were prepared to work together to reach a consensus.

At the end of 2000, after only four one-day meetings (held in March, May, July and September 2000) but several thousand hours of input, drafting, negotiating and internal checking and revisions, the discussion process produced the Voluntary Principles on Security and Human Rights (VPs, 2000). The number of participants that took part in the discussions was limited by the two governments (US State Department-U.K. Foreign Office) as the sponsors were not confident that they could achieve more within less than a year if there were additional governments and companies

engaged.

Three major areas were discussed and the principles were organized around these substantive categories:

- (1) Criteria companies use to assess the risk to human rights in their security operations
- (2) Company relations with state security forces (military and police), and
- (3) Company relations with private security forces.

Implications from developing the VPs are:

- (i) The process is a concrete example of human rights and corporate responsibility in action.
- (ii) Demonstration of companies' willingness to engage with critics.
- (iii) Willingness of NGOs to find common ground on problems.
- (iv) Recognition by two governments that their foreign policies have now become inter-linked with human rights concerns and the reputations of their companies overseas; a willingness to lend their convening power to lead and manage the process among the participants; and a willingness to handle the delicate political implications with host governments.

This experience may encourage a country's willingness to use its convening authority and diplomatic capacity. These VPs are viewed as an example of a non-binding approach. Scepticism about such voluntary principles is a valid concern. However, the U.S. State Department/U.K. Foreign Office wanted to deal with what was possible given the mindset of NGOs and companies. A key motivation was the nervousness on the part of companies at the prospect of litigation.

The NGOs and others wanted to be sure this was a serious effort and not just an exercise. They would not support the principles and welcome the process unless all the problems were fully dealt with and resolved to their satisfaction. The process itself was a challenge to the NGOs. However, even if the VPs were non-binding, the process crystallized a comprehensive document with reference to soft law.

There was criticism by some that there was a narrow focus on a single set of human rights concerns with the participation of a limited number of organizations and only two Western governments. The decision to keep the focus narrow was deliberate and unapologetically taken as the basis to get something accomplished within one year. However, this was a useful starting point. The starting thesis for the VPs was that security and human rights involved the most clearly defined set of problems (including both state and private security forces) that could be brought into the discussion.

The results validated the concept of having the scope clearly defined so that the concerned parties would have a greater likelihood of being able to succeed.

The press noted that this was the first time that U.S. and U.K. major oil and mining companies were prepared to confront these complex problems. This process saw a convergence of corporate responsibility and human rights that can now move forward to deal with the broader questions. A key point was the convening power of the two governments in the process, without which the discussions would not have been initiated (Freeman, 2001a).

Commitment or Lip Service?

As discussed above, credible allegations of the negative effects of mining on human rights raise questions about mining company (mostly juniors) commitments to protect human rights (Handelsman, 2005a). It is now longer than seven years since, as described above, the U.S. and U.K. governments proposed that seven major oil and gas companies, two mining companies, and nine NGOs join in developing the VPs as guidelines and a standard to which companies could be held accountable. Dutch and Norwegian governments, other NGOs, energy and mining companies subsequently joined. The VPs participants as of July 2008 are shown in Table 3.5.

Table 3.5. Participants in the Voluntary Principles on Security and Human Rights, July 2008

Governments	Oil/Gas Companies	Mining and Metals Companies	NGOs	Observers
United States United Kingdom Norway Netherlands	Amerada Hess Corporation BG Group BP Chevron ConocoPhillips ExxonMobil Marathon Oil Occidental Petroleum Group Shell StatoilHydro Talisman Energy	AngloGold Ashanti Anglo American BHP Billiton Freeport-McMoRan Copper & Gold Norsk Hydro ASA Newmont Mining Corporation Rio Tinto	Amnesty International The Fund for Peace Human Rights Watch Human Rights First International Alert IKV Pax Christi Oxfam Pact, Inc.	International Committee of the Red Cross International Council on Mining & Metals International Petroleum Industry Environmental Conservation Association

Note: The International Business Leaders Forum (IBLF) & Business for Social Responsibility (BSR) jointly provide the VPs secretariat.

These non-binding VPs have become a standard for the extractive industries. Since the IFC incorporated them into its Safeguard Policies, they can be enforced where a company takes down an IFC loan. Conferences and seminars examining their effectiveness criticized vague rules of admission with no criteria for membership or expulsion if a company does not perform. Supporters and critics agreed that to be effective there needs to be clearer accountability with independent monitoring and reporting, and enhanced support by home governments, host governments and multi-

lateral organizations. In response to pressure some rules were introduced but there remains a “need to ensure that all their members uphold the standards that they claim to support. Currently the VPs fall short” (Ganesan, 2008).

Of two human rights and security problems covered by the VPs, the first, cleaning-up human rights messes from corporate histories, includes monitoring current operations and making amends for past problems, has proved difficult for most companies. BP, Occidental and Freeport-McMoRan had appeared to be leading the way, but there remains much to be done. Many other companies had more activity in their corporate offices than at their established operations. NGOs claim there are serious discrepancies between what companies assert about their actions in terms of protecting human rights and the evidence obtained by NGOs (ActionAid, 2006). Even former executives express scepticism:

“My experience in Shell, and I have little doubt that most oil multinationals are just the same, is that commitments to human rights are not worth anything at all. I could choose many examples to illustrate this assertion...and which suggest that when push comes to shove the choice will nearly always be Profit rather than Principles...” (Briggs, 2007)

Concerns about effective performance and reporting by companies in the VPs are illustrated by criticism of Newmont to its response to an incident involving police at New Abirem, Ghana, that shot protesters against Newmont as reported in the local press (GNA, 2005).

“While Newmont has expressed regret at the outcome of the incident, it has apparently done little else to follow through on what was clearly a very serious human rights incident. The Voluntary Principles on Security & Human Rights, to which Newmont has committed itself, are clear on companies’ responsibilities in such circumstances, namely:

Responses to Human Rights Abuses

- Companies should record and report any credible allegations of human rights abuses by public security in their areas of operation to appropriate host government authorities. Where appropriate, Companies should urge investigation and that action be taken to prevent any recurrence.
- Companies should actively monitor the status of investigations and press for their proper resolution.

At the very least in this instance, I would have thought the company should request an independent investigation of the attack. Such an action might have the additional benefit (to Newmont) of being a tangible step in its stated desire to improve the relationships with the communities it most affects” (O’Reilly, 2006).

The second part of the VPs is to undertake a comprehensive risk assessment for new operations. Here the major oil and gas and mining companies seem to be fairing better. Companies are finding the risk assessment toolbox is a way to integrate their commitments to establish new operations that adhere to human rights and security principles.

While the largest companies are tentatively moving forward in implementing the VPs, numerous smaller mining companies and contractors working for major mining companies are outside the process. Since home country participation is required for companies to be included, the

absence of Canada, Australia and any developing countries is a notable deficiency, although some companies are implementing the VPs themselves. However, any country could adopt the VPs as government policy, and hopefully Canada and others will soon become full members of the process.

Implementing human rights is difficult because there are multiple players: local communities (not all simple and pristine), companies (not all simple and pristine), governments – home or host – (not all simple and pristine). Problems occur when relations with the community have broken down, especially in areas of high poverty and high oppression. Implementation of the Principles by oil, gas and mining companies has ranged from some to none. While some companies have shown a serious Human Rights commitment, the challenge remains to motivate others who have not participated or only adopt the VPs to do little more than get public relations coverage.

Because of this, NGOs and others want to hold companies legally accountable with legislation. Since the business community and some governments resist this, they have to demonstrate that following the Voluntary Principles collaboration between government, business and civil society will prevent human rights abuses and protect vulnerable people and indigenous populations at risk.

Risk Assessment

Mining companies are being pressured to develop clear human rights indicators using inclusive processes and wide debate in the host countries. They are being urged to integrate human rights into the mainstream of their activities. The considerations need to become essential parts of due diligence, training, planning and at the board level. The section on risk assessment in the Voluntary Principles provides companies with a guide to the factors they need to consider for effective risk assessment (see Appendix II).

The principles need to be communicated to in-house and third party risk analysts who are now more involved in assessing country risk at the pre-investment stage. Human rights abuse conditions tend to show up in a preliminary country risk assessment. Analysts need to look at not just the business, fiscal, and political risk analysis, but how the government functions. Companies are concerned about their potential financial liability through their exposure to litigation, as they are held accountable for how they treat their surroundings. It is difficult to quantify the costs and benefits of human rights but the potential impact on the license to operate is a significant motivator signifying the approval of the stakeholders.

Other consequences are that some financial institutions will not deal with those companies in the mining industry that do not act responsibly and hence their cost of capital will increase.

Companies with bad reputations will not be able to access finance. Other risks that generate adverse publicity and can lead to increased costs come from pressure to be more socially responsible from mining companies' employees and their shareholders (a few NGOs buy shares so that they can raise subjects and question the company's management at Annual General Meetings) (Warhurst, 2001). Ethical (socially-responsible) funds (a category of institutional investors) apply pressure on companies because they will limit their investments according to social, environmental and/or political concerns. Their influence arises from either seeking companies that contribute positively to sustainable development, the environment, international relations or the economy, or by avoiding/disinvesting in companies identified as having negative impacts.

As regulations emerge with voluntary principles, and corporate codes of conduct emerge, the commercial and multi-lateral institutions will insist that the company meet standards. Risks will exist from lawsuits such as those under the U.S. Alien Tort Claims Act, increased media scrutiny, and from socially responsible investment funds. There will be a range of costs and liabilities and insurance costs will increase, as insurance companies will not want to be liable for irresponsible activities. A mining company with a poor reputation for environmental management and local community relations could reduce its access to some mineral deposits (Östensson, 2000).

The VPs deal with a company's assessment of the risk to human rights, relations with state security forces (military and police), and relations with private security forces. The VPs, although prescriptive and specific, are aspirational.

AS/NZS 4360 Risk Management Standard

Helpful tool kits are available for companies to identify and manage risks, including social risks. Particularly relevant is the Australian and New Zealand national standard: *AS/NZS 4360 Risk Management Standard* (AS/NZS, 2004). This national standard can be used as a framework for establishing the context, identification, analysis, evaluation, treatment, monitoring and communication of risk.

As stressed in previous versions of the standard, AS/NZS 4360 was not limited to security, environmental or social concerns:

“This Standard provides a generic guide for managing risk. This Standard may be applied to a very wide range of activities, decisions or operations of any public, private or community enterprise, group or individual. While the Standard has very broad applicability, risk management processes are commonly applied by organizations or groups ... This Standard specifies the elements of the risk management process...It is generic and independent of any specific industry or economic sector. The design and implementation of the risk management system will be influenced by the varying needs of an organization, its particular objectives, its products and services, and the processes and specific practices employed.

This Standard should be applied at all stages in the life of an activity, function, project, product or asset. The maximum benefit is usually obtained by applying the risk management process from the beginning. Often a number of discrete studies are carried out at different times, and from strategic and operational perspectives.

The process described here applies to the management of both potential gains and potential losses." (AS/NZS, 2004)

Conflict Zones

A particularly relevant toolbox endorsed by former United Nations Secretary-General Kofi Annan is the *Conflict-Sensitive Business Practice: Guidance for Extractive Industries* developed for companies concerned about improving their impact on host countries to understand, assess and minimize conflict risk, and actively contribute to peace (International Alert, 2005). The Confederation of Norwegian Business and Industry also developed a checklist for responsible engagement for corporations in conflict zones (NHO, 2003). The OECD developed a *Risk Awareness Tool for Multinational Enterprises in Weak Governance Zones* (OECD, 2006). These and other tools cited show there is no lack of toolboxes to help companies understand and assess the risks they may face.

CHAPTER 4: Points of Conflict (Problems of Human Rights and Mining)

The case studies described in some detail in this chapter are organized by problem (e.g., the use of government and/or private security forces at a mining operation where alleged human rights violations took place) rather than by company or mining operation. This approach was chosen because several mines have multiple human rights problems connected with their operations. The case of the Rio Tinto mine in Spain was selected to provide some historical context. Rio Tinto's Bougainville mine and Freeport-McMoRan's Grasberg mine are important cases because of alleged indigenous land rights violations, environmental degradation and conflicts caused by the respective government's protection of mining operations. Not surprisingly, both of those mines are located in areas of limited development, weak governance and corrupt and/or inept governmental security. Both are (were in the case of Bougainville) very large and complex operations in areas without any other economic or social development projects. Where there are multiple human rights problems involved with a case, the general operating context is included in the first reference to that case. Subsequent human rights questions are discussed without further general descriptions of the operations or operating conditions.

Because Rio Tinto plc gave the author free access to its historical documents as well as to current and former executives, there is a preponderance of case studies from that company. Readers of this study would be mistaken in assuming that Rio Tinto's human rights record is worse than other companies because of the numbers of cases linked to Rio Tinto. In fact, the author came away from this study with a strong belief that Rio Tinto has done an admirable job dealing with human rights concerns and has created a workable and transparent plan to mitigate potential human rights and community relations' problems.

This chapter is arranged to examine first the most public and pressing problems on the human rights agenda: human rights violations alleged to have taken place at the hands of security forces protecting mine property and mine operations; next land, environment, social development and indigenous peoples' rights; labour rights; health & safety; "pariah" or failing states, the dilemmas posed and the need for adequate risk analysis by a potential investor; and the right to share in the benefits of mining by local communities and at the regional and national level. Corrupting influences are discussed. The Rio Tinto cases come from key events in the company's history. They illustrate how the company's safeguard policies evolved and are applied. Other events were included to examine how other companies deal with the problems. This chapter examines safeguard policies, various views on the voluntary principles for security and human rights (VPs), the voluntary vs.

mandatory concerns, the UN Norms, the use of human rights impact assessment and the importance of monitoring, verification and reporting human rights performance. The chapter concludes with some details of recent debates and the Canadian RoundTables. The interviews were a source of critical material to supplement written accounts.

An examination of 178 cases (some 61 in the past 5 years; over 100 in the current decade) in 67 jurisdictions where there were allegations of human rights abuses involving mineral exploration and mining shows that they may be broadly characterized according to the type of conflict. This database was obtained from a variety of sources. Since February 2005, the Business and Human Rights Resource Center, an NGO, has compiled a non-sector specific database of allegations of misconduct that includes any responses received from the companies cited (B&HRRC, 2008). It publishes updates that include news and reports about human rights impacts, positive steps taken and allegations of any abuses. Its database includes details of the problem raised in whatever country and the parties involved. Companies mentioned are invited to reply and any such material is included. More than 80% of the companies cited have responded since the database was started and any subsequent exchanges are added. The worldwide mining-related incidents from February 2005 up to July 2008 are also incorporated into the database that appears as Appendix I.

In its second response to the initial report in 2006 of the United Nations Secretary-General's Special Representative on The Issue of Human Rights and Transnational Corporations and Other Business Enterprises, an industry group presented an analysis of 38 cases alleging mining company complicity in human rights abuses (ICMM, 2006). It reported that equity interests held by 42 companies were involved with the 38 incidents that took place in 25 host countries. Geographically five companies were located in DRC, four each in the Philippines and Indonesia, three in India, and two each in Ghana, Papua New Guinea (PNG) and Peru. Of the companies' fifteen home countries, most were incorporated in Canada (nine, of which eight were operators), six in the U.K. (four operators), four in the U.S. (three operators), and four in Australia (three operators). Identifying the home countries of the other companies, three were from PNG; two each from India, Japan, Mexico and South Africa; and one each from Botswana, DRC, Ghana, Indonesia, Peru and the Philippines. Of the two others, one was classified as global while the other was undetermined.

The ICMM analysis showed that (a) the incidents mostly took place in low-income or lower-middle income countries with poor governance; (b) although most companies cited in the allegations had general statements of business principles, and social or community policies they lacked clear policy commitments on human rights or to relevant voluntary initiatives; (c) among the broad range of problems:

“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... as underlying concerns...A common underlying theme across the cases was perceptions of negative impacts on communities around the mine (or at least of insufficient positive impacts)” (ICMM, 2006)

and (d) while in most incidents cited, the responsibility was perceived to be wholly or partly due to the behaviour of others than the companies themselves, such as local state agencies, these parties were seen as being directly linked to the mining operations. The categories of problems in the allegations were cited as civil conflict, security, indigenous peoples rights, resettlement and compensation; artisanal and small-scale miners, health & environment, and safety (ICMM, 2006).

A tabulation of mineral sector cases (Appendix I) includes the year, country, commodity, project, general category of human rights involved (letter code: S=security; I=Indigenous Peoples; L=Labour, C=Child Labour; H=Health & Safety; P=Property; B=Life & Liberty; U=Cruel & Unusual Punishment; J=Access to Justice), and a brief summary of the human rights dispute involved. The most serious abuses of human rights arise from public and private security activities around mining exploration and development sites. Other cases involve the rights of indigenous peoples, child labour and other labour problems, health and safety, property ownership, access to justice, life and liberty, or cruel and unusual punishment. Conflicts also arise that encompass local community input, land disputes, benefits, and revenue allocation stemming from corruption.

Broad categories of human rights concerns have arisen within various contexts (i.e., at the exploration stage, development stage, mining stage, and from illegal mining) as shown in Table 4.1.

Table 4.1 Human Rights Context, Broad Categories and Issues

Varied Context –Exploration Stage –Development Stage –Mining Stage –Illegal Mining	Broad Categories –Forced Labour –Child Labour –Labour –Sexual Harassment –Health & Safety –Environmental Health & Safety –Indigenous Peoples –Life & Liberty –Cruel & Unusual Punishment –Access to Justice
Issues –Labour –Land –Security Forces –Health & Safety	–Respect –Political Regime –Benefits –Public Participation

It was found very helpful during the research and analysis to consider human rights concerns

within major groupings of factors such as labour, respect, land and political regime as shown in Table 4.2.

A cluster diagram was prepared to illustrate how the factors involved can be shown in groups around key human rights issues as shown in Fig. 4.1.

Table 4.2 Human Rights Issues: Main Groups of Factors

Labour	Respect
–Salary	–Cultural
–Unions	–Gender
–Slavery	–Ideology
–Child Labour	–Sexual preference
Land	Political Regime
–Access	–Degree of democracy
–Ownership	–Governance
–Relocation	–Weak or strong institutions
–Use	–Regulatory framework
	–Power structure

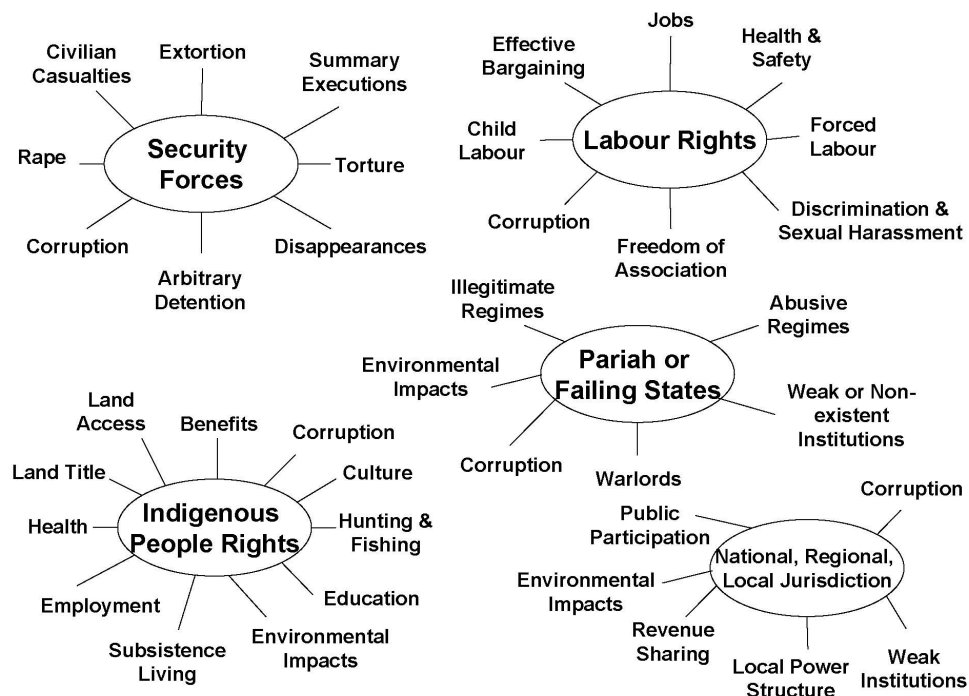


Fig. 4.1 Clusters of Human Rights Issues in Mining

Often there is more than a single issue involved around a point of conflict. Many of the conflicts were found to have arisen from disputes about land ownership and compensation for its use, environmental impact, and political considerations as summarized in Table 4.3. Environmental issues have been the focus of considerable attention for many years. Since an examination of environmental impact in a human rights context would itself merit a major research study, the scope of this research excluded an in-depth consideration of environmental issues. Based on the assigned categories to each case a count was made to examine the incidence of each point of conflict. The database summary shown in Table 4.4 confirms that security and human rights concerns occur as the most important point of conflict on which the mining industry has to focus. A general categorization of the points of conflict involved in the major cases discussed in this chapter is included in Table 4.5.

Table 4.3 Points of Conflict and Problems

Point of Conflict	Land	Environmental Impact	Political Considerations
Public & Private Security Forces	X	X	X
Labour Rights		X	X
Indigenous Peoples Rights	X	X	X
Pariah or Failing States	X	X	X
National, Regional & Local Jurisdictions	X	X	X

Table 4.4 Priorities of Points of Conflict

Point of Conflict	No of cases
Public & Private Security Forces	86
Indigenous Peoples Rights	80
Labour Rights	77
National, Regional & Local Jurisdictions	43
“Pariah” or Failing states	26

Table 4.5. Points of Conflict in Principal Cases Described

	Public & private security forces	Indigenous peoples rights	Labour rights	“Pariah” or Failing states	National, regional, local jurisdictions
Rio Tinto, Spain (1888)	X		X		
Rio Tinto, Spain, (1920)			X		
Bougainville, PNG/Australia	X	X	X		X
Grasberg, Indonesia	X	X			X
Amayapampa, Bolivia	X	X	X		
Morro do Ouro, Brazil	X	X	X		
Mongbwalu, DRC	X	X		X	X
Diavik, Canada		X			X
Fort-Dauphin, Madagascar		X	X		X
Rössing, Namibia			X		
Avonmouth, U.K.			X		
Jade, Burma	X	X	X	X	
Monywa, Burma	X			X	
Coed-y-Brenin/Mawddach Estuary, U.K.					X

An analysis of the effectiveness of human rights standards for large-scale projects finance by IFC, export credit agencies, and financial institutions subscribing to the Equator Principles was made by a group of NGOs (Herz et al., 2008). They categorized the human rights concerns in some sixty projects that were the source of local communities' complaints or objections as shown in Fig 4.2.

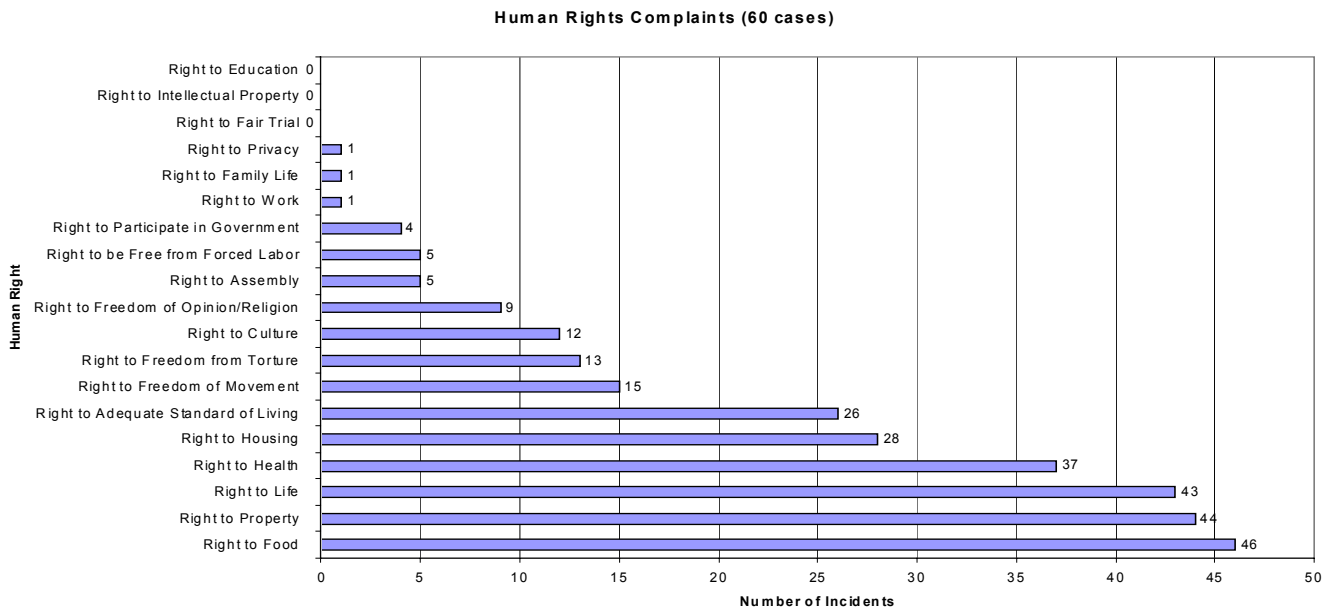


Fig. 4.2 Incidence of Human Rights Issues in Large-Scale Infrastructure and Extractive Industry Projects (after Herz et al., 2008)

The following summaries, covering some of the more prominent characteristics, illustrate the breadth of problems that need to be confronted.

4.1 Use of Security Forces

As mentioned in the introduction to this chapter, the case of the Rio Tinto mine in Spain and the riots in Spain in 1888 was included for historical context. Bougainville Copper illustrates the confluence of interrelated problems leading to the most serious result of conflict, the loss of thousands of lives and the (probably) permanent closure of a world class mine. Grasberg also illustrates the confluence of complex problems with serious human rights violations but a more positive outcome as the company adopted measures that sought to protect human rights. The Bougainville and Grasberg incidents gained world attention. In the Bolivian case, an initial labour dispute encountered by a junior company spiralled out of control with no apparent positive results. At Morro do Ouro, Brazil, artisanal miners were shot by company security. In addition to focusing on the role of security, the company endeavoured to gain a better understanding of artisanal mining and the local community, leading to proactive measures to support local economic development. These

examples are complex cases involving several questions of human rights.

Countries have fought with each other forever about resources and wars often create human rights violations. Spain's silver mines provided an incentive for the second Punic War (Rickard, 1928). The acquisition of mineral resources needed for coinage and making luxury items was a direct benefit of the conquest of the Roman Empire (Edmondson, 1989). This document deals with the more microcosmic concern of internal security to keep mines running. Security and human rights abuses relating to state or private security forces are among the most clearly defined problems.

Because of national sovereignty, mining companies cannot exert direct control over the behaviour of security forces when they belong to the state. When a company asks or expects a government to provide reasonable protection for its assets and employees, the company may have expectations of behaviour that conform to the norms of its home country, or those expected by their shareholders. However, the host government may, in fact, care less about the human rights of its vulnerable populations than does the company. In addition, host countries may use the security needs of resource companies as an excuse for nefarious actions against indigenous groups.

In most countries, surface and subsurface minerals are owned by the State, and various legal and regulatory frameworks (e.g., contracts of work (COW), concessions, licenses, permits, and claims systems) control how mining companies may extract resources and build facilities. The mining company will also have to come to terms with private or public owners of surface rights. There is also a range of conditions relating to sovereignty, ranging from complete retention of ownership and control of resources by governments, through partial ownership arrangements between mining companies and governments, to complete private control of resources where companies are expected to pay royalties and taxes. In Indonesia, for example, under the COW system, the ownership of mineral resources rest with the State, as does any equipment brought in by the mining company for the operation. Freeport's Indonesian mine, Grasberg, is further categorized as a strategic project whereby the government asserts its rights to protect the project (a state asset) using the police or military in whatever way it deems appropriate (regardless even of what the company is doing or wishes).

In many countries, mining companies are allowed to use private security forces (in some countries armed, in others not), and in some circumstances companies may invite State security forces to assist. Companies bear obvious responsibility for the behaviour of their own or contracted private security forces, but they are also held responsible for complicity in any abusive behaviour by public security forces that they have asked for protection. Although they do not have control over how police or military forces behave, it is essential that geoscientists and mining engineers are aware of

the local culture and history of security force behaviour.

One reason mining companies have had to focus on human rights is because of security problems and associated abuses of human rights caused by the use of police and security forces, private security companies, and mercenaries in countries as geographically diverse as Angola, Colombia, DRC, Guatemala, Indonesia, Papua New Guinea, and Senegal. Because these abuses are believed to occur in direct consequence of the presence of the mining company, the company is held accountable for preventing such abuses. The use of natural resources to fund conflicts has also drawn adverse public attention to the mining industry.

It is therefore essential to make sure the company has in place as many positive programs and safeguards as possible to avoid human rights abuses, because it may have little or no control over the local public security forces (Lilly, 2000; International Alert, 2004). The following case studies examine a variety of situations where the provision of security for mining projects led to human rights violations. They start as long ago as 19th century in Europe and include some as recent as in the past few years. The cases of human rights violations were committed both by company security forces and host country security forces responding to the security needs of the company. These cases are situated in different regions of the world with companies both major and junior, involving mining and exploration activities.

4.1.1 Riots of 1888, Rio Tinto, Spain

A major and widespread environmental pollution problem at the Rio Tinto mine in Spain, together with labour discontent led a civil disturbance which the government troops “handled” by the use of excessive force. There was no attempt by the company to make environmental or security changes. It continued with closer control from Head Office and a paternalistic approach to the workforces and community.

Pyrites deposits in southern Spain are said to be the largest single mining zone in antiquity (stretching some 128 km from Aznacollar near Seville to Aljustrel in Portugal, with the Rio Tinto mine located at about 37°43' N latitude and 6°52' S longitude –see Figure 4.3). From the earliest times gold, silver, tin, lead and mercury were mined (Checkland, 1967). In early pre-historic times, Huelva was a trading centre for the metalworking industry, with evidence in the Rio Tinto area of prehistoric exploitation beginning in the seventh to sixth century B.C. (Jones, 1980). Romans exploited the ores after they defeated the Carthaginians in 206 B.C. (Jones, 1980). According to an 1890 survey some sixteen million tones of ancient slag were in place of which fifteen million tons were silver and one million tons was from copper smelting (Jones, 1980; Williams 1932;). By 1862,

the state-owned Rio Tinto mine producing 1,811 tons copper (Mining Journal, 1865). The mines were unsuccessfully offered, first in May 1871, then in July 1872, but a purchase agreement was concluded in 1873 with a group led by Hugh Matheson (Checkland, 1967; Harvey, 1981). The operations expanded and a revived copper demand in the 1880s resulted that by 1885 Rio Tinto had become “the greatest mine in the world” (E&MJ, 1885 and 1885a).

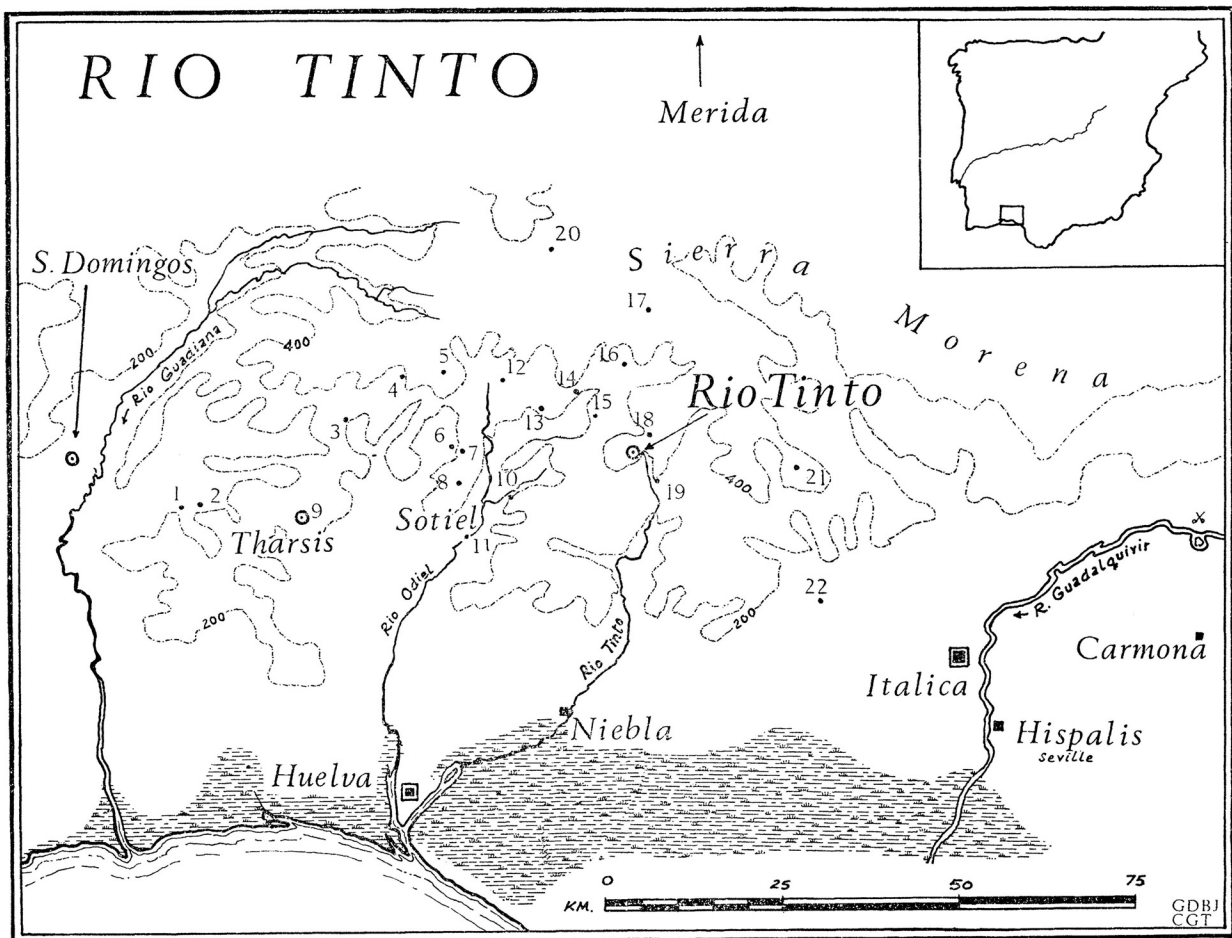


FIG. 1. RIO TINTO AND ITS ASSOCIATED MINING AREA.

The major sites after Rio Tinto are Tharsis, the S. Domingos mines west of the Gadiana and Sotiel Coronado. The prehistoric or Roman mining sites include those numbered on the map as follows 1. Cabezas 2. Herreras 3. La Joya 4. San Telmo 5. Lomero Poyatas 6. Perrunal 7. Zarza 8. Calanas 9. Tharsis 10. Buitron 11. Sotiel Coronado 12. S. Miguel de la Mora 13. S. Miguel 14. Concepcion 15. Poderosa 16. Lo Soldado 17. Aracena 18. Pena 19. Rio Tinto 20. Maria Luisa 21. Castillo de las Guardas 22. Aznalcollar.

Fig. 4.3. Rio Tinto, Spain, Location Map
Source: Jones, 1980.

While various reports on the background and subsequent events mostly agree, as might be expected there are different perceptions or versions of the tragic events that occurred on February 4, 1888.

Starting in 1873, the increased ore tonnages being mined meant more piles of sulphides “teleras” were used to burn ores, resulting in larger and thicker sulphur clouds that caused increased

amounts of damage to health, vegetation and crops, and further alienated local farmers and landowners who lived with this problem since the 1830s (Avery, 1974). The Rio Tinto Company, which operated the mine, believed that the material gains it achieved outweighed any damages (Avery 1974). Having once agreed to compensate local farmers, the company was soon paying claims from more than 1,600 people owning about 11, 000 different properties within an area of 300 square miles around the mine.

Fumes from burning pyrites were the major cause of unrest. Rio Tinto was burning one million tons of ore per year by 1884 with escalating complaints about the sulphurous fumes, shown in Fig. 4.4, that caused atmospheric pollution killing plants, trees and vegetation.



Fig. 4.4 Open-Air Calcination, 1880s.

Source: *El Pais*, Madrid, March 25, 2007

By 1879, dense clouds of acid fumes from the mine smoke extended for miles; pyrites “burn for nearly a year...[the] vapours destroy the vegetation for miles around; the iron and the copper remain” (Burnaby, 1879). Since the company’s land purchases were insufficient to pacify the local owners, annual payments were made to compensate them. Protests and animosity expanded into nearby villages. A cartoon published in *El Motin* in 1887, Fig. 4.5 depicted the question as a matter of private interest outweighing public interest, with wealth being more than important than rights or

justice.

An anarchist organizer (Maximiliano Tornet) planned and organized a large demonstration, having managed to put together a series of unusual alliances between local communist organizers, Anti-Smoke League officials, local political leaders, and landlords and farmers, whose only common bond was hostility towards the company. Their objective was to force the government to ban open air burning. The Anti-Smoke League was actively lobbying the Government to enact a Decree abolishing open-air calcination.

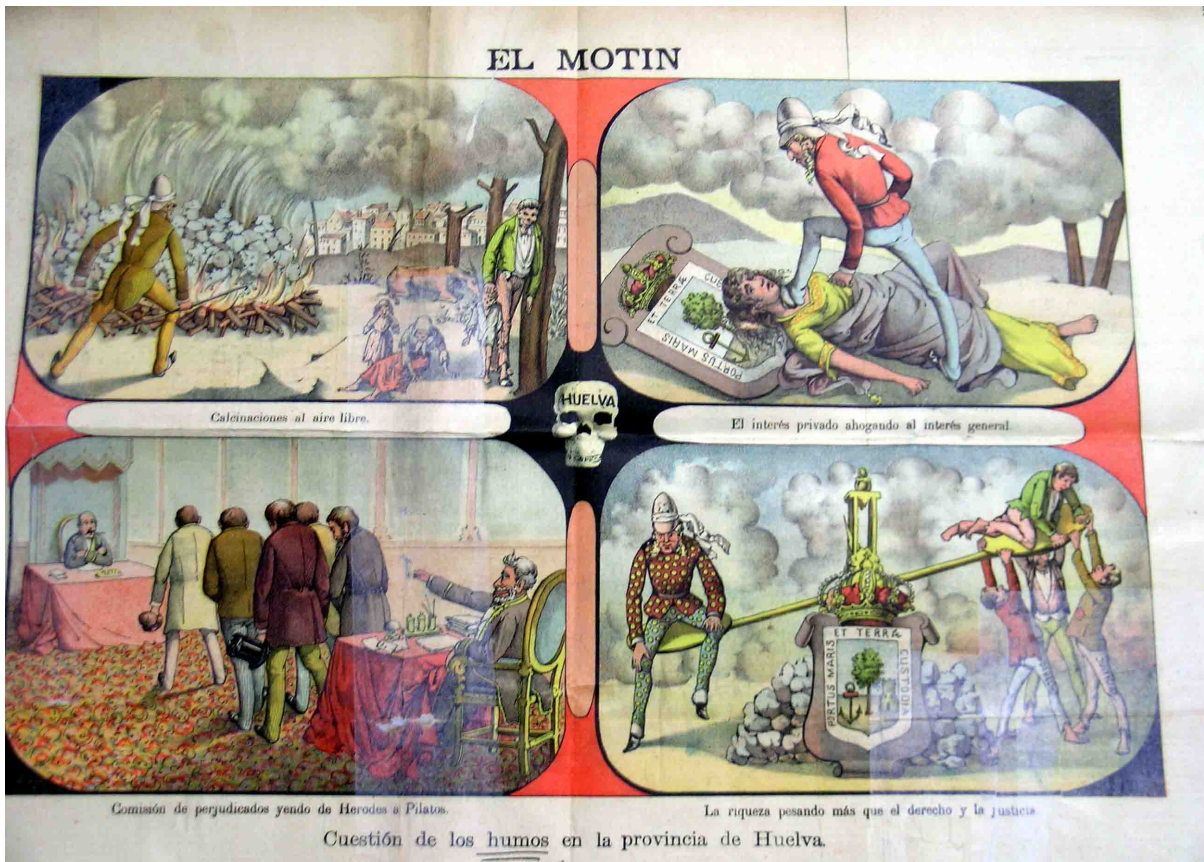


Fig. 4.5. Question of Open Air Calcination in Huelva Province:

Open air calcinations; Private interest tramples the public good; Commission of harmed going from Herodes to Pilatos; Wealth weighing more than right and justice.

Source: *El Motin*, Madrid, October 16, 1887 (U.K. National Archives).

In January 1888, after the Calañas' city council passed a resolution prohibiting open-air calcinations, the Tharsis Company (a French mining company mining pyrites in the region) was served notice to cease burning its ores by February 20, 1888. Other city councils in the area except those of Nerba and Rio Tinto passed similar ordinances and as a group tried to pressure the remaining two councils to follow suit. Rio Tinto's city council (where all except two councilmen were Rio Tinto employees), acknowledged that the smoke was unpleasant and damaged agriculture, but

claimed it lacked authority –any actions would have to be taken by the Central Government (Blanco, 1994). This provoked the other city councils in the area to organize a combined demonstration to put pressure on Rio Tinto’s city council. The opposition was centred at Zalamea that financed Maximiliano to encourage discontent, obtain signatures on petitions against open-air calcination, and agitate for a strike.

The Company did not take the situation too seriously and declined to ask the central Government in Madrid for any help. The conditions were exasperated by a new mine manager who ignored advice, and had instituted new changes in working condition without consulting the workers. He had hired temporary workers for the railway, and arbitrarily changed the monthly workers’ contract (due to ground conditions).

Maximiliano and others from the town of Zalamea agitated the workers to go on strike on February 1, 1888, succeeding in getting most workers out by the next day. Meanwhile Maximiliano and Zalamea people were organizing a demonstration for February 4, 1888. A column of 4,000 villagers was met by thousands of strikers and their families. The procession, led by a band, headed to Las Minas de Rio Tinto mayor’s office. While the local mayors met, a crowd assembled in the town square. Maximiliano and some of the other organizers accompanied the group to the mayor’s office, although he appears to have left for refreshments soon after the discussions started by disappearing through a back door. He was presumed to have safely reached Zalamea when shooting took place in the town square.

During discussions with a commission of local mayors, the Governor arrived with troops from Huelva and requested the officials leave. He insisted that no ordinance could be enacted, and he was determined to maintain law and order. While not actually refusing, the commission did not depart. The Governor attempted to disperse the mob by speaking from the balcony, but the crowd refused to listen with each group shouting out what it thought it could gain. Some say soldiers opened fire in panic, others that the commanding officer gave the order to shoot, which he denied saying his men mistook the voice of the demonstrator as an order to shoot. The number of deaths increases or decreases according to the source. Reports in Spanish military archives are said to be unreliable or missing (Blanco, 1994). Rio Tinto’s list of thirteen killed and forty-eight wounded is said to understate the number of casualties – the total dead was presumed to be between 100 and 200.

One account described a mob in the square outside the mayor’s office yelling insults against the Governor. The Lt. Colonel in charge of the troops emphasized to the crowd that he had sufficient force to maintain order. The use of the word “force” was claimed to have been answered “by someone in the balcony opposite who replied in a loud void: ‘If you have force we also have arms’

‘Fire on them!’ ” The troops responded to this by moving into the square and firing on the crowd (RTC, 1888).

The First Secretary of the British Embassy at Madrid described a different version of events (Gosling, 1888). Gosling’s report, classified as confidential, was later printed for the use at the Foreign Office in London. Contributing to conflicting reports were the Company’s efforts to reinterpret facts, such as, eliminating the presence of women and children in the plaza; giving more credibility to socialist activism; spreading rumours that there was an injured soldier who justified the troops shooting; and suggesting dynamite charges caused injuries, whereas all the wounds were from bullets (many people had been shot in the back) (Blanco, 1994).

Another report about the calcination of the cuprous pyrites in the open air injected sarcasm when it described a riot by 12,000 to 14,000 people “quelled by the authorities firing upon them and killing ten of the rioters. What trouble they would have saved had they quietly allowed themselves to be poisoned by the sulphurous fumes. What ill nature to refuse the civilizing operations of manufacturing chemistry!!” (Chemical Trade Journal, 1888).

Engineers in England criticized the mine owners for not experimenting to test new technology that could replace open-air calcinations and eliminate the smoke problem (Deby, 1888 and 1888a). Others reported that soldiers fired their guns three times at point-blank range (Gallant, 2007).

After Matheson, Rio Tinto’s Chairman, traveled to Spain to assess the situation, he reappraised local relationships, insisting on closer liaison with Head Office. This resulted in greater paternalism and a closer control of all aspects of local life in which the Spaniards had no input, while the company was confident it could rely on armed force to support its rule. The chairman expressed regret “that in a collision which occurred 13 lives were lost” (RTC, 1888a).

The mine’s general manager was perceived as a colonial governor or Caesar. The British and Spanish segregated themselves into distinct communities (Avery, 1974). The Company paid low wages but by adopting a paternalist approach under which it set up subsidized shops, housing, and schools was able to provide a reasonable standard of living. This strategy precluded any local supply and service industry developing that would benefit the local economy. (Harvey 1981)

Following a Royal decree limiting ore burning, the company was adamant that it would not relinquish the legal rights it had acquired from the Government, and would do whatever necessary to “defend the rights of the Company” (RTC, 1888a and 1889). Matheson lobbied the Spain’s Prime Minister, Finance Minister, and both Houses of the Spanish Parliament. His political pressure led to

the decree being rescinded (RTC, 1891). The British Ambassador to Spain held agricultural interests of the small-scale farmers in disdain and questioned the motives of anyone raising environmental and health concerns that challenged mining investments (Ford, 1887).

The Rio Tinto mine manager came up with three proposals to punish men (a) stop all overtime, (b) dismiss the ringleaders, and (c) gradually reduce the pay of all the others who stayed away from work. The Board rejected the first because it would also punish those who were at work and because overtime was required as a company necessity not to provide worker benefits. It agreed that the ringleaders should be fired in a way to prevent them becoming martyrs; and rejected the third proposal as discriminating against those who stayed away for a day –if they did anything that deserved punishment; they should be dismissed (RTC, 1890 and 1890a).

In 1895, when three hundred miners went on strike at Rio Tinto, 40 gendarmes were sent to the avert disturbances at the mine. Most of the other 3,000 workers did not join the strikers (Mining Journal, 1895). Open-air calcination continued at Rio Tinto until 1907 although the Tharsis Company at its mines in the region used other technology developed to replace open-air calcinations since 1889 (Blanco, 1994).

Comments

Despite widespread criticism in the Spanish press, there do not appear to have been any consequences to the company or changes in its approach to the use of security forces as the human rights movement did not become powerful enough to influence change for a century. Neither were there any consequences or change in the environmental pollution from the mine until twenty years later. The company's paternalistic approach and its control over its workforce only strengthened.

4.1.2 Bougainville Copper, Papua New Guinea

The Bougainville conflict stemmed from indigenous peoples rights, local and national jurisdiction disputes and a separatist movement, and the use of public and private security forces. The conflict that resulted in the permanent closure of the then world's largest and lowest cost copper/gold mine was examined in detail by a Joint Australian Parliamentary Committee as described in its comprehensive report (Australia, 1999). Except where noted, this section is based on that report and incorporates much of its Appendix D to provide a history of the conflict.

Australian military forces occupied Bougainville in September 1914. In 1920, the League of Nations awarded Australia a mandate over the former German New Guinea. Papua and New Guinea were amalgamated under an Australian military administration at the end of the Japanese occupation during World War II. Australia was awarded trusteeship of the former Mandated Territory of New

Guinea by the United Nations in 1946. In 1949 the United Nations approved Australia's joint administration of Papua and New Guinea, which became the independent country of Papua New Guinea (PNG) in 1975 (Australia, 1999).

Gold discoveries in Papua in the 1920s attracted adventurers. The colonial administrators welcomed the gold miners ignoring any abuses while they paid royalties and license fees. "Miners on occasion gunned down those who reacted aggressively to their intrusion." (Sillitoe, 2000) In 1963, CRA Exploration, a Rio Tinto controlled Australian company, received a permit to explore an area of Bougainville Island including Panguna. In 1965 the Mining Warden awarded additional prospecting licenses to CRA, Diamond drilling started and confrontations between the villagers and geologists occurred all year (Australia, 1999).

Early in 1968, Bougainvillians held a meeting to discuss succession. By July 1968, the villages around Panguna had forced drilling to stop but continued under police protection (Australia, 1999). In 1969, CRA was awarded a Special Mining Lease despite the villagers' objections that were dismissed by the Australian High Court. After the case was dismissed 1,500 people attended the initial meeting of Napidakoe Navitu, a micro-nationalist movement. An unofficial referendum on succession in 1970 claimed 69% of the votes were in favour of succession (Australia, 1999).

In April 1972, the mine began commercial production a month after the Australian Minister of Foreign Affairs received a demand for succession in Port Moresby. The following year exceptionally high copper and gold prices that generated profits of \$158 million led to promises that Bougainville would receive 95% mine royalties and a re-negotiation of CRA/BCL's 1967 Agreement. Between 1972 until 1989, the mine produced a copper concentrate with significant quantities of gold and silver. During eighteen years of operations the mine produced concentrate containing three million tonnes of copper, 306 tonnes of gold and 784 tonnes of silver. The production value represented approximately 44 per cent of PNG's total exports during that period.

In 1975, the Bougainville Provincial Government voted to secede from PNG as *North Solomons*. PNG was granted independence in September 1975; the Bougainville Provincial Government was suspended by Parliament the following month. There were riots on Bougainville against the National Government. In 1989, demonstrations were held in support of demands for the Central Government to cancel the Mining Agreement. There were roadblocks, and sit-ins that stopped mine production for six hours. After police cleared a landowner roadblock explosives were stolen from the mine. Some explosions, that led to riot police being brought in from outside the island in an attempt to quell violence, stopped mine operations again. Raids by these police resulted in allegations of brutality. Violence escalated during 1989, including attacks on the mine. Curfews

and unsuccessful cease-fires failed to stem violence, which spread. Plantation workers left as deaths and injuries rose from clashes with security forces. BCL's operations were closed indefinitely on May 25, 1989 (Australia, 1999).

Amnesty International reported cases of human rights abuses committed by security forces. When violence escalated, security forces were withdrawn in March 1990, with Bougainvillian forces taking charge.

A public discussion in 1994 about the government re-taking Panguna to reopen the mine was abortive. Late in 1995 an agreement was arrived at to establish a transitional government. However, clashes with security forces continued intermittently with casualties on both sides (Australia, 1999). In 1997, there was a failed attempt by mercenaries to capture the mine (Correy, 1997; Regan, 1997). "The Bougainvilleans ... were not thought seriously to threaten the Panguna mine until ... a bloody rebellion resulted in the destruction of both the island's infrastructure and its administration and closed the mine [in 1989]" (Sillitoe, 2000).

Currently, Bougainville Copper Limited is owned 53.58 per cent by Rio Tinto Limited, 19.06 per cent by the PNG government, and 27.36 per cent by public shareholders (BCL, 2006).

In August 2007, the U.S. 9th Circuit Court of Appeals in San Francisco set aside a decision by a panel of three of its judges to reinstate a 2000 lawsuit by landowners claiming responsibility for the deaths of thousands of people by the joint-venture formed by Rio Tinto and the PNG government to operate the mine. A full panel of 11 judges will hear the case. Previously, the smaller panel said 12 landowners, who seek to represent thousands of civilians, could proceed with claims of war crimes, racial discrimination and environmental damages against Rio Tinto (Gullo, 2007).

There is a moratorium on new exploration and mining outside of Bougainville Copper's lease area. According to the company, it has developed a three-year plan that would lead to active exploration and mining in the country. Its recent preoccupation has been to try to settle a dispute over taxes (BCL, 2006).

Interactions Between Companies & Corporate Private Security Providers

Concerns about the interaction between mining companies and private security providers have frequently been raised and discussed in detail in the context of resources in conflict zones (Lilly, 2000; United Nations, 2000a). An example is the "Sandline affair" in 1997, when the Papua New Guinea government entered into a contract for mercenaries to capture Bougainville. Before the mercenaries arrived to seize Bougainville the army arrested Sandline officials and the PNG Prime Minister resigned (Australia, 1999). The incident later attracted worldwide attention (Correy, 1997;

Regan, 1997). Activities of Executive Outcomes and its relationship with Branch Energy in Sierra Leone, other African countries and elsewhere, were other situations that also gained the focus of public attention (Correy, 1996; Daily Mail & Guardian, 1997).

Comments

The Bougainville case in Papua New Guinea illustrates the extent of conflict that can result from the lack of recognition of respect of indigenous people's rights to resources and to share in the benefits of development. This principle was not respected according to the beliefs of most Bougainvilleans, and was part of a clash of cultures around the Panguna mine (Taylor, 2001). After almost eighteen years' successful operation, in 1990, one of the world's largest and most successful copper mines was closed due to a war of secession which caused the death of hundreds of soldiers and rebels and between 10,000 to 15,000 civilians (Tonks et al., 1998; Australia, 1999).

The use of security forces to obtain access often constitutes a rude form of conflict between the company and communities. Prospectors examining local geology may take soil, water and rock samples. A greater degree of contact comes as exploration proceeds and with drilling. As the project proceeds beyond the reconnaissance stage, there are more activities as ground lines are established for systematic sampling, geochemical and geophysical surveys and drilling. Surveyors come into an area to establish the boundary of the concession or claim and lines.

Rio Tinto became involved with several controversial overseas projects after it left Spain of which Bougainville was the first. At Bougainville the Australian government was *in loco parentis* at the time Rio Tinto was trying to turn an exploration project into a mine. The Australian Government representative insisted on dealing with matters. Problems stemmed from the decision by Rio Tinto to acquiesce to what government was telling it. That was the last time Rio Tinto ever allowed a government speak for it.

The government's view was paternalistic. Adopting a greater good for the greatest number of people approach, the Australians considered the astronomic value of the mine to the new nation of Papua New Guinea outweighed the small number of people who were likely to be upset about. A Rio Tinto executive recalled that after people spoke to the Australian representative in PNG saying, "we don't trust him. We have a problem." While not entirely convinced they were doing the right thing, Rio Tinto says they did not know how else to approach things at that time because when responsible government institutions said "jump through the hoop", at that time people jumped through the hoop. They had not worked out how to say, "Wait, there is another way of doing things."

4.1.3 Grasberg, Indonesia

The case of Freeport-McMoRan Copper & Gold Inc and its Indonesian affiliate, PT Freeport Indonesia, illustrates the complexities of problems that surround mining operations in areas of weak governance, corrupt administration, indigenous peoples, nationalist aspirations, and strong but undisciplined security forces. It also suggests how mining companies may be able to provide for security while working to protect human rights. In Indonesia, Freeport operates the Grasberg mining and milling complex, the world's lowest-cost copper producer and one of the world's largest producers of copper and gold.

Freeport signed a contract of work (COW) with the government of the Republic of Indonesia in 1967. That was five years after the West Papua administration was handed to the Indonesian Government by the United Nations Temporary Executive authority, and two years before the United Nations (UN) mandated Act of Free Choice 1969 was ratified, transferring authority over the government of West Papua from the Netherlands to Indonesia. Many believed at the time the Act did not reflect the will of the Papua people; that belief has grown ever since West Papua's formal incorporation within Indonesia's Province of Irian Jaya (Anti-Slavery Society 1990; Saltford 2000).

Problems arose in 1995 when Rio Tinto bought an interest in Freeport-McMoRan's Grasberg project. At the time without an injection of equity Freeport would have been foreclosed. Rio Tinto put up just over 10% of the equity and obtained a free-carried 40% joint venture in the mine that it kept when it sold its equity interest in 2004. Grasberg is owned and operated by Freeport Indonesia (PTFI), 91 per cent held by Freeport-McMoRan Copper & Gold Inc. and the remaining 9 percent held by the Government of Indonesia.

A 1995 report for OPIC stated "the project has devastated the river system, through excessive discharge and deposition of tailings" (Bryce, 2005). Currently, the Grasberg mine dumps 230,000 tonnes of tailings daily into the Ajikwa River. The Norwegian sovereign wealth fund sold its £500 million shareholding in Rio Tinto after being unable to effect a change in operating conditions (Robertson, 2008).

There have been periodic, and widely spaced geographically, clashes between Indonesian security forces and freedom fighters from the Organisasi Papua Merdeka—Free Papua Movement (OPM). The conflict between freedom fighters and security forces has brought accusations of human rights violations. Although the Papuans, and especially the OPM, were accused of perpetrating human rights violations, more often it has been the security forces that have faced the most serious accusations of imprisoning, torturing and killing civilians.

Alleged and proven human rights violations have occurred relatively infrequently in the area of Freeport's operations. However, those violations were widely publicized, particularly in a report published by ACFOA (Australian Council for Overseas Aid, an NGO).²⁰ The Robert F Kennedy Center for Human Rights, a Washington- based NGO, and Project Underground picked up the ACFOA accusations and pressed for an independent investigation of Freeport's relationship with Indonesian security forces. A detailed discussion of the events concerning Freeport follows.

On 18 November 1994 a Freeport employee working on the company road was shot in the back by a high-powered rifle and killed. During that day Freeport vehicles were shot at and several employees wounded. This followed months of reports of OPM activity in the Tsinga Valley, east of Freeport's operations area. It was also reported that government security personnel had pursued the OPM in Tsinga and had done as much damage to the village and its people as the OPM (Munninghoff, 1995).

At that time Freeport had an internal, unarmed security force of some 200 men and the government security forces in the area were about equal in number. Freeport's security personnel had access to ten vehicles and logistical support, whereas the armed government security personnel had a handful of vehicles and no logistical support of their own. Following the shootings, Freeport requested the government of Indonesia to provide sufficient protection to allow the mine to continue operating and for its employees to be able to live and work without fear. The government sent approximately 400 additional security forces to the area, mostly to patrol the 100 kilometres of the road between the coast and the mine (Munninghoff, 1995).

The government identified those who killed the employee as members of the OPM led by Kelly Kwalik, an Amungme from the area around Freeport's mine. To facilitate the capture of the OPM operatives, the government security forces took about 20 local people into custody, some were never been found and are presumed dead; others, including women, were locked in shipping boxes under inhumane conditions. In spite of the government security forces' efforts, the freedom fighters escaped from the area (Munninghoff, 1995).

This led to increased protests by the local population against the Indonesian government culminating on Christmas morning when the Papuan (Morning Star) flag was raised in Freeport's town of Tembagapura. The man who raised the flag was killed and, shortly after that, additional Papuans were arrested. During the transport of five of those arrested, one man was shot and killed

²⁰ The original report about events in 1994 in Freeport's operations area was published in 1995 by ACFOA. Bishop Munninghoff, the Roman Catholic Bishop of Jayapura, whose account became the basis for the ACFOA report, was more sanguine in his report: "Because the sources of the report are not well known, on the one hand we cannot accept it at face value, but on the other hand, what happened in these stories is challenging us to pay attention" (Munninghoff, 1995).

(Munninghoff, 1995).

There are no accusations that Freeport personnel directly participated in any of these events. The most comprehensive report neither exonerated nor implicated Freeport for the human rights violations; it simply recounted the events as attested by a large number of witnesses (Munninghoff, 1995). The report made it clear that government security forces committed the direct violations.

However, other factors complicated the situation. It was claimed that the vehicle used by the security forces to transport the body of the man killed at the flag raising was a Freeport vehicle (although both Freeport and the security forces deny this). The five who were arrested were transported on a Freeport bus that was commandeered by security forces at gunpoint, and the box that was used to hold those held for questioning was a shipping box given by Freeport to the security forces 12 years earlier for storage. Four low-level government security personnel were court-martialed for human rights violation in this case and jailed for a period of time, but no officers were tried. The question arises whether these circumstances, along with the fact that Freeport requested protection from additional security forces, constituted complicity in human rights violations. Some NGOs, faith-based organisations and human rights NGOs said “yes”; Freeport disagreed. Some local people and NGOs also complained that if Freeport were not operating in the area security forces either would not be in the area at all, or at least would not be there in such numbers. That is probably true. Resource extraction brings enhanced security: “Where indigenous people clash with developmental projects, the developers almost always win. Tensions with indigenous peoples in Irian Jaya, including in the vicinity of the Freeport-McMoRan mining concession area . . . led to a crackdown by government security forces” (US Department of State 1996).

When Rio Tinto bought into Freeport one of the interviewees, who commented that the company was buying 10% of their equity and putting up 100% of Rio Tinto’s reputation, had suggested either not doing it, or taking Freeport over completely. While that suggestion was not followed, Rio made a lot of money getting a lot of grief in the process.

Rio Tinto was heavily criticized for environmental damage and complicity in human rights abuses at the Grasberg copper gold mine. Rio Tinto offered to second people to help with the problems. Four independent investigations absolved Freeport of any complicit involvement in the abuses by the Indonesian military and paramilitary forces in the area. Despite significant human rights and conflict problems surrounding Grasberg, Rio Tinto was willing to invest in this economically attractive project.

The Aftermath and Freeport's Response

It is difficult to directly attribute events in 1995 and 1996 to the troubles that took place in Freeport's area in 1994, but since these events were not strikingly different from what had taken place in the area prior to late 1994, there may be some discernible connection. Three events were initiated by the local people: first, in January 1996, the kidnapping of WWF (World Wide Fund for Nature) researchers from an area some 160 kilometres east of Freeport's mine; second, in March 1996, riots in Freeport's town of Tembagapura and in the nearby town of Timika; and, third, in April 1996, a lawsuit filed in the U.S. District Court in New Orleans on behalf of an Amungme man and, later, a similar case filed in Louisiana State court on behalf of an Amungme woman, both alleging human rights violations against the local people by the Indonesian security forces supported by Freeport.

The U.K.'s New Scotland Yard antiterrorist officers joined with Indonesian security forces in attempts to free the hostages. Both the ICRC and the security forces used the airport at Timika for logistical support. Hence, although neither Freeport nor Timika was directly involved in the hostage situation, much of the news about the events carried the name of Freeport. The crisis ended with a security raid in late April 1996, after the withdrawal of the ICRC negotiators. Their abductors killed several Indonesian hostages, reportedly during the freeing of the hostages. Reports indicated that security forces killed a number of the kidnappers.

Equally important as what happened during the kidnapping was what reportedly happened after the kidnapping episode ended. The Irian Jaya Council of Churches alleged that security forces carried out systematic raids on villages around the kidnapping area during which local residents were tortured, raped and killed. In the eyes of many of the local people, none of this would have taken place if Freeport were not operating in the area. The origins of the March 1996 riots, first in Tembagapura and later in Timika, remain unclear. The damage was substantial and the mine and mill were closed for two days. Unlike the Tembagapura riots, the riots in Timika two days later were spontaneous and uncontrolled. Three people died in Timika from accidents, two when a stolen truck ran into a tree and another when a man fell from a stolen dozer. In the aftermath of the riots the number of security forces in the area increased from approximately 400 to over 1,000, which is the current number (PT Freeport Indonesia 1996). At the urging of national and international NGOs, the local community filed lawsuits in the United States against Freeport-McMoRan Copper & Gold Inc. The suits alleged that Freeport supported Indonesian security forces in committing human rights abuses, polluted traditional lands with mine tailings, and attempted "cultural genocide" on the local people. The courts dismissed both cases. However, the cases, together with the events outlined above, induced a number of changes in Freeport's policies and ways of relating to the local people. Freeport took five specific

actions:

1. Established the Freeport Fund for Irian Jaya Development (FFIJD)
2. Hired a high-level employee to act as a liaison with security forces
3. Built living and recreational facilities for government security forces
4. Established a corporate social, employment and human rights policy (Appendix IV)
5. Introduced human rights training for Freeport's unarmed security personnel, to which government security personnel are invited, and provided support for the government in establishing the rule of law and a legal system for all parties in the area.

The most substantive change was to restructure Freeport's community development programme to give the local community a greater voice in the process. The scope of the programme was expanded from a focus on only the two most local indigenous groups (the Amungme and Kamoro) to give equal treatment to other indigenous people who had moved into Freeport's operations area from the five other contiguous tribal groups. This was the primary demand of local people following the rioting. Freeport introduced the FFIJD, which provides 1% of PT Freeport Indonesia's net revenue for the development of the local community. The FFIJD was attacked by some of the local people and criticized by a number of NGOs for having a divisive impact on indigenous communities, encouraging a dependency mentality, and undermining Papuan cultural norms (The Diary of Online Papua Mouthpiece, 2002). In response to these criticisms, the FFIJD has been restructured several times. Despite difficult beginnings, the FFIJD has provided benefits to the local people in healthcare, education and the development of village infrastructure. Over the past few years, local people have gained a stronger voice in the use of the FFIJD funds. Since 1996 the FFIJD has provided over U.S.\$74 million for the people around Freeport's mine.

The second action was to hire an experienced expatriate to co-ordinate relations with the Indonesian security forces. This has been controversial. One of the weaknesses identified by Freeport in the midst of the troubles in 1994 and 1996, was that there was little active communication with government security forces, either before or after security actions took place. Freeport claimed that it did not know that company equipment was being used in the cases where there were alleged human rights abuses until after the fact and, in some cases, until the company read reports written by human rights NGOs. The company insists that it never asked the security forces to do anything that would violate the human rights of the local people, and that the use of company facilities and equipment by security forces was intended to be on the same basis as when used by the local community or the civilian government (i.e. for the benefit of the whole community). The company viewed the security

forces behaviour as unacceptable and believed that a more proactive relationship with the security forces could stop further incidents from occurring in the future. Critics, on the other hand, claim that such a liaison only enhances Freeport's relationship with government security forces to the detriment of the local population.

The third action caused even more criticism: the building of barracks and recreational facilities for the security forces that were being assigned to the area in greater numbers than before. Freeport's logic was that security personnel who were poorly housed in remote areas and who had little long-term stake in the welfare of the area would be more apt to behave poorly than those who were well housed and fed and could possibly have family members with them. Critics said that Freeport was just making life better for those who regularly abused the people. Although there is no long-term evidence for whether Freeport or its critics are right, the human rights record in the area, with the exception of a minor incident in December 1999 and the ambush in August 2002, has been far better than in other similar cities in Irian Jaya (West Papua).

The fourth action taken by the company was the approval by the Freeport-McMoRan Copper & Gold Inc.'s Board of Directors of a social, employment and human rights policy included as Appendix IV to this document (Freeport-McMoRan Copper & Gold, 2001a). This policy clearly states that Freeport does not permit any employee to partake in human rights violations and that the management of Freeport will publicly condemn any rights violations of which it becomes aware. In addition, all staff employees and all security and community affairs employees are required to sign an assurance letter each year stating that they have not been part of any human rights violations and that they have not seen any although some reports suggest that the policy is only partially implemented (Shari and Prasso 2000). All reported human rights violations are liable to company disciplinary action and such violations are reported to the Indonesian Human Rights Commission.

The fifth action supported the fourth. Freeport's security department has provided human rights training to all its personnel, using faculty from Indonesian universities and from human rights NGOs. Freeport has invited local government security to participate in these training sessions. This activity is linked with support for government efforts to establish the rule of law in the area and to set up courts to hear criminal and civil cases. Until recently there were no courts or jails in the area.

Although Freeport made efforts to focus on human rights violations and programs to minimize the possibility of a recurrence of human rights violations, recent events show that problems remain in the area around Freeport's mining operations. These include:

- The 2002 shootings of faculty at the expatriate school connected to Freeport,

- The 2006 blockade of the mine road by protesting “informal” miners, causing the mine to shut down operations for several days.
- The 2007 police killed two protesters after the death of a tribal leader following his scuffle with the Mimi Baru police chief.

The painfully slow investigation of the shootings resulted in the arrest of eight Papuan independence fighters. It is noteworthy that the investigation and arrests of suspects took place without accusations of human rights violations (Handelsman, 2006).

In February 2006, a large number of Papuan gold-panners rioted in the area. Again there were no accusations of human and civil rights violations in Freeport operations area. That is a far cry from what transpired a decade ago. This case is a good example of how a company changed its behaviour and provided for security while working to protect human rights.

In spite of the improvements on the ground, a series of four articles on mining in the New York Times in 2006 articulated many of the problems faced by -- and caused by -- the gold mining industry, including a plethora of environmental problems, social development challenges, and the concerns surrounding human and indigenous rights and security for operations (Handelsman, 2006a).

Regrettably, the articles only described problems and missed the complexities and subtleties of what went on, omitting any indication of solutions, albeit difficult, to these challenges.

The third article in the series focused on the environmental and security/human rights record of Freeport-McMoRan Copper & Gold in Papua, Indonesia, reporting the company gave money to high ranking military and police officials.

A subsequent editorial, *Recklessness in Indonesia*, suggested such payments damaged human rights, supported corruption and hindered the development of democracy. Later an article in the *Singapore Straits Times* by John McBeth, a well-respected journalist who specializes in South-east Asia, defended Freeport’s practices. Unfortunately, none of these articles begins to come to grips with the complexities which surround mining operations in areas where conflict exists between local communities and the national jurisdiction, caused by weak governance, corrupt administration, nationalist aspirations and strong but undisciplined security forces.

Relationships Between Company and State Security Forces

Major cases of problems with state security forces with resource companies include those of Freeport-McMoRan and its mine in Indonesia, and those of the oil operations of Chevron in Colombia and Shell in Nigeria (Handelsman, 2002). The Freeport case is just one of the examples of

the relationships between companies and state security forces described in this document.

There may be unintended consequences when the company thinks what it is doing is right without considering the geo-politics or local concerns. Several examples illustrate this. In Indonesia, one company was financing amateur soccer and there was the incident of excessive force used by police supporting the local football team, resulting from ethnic tension with the opposing team.

An energy company had built schools that were then used by Indonesian military for torture and investigations. The Indonesian army had asked the company for excavators for farming which were innocently provided, but were then used to dig graves – an outcome that the company had not realized would happen.

Comments

It is clear that Freeport's management did not recognise its role to protect the human rights of the local population until after the accumulation of events in 1994–96. This was despite incidents in the area in both 1977 and 1984, which were not linked to Freeport, but which were close enough that some notice should have been taken (even though there were no security forces in the area and very little communication between government and the company about security problems). There is little doubt that Freeport did not have proper human rights safeguards in place during the events that transpired in 1994 and 1996. This was a serious mistake. It is difficult to be sure that Freeport could have prevented the events of 1994 and 1996. However, if Freeport had made preparations for such eventualities, this would have better served both the local people and the company.

Since that time, as discussed above, Freeport has taken specific actions to deal with those concerns. Although some of the actions it took were controversial, so far they appear to have been successful. Freeport was a company that “went it alone” for years and remained outside the discussions on such problems as the environment and human rights. It has now become very much involved and concerned with these questions. It was one of the two mining companies that agreed to the U.S./U.K. Voluntary Principles on Human Rights and Security.

Regrettably, the company didn't go far enough – its programme was insufficiently transparent, it did not publicly state that the focus of giving support to the security and justice systems was to create a more secure and just environment for the company and the local community and, although some human rights training was offered to the military and police, it was not a high enough priority to be generally beneficial. Nonetheless it did some good for all parties.

Since 1997, while accusations of human rights violations in Papua have increased, they have decreased to virtually none in the area of Freeport's operation. Some of the credit for the improving

human rights record in the area belongs to Freeport; some is due to the indigenous leadership of the Papuan community, which has called upon all parties to make the area a “zone of peace.”

However, the quest to establish a viable and reliable security and judicial system that provides services to Freeport and the local community while supporting human rights remains incomplete. How can an “outsider” best influence the establishment of a fair and judicious security system where none has previously existed, where corruption and lack of training abounds and where the “outsider” is transforming the society into which it intruded? That is the challenge Freeport faces in Papua.

4.1.4 Amayapampa, Llallagua and Capasirca, Bolivia

The conflict that took place in the Bolivian mining districts of Amayapampa, Llallagua and Capasirca started as management/labour disputes, including disputes over the control of gold mining licence areas (Handelsman, 2003). The situation subsequently escalated into hostage taking, workers seizing the operations, and a violent confrontation with the police and military in December 1996 in which a Special Security Group Commander and nine civilians were killed, and three police officers and 32 civilians wounded. The description of the events Bolivia is based on (OAS, 1997) unless otherwise indicated.

Although the mining districts of Amayapampa, Llallagua and Capasirca in the province of Bustillos were once part of a thriving mining region, depressed metal prices (mostly tin) and inefficient, traditional mining methods led to a severe reduction in mining activity, and the region became one of the most economically depressed areas of Bolivia. The miners’ unions were leaders of the 1962 revolution and of the opposition to the dictatorship of the 1980s. The importance of mine production, the high concentration of workers and the difficult working conditions had led to strong trade unions with a high level of labour and social unrest in the province in recent decades. Security forces intervened to repress miners resulting in massacres in 1942, 1949, 1965 and 1967 (OAS, 1997).

The case dates to 1996, when a Canadian junior company, Da Capo Resources, acquired two old gold mines from the local owners: Amayapampa and Capasirca. Later that year it merged with another junior company Granges to form Vista Gold Corporation (Vista Gold, 1997b and 2002). The Amayapampa district had been mined on a very small scale by indigenous peoples prior to the arrival of the Spanish conquistadors. Small-scale mining continued through the Spanish colonial period into modern times.

Da Capo agreed that CEM, a miners co-operative, could continue mining the Amayapampa

mine at the then levels of underground production (about 220 tonnes per day) processing the ore in two mills on site until 11 August 1996. At the time, the Amayapampa mine was one of the largest producing underground gold mines in Bolivia (Vista Gold, 1997b).

Capasirca had been optioned to David O'Connor (later the mine manager) who assigned the option agreement to Da Capo Resources. The Capasirca property was mined by underground methods at a rate of some 20 tonnes per day before in 1996.

The new owners immediately came into conflict with the mineworkers, particularly at the Capasirca mine, where disputes and debt payments sought from the previous owners. The new management wanted to change from traditional work practices in which the Union had a leading role in organizing gold production and extraction. The conflict was exacerbated by ideology and regional poverty, with a background of resentment about the way the state mining enterprise had been awarding mining concessions. (US Department of State, 2002a).

The Capasirca mine workers went on strike in April 1996. It was agreed the workers would retain the current work system but help improve technology under new working conditions with guaranteed job security. About six weeks later, the union filed claims for 50% wage increases, better conditions, and accused the company of breaching the settlement.

Company representatives and union leaders met in La Paz to discuss grievances at an August 1996 meeting that started badly when the miners complained the mine manager (David O'Connor) had insulted them. On the same day the mine manager asked the government to move military troops and the national police force into the conflict area. The company withdrew its people from the area, leaving the mine in the hands of the miners and the unions. In September 1996, the miners took the mine engineer hostage (he was released on the intervention of a local priest). The company filed criminal charges against those responsible for the loss of management and the resignation of the company's staff. The mine was still under the control of the miners who, the company complained, were producing and keeping gold.

When some 130 police attempted on 14 November 1999, to detain the secretary-general of the Capasirca mining union, the local people surrounded the police, took their weapons and equipment and drove them from the area. The local prefect intervened to recover the weapons and equipment before the local troops, moving towards the area, caused a confrontation. He initiated a meeting held on 20 November 1999, in Potosí, in an attempt to reopen dialogue between the parties and to mediate the dispute. This meeting produced a signed statement of intent. The Da Capo company representatives failed to attend the next scheduled meeting on 4 December 1996.

Negotiations collapsed when the company learnt that mine workers had illegally seized the Amayapampa mine. That morning, residents and mine workers from Amayapampa heard that two workers had been detained and accused of theft by Da Capo. The miners were upset by a company prohibition on chewing coca leaves at work. After negotiations collapsed and the Amayapampa mine seized, government authorities decided to employ public forces to restore order in the area, to remove the mineworkers, and to restore the mine to its owners. Police were moved into the area. The next day, 19 December 1999, a conflict ensued between the army and police forces and the peasants and miners who had illegally occupied the mines of Amayapampa and Capasirca. Four people were killed, including a minor (15 years old) and a peasant shot in the back. One of the dead was a mineworker leader who had tried to seek a peaceful solution with the military and police.

On 20 December 1999, a colonel was killed by a shot to his head, a civilian physician was seriously wounded, and four police officers were wounded. At Llallagua where the townspeople formed a human barrier and threw stones, sticks and dynamite fragments the military police shot tear gas, rubber bullets and, later, live ammunition, killing two people, neither of whom were involved in any conflict. In the hills near the Amayapampa mining camp, the police and military forces opened fire on civilians wounding three plus a nursing auxiliary who was shot in the leg and later died without receiving proper medical attention.

Waldo Albarracín, president of the Permanent Human Rights Assembly of Bolivia, appealed for a speedy, independent and impartial investigation into the December 1996 killings, which led to a detention order against him (Amnesty, 1997). On 25 January 1997, while traveling by public transport in La Paz, he was violently forced out of the vehicle by eight police agents who blindfolded him and took him to an unidentified location where he was subjected to beatings, ill treatment and death threats, and was subsequently left unconscious and seriously injured at a police station in La Paz. He was detained in a cell until he was transferred to a police clinic from which he was removed by relatives and hospitalized at a private clinic.

As a result of national and international pressures, the Bolivian Government invited the Inter-American Commission on Human Rights (IACHR), Organisation of American States (OAS), to investigate the events at Capasirca and Amayapampa. It conducted an on-site visit, preceded by a technical mission that met with government, the military and civil society. Testimony was taken from peasants and miners living in the area and family members of the victims.

The IACHR concluded that the tragedy had many origins, including: an inappropriately handled labour conflict; an attempt to introduce modern mining methods conflicting with miners expectations from their traditional work habits; and the backwardness and extreme poverty in a region

that had previously been wealthy, but where the population as a whole had not benefited. It also concluded, “that the deaths of nine civilians due to direct actions of military and police agents of the state in Amayapampa, Llallagua and Capasirca between December 19-21, 1996 are imputable to the Bolivian state as a juridical person.”

The IACHR recommended that the government should investigate the incidents and determine the individual liabilities and sanctions for the military and police, and determine the individual liabilities that may arise from the circumstances of the colonel’s death. It noted that the rules regarding the use of force need to be reviewed, and that compensation should be paid to the relatives of the deceased and the wounded.

More broadly, it recommended supervising the enforcement of labour and tax legislation under which mining companies operated at Amayapampa and Capasirca. Although it did not investigate any violations, it reported a perception among the workforce that tax payments merited examination. It also recommended that the government guarantee the effective operation of mechanisms to resolve collective labour disputes.

It took the Bolivian Attorney General some two and a half years to complete investigations into the December 1996 events at Amayapampa and Capasirca. A U.S. government report observed that the delays in the investigations and in the identification and punishment of those responsible for the deaths resulted in an atmosphere of impunity (US Department of State 2001). Although five military officers were found responsible, the then President Gonzalo Sánchez de Lozada and his ministers were absolved of any responsibility. Cases against the accused officers moved slowly through the military justice system; five officers were reassigned to non-operational units pending the outcome of their legal cases. There was an attempt in Congress to censure Sánchez de Lozada and his ministers.

At the end of 1996, Vista Gold had expected to start construction of the Amayapampa mine in June 1997 with production by June 1998 and production from Capasirca about one year later. Vista Gold closed the mining operations because they were unsafe and tailings were polluting villagers’ land and water. The company continued to pay the miners for work on exploration and development activities as well as infrastructure improvements in their village (roadworks, schools, medical facilities and church) to promote good will and maintain social stability in the region. These payments were discontinued in 2000 and workers were laid off as a result of low gold prices.

In April 1997, Vista Gold obtained surface land rights from local indigenous people for Amayapampa and Capasirca in exchange for community programmes including education, training

and employment, and improvement and development (Vista Gold, 1997c). By July 1997, a feasibility study for the Amayapampa property led Vista Gold to announce that it would seek finance for the project, but by November it had reduced the project's size to reflect a significant drop in the price of gold and lower gold grades from additional drilling (Vista Gold, 1998). As the price of gold continued to decline, the project was placed on hold pending higher prices. By March 1999, Vista Gold was considering an open pit mine. Studies continued, but in April 2000 all the workers at Amayapampa were laid off. Vista Gold continued to provide limited community assistance during 2000 (six teachers and a nurse and restricted access to ex-miners to the old underground workings) (Vista Gold, 2001).

There were reports in 1999 that miners and villagers had accepted Vista Gold's offer allowing them to mine any surface gold occurrences at Capasirca (Vista Gold, 1999). In February 2000, having decided that the mine was more suitable for small-scale mining, Vista Gold sold Capasirca to a miner's co-operative for about U.S.\$300,000 in cash and a production royalty (Vista Gold, 2000).

In April 2008, Vista Gold sold the Amayapampa gold project to Republic Gold, an Australian company (Vista Gold, 2008). Republic's quarterly report following the acquisition mentions that "social issues in the village of Amayapampa and surrounding communities" had been major problems (Republic 2008). Its representatives engaged with various stakeholders including union leaders and leaders of the local communities. Training and higher wages were key aspects of an agreement to ensure local and national support would be provided for the project to develop.

Company Response

The initial public information about the conflict presented by the company appears to have been a press release reporting that, after the breakdown of extensive negotiations between a lawless faction of miners, Vista Gold and the government, the company had been informed by the government that when it sent police to deal with a "small group of dissident miners" three people were killed and thirteen injured (Vista Gold, 1996a). The company rejected assertions of a broader question of indigenous peoples' rights, and said it was Bolivian officials who wanted the mines' "rightful ownership" returned to Vista Gold to be operated legally.

Three days later, a second press release reported that the government had informed Vista Gold that "The conflict at the Amayapampa and Capa Circa mines has been resolved" although the company was "saddened by the violence . . . the Company appreciates the prompt action by the government" (Vista Gold, 1996b). The company persisted with its explanation of events (Vista Gold,

1997a). One of Vista Gold's senior officers lauded the government's "determination to protect the assets of foreign investors and maintain law and order", saying that it was "a clear message by the government that they want foreign investment and the benefits it can bring to improve the quality of life for all its citizens" (Vista Gold, 1996b).

Comments

The company did not disclose or discuss the evolving dispute to its shareholders or in its filing to the SEC (U.S. Securities and Exchange Commission) (Granges 1996). Its board did not endorse any positive actions or accept any responsibility after the events, but instead maintained that the problems were caused by a "criminal element", a finding refuted by the international judicial investigation that concluded origins to the tragedy lay with the company's behaviour.

Although the junior company had limited financial capacity, it had a board of prominent, capable, experienced directors who might have provided appropriate leadership to avoid the conflict. Vista Gold did not recognize that it had any responsibility for the actions of the police and military. It saw its property, management and economic rights threatened and did not recognize a need to engage on human rights problems. Vista Gold complained to the government and urged it to protect the rights of foreign investors. In Vista Gold's view, the responsibility for the tragedy belonged to others: the lawless miners and peasants, the police and the armed forces (Handelsman, 2003).

Da Capo/Vista Gold's management had some experience of working in Bolivia. The company believed it was reasonable to introduce changes that made working conditions safer and the operations more profitable. However, they did not recognize the importance of engaging in a positive way to establish a dialogue with the mineworkers and local community to effect change. Within a month the new management had a strike at the Capasirca mine and soon there were problems at Amayapampa, which had not previously experienced labour disputes. It appears that the company seriously underestimated the discontent remaining after it obtained ownership of the mines, and the resentment from the government's introduction of structural adjustments to the economy. There was an unusual alliance between mine workers and the peasant community.

The company's local manager focused on asserting management and property rights, and appears to have been operating with a command-and-control approach. More conciliatory social-political skills to manage change seem to have been required. In the end, the company changed its vision of Capasirca's potential and by 2003 the mineworkers were operating the mine in their own way for their own benefits (or losses).

There is little doubt that the company did not have proper human rights safeguards in place

during the events that transpired in 1996. There were serious mistakes. It is not unreasonable to expect that Da Capo/Vista Gold could have prevented the events of December 1996 if a more conciliatory approach had been taken. However, as the IACHR concluded, there were also many opportunities for others to avert tragedy. One can speculate on a different outcome if the parties had adopted an approach such as those in the U.S./U.K. Voluntary Principles on Human Rights and Security. The IACHR specifically recommended that Bolivia deal take up this question.

There is no evidence that Vista Gold has taken specific actions to deal with those concerns. While the company provided some social/community programmes, there is a significant difference between engagement in corporate responsibility and philanthropy with which many corporations are grappling.

In Bolivia, there were no signs of positive engagement in support of human rights by the corporation, nor does the company appear to have either changed its behaviour or accepted any responsibility for the tragedy.

Addendum: Reporting Requirements?

There are requirements under Canadian Securities regulations to fully disclose material social/political incidents. Since the Bre-X gold mining stock promotion fraud, Canadian Securities regulators introduced Standards of Disclosure for Mineral Projects (rule NI 43-101) that require a Qualified Person be involved in preparing reports to ensure adequate disclosure of relevant technical and scientific information that is material to decisions being made by the investing public (Handelsman, 2004).

Section 3.4 (d) of NI 43-101 and item 19 (g) of the Form 43-101F1, require “a general discussion of the extent to which the estimate of mineral resources and mineral reserves may be materially affected by any known ... socio-political ... issues.” (NI 43-101, 2001 & 2005)

A Qualified Person comfortable with technical matters may feel ill at ease commenting on unfamiliar social and political problems, especially in foreign countries with volatile social and political conditions in conditions of weak, corrupt institutions. However, in the same way that specialists provide input on technical questions, experts on non-technical aspects could be used for other aspects of work. Even if securities regulations require full disclosure, there remains a natural unwillingness to delve into the area, as well as to risk consequences that may arise from offending host governments.

A February 2004, NI 43-101 report on the Amayapampa project in Bolivia included twenty-four specific references to investigations into technical matters such as geology, drilling, sampling,

testing and environmental conditions (Wallis et al., 2004). However, specific citations to investigations into human rights abuses were not included, suggesting that a full accounting and complete reporting of these problems were not material to the mining industry.

The report included a single paragraph alluding to conflicts between mine management and miners that led to the situation described above.

Conspicuous by its absence from a list of 24 references in the NI 43-101 report is a citation of the report of the Inter-American Commission on Human Rights' (IACHR's) judicial investigation into the human rights situation in the events 19-22 December 1996, at Amayapampa, Llallagua, and Capasirca (OAS, 1997).

There is often pressure to ignore or bury bad news, but with growing demands for full disclosure and transparency, a prompt acknowledgement of reality can avoid later problems. If human rights concerns are not considered important enough to be material to the mining industry what will it take to put them at the top of the agenda?

4.1.5 Morro do Ouro, Brazil

Paracatu, a town in the state of Minas Gerais, Brazil, was established when gold was discovered at the beginning of the eighteenth century with an early settlement around the *Morro do Ouro* (Hill of Gold). At that time, news of gold bearing streams attracted thousands of garimpeiros (small scale prospectors/miners) to the site. Although agriculture and other economic activities developed in the area, artisanal mining activities persisted which polluted the environment with mercury and continued after they were declared illegal in 1989 (Hammer, 2000; Leggatt, 2003). This section includes information obtained from interviews

Starting in 1980, Rio Tinto Brasil explored the area, developed and operated the Morro do Ouro gold mine through Rio Paracatu Mineração S.A. (RPM) that produced its first gold in 1987. At that time, the grade of ore (0.43 g/t) mined was lowest of any operating gold mine in the world. RPM was owned by 51% by Rio Tinto and 49% by Normandy Mining, which after several ownership changes was acquired by Kinross Gold Corp who later purchased Rio Tinto's interest at the end of 2004

The cause of the problem at the mine was that the gold recovery rate was low (around 80%) enough that the company had a couple of gold panners working inside the operation before the tailings were released. The mine's engineering and design were such that it was easy for people to gain access to these tailings. The general attitude in the town was if the company did not want the tailings waste, why should anyone bother if anyone tried to get something out of it. At that time there

was a very high level of unemployment in the town (35-40%). The company had some concerns about adverse health impact of exposure to the tailings and that some people were starting to scale walls for access.

There was shooting incident in 2000 in which one of the guards was charged with shooting one of the artisanal miners inside the compound who was trying to process the tailings. This was the first time the operation had ever experienced such an incident. For the next six months to a year the company grappled internally with questions such as what was the role of security? Under what conditions, if any, could they shoot? What type of training they should have? What should the rules of engagement be? etc. It was all very challenging.

Artisanal miners made some 11,000 incursions a month onto the property making it a problem of serious proportions. The police and security forces appeared to be relative powerless to prevent them. Often the panners were related to the guards. Overall it was not a very good situation, although it was profitable for people to be engaged in panning.

In 2000, the Australian SBS TV network screened a current affairs story about Rio Tinto in Brazil (Hammer, 2000). It reported that:

- Armed company security guards shot and killed local people scavenging on the minesite for tiny amounts of gold in the mine tailings. These shootings were alleged to have occurred through a planned confrontation rather than accidentally.
- Workers in the mineral processing plant claimed to have been exposed to lead at levels far in excess of known safety standards
- The company had directed certain employees to spy on the trade union, and had fired workers active in the union. (Hammer, 2000)

The documentary claimed that some Rio Tinto operations were very different from the perception given by the company's Annual Report and Social and Environment Report. SBS said the reports were aimed to assure investors all was well at Rio Tinto operations and the company's backers were safe from being linked to cases of human rights and environmental abuse. The SBS report suggested that independent monitoring would easily expose major problems. (Hammer, 2000).

In 2001, Rio Tinto reported a “significant event” and from its investigation, concerns about the behaviour of security guards led to their dismissal and referring the case to the local police. A security firm was hired to institute new practices. The processing plant was modified to improve gold recovery thereby reducing the quantities in the tailings. Rio Tinto said the allegation about “the use

of violence and torture to discourage miners” was completely unsubstantiated. A social study was commissioned to provide a better understanding of the artisanal mining and the local community (Rio Tinto Brasil, 2001). In addition to the social and anthropological studies, Rio Tinto took employee surveys that confirmed artisanal mining was a result of poverty and lack of employment opportunities (Leggatt, 2003). The company worked with the local bishop who was very influential in the community and the number of incursions went down from 11,000 a month to 8 or 9 incidents.

Recognizing a need for action, with community support the company established a development agency, a new technical training school, and encouraged business opportunities for local sourcing. Then the local community proposed projects to a community workshop each year in competition for RPM’s fixed amount of financial support. RPM supported those projects selected by the community (Eggleston, 2003).

Projects developed since 2000, focused on sustainable development - the transfer of skills, development projects and income generation, aimed at long-term poverty alleviation, e.g. production and distribution of generic drugs. A Partnership Council was established in 2002, with four community members and one facilitator representing the company. The company’s social studies led to a revised five-year community relations plan that concentrated on agricultural opportunities as a potential escape from poverty.

Comments

The Paracatu case study illustrates how when there is a prosperous operation in a poor community it is essential to have more sharing. An operation becomes unsustainable with high unemployment in the area (e.g., levels of 30%). Morro de Ouro was to some extent seen as a problem caused by a reliance on third parties without having a proper understanding of what was going on. When armed people are stealing gold, clearly there is a problem that needs to be confronted.

Brazil was said not to be an example of a typical Rio Tinto mine site. It was a major incident that got caught. Nobody believed it could happen in the first place. It happened because of local circumstances. The mine’s management may have been trying to say there was not a problem, not wanted to rock the boat with the local community etc. Little bits of information coming through to Head Office did not quite add up and provide a full picture of what was happening. The situation came to light because people going there, put things together and reported what they found. When news about security breaches and somebody had been killed reached London, questions were asked.

In 2006, apparently artisanal mining, at a much reduced scale than previously, continued in the Paracatu area where studies had examined the impact of accumulated mercury pollution from

many years of artisanal and small-scale mining (Handelsman and Veiga, 2006).

4.2 Respect of Cultures (Land, Environment, Social Development, and Indigenous Peoples)

For indigenous peoples land is life. It is ‘mother earth’ that provides for the life of the community. Indigenous populations do not ‘own’ land, they ‘use’ land as a common heritage and gift. That does not mean the indigenous peoples do not abuse ‘mother earth,’ it only means that their perceived relationship with land is essentially different from that of the Western, developed world. During European colonization and exploitation of resources globally, their legal rights to land were in most cases extinguished. Over the past four decades there has been an effort to re-establish basic land protections for indigenous populations. This effort has energized indigenous communities in their quest to re-claim ancient, tribal lands; it has also brought indigenous peoples and communities into conflict with the nation-states in which they reside and mining companies who hold rights to exploit natural resources on indigenous lands. It also has brought conflicts between mining companies and communities over cultural respect, environmental protection and the nature of social and economic development.

This section includes aspects of the cases of Bougainville and Freeport that also included points of conflict with indigenous peoples. It includes a number of illustrations of typical conflicts arising over land, environment and social development rights, including illegal mining. More positive situations are illustrated by the cases of Diavik, Canada, and Fort-Dauphin that impact indigenous peoples and local communities although the areas of concern to a larger extent encompass land, environment and social development rights.

Some countries, such as Bolivia, Colombia, Peru, and Venezuela formally acknowledge that indigenous people should be engaged in prior consultations about whether resources should be developed. However, there are concerns whether the constitutional provisions that established collective rights of indigenous people for consultation about developments of non-renewable resources are effective, or merely a courtesy (Amnesty, 2002). Only in industrial nations with indigenous populations (Australia, Canada, Norway, and the USA) can it be asserted that indigenous people enjoy an effective right to prior consultation about natural resource developments on their traditional lands (ICME, 1999).

The rights of indigenous people in the areas of mining operations raise questions concerning ownership of land, the power to make decisions about their future, the entitlement to benefits from development, the appropriate form of community development, and relationships with government

and non-indigenous small-scale and artisanal miners. Convention No. 169, included in Appendix II, identified indigenous and tribal peoples' rights to the natural resources of their territories including:

- The right to participate in the use, management, protection and conservation of these resources;
- The right to be consulted before natural resources on their lands are explored or exploited;
- The right to studies on the effects of such exploration and exploitation;
- The right to benefit in the profits made from any exploitation and use of natural resources; and
- The right to be compensated by the government for any damages caused by such activities (ILO, 2003).

The United Nations' non-binding *Declaration on the Rights of Indigenous Peoples* recognized the right to self-determination and enunciated global human rights standards for indigenous peoples. Indigenous peoples are concerned that the extractive industries' development projects put their lands at risk. The Declaration included a requirement "to consult and cooperate in good faith with the indigenous peoples ...to obtain their free and informed consent prior to the approval of any project affecting their lands or territories and other resources, particularly in connection with the development, utilization or exploitation of mineral, water or other resources" (United Nations, 2007). Provision for prior, informed consent of indigenous peoples for projects that impact their land has been included in some countries legislation (e.g., Australia, Malaysia, Peru, the Philippines and Venezuela). Case studies confirm the need for clear guidelines and enforcement to ensure effective implementation of these requirements (Haira, 2006).

Indigenous communities, people and nations might be regarded as being in a distinct category, different from the other stakeholders, with a uniquely important status.

As with the case of Grasberg, indigenous peoples' perceived disrespect of their traditional land rights on Bougainville Island, and the very real impact of the Panguna mining operation on their land were very much points of conflict involved in fuelling the conflict discussed earlier. At Morro do Ouro in Brazil the conflict with security forces evolved from conflict with artisanal miners over access to land (inside the mine property) and social economic conditions in the region. At Amayapampa, Llallagua and Capasirca in Bolivia, the conflict with security forces was not limited to labour conflict with small-scale miners who were supported by their local communities. Land,

environment and social development rights are involved in other cases presented in this section. The cases of the Diavik diamond mine in Canada and Fort-Dauphin titanium mine in Madagascar are demonstrate how safeguard policies (discussed later in this chapter) can be used effectively to deal with complex problems.

4.2.1 Bougainville, Papua New Guinea

The problems of indigenous Bougainvillian islanders' rights came into tragic conflict with public and private security forces as discussed in section 4.1.2. In the 1920s, labour abuses were common and "New Guineans with picks and shovels received dramatically lower wages than Australian artisans and men were drafted into heavy labour, under more or less coercion for pitiful wages." No one respected the villagers' rights as landowners or stakeholders (Denoon, 2000). "Many Melanesians believe that this set a pattern of callous exploitation that continues to this day" (Sillitoe, 2000).

Very early in the process CRA used anthropologists to gain an understanding of the local culture. In common with much of Melanesia, land ownership is matrilineal (passes from mother to eldest daughter), and "according to the rules of their traditional land tenure systems, Melanesians cannot permanently alienate land to strangers" (Sillitoe, 2000). However, Australia registered men as the titleholders. "The BCL rent and compensation payments failed to take into account the complex systems of land ownership in Bougainville" (Australia, 1999). "There was opposition to mining on Bougainville from the very beginning. Bougainvillians felt that their consent was never sought...Negotiations took place under the principles of Australian law, whereby anything below the surface, such as minerals, belonged to the government rather than the land titleholders. This ruling was at odds with traditional ownership laws" (Australia, 1999). Land and access rights came into conflict at the exploration stage (Australia, 1999).

Lack of human relationship skills and sensitivity to the concerns of others can lead to confrontation, such as that experienced by CRA Exploration on Bougainville Island in 1964 when villagers told the company "We don't want any prospectors in this area" (Denoon, 2000).

The construction work force at Panguna peaked in 1971 at more than 10,000, most not from Bougainville Island. With most skilled workers foreigners, two-thirds of the labourers were also not from the island (Denoon, 2000). The Company gave training programs for about 12,000 employees. A 1,000 completed full trade apprenticeships and about 400 completed graduate and postgraduate studies (BCL, 2005).

During construction and later during operations, because they were unskilled, few villagers

from around the mine site were employed. “By destroying or limiting access to land, the mine created shortages of land for subsistence gardening and cash crop cultivation.” Bougainvilleans resented what they perceived as an inequitable treatment of their labour rights (Australia, 1999).

Mining operations replaced agricultural land. The tailings disposal caused land loss in the Jaba River valley and affected drinking water, timber, and hunting and fishing. The tailings also blocked tributary streams, resulting in flooding and the fish loss. They prevented fish migration for spawning. Access to some areas became difficult and dangerous (Connell et al., 1991).

Before the mine was developed, Bougainvilleans depended on agriculture. After its closure they had an even greater dependence on agriculture due to a lack of other sustainable economic activities. Any loss or damage to the land threatens the basis upon which their survival depends.

Problems of Melanesia reflect a mix of cultural complexities, including a matriarchal society where men worked in subsistence farming. Companies came in and hired men, the men left and society was destabilized. The Bougainville case shows how mining and exploration companies need to be aware of the stakeholder power matrix in pre-existing conditions and analyze the opinion of the local people involved. They should avoid a paternalistic approach and be aware that there may be deeply held differences in values, bearing in mind that whenever mining developments come into a community there will be a major impact on human rights at all stages of the mining cycle.

Corporate approaches evolved over time as a result of bad experiences and difficulties. The Bougainville experience was bad for the people and bad for the company. It took a lot of effort to overcome the initial hostility. When Rio Tinto people visited the country it appeared to them that things were going in the right direction locally. Nobody fully appreciated the degree of underlying resentment caused by bypassing the traditional matriarchal system. Many studies, papers and books, have subsequently been written about the Bougainville problems.

Despite numerous attempts to convince the islanders to allow the mine to be rehabilitated and re-opened, the Bougainvillians remain adamantly opposed to this concept. Other companies are making more efforts in Papua New Guinea to inform and consult local communities “especially where they are dense and potentially disruptive of mining activities (e.g., Porgera) or well informed about their rights and the consequences of mining (e.g., Lihir).

4.2.2 Grasberg, Indonesia

The people of Irian Jaya are ethnically and culturally different from other people in Indonesia. Papuans are Melanesians. Under the Indonesian constitution the government is the owner of land for the benefit of “all Indonesians.” There were no legal protections for traditional,

community land rights (hak ulayat), although the new Special Autonomy laws for Aceh and Irian recognise community land rights and provide legal protection for them. Mining companies work surface and subsurface resources but do not own them. Many resource sites, including Freeport's, are designated as "National Treasures." Many of these factors put the government of Indonesia and local people (Amungme and Kamoro) on a collision course.

Land is life for the people; for the government it is a resource to be exploited (Churchill 1995; Sillitoe 2000). In 1968 Freeport signed a Contract of Work with the government of the Republic of Indonesia. In 1972 Freeport began operations. It was not until 1974 that Freeport and the government began to negotiate with the Amungme for compensation and land rights. All accounts suggest it was not a very 'open ended' discussion and negotiation. The Amungme received a church, a school and some homes as compensation for Freeport's use of their land. At first Freeport's operations were small. Over time they grew modestly, then, in 1988, with the discovery of the Grasberg deposit, the operation took off. The area of mining operations, which had fewer than 1,000 inhabitants when PT Freeport Indonesia began operations in 1972, grew to more than 100,000 residents (Freeport-McMoRan 2001b). Some of the new residents were Amungme and other Papuans from the surrounding area, but most were Freeport employees, contractors and their families, and government-sponsored transmigrants. Mining directly changed the land and the lives of the original indigenous population of the area; the indirect changes were at least as great.

There were also environmental problems that affected the local people. Freeport's mine produces 250,000 tonnes of mine waste a day that flows through rivers to a tailings disposal area in the coastal area below the mine. Although the Freeport contends the mine waste is not toxic and is fully reclaimable, it changes the land that has been an integral part of the lives, history and culture of the Amungme and Komoro—and all without the respect of sensitive and transparent consultation.

4.2.3 Other Examples of Land Rights Problems

Illustrations of points of conflict with indigenous people are found in the Amazon regions of Brazil, Venezuela, Ecuador, and Peru. In Brazil, there are efforts to prevent the Brazilian government from taking more Indian land for mining, logging, agricultural, and other uses. Nevertheless, Brazilian Indians still complain that the rainforest is increasingly threatened by mining companies (Reuters, 2001). In the early 1990s, intrusion by Brazilian *garimpeiros* (artisanal gold miners) into Yanomami lands led to thousands of deaths (HRW, 1994), and even after the area was declared off limits to outsiders, thousands of illegal gold miners still entered the area leading to the deaths of more Yanomami in 1998 (United Nations, 1999).

In 2006, Xikrin Indians armed with clubs, bows and arrows occupied Vale's Carajás iron ore mine in Para state, Brazil, demanding money and local infrastructure improvements, including housing. Vale disagreed with FUNAI (Brazil's National Indian Foundation) about whether it had fulfilled an agreement with these Indians. Vale said it would not pay its U.S.\$4.2 million annual contribution to the community to recompense it for lost income when the mine was closed for four days. The company asserted that the State was responsible for indigenous groups welfare, not the private sector. It criticized Brazil's government at an Organization of American States (OAS) meeting for having inadequate public policies to protect indigenous populations and claimed government inertia led to invasions in Para, Maranhão, and Minas Gerais. Vale resumed the payments (U.S. Department of State 2007).

In Brazil, violence, intimidation, and corruption by illegal gold miners prevented any effective legal action by the Macuxi Indians in 1998 (United Nations, 1999).

Local opposition at Tambogrande, Peru, to Manhattan Minerals, a Vancouver junior with new gold mining project that proposed moving the town caused significant costs and ongoing delays to the project (Moran, 2001). The company withdrew, after losing U.S.\$60 million on the project, when Centromin, the State mining enterprise, terminated the option agreement in 2005, because the company did not have a 10,000 tonnes per day processing plant and U.S.\$100 million in equity in place by a specified date as required by the contract (BN Americas, 2005)

A similar case occurred at Esquel, Argentina, where “a striking lack of consistent and comprehensive engagement...with the local community to hear concerns and address them, and an attitude of disregard for the Esquel community ... in the actions and attitudes of some key MED [Minera El Desquite] personnel” (BSR, 2003) led to a vote by 75 per cent of eligible voters in the community with 80 per cent against the project in March 2003. This jeopardized a U.S.\$310.1 million acquisition investment made by Meridian Gold in 2002 (Meridian Gold, 2003).

One company observed that at Esquel in Argentina, Meridian misread local sentiment and the situation blew up in their face. A report Meridian commissioned identifies the problems created and provides a roadmap that others can use to avoid inflaming local communities (BSR, 2003).

There is no doubt that there have been abuses of human rights and indigenous peoples rights by illegal miners in Indonesia. Some NGOs want to “cease all new mining activities in Indonesia and to urge the government to revoke all mining licenses/permits given to all mining companies” (JATAM, 1999). Illegal and illegitimate activities employed to obtain access to natural resources lead to human rights abuses in many of the categories enumerated herein. While NGOs focus on the

major mining corporations they say little about the extensive illegal gold mining. Rich national business interests exist in the background to these illegal activities, which conflict with legal mining (McBeth, 1999). Illegal coal mining was taking place on a major scale, supported by “provincial and military officials as well as local businessmen” (McBeth, 1999). For example, an estimated 4 million tonnes of the total annual production of 22 million tonnes of coal in South Kalimantan, Indonesia, was mined illegally. It was reported that the Indonesian South Kalimantan Governor was convinced that “masterminds...just use local people as a shield to safeguard their illegal businesses”, and he suggested that a simplified procedure was required for providing mining permits to local people (MiningIndo, 2001).

A major concern arises with the removal and relocation of indigenous people. For example, phosphate mining on the island nation of Nauru reportedly left over eighty per cent of the island uninhabitable (Pukrop, 1997).

Some companies, such as AGA, have business principles that say they would try to use land with consensus if possible, and will try to avoid resettlement as far as possible. Resettlement is a contentious question. AGA determined it needed a specific policy around every resettlement that is going to take place. It adopted the IFC safeguard policies, if and when resettlement needs to take place, with the proviso that it will attempt not to undertake resettlement wherever possible.

Sometimes when the community is sitting on top of the ore body difficult decisions have to be made, such as in Ghana, Tanzania and Mali. When the situation arises where people need to be moved, AGA follows the IFC Safeguard policy on resettlement, which articulates preparing a resettlement action plan and its monitoring and evaluation. The engagement plan, monitoring and evaluation are done in conjunction with the community, and often making use, as in Mali, of a third party to follow up with the audit. It will then be monitored on an on-going basis for some years after the initial re-settlements have been made.

An interview examined when Rio Tinto had a license to explore up in Northern Lapland from both the Norwegian and Swedish governments who were actively promoting exploration in that region. When the company went there and started to talk to the local Sami communities there were concerns that, even with a very light exploration footprint and the use of helicopters to come in, it would disturb and disrupt the reindeer and the caribou migration patterns. Although the company made strenuous efforts, it could not persuade the local communities. When it realized it would never get the approval of the local community, the company withdrew explaining to the Norwegian and Swedish governments it was not going to proceed because it could not get local community agreement. While not a human rights concern, it demonstrates the company is prepared to walk away

from a commercial opportunity.

4.2.4 Diavik, Canada

The case of the Diavik diamond mine in Canada is included to demonstrate how Rio Tinto has changed its approach to matters of concern to Civil Society. Care was taken to understand the indigenous people's culture and provide training, employment, and to facilitate local economic opportunities. It shows that a corporation that adapts to societal demands can flourish. Much of this section is extracted from the writer's notes of a presentation given by Aber Diamond Corp's CEO (Robert Gannicott, 2005). Rio Tinto owns a 60% interest in Diavik diamond mine (Aber Diamond Corporation retained 40%), located in Northern Canada on an island in a large sub-Arctic lake, which it operates through Diavik Diamond Mines Inc. Project development benchmarks are shown on the following time line prepared by Aber (Diavik, 2007):

- 1991: Claim staking
- 1992: Joint Venture with Rio Tinto as operator
- 1993: Discovery
- 1996: Pre-feasibility study Social and Environmental permitting begins
- 1999: Feasibility Study complete
- 2000: Permits granted. Construction begins
- 2002: Production starts in November
- 2003: Diamond sales begin in March
- 2004: Harry Winston acquisition
- 2005: First dividend paid

Diavik helped make Canada the world's third largest diamond producer (by value). The project included building a large dyke, a water treatment plant, de-watering the area inside the dyke and developing large waste rock piles. Water quality management and wildlife impact were important questions (Gannicott, 2005).

Negotiations with the local people were a lengthy and expensive process within an ill-defined economic and political framework. Rio Tinto's expert on aboriginal affairs carried out an early stage social analysis to develop an understanding of aboriginal beliefs and how they interfaced with the land. Legitimate local concerns included land title and mineral rights ownership, environmental management and employment opportunities.²¹ Dealing with aboriginal concerns was easier than with the politics of the environmental NGOs. The Canadian Federal government was interested in project

²¹ The background to agreements in Canada with aboriginal land rights is complicated. Agreements between mining companies and a number aboriginal peoples in Northwest Territories were not solely the result of rising expectations about the benefits of mining development; Lucas (2003) explains that the "heightened sensitivity to the consultation needs of aboriginal people...is ultimately based on constitutional rights of Canada's aboriginal people." The Supreme Court of Canada explained "there is a fiduciary relationship between the Crown and aboriginal peoples in decisions taken about their lands. There is always a duty of consultation."

Although the diamond agreements are of recent origin, there were earlier agreements in Saskatchewan concerning uranium at Key Lake and Clough Lake; for the Nanisivik Mine (lead/zinc) on Baffin Island; and in the extreme north Nunavik region of Quebec for the Raglan Mine (nickel/copper).

revenues as its costs in the north were running about \$1 billion per year for a population of 40,000. In the absence of an umbrella group with which to negotiate, the company negotiated separately with each party.

Problems encountered during project development included unresolved land tenure disputes between the Canadian government and aboriginal groups. Permitting became a battleground of treaty resolution and revenue sharing, intertwined with economic, social, political and environmental problems. Equity investor uncertainty led to investor fatigue because of the long time involved in reaching the development agreement. Capital and operating costs escalated by some 50% to satisfy environmental and social demands. Financial terms in the agreements are confidential at the request of local groups.

Commitments to provide meaningful training, employment and business opportunities to the residents of the Northwest Territories and the West Kitikmeot region of Nunavut were written into the 1999 Diavik Socio-Economic Monitoring Agreement (SEMA) with the five local Aboriginal groups and the Government of the Northwest Territories. There were also Participation Agreements negotiated with each five Aboriginal groups. There are local employment and northern purchasing targets. The local employment target was set at 40%. During 2006, Diavik's workforce averaged 735 people, of which 497 people (68 per cent) were northerners and about one third Aboriginal. SEMA and other commitments are publicly reported on a regular basis.

Cash transfers on an annual basis are not very large. A joint-stewardship committee was set up with representatives of different groups who meet as a board of directors to determine compliance with social and environmental questions from their points of view.

Diavik found that social and environmental management costs could be significant components of capital and operating costs that are key feasibility study factors that should not be late addenda, which can cause a nasty shock. The high costs were a shock to the market because of the change between the pre-feasibility study and feasibility study caused by not fully understanding the costs. The company almost was unable to finance the project without selling out. As Gannicott said: "If you cannot do things right, then you should not be doing the project at all. In a project, optimism is replaced with margin –if there is not enough margin in a project to provide a cushion, stay away from it!" (Gannicott, 2005).

Aber transferred its competitive advantage in social and environmental excellence to the luxury jewellery business. Reaching an off-take agreement to supply Tiffany was a key factor in raising funds at the project finance stage, achieved by providing diamonds with a Canadian origin for

sale at the retail level. The Canadian origin supports a luxury brand image (Harry Winston). Aber believes its social and environmental excellence is a transferable competitive advantage and commented that Rio Tinto uses the same attribute to get them first through the door when an emerging economy has a mineral deposit to be developed.

Aber Diamond Corporation concluded that the costly impediment of environment and social studies became a profitable opportunity for the company. Corporate Social Responsibility is sound business, not philanthropy: “corporations are governed to make profits in socially responsible manner enabling their shareholders to become philanthropists.”

4.2.5 Fort-Dauphin, Madagascar

The case of the Fort-Dauphin titanium mine development project in Madagascar is included as another example of how in recent years Rio Tinto has approached matters of concern to Civil Society. While the company considered it most important to give serious attention to social conditions as well as the environment, most of the NGOs appeared to be more concerned about protecting the distinctive biodiversity found on the island than alleviating poverty.

Madagascar, located in the South West Indian Ocean some 400 km. off the coast of Mozambique, is the world's fourth largest island, well-known for its biodiversity since most of its mammals, half its birds, and most of its plants exist nowhere else on earth. However, due to slash and burn agriculture and poor management, only 26% of the land is forested. The island is subject to tropical cyclones that bring torrential rains and destructive floods, such as those in 2000 and 2004, which left thousands homeless (Ball, 2007).

Following a repressive French colonial rule, Madagascar gained independence in 1960. Its military seized power in the early 1970s. Instead of becoming a socialist paradise, the economy declined. In 1982 the government was forced by the IMF to adopt a structural adjustment programme. The World Bank estimated that 70% of Malagasy live on less than \$1 per day. Poverty and the competition for agricultural land have put pressure on the island's dwindling forests, home to much of Madagascar's unique wildlife and key to its emerging tourist industry. Agriculture dominates the economy. For more than three decades Madagascar had the world's fifth-lowest GDP growth rate (0.5% per annum). In recent years things have improved. The island retains strong ties with France as well as economic and cultural links with French-speaking West Africa

Although Madagascar's Government generally respects the human rights of its citizens, security forces have used lethal force to disperse demonstrations. Prison conditions are harsh and life threatening; with some prisoners physically and sexually abused by other prisoners. Women continue

to face some societal discrimination. There are reports of child labour and unconfirmed reports of trafficking in women and girls (US Department of State, 2004).

Starting in the late 1980s, Rio Tinto Exploration identified a major mineral sands resource in the Fort Dauphin region of southern Madagascar (Mandena, Petriky and Sainte-Luce). Simultaneously it initiated preliminary social and environmental studies that evolved in the mid-1990s into a full time social and environmental programme operated by Rio Tinto's wholly owned QIT-Fer et Titane as QIT QMM (QIT Madagascar Minerals). QMM employed five anthropologists and socio-economists whose studies included the potential impact of the project on material and social well-being of the local population.

The SEIA submitted to the government in 2001 proposed an environmental mitigation and rehabilitation programme with social aspects that required collaborative efforts at the local, regional and national level. Private-public partnerships and alliances were established to expand project benefits to alleviate some of the causes of poverty, environmental degradation, and poor health in the region. Regional development and community development plans were established and measures adopted for capacity building and institutional strengthening. Public health, education, micro-finance and other initiatives were taken. Special efforts were directed towards “vulnerable groups such as women, ethnic minorities, the very poor and other socially or economically disadvantaged groups, as these groups are often the most adversely affected and least equipped to benefit from the positive impacts of the project.” An emphasis was placed on local employment, training and an enterprise promotion strategy to develop local supply and service capacity (QIT, 2007).

It was mentioned during the interviews that NGOs, not to their credit, supplied with a great deal of finance for Madagascar, for quite a while dedicated about 70-75% of the development budget to flora and fauna, not to poor people. Rio Tinto encountered opposition to the project mostly environmental, with NGOs focused on Madagascar as a biodiversity hotspot. The criticisms were “more animal rights than human rights.” Local people make extensive use of charcoal from hardwood, depleting an irreplaceable resource. Rio Tinto initiated a reforestation effort. However, the local people do not like substitutes for hardwood: although softwood grows quickly it takes 4 or 5 times as long to boil water, does not give off as much heat, and produces offensive smoke.

In addition to Conservation International, WWF and FOE criticized the project. In 1999, environmental and human rights campaigners including FOE voiced concerns at Rio Tinto's annual meeting. Signs protesting, “People before Profits” and “Rio Tinto—corporate greed, global grief” paraded outside the meeting. Friends of the Earth (FOE) objected that while the company may have spent money to minimize environmental impact “they have failed to show how they will replace

precious habitat that has evolved over millions of years and how they will resolve long-term impacts.” (FOE, 2004)

Conservation International (CI) reviewed QMM’s SEIA with a focus on potential impacts on biodiversity, natural resources, and the health of the communities, and the company’s overall environmental and social practices (Porter et al., 2001). It applied its guide for responsible mining (Sweeting and Clark, 2000). The review, mostly concerned with biodiversity and conservation, noted that despite “extensive and carefully planned efforts to consult with local stakeholders” it had not collected all the villagers concerns and raised questions about systematic follow up. It noted the “social program...is based on solid diagnostic work.” Concerns were raised that affected groups “do not appear to be aware of their legal rights regarding compensation.” Other concerns included loss of fishing revenue, whether proposed tourism developments would result in a net benefit, migration pressures on littoral forests and the risks of HIV/AIDS. The review recommended improvements in QMM’s conservation strategy, more consultation in its social practice, and additional impact assessment. Although Rio Tinto revised its mine plan, FOE continued to oppose the project on both social and ecological grounds while CI and WWF dropped their objections (Moody, 2007).

QMM agreed to provide some funding for schools and clinics, however, areas of concern were water supply, sanitation for workers and the influx of people the mine would attract (Frenkiel, 2005). Although Rio Tinto was aware that the potential introduction of HIV/AIDS into Madagascar is a critical risk and one that it was committed to managing effectively (Rio Tinto, 2008), there was an outbreak in 2007. Tests indicated that third of the region’s sexually active population (some 17,000) may have the STD. The economic boom associated with mining projects attracted prostitutes and international mine workers. This raised fears about HIV/AIDS. The health minister was concerned and initiated a treatment programme and additional sexual health education in the area (Hogg, 2007a).

A 2007 study suggested, “differences of understanding about a new mining project in southern Madagascar have already led to mistrust and social conflict which, unless addressed, could escalate” (Harbinson, 2007). Rio Tinto has invested a considerable amount of time and effort to focus on social and environmental concerns. It will be interesting to monitor the effectiveness of its innovative multi-stakeholder partnerships in dealing with the complex problems faced in Madagascar.

4.2.6 Junior Companies and Canadian First Nations

While some of junior mineral exploration and mining companies interviewed were adopting positive principles and practices, the sheer number and geographical diversity of alleged complicity in

human rights abuses demonstrates that more of these companies need to follow a more positive approach. Environmental concerns used to be the most critical, now companies understand that social considerations are paramount, followed by environmental, and engineering is third. Some junior company executives mentioned that they have anti-bribery policies

An early challenge encountered in Canada by junior mining companies in the late 1980s was when First Nations people became more aggressive in efforts to receive government recognition of their land rights. While the First Nations and companies were waiting for the government to resolve land claim disputes, development costs were escalating.

As a result of prospecting and claim staking experience, some indigenous groups were familiar with mining and recognized the leverage they could exert to participate in social and economic benefits from developments by saying no to any project in their traditional territory. The strength of their negotiating position was exemplified when a developer was told the mine might not proceed “for all we care, the sheep can sleep on your gold.” Companies have found the First Nations were tough negotiators who insisted there would be no new mines without a social-economic benefit agreement. Initially it took a long time to arrive at an agreement to develop a new mine while the land claims disputes remained unresolved. Mining prospects typically take 3 or 4 years of exploration; followed by a couple of years of feasibility; then 2-3 years of permitting, before construction starts. The general public does not understand that it can take 8 – 10 years from finding a mine before it is in production.

One of the First Nations established a development corporation to generate cash flow by providing construction and other services to mineral exploration and mining projects. At first it created jobs in construction and highway maintenance activities, and later through catering, mining and mine supply services.

A junior company recognized in the late 1980s that it needed more than traditional technical and financial skills. It has expanded its capacity to include environmental, socio-economic, and graphics capacity, in addition to project evaluation, engineering, geological, industrial relations and accounting functions. Experience has shown the need to engage with local communities early. To be proactive, as soon as it acquires a property, one company develops a plan to fulfill its social and environmental responsibilities. It engages professional independent polling firms to identify the baseline local perceptions of the mining industry, perceptions of public awareness of the project, and perceptions of the company, its credibility and associated concerns. It makes efforts to establish trusting community relationships. A strategic approach is taken to slowly build up project support over time to peak when political decisions are being made to issue permits. During the operating

phase, different types of support are required. Initially a proposed project requires multi-stakeholder support to obtain permits. Local hiring, business development opportunities and cash flow into the communities demonstrate whether prior commitments are met and community support continues during construction, operation and closure.

Although that company does not have a specific policy paper formalizing its approach to community relations, project managers are directed to ensure that social responsibility and a social consciousness are integrated into its projects. It has formalized policies for local hiring and “responsible environmental mineral development.” This company relies on a belief that most geologists being outdoor lovers are the best conservationists. At an early stage in a project it makes efforts to inform and educate people in local communities about the work involved and length of time it takes to develop a mine and attempts to keep expectations realistic.

Junior companies are concerned that sophisticated, anti-mining NGOs, funded by industrial trust funds from the U.S., cause problems by giving a negative impression of mining and its impacts. To bolster that position, activist NGOs sponsor site visits to some mines in the U.S. which were not properly reclaimed and where American Indians are vociferous in their opposition to mining. Developers characterize this as fear mongering in local communities that do not have a high level of education or awareness about mining. Strong efforts are being made by industry to counter those efforts by engagement and placing an emphasis on social and economic concerns.

4.3 Labour Rights

This section discusses labour rights and the problems of forced labour and child labour. Conflicts over labour relations are given historical perspective from the cases found with Rio Tinto in Spain. The controversial Rössing uranium mine in Southwest Africa faced opposition from the Anti-Apartheid movement, the anti-nuclear lobby and encountered significant problems caused by critical management information being concealed from head office. This case is discussed because it was pivotal in changes in how the company engaged with other stakeholders and adapted its management approach and structures as circumstances require. An examination of Rio Tinto’s labour management disputes in Australia is included. Health & safety cases considered include historical accident incidence and environmental impact at the Rio Tinto mine in Spain, a lead poisoning scare at the Avonmouth Smelter in the U.K., current accident incidence in China and South Africa, in addition to HIV/AIDS and gender questions.

The degree of respect for labour rights within the mining corporation itself is one important test of its overall respect for human rights. Labour rights are human rights that encompass the

freedom of association and the right to collective bargaining, in connection with all other rights. ILO Conventions define such rights as those relating to forced labour, child labour, health and safety, etc. How to ensure workers rights, health and safety is the first priority of organized labour, but in many countries they would also want a more effective voice in decisions that affect them. Labour rights can generate specific points of conflict: for example, six trade unionists per month were killed in Colombia, and the right to collective bargaining is weak in China (Kovalik, 2001; ICFTU, 2003; ICFTU, 2006). Trade Unions have occasionally negotiated clauses in their labour contracts involving employee monitoring of human rights abuses.

According to information from the interviews, the mining industry has a reputation in some quarters for using workers only for hard labour. A perception is that they are not paid to think, and if they do, they are punished. With an average of eighteen years of service per worker in the U.S. coal mining industry, labour believes that it has a lot of good ideas to offer, but believes that it is blocked because if management accepts this then it would in effect have to give up some of its powers to the worker. Although the potential benefits are huge, the conflict culture often held by front line managers may be hard to change because they feel threatened.

In Brazil most companies in the productive sector agree with the ideas of human rights, but they are worried that developed countries will use human rights concerns to create non-tariff barriers to commerce. Industrial groups are more aware of Brazilian NGOs being active with questions of employment rights and health and safety rather than hearing concerns about guarantees of other human rights.

Some see the rights of labour as a fundamental component of sustainable development. Radical groups can use the lack of respect for the rights of labour to mount global attacks on multinational corporations and the international structures that support them, such as the World Trade Organisation.

Although not all ILO conventions have been ratified, member states undertook to apply their spirit. ILO works to encourage and help countries to ratify them. Unlike the United Nations, the ILO has a monitoring system for countries that ratify an ILO convention whereby member countries report regularly on conventions and how they are implementing them. An employer or worker or third party can complain to ILO if they believe that a government that has ratified a convention is not following it. ILO uses a committee of experts to investigate and advise what needs to be done. Typically complaints are by trade union and others about the core conventions and decent work problems.

Occupational safety and health, missing from the conventions, is a core part of ILO's work.

Workers should be free to choose to join a trade union or not; have a reasonable safety net; no child labour; no discrimination and at the end of their life be healthy and safe. An umbrella convention on safety and health is proposed that formally includes safety & health in mining.

As with other industries, things have changed over the past 20 years in mining. The work force has been shrinking with major job losses due to structural changes, especially in Central and Western Europe. Since the miners strike in the U.K., the workforce has shrunk to fewer than 7,000 workers. Massive job losses have been hard for the trade unions. In many countries trade unions were agents of change; in some countries they have been bypassed by the transition to service industries. Miners have been left by the roadside - manifested by demonstrations in Romania where they invaded Bucharest.

The mining industry made huge investments in technology, moving away from working 5 day-2 shifts to 24/7 operations that require more flexible and highly skilled workers. Those who remained in the industry are still well paid. The declining level of unionization is a global phenomenon. The few hundred people employed in new surface mines are unlikely to be unionized. Union influence on pay and working conditions is not so strong. Unions are trying to replace a shrinking membership. Global union federations are also losing members; e.g., chemical and miners and steel. Today the workforce is a fraction of what it was consequently with less money flowing into unions. In the past workers typically wanted less work with more pay. Today workers want job security and post-employment training. Some strong industrial action had been caused by industry's refusal to countenance trade unions, especially in Australia where Rio Tinto and the trade unions had a long battle (a change in Australian law allows direct negotiations between the company and workers). The company will make an offer to one worker and then bargain differently with another, which puts the individual at a disadvantage, rather than engaging in collective bargaining. This was initially an Australian approach. As mining became global, companies want to put such practices in place wherever they open new mines.

The global union movement was slow to adapt when these changes were taking place. Industry changed faster. Federations now try to negotiate company-wide agreements. There are almost forty such agreements; e.g. the global mining union has an agreement with one company that has agreed to adhere to certain practices wherever it has operations. Many of these agreements include adherence to the right to work. ILO, not in the negotiation process, acts as a facilitator to establish the core labour standards that are the foundation of global agreements. Mostly companies adopt practices from their home country regardless of regulations since it is difficult to justify accident rates higher in one country than another. The company may not be required to report at the

national level (causing a lack of transparency); hence the attempt to get cross-border union involvement with cross border companies.

4.3.1 Forced Labour

Forced labour has been prevalent in mining for thousands of years. In Roman times, slaves who worked at the Almaden mercury mine in Spain had a life expectancy working in the mine of less than three years (CAO, 2000). Diodorus Siculus wrote that “Romans obtained great wealth by buying large numbers of slaves and using them to win minerals in Spain” and “those who exploit the mines in Spain find their hopes fulfilled and pile up enormous wealth from their operations.” (Rickard, 1928). Posidonius wrote “Mining is profitable beyond measure there, because one-fourth of the ore brought out by the copper workers is pure copper” (Checkland, 1967). Posidonius has been interpreted as describing something akin to a nineteenth-century gold rush (Richardson, 1976).

In Roman times some free men but mostly slaves and criminals worked mines, with as many as 10,000 slaves working at Rio Tinto (Avery, 1974). Life sentences of exile and hard labour in mines and quarries under “horribly harsh and degrading” conditions that “often proved fatal” were common (Gustafson, 1994). Although slaves, there were distinctions between labourers and those with quasi-professional skills who gained privileges. Diodorus Siculus described five conditions under which miners worked: (a) all chained; (b) working day and night without rest; (c) having no means of escape; (d) beaten to keep on working until they eventually died; and (e) working naked. While some suggest he was exaggerating, archaeological evidence supports (a) and (d). All these conditions except (c) were included in a letter written independently in 257 by Cyprian, the bishop of Carthage to nine other bishops (Davies, 1955). Mining conditions were hazardous; “many skeletons, with their tools alongside them, have been found entombed in the ancient galleries” and the shackled bones of a criminal were found in a grave at Rio Tinto (Avery, 1974). Although an amnesty was granted in 386 to those sentenced to the mines, later decrees (in 408 and 428) still provided for life sentences of work in the mines (Gustafson, 1994). Wars of conquest provided a source of slaves to work the mines (Checkland, 1967). During the first and second centuries, a large proportion of mine workers were slaves (Jones, 1980).

As recently as the mid-1900s, convicts were essential for profitable coal mining in the USA (Podobnik, 1998); for example, Alabama supplied convicts to work in mines up to 1928 (Blackmon, 2001). The convicts were cheap and were also used when workers went on strike. Globally, prisoners have frequently been forced to work as miners in labour camps during periods of war, and there are recent reports that prisoners have been forced to mine asbestos without protective clothing in

China, and to work at gold mines in Tibet²² (The Week, 2001; Marshall, 1999a).

4.3.2 Child Labour

Children comprised as much as twenty-five per cent of the coal mining labour force in Nova Scotia, Canada, until 1923, when legislation ended the practice (McIntosh, 2000). The large number of women and children working in small-scale mining operations in developing countries results in workplace fatality rates up to 90 times higher than in industrialized countries (ILO, 1999). Artisanal mining, particularly alluvial sluice mining, provides examples of social degradation involving children and their families.

An analysis of child labour data for 2000 and 2004 indicated that 0.8 percent of working children under 18 years old in 2000, i.e., 2.8 million children, were working in mines and stone quarries (Sunal, 2006). The analysis found that in the mining of gold, precious gems and other minerals in many countries throughout the world most children were forced to work in hazardous conditions. The ILO reported that most child labour in mining and quarrying, due to the nature of working conditions with dangers of injury, disease and death, injury, were active in what is known as a “Worst Form of Child Labour” (ILO, 2005).

There are programmes to remove children from the worst forms of child labour. They want to remove children from mines and put in them into schools. The approach would make sure the families receive a salary to replace that earned by their children. If the child goes to school it can get a better job. The problem is acute in small-scale and artisanal mining. Gold buyers take advantage of these workers by only paying a fraction of the gold value. The global mining industry recognized the problem and does not employ children. There is a call to action to remove around one million children in small scale and artisanal mining which is a small proportion of the approximately 172 million child labourers including domestic work, prostitution and child soldiers. Children are employed downstream in the diamond and gemstone businesses, which are separate industries. To a large extent the use of children in cutting and polishing is well on the way to be eliminated. For semi-precious stones there are projects to try to sensitive people, e.g. in Sri Lanka. There is an attempt to make sure stores are not buying diamonds cut and polished by children or that could have come from

²² “Tsering Dorje was a 30-year old trader from Kardze (Chinese: Ganzi) County, Kardze Tibetan Autonomous Prefecture (TAP) when he was detained in October 1990 for putting up pro-independence posters. Sentenced to 12 years, he was put to work in gold mines in a network of prisons Tibetans call the ‘Rang-nga-khang’, located in Dardo and Dawu counties. Believing he would not survive his sentence, he managed to escape in February 1993. He described extremely harsh conditions in the mines. Prisoners were compelled by beating to fulfill daily excavation quotas despite meagre food and little sleep. Chinese prisoners, who had no relatives to supplement food, are alleged to have committed suicide in preference to being beaten, starved and worked to death. Other prisoners injured or mutilated themselves to avoid excavation work. Guards are said to have meted out beatings so harsh that limbs were broken and eyes dislodged. Attempted escape was met with extended flogging to a naked body, followed by months of isolation in a small, darkened cell, the main door of which was, according to Tsering Dorje, not opened again until the solitary period was completed” (Marshall, 1999).

mines with child labour. The diamond industry is very sensitive to its reputation; gemstones are another problem. ILO is involved in DRC trying to rehabilitate child soldiers.

4.3.3 Labour Relations

Labour relations have a long history of becoming a source of conflict when workers have asserted their labour rights. For example, the mining industry in the U.S. experienced labour and capital conflicts with the Molly Maguires in the 1860s and 1870s, and in the U.K. the army was used against coal miners in the early 20th century. Labour unrest continues to be a problem in the industry. The Australian Council of Trade Unions complained about Rio Tinto's violation of fundamental workers' rights in Australia, specifically the right to collective bargaining (Maitland, 1999). Other countries continue to experience strikes and labour disputes.

A survey of 138 countries determined 144 people were killed because of their trade union activities in 2006, an increase from 115 in 2005. Colombia remained the most dangerous country for trade unionists, with 78 trade unionists assassinated in 2006, an increase of eight over the 2005 number (ITUC, 2007). Union officials are being killed at an unprecedented rate in Colombia; for example, two leaders of the mineworkers union were shot dead after leaving negotiations with Drummond Coal Company (Kovalik, 2001). When a Colombian labour union went on strike in 1990 against the Cerrejon coal mine, the President of the country called in the military to occupy the mine as it had in previous contract negotiations.

There are more positive attitudes, for example at the Araxa niobium mine in Brazil, where over ninety per cent of the more than 300 employees have worked for the company for more than ten years, the CEO does not write memos or letters to his staff suggesting changes in work procedures, since he acknowledged that after ten years they knew best how to do their work.

Rio Tinto, Spain

Understanding that living conditions influenced industrial efficiency, the Romans enacted a General Mining Statute to regulate operating conditions (Checkland, 1967; Louis, 1921). Attention was paid to worker welfare. In addition to mining concession laws, there were township regulations and rules that covered the temperature of baths, care and maintenance of tools, and providing services such as laundry, shaving, boots and shoes (McElderry, 1918; Rickard, 1928; Checkland, 1967). However, Phillips "expressed a doubt as to whether the existence of excellent Roman laws securing good conditions for the workers in miners could be taken as proof that these conditions were in fact good." (McElderry, 1918)

In 1786, disputes between Rio Tinto's mine administrator with employees at all levels

culminated in a strike and his replacement. Typically, labourers would return to the countryside at harvest time to earn higher wages as temporary agricultural workers. A director general of mines at the time saw the need to improve working and living conditions, introduce mechanization, social benefits such as more housing, a fund to pay for sick leave, and a pension plan. He engaged in discussions with the workforce to obtain their support. The proposed pension plan was abandoned because care of the aged was accepted as their village community's responsibility and in the end most of the proposals were not followed. However, operating changes reduced accidents at the mine work face (Avery, 1974).

When workers were fired in 1810 after a strike against management abuses, they rioted for four days. The mine buildings were destroyed; orchards and gardens were ransacked and looted. Food was scarce in what had become a poverty-stricken area. Among the people who died of starvation four were senior staff. From 1874 to 1888, there were frequent short, poorly coordinated strikes and attempts to organize trade unions at Rio Tinto. To deal with French and Italian communist provocateurs who were trying to organize the workers, the mine hired them at higher wage rates and provided with better houses than other workers. Life was made so unbearable for the newcomers by their jealous co-workers that they did not stay long (Burnaby, 1979).

During that period there were frequent contemporaneous conflicts in the U.K. between capital and labour leading to strikes and lockouts (Tredinnick, 1875). At Rio Tinto, there were spontaneous angry reactions to incidents as well as attempts by the anarchists to demonstrate their influence. The Company's strict policy on drunkenness (usually dismissal for second offences) and theft at work (immediate discharge) was resented. Company management did not understand that much of the drunkenness and theft was due to migration into the area, and the resulting social unrest of a community expanding rapidly. Some 25% of the copper produced and a large proportion of equipment and tools were stolen. Workers were also fired for political agitation. Corporate paternalism was seen as despotism and led to strikes. Avery explains that while wages were better than agricultural workers, they were lower than what the local and expatriate staff were earning.

Initially "abundant" labour was comprised of "industrious and peaceful" workers (Rio Tinto, 1877). As the operations expanded, the workforce increased from about 1,000 in 1874 to more than 7,000 by 1879 and 9,000 by 1888 (Avery, 1974; Rio Tinto, 1880). By this time, people were more aware of their rights and had gained experience protesting environmental destruction (Checkland, 1976).

The company failed to anticipate that a large influx of people would destroy much of the social fabric of the old mining community, creating hostility between the people already there and

social tensions with the newcomers. Avery observed that the Chairman had a well-developed social conscience evidenced by his willingness to provide decent housing and introducing work- free Sundays.

In 1885, a deputation of the Board decided to build houses for “the greater comfort and health of foreign staff” with cost written off over three years (RTC, 1885). However, it rejected a proposal to keep cows, and instructed the new General Manager to develop another plan to procure a milk supply. The General Manager was authorized to use existing buildings in two villages to establish a casino or club for the workmen (RTC, 1885). In September 1895, Rio Tinto finally agreed to demands and opened the railway to passenger service, which proved profitable, and without any adverse impact on production (RTC, 1896).

Matheson established a scholarship that rewarded the best students in local schools, while at the same board meeting that approved this, he rejected the local mine management’s decision to pay workers to stay home when their families were ill with small pox (RTC- Board Minute). Schools built by the company which taught in Spanish, charged nominal or no fees (Rio Tinto, 1880; 1890). The approach at the time towards social problems was one of paternalism not engagement. With a belief in hierarchy and authority, the Scots enforced strict discipline and generally had little or no concerns about Spain and Spaniards. During Rio Tinto’s annual meeting shortly after Matheson’s death, he was acclaimed by the company’s auditor as having “a character which was beyond reproach” (Rio Tinto, 1898).

British segregationism and paternalism was not questioned by the Spanish prior to 1914, and remained unchallenged until 1931. Management did not trust their workers enough to allow them to administer the villages where they lived (Checkland, 1967). British enterprises in Spain faced similar problems as companies in Britain: to what extent could the local community be trusted with power and responsibility for community affairs, and to what extent should reasonable living conditions be provided in a paternalistic approach? (Checkland, 1967). No social insurance was provided. Workman’s Compensation was introduced in 1900 following a rudimentary system legislated in Britain since 1887 where pension legislation was enacted in 1909. Liability concerns under Scottish law constrained the use of corporate funds for social programs, which operated under a “system of gratuitous charity.” This system led on the one side to arrogant management, and on the other to villagers exploiting the system irresponsibly (Checkland, 1967). British directors in the late 1880s tended to regard a mining area as their realm, ignoring the social impact caused by their operations, and they were less concerned about housing, social and recreational activities than German mine owners (Checkland, 1967).

Rio Tinto's directors could not understand Spanish workers' acrimony, attributed by Avery to "stresses of life at Rio Tinto" exacerbated by poor labour management (Avery, 1974). Since labour was a major component of operating costs, demands for improved wages, welfare services and social amenities were unwelcome.

It was difficult for the mines to attract technical staff although jobs were well paid plus had benefits such as free housing, medical care and travel allowances. Nevertheless, about 100 of the 284 middle and senior managers did not remain as long as two years and the average time stayed was eight years (Harvey and Press, 1989). An appreciation of a more scientific approach to engineering in the late 1800s and a "sense of outrage at the speculation, fraud and corruption which plagued the international mining industry" led to the establishment in the U.K. of the Institution of Mining and Metallurgy (IMM). Although sharing knowledge was appreciated as a mechanism to make social, economic and technical progress, Rio Tinto was typical of the larger companies that "responded to the formation of the IMM by requiring all its engineers to sign a secrecy agreement." However, eventually it realized that IMM membership reflected professional capability and allowed its staff to become active in the Institution (Harvey and Press, 1989)

In the early 1900s management resistance to workers demands led to conflicts. In 1900, the mine manager "handled a troublesome strike among the Miners at Rio Tinto and Workmen at Huelva with great tact and judgment" while the Spanish Government was credited "for the prompt measures they took to maintain order" (Rio Tinto, 1901). There was a strike in 1908 by 200 workers at the Rio Tinto mines (Mining Journal, 1908). Labour discontent in the country continued with meetings held throughout Spain in an attempt to gain better working conditions, such as an eight-hour day, a minimum daily wage "and protest against the objectionable conduct of the Rio Tinto and other mining companies" (Mining Journal, 1909). In November 1910 when there was another strike at Huelva, troops were moved into the area with costs of their barracks paid by Rio Tinto (Mining Journal, 1910; Harvey, 1981). When the railway went on strike in 1912, Rio Tinto supplied workers to replace the striking government employees. Miners also struck at other operations in Spain.

April 1913, there was a strike of Huelva wharf loaders. A strike at the mine in October 1913 for an eight-hour day, curbing contractors, and a minimum wage affected some 17,000 workers. It was attributed to "two or three professional agitators, who have been disturbing the workmen of the district during the past six months." In November 1913, seven people died in a fire at the mine (Mining Journal, 1913 and 1913a). The strike was settled in November 1913 (Mining Journal, 1913a).

An analysis of the causes of strikes in 1913 at Rio Tinto determined that its workers were the

last Spain to become unionized and take industrial action against their employer. Rio Tinto was a company town run paternalistically. While socialism was spreading throughout Europe, Rio Tinto had been isolated from the movement. The Company had gradually improved working and living conditions that inoculated its workers against agitators. However, “the moment came in which the profits had to be reduced more than the shareholders liked...due partly to a half slavery of the working class, and then the battle became grave and serious” (Mining Journal, 1913b).

The strike forced the company to begin to change its archaic policies and enter into a dialog with its workers. It had managed to keep its employees afraid of losing their job by making “the director appear in the guise of a fearful Caesar...if the workmen were obstinate enough to create difficulties, the company...would stop the working, and threatening them with the gravest loss” (Mining Journal, 1913b). This was perceived at the time as an inappropriate way to manage the company’s fifteen thousand workers as they were deprived “of the free use of their rights. The workman...is an automaton, well paid, but having his life controlled by the company...strikes will not have a definite solution til the company abandons the erroneous policy that has long been developing” (Mining Journal, 1913b).

As predicted, another strike in January and February 1914, involved 14,000 workers who claimed the company did not implement its side of the settlement. It was resolved after both sides agreed to bring in the Government as an arbitrator. There were partial strikes in March and April 1914. When in June 1914, the strike committee asked workers to reduce production from 6,000 to 1,000 tons per day, the company responded with a lock out. Sales and shipments, which slowed in July 1914, were not expected to improve until after the war (Mining Journal, 1914, 1914a and 1914b). Rio Tinto’s 1914 annual report advised its shareholders that “to prevent dire distress amongst the workpeople, the various departments were...kept going on the basis of working three days a week...although all the mineral thus produced could not be disposed of.” (RTC, 1915)

Industrial unrest continued with numerous strikes during and after World War I. Although there was continuous employment with full production, there was a lot of unrest in all parts of the labour force. Since foreign engineers were given preference over Spaniards, legislation was enacted to force foreign companies to employ local professionals (Mining Journal, 1920).

Strike of 1920, Rio Tinto, Spain

From the spring of 1920, the longest series of strikes occurred at the mines in Spain. Their origin appears to have been a dispute at the port about pensions and wheat grown by the company used for bread making (Browning, 1920). By the end of the year, the operation was stopped by a

bitter conflict that continued until it restarted in 1921 (Rio Tinto, 1922). The conflict included a war of words in the press. Management complained in a letter to *El Sol* newspaper that about newspapers in Seville and Madrid “maintaining an absolutely mistaken campaign against the Company... absolutely untrue...alarming public opinion” (Browning, 1920a). The General Manager told the company’s head office he was convinced that the strike was principally organized and funded by political opponents of the Spanish government including the Sindicalists, and two of Rio Tinto’s competitors (The Tharsis Company, and The Alkali Company). He asserted “the men are being used as pawns in the game,” noting the Rio Tinto workers were paid more than the other two companies with better working conditions (Browning, 1920b).

When Walter Browning, the General Manager, confronted the workers, he exasperated the situation. Although two of his assistant managers saw a worker miss hitting him with shots from a shotgun, they disliked Browning so much that they refused to testify against the assailant who was then released from custody.

An August 1920 Reuters dispatch carried by the British press reported that as a result of the strike children had been evacuated to Huelva where they were volunteers looked after them on a charitable basis. The Rio Tinto council and others in the area resigned because of the strike (Financial Times, 1920).

Five hungry children were reportedly arrested and incarcerated for stealing some loaves of bread (El Pais, 1920). The following three paragraphs in a November 1920 letter by two assistant managers presenting their views about labour problems at the mines could have been written in 1888, 1920, or today.

“The Company’s present unpopularity has been brought about by misconceptions due to lack of honest plain speaking, and to failure to face the facts, and make the proper deductions from them.

Because ... the Company secure in ... good intentions, has failed to recognise certain facts, and continues to believe that its actions are irreproachable, that it is so much detested today. We have not given the same care to the human element of our operations as we have to the mechanical. It must be recognized that social engineering is just as essential to economical operation, as mechanical or any other branch of engineering, and that the problems involved must be dealt with on something the same lines.” (Douglas and Gray, 1920).

The assistant managers asserted that most of the labour conflicts could have been avoided, taking their share of the blame. Aware of strong feelings of resentment against the company, they noted the “very profound, and almost universal” lack of confidence in its administration that had ebbed and flowed since the 1914 strike. While some Directors believed they were ahead of the times on social questions, almost all the employees distrusted the company’s sincerity and believed “that force is the only argument that will have any effect.” The assistant managers observed that the wide

gulf between English and Spaniards at Rio Tinto did not occur with the French at Peñarroya, and advocated the need to respect the locals and learn Spanish to communicate better. The General Manager's sole margin notation in the report was to disagree with an observation that "it is a policy to discourage all social intercourse, and that any Englishman who ventured to invite a Spaniard to his house would be regarded with disfavour."

The French branch of the Rothschild family, who were Rio Tinto's major shareholder, nominated Sir Rhys Williams, a Liberal MP, to seek a settlement. He assessed labour conditions at Huelva and Rio Tinto, comparing them with other mines in the Province. He suggested a possible means of ending the strike while weakening two strong unions (Williams, 1920). However, "Browning's policy of starving the strikers into submission was probably more successful in getting a return to work than any of Williams's efforts" (Avery, 1974).

The unions' exhaustion and political changes contributed to having no further strikes from 1921 to 1930 (Avery, 1974). In 1934, labour and management clashes led to another major strike. In 1936 the General Franco's Nationalist government insisted the company reinstate and pay compensation to the 1,197 workers fired at the end of the strike (Harvey, 1978).

Comment

The strike of 1920 is typical of the long history of labour conflicts with the mining industry. Douglas and Gray recognized that social questions needed as much attention the mine management was giving to technical matters. Their observation that the lack of respect for local people was causing problems was not appreciated by senior management, but can be seen as a root cause of conflict in most of the other cases discussed in this document.

Rössing Uranium, Namibia

Rio Tinto's next controversial overseas project in the 1970s after Bougainville was Rössing in Southwest Africa where the country was controlled by South Africa during the time of the Anti-Apartheid movement, and when Uranium and the anti-nuclear lobby were major problems. It had all the ingredients for trouble from day one. It also had serious technical and social problems attributable to management. Worker health questions linking uranium exposure to cancer incidence arose after years of operations. This case is included because Rio Tinto's Rössing experience caused changes in how it engaged with other stakeholders and led it to adapt its management structure.

Peter Louw was prospecting in the Rössing Hills of South-West Africa (later Namibia) during the 1920's, when he identified mineralization that was radioactive. A two-year exploration program in the 1950s by the Anglo-American company concluded the deposit, located in the Namib Desert 65

km inland from the port of Walvis Bay, and was too small and low-grade to be economic at that time. In the 1970's, additional work, including underground sampling and a pilot plant test by Rio Tinto, led to the design of a mine to produce 5,000 t/y of uranium oxide that started operating in March 1976.

Unanticipated wear of machinery and piping by the highly abrasive ore also damaged the tailings disposal system. Other plant design problems led to reduced recoveries and operating inefficiencies whereby less than 800 tonnes uranium oxide were produced in the first year. A major plant modification program designed to resolve the problems was started in 1977, however, just as it was finishing in 1978, a spark in a motor caused a fire that destroyed one of the two solvent extraction plants (Brigg, 2006).

According to the interviews, although the mineral deposit was estimated to be a potentially viable mine, given the low uranium price prevailing at the time, it needed to be developed within a tight budget. Roy Wright, the executive involved was said to have sent a message to cut every corner to save costs and develop the project in the cheapest way possible, ensuring it came in to production under budget. That instruction was taken literally. Project management did some very stupid things in both the social and technical engineering areas. Had they thought more about what they were doing and spent a little more money, they would have had much less of a problem.

The question arose “How the hell did this happen?” A high-level investigative team from Rio Tinto's head office examined the many technical problems and determined that in addition there were significant social problems caused by the design and layout of the town. It became clear that, although not exactly developed on a shoestring, all the corners had been cut such that the project had not been developed as it should have been done, or would have been done by anyone else in Rio Tinto. After Sir Mark Turner, the then chairman, visited the project, he called senior management into the Board Room and asked, “What do we do? Close it down? or, Do it properly?” The decision to do it properly cost hundreds of millions of pounds and represented a two-year project, involving not just reengineering the plant, but also social aspects. The town had been built as a typical New Town little box village as found in Northern Ireland, the U.K., or Australia, etc. Nobody had bothered to ask the local people what they liked or what they did not like. Henry Smith, sent out to re-engineer the town asked the people who were living there: “What do you want?” The town was completely regenerated to accommodate traditional social patterns. The whole town was turned inside out. Front gardens became enclaves where children could play without traffic; roads were rerouted around the back of the houses. The houses themselves were greatly improved, etc.

There had been allegations about social conditions at the mine. Some people had been living

in contractor's camps. Photographs taken of accommodation surrounded by barbed wire near cement storage where wire fences had been put up to keep children out gave the impression of a fortified encampment. The initial workforce was mainly unskilled and migrant.

The Rössing project was initially controversial because South Africa's apartheid government was administering Namibia (former South West Africa) in defiance of United Nations resolutions citing the "illegal occupation of Namibia by racist South Africa" (United Nations, 1986a). The United Nations General Assembly and the UN Council on Namibia criticized the illegal seizure and rapid depletion of Namibia's natural resources. The UN Council for Namibia accused multinational companies of reinforcing the country's apartheid system. "Since the benefits from those sectors accrue almost exclusively to whites, it can be said that transnational corporations are of particular importance to the preservation and growth of the privileges enjoyed by the white minority." Rössing also became a focus of anti-mining groups allied with the Campaign for Nuclear Disarmament as a supplier of fuel for military end-uses.

In 1978 the Rössing Foundation was established to promote sustainable development through training, education and enterprise development. Rössing Uranium funds the foundation, which also administers projects on behalf of non-government organizations and foreign aid institutions.

As a major employer and contributor to Namibia's economy, Rio Tinto continued to operate the mine after Namibia became independent from South Africa in 1990. A ten-year period of uranium prices around or below U.S.\$10/lb with depressed market conditions led the mine to reduce output to 75% capacity in 1998 and reduce its workforce. In 2003, it announced it would close the mine in 2007. In 2004, Rössing became the first Western uranium producer to export to China. A revised plan was announced in 2005 that would keep the mine operating until 2009. However, a significant market price improvement in 2005 led to a reassessment and a decision to invest in new plant and equipment to extend the mine's life to at least 2016. At the end of 2007, the mine employed 1,175 people of whom 97% were Namibian with a male:female ratio of 8:1.

According to the interviews some but not all of the lessons learned from Bougainville were applied at Rössing. A lesson that Rio Tinto learned from this was not to rely completely on reports that come back through the chain of command. Rössing's General Manager was fired peremptorily for not telling the truth. Sir Mark Turner determined they had been led up the garden path. One can never solve the problem of people telling management what they want to hear not what they need to know, particularly in a big organization.

Management Structure

How the Rössing experience in the 1970s changed Rio Tinto was explored in the interviews. The company was changed from a rapidly growing pyramidal structure into a much flatter structure with fewer layers of management to allow more direct involvement between senior and junior levels. However, management style again became a problem again as the company grew very rapidly. Whenever a new project was developed a new director was appointed to be responsible. Soon (in the early 1980s) there were some 30 directors, too many people on a board to effectively run any business. It had become very unwieldy with fiefdoms created, such as one in Australia under Rod Carnegie. The problems encountered at Rössing with the pyramidal structure were recreated as enterprises in some parts of the world were being run entirely separately from the main company. Rio Tinto had morphed from a single company into a group of companies.

Non-operational members of the board such as the Finance Director, who were not running their own business fiefdoms, became convinced in the mid 1980s that if the company continued as it was going, there would be trouble. A structure was proposed that could be managed from London that had a new strategic plan to concentrate on what Rio Tinto did well, the mining business, and dispose of what it did not know much about, or was not doing well. More than half of the directors were sacked. It was decided that the non-mining business was non-strategic —if the company could get good prices those pieces ought to be sold. During the late 1980s half the company was sold off.

Rio Tinto relied on a management philosophy that would appoint the best people to run an operation, then give them responsibility and accountability for it. In the past accountability was measured solely in monetary terms. More recently, accountability was being measured in economic, social and environmental terms that are still evolving.

Management Union Relations

Rio Tinto had disputes with labour, primarily with one union in Australia (CFMEU) that represented coal operations employees in the Hunter Valley, New South Wales (CFMEU, 1998). A change in Australia's industrial relations legislation allowed individual employees to choose to enter into work place agreements with a company instead of collective bargaining with the union. According to the company many employees wanted to do that whereas the union was philosophically opposed. Rio Tinto was targeted when it was the first company that tried to test the legislation. The company wanted to use it to change a lot of outmoded work practices such as strict demarcations about heavy equipment operators not taking out a piece of heavy equipment if the FM radio was not

working. The unions could use such practices to slow the operation down. Operating in a highly competitive market the company was concerned if it did not reduce its operating costs, it would lose out to competition elsewhere in Australia and elsewhere in the world. The company believed the CFMEU did not really understand coal mining was a global business with Australian coal miners competing against other Australian coal miners and against Indonesian coal production, etc. The long struggle with CFMEU included strike actions. However, the company now believes its relationships with organized labour are by and large pretty good. Those employees who wanted to switch to individual contracts with the company are allowed to do so; and those who wanted to stay with the collectively bargained labour agreement that the union has with the company are allowed to stay.

The Universal Declaration of Human Rights states individuals have the right to be collectively represented or not. Rio Tinto's statement of business practice on employment and human rights include the right to be collectively represented. The company believes they should not be forced into collective representation; neither should they be precluded from collective representation.

The interviews determined that trade unions, as well as the companies, found entering into a global framework agreement (GFA) with each other was important. The approach of entering into a global agreement with an international labour union (ICEM) was seen to provide a useful framework. A GFA can be used to provide a monitoring mechanism.

A trade union emphasis in Columbia has been on communicating to facilitate a social dialogue to ensure adequate security and safety for trade union representatives and leaders and others in a country where a large number of them have been murdered. Union pressure, often behind the scenes, was cited as a contributing factor that pressured companies into withdrawing from Burma, and improving conditions in other countries. Working through the ILO is important for trade unions that continue to explore areas of increased cooperation and joint work with industry groups such as ICMU, together with direct communication with companies in the extractive sector. Other areas of concern to the labour movement in addition to entering into GFAs, safety and security for trade unionists in Colombia, and the anti-investment policies around Burma, include confronting HIV/AIDS, reducing the huge number of mine accidents and fatalities in China, and supporting human rights.

4.3.4 Health & Safety

Mining conditions in many countries have become safer with the adoption of standards for health and safety practices, yet in some jurisdictions archaic conditions still prevail, although this is no longer the case in the industrialized countries. In other countries there are still reports of many

mining-related deaths, a measure of health and safety problems. Efforts to maintain healthy and safe workplace require on-going attention as shown by an analysis of the early days of Rio Tinto mine in Spain and the lead problems at the Avonmouth Smelter in the U. K. The emerging health & safety problems caused by new technology are emerging areas of concern.

Rio Tinto, Spain

At Rio Tinto's mine in Spain during the 1800s, the accident rate at the mine was initially very high, and was reduced significantly through a major effort at health and safe training to an average of 183 per year with five fatalities by the early 20th Century. From time to time an increase required intensive training to reduce their incidence (Avery, 1974). There were 11 fatal accidents at the mines during January - June 1908 compared with 20 during all of 1907 (10, 8, 15 & 11 in the previous four years respectively) (Rio Tinto, 1908).

The environmental impact of ancient mine workings included silting Andalusian rivers from the mine waste thrown into them. Forests were destroyed to meet the demand for charcoal to smelt ore resulting in reduced rainfall, increased aridity and devastation. Pliny commented, "the operations of the miner disfigure the face of nature and diminish its fruitfulness" (Rickard, 1928). Acid salts from the decomposition of pyrites made the rivers incompatible for fish or other forms of life to survive, and unsuitable for irrigation.

After the mines were abandoned an estimated 70,000-80,000 tons of copper were transported out to sea by the Rio Tinto River (Phillips, 1884). Villagers saw that iron dissolved in the water, and a thick red deposit of silt (copperas) that accumulated for centuries on the river bank was collected every August/September for the Archbishop of Seville (Avery, 1974). Rich in iron sulphate, it was used in dyeing, tanning and ink making.

Rössing, Namibia

A former Rössing engineer who contracted cancer unsuccessfully sued the company for compensation in the U.K courts. In 2005, "unusual uranium levels" were reported some 25 km from the mine in the Swakop River groundwater that is not used for drinking but crop irrigation. A project of the South African Medical Research Council ("Cancer among current and ex-employees of Rössing Uranium Mine, Namibia") is comparing patterns of cancer among employees of Rössing Uranium Mine to Namibian and South African Cancer Patterns. This led to the establishment of a Namibian Cancer Registry now run by the Namibian Cancer Association.

Avonmouth Smelter, Bristol

The company considered the lead scare at the Avonmouth Zinc Smelter in late 1960s to be more a matter of perceptions rather than realities. It shook people within the Company when those outside questioned for the first time what it was doing, how it was doing it, and why.

A lead scare arose in the late 1960s and early 1970s about workers' health at Rio Tinto's zinc smelter at Avonmouth, Bristol, U.K. The Avonmouth lead poisonings controversy was examined in detail by the Windeyer Committee who submitted a report to Parliament from which the following was extracted (Windeyer, 1972).

A predecessor company to the RTZ-owned Imperial Smelting Corporation (ISC) had been smelting lead and zinc in the Bristol area of England since 1917. A new plant started operating at Avonmouth in 1968. Although the process selected had worked successfully in previous plants, there were there were major unforeseen problems with the smelter which was "subject to frequent breakdowns and unscheduled stoppages...a major cause of hazard to plant operators and maintenance contractors." Fumes and dust containing lead are a dangerous health hazard if the lead is absorbed into the body. Rio Tinto monitored the levels of lead in the air at points of the plant it thought were potentially most hazardous. These data showed that for years workers were exposed to frequent and sometimes consistent levels of lead in the air higher than maximum acceptable levels of exposure in many working areas.

The company's initial measures to protect against lead absorption were inadequate. Despite plant improvements and modifications "conditions remained unsatisfactory." In late 1971, the Company's efforts to resolve the problem through major plant modifications resulted in working environment improvements. While the Company had initially refused to accept responsibility for the health and safety of contractors' employees, later it provided them with washing and changing facilities.

Government regulations required regular testing of workers exposed to lead. Two cases of lead poisoning were reported in 1968, 25 in 1989, 2 in 1970, and 11 in 1971 (all were referred to a hospital for further investigation and treatment). Despite their high levels of lead absorption, the patients had only mild symptoms with no serious or lasting health problems.

Concerns grew about ongoing worker health risks from 1968 to 1972. The Trade Unions' initial confidence that management would provide safe working conditions gradually evaporated until they had no confidence the problems would be solved.

The worker's Union was rebuffed when it pressed for detailed information on individual

blood levels, however, the Company agreed to a visit by the union's medical officer who "expressed serious concern about the state of environmental hygiene in the plant." The number of confirmed cases of lead poisoning did really not reflect the quality of medical care at the plant. "Because of the high quality of medical vigilance and supervision...there were not more cases, and...those cases that did arise were not more serious."

There were probably design errors since similar plants operated without experiencing lead dust and fume levels above maximum permitted levels. Remedial action to ensure lead-in-air concentrations could be reduced to acceptable levels had been taken or scheduled by the time of the Parliamentary inquiry.

High or rising levels of lead in the blood suggested either problems with hygiene or environmental controls. Among the lessons learned was that it was essential to get the full co-operation of workers to maintain good health and safety practices, provide adequate education and training, and ensure adequate information is provided about these conditions in the plant. Maintaining good standards of health and safety depend on line managers and supervisors.

The inquiry noted improvements in training and communications despite management's reluctance to disclose all the relevant monitoring data a change in policy was occurring. As part of a new initiative, a brochure "Lead and You" was prepared and distributed to workers that explained the significance of test results. A failure to match the demand for higher health and safety standards was seen as a reason for the inability of plant modifications to meet long-established standards. A changing dynamic was in progress:

Improvements in health and safety are driven by setting higher targets and measuring results against them rather than against existing lower standards. "[T]his more positive approach could not develop without an initiative from management."

The inquiry concluded that protecting workers' health a senior management responsibility and that a hygiene policy should be defined and made clearly understood throughout the works.

China

During a single week in 2001 there were reports from China that 200 miners may have died in a flooded tin mine in Guangxi (BBC, 2001), while 92 miners were killed in a coal mine explosion in eastern Jiangsu (Bangkok Post, 2001a). There were 5,300 coal mine deaths in China reported in 2000, and many thousands more said to be unreported (Eckholm, 2001).

According to information obtained from the interviews, China has 10,000 cases of

pneumosilicosis whereas Australia has had none for more than 20 years. The U.S. has dust control and is monitoring workers. In China there are thousands of deaths. Safety problems that have been attended to in other countries are not dealt with and there has been a lack of investment in equipment. Coal mine production doubled in fewer than 5 years with virtually no investment in monitoring. There are many accidents with as many as 150 people killed not being uncommon. The ventilation system for 250,000 t/y remained the same when production increased to 400,000 t/y. The premise of keeping coal mines safe is to make sure there is no dust and gas around. A well-known technique is to add air to dilute gas.

In China, fatalities at large state-owned mines are about the same as on India but better than the FSU or the Ukraine that has a dreadful record in terms of incidents. Medium-size mines owned and controlled at the provincial level have accident rates worse than the larger mines. The small mines have horrendous fatality rates.

An example was cited in an interview of a low-level township mine that had not any fatal accidents for at least five years; and had few, if any, serious non-fatal accidents. Some large mines are good performers. Since mine safety can be achieved, the question is why is the government not encouraging others to learn at the national level? China needs a system to get operators together to achieve zero fatal accidents. They do not need foreign experts; but need to try to disseminate good practices throughout the country.

South Africa, Russia and the U.S.

Although South Africa has been making remarkable and sustained improvement in last 10 years especially in reducing fatalities; there is still a high number related to the geology caused by outbursts of rocks. The question arises why not mine by robot? Why do people have to go underground? An underground mine is the only workplace that changes hour by hour; unlike manufacturing cars or sweaters. It changes shape every minute of the day. Problems of remote control are surmountable. There are lots of better techniques. Mines can adopt technology to know where everyone is located using scanners, bar codes or chips etc.

South Africa and Russia are countries where safety statistics raise questions about mine workers' safety. The interviews explored other health & safety questions, for example, India with the second largest work force in mining seemed to have reached a threshold where the number of deaths every year over about 10 years remained constant. The rate of fatal accidents is going up. The barrier is not technical but a lack of political inclination. Coal mine accidents in the U.S. in 2006 and 2007 attributable to lax health and safety practices gained national attention.

Emerging Health and Safety Problems

Many safety problems have been engineered out; but new equipment has brought other problems, such as noise and vibration. A lot of electrical equipment vibration has caused white finger in the U.K.; i.e., loss of permanent feeling or the use of the ends of fingers. This happens quickly; it can happen in 4-5 years, whereas pneumosilicosis manifests itself after leaving the workforce.

Problems arise from new technology. When working 12 hours underground rather than 8; what does this mean for exposure? Working 2,000 hours in a different way, i.e., 7x12 hr gives a different daily dose of noise, vibration and heat. The question is does body sort it out over a year when exposure limits were based on 8 hours? This is a problem that needs more attention. There is a more intense way of working, as companies want more out of equipment.

Rotating shifts of young doctors and workers on oilrigs illustrate the effects of 12-hour shifts. The problem of fatigue is a very modern phenomenon. Motor and decision skills after being awake for a long time show similar effects as having a few drinks. People are put in \$350,000 haulage truck without being tested for proper sleep. The concern about fatigue is that in a team of 14, if one person has the problem of being over tired; the rest are at risk.

New technology is not risk free; the focus should be on safety and health problems that have been secondary; as they do not manifest immediately; but are cumulative things that do not arise at end of one shift. Industry realizes it needs to look at these problems.

Many workers in Australia Fly In-Fly Out (FI-FO): Research had been done on fatigue and FI-FO. Companies used to build a mining town where people lived and worked. Now they build camps. Workers cannot not live with their families with FI-FO and their and homes could be hundreds of km away or further.

According to an interview Omai in Guyana had an accident because people were tired. The supervisor worked for 30 days straight. The health and safety officer worked 12 hr days and was on the 29th day of a 30-day tour during which he worked every day. The manager lived in Trinidad and went back and forth to Canada. It appears to be essential to avoid future problems that the mining industry seriously examines fatigue problems.

Need for Effective Mine Inspection

Effective inspection is important, especially where the mine inspector has the power to close operations. Often there are either too few inspectors or they are poorly paid. The inspection regime in a number of countries needs much to be done to ensue inspection plays a policing role, provides

guidance, and has the means to prevent re-occurrence. The problem in many areas is a lack of resources. An inspector's major role is to check on production and check royalties have been paid, not safety and health, which is a conflict of interest.

The role of mine safety in the U.S. has shifted from mandatory to voluntary. While inspections are a legal requirement generating a lot of citations, many are administrative. Recent serious accidents highlight deficiencies of enforcement in that inspections system.

Some countries ratify ILO conventions and then ignore their enforcement. The most repressive regimes have ratified more conventions than others.

HIV/AIDS

In Southern Africa, AIDS in mining is a major health problem. The mining industry in South Africa has been dealing with AIDS for more than 20 years. Since the first case in 1984, the major mining companies have made huge efforts. The cost of doing nothing is greater than the cost of confronting it even when the drug cost was higher (costs have dropped from thousands to hundreds of dollars). In some countries mineworkers have a much higher incidence of HIV/AIDS than the general population, in others lower. The concern of the union is testing, code of practice; rights of workers, counselling and testing; discrimination regarding HIV/AIDS; The union movement in South Africa is keen to make sure there is no discrimination; companies are leery; they have a falling workforce; rely more on highly skilled worker; if can keep healthy and active. Ages 18-40 are the most susceptible to HIV/AIDS. The problem that needs to be dealt with is that of the smaller companies in Zambia and Zimbabwe that lack the resources to pay for anti-viral treatment.

The number of HIV/AIDS cases in India is approaching the number in South Africa. Problems are inherent in the attitude of the general population: a high proportion would not get on bus with a person with HIV/AIDS. In addition to cultural problems to admit to a need for testing, there has been a high rate of infection through blood transmissions. There is a need for awareness at the management level and with illiterate, uneducated workers. It involves rights questions to get information to people who cannot read and write so they can exercise their rights. The same problem of trying to provide useful information exists in China where people have little or no education. It is important with HIV/AIDS and occupational safety and health to have a joint approach, not just to give orders.

4.3.5 Gender

Dealing with discrimination against women has been a focus of effort by mining companies (Lahiri-Dutt and Macintyre, 2006). There were problems at the Kelian Gold operation in East

Kalimantan, Indonesia, related to abuses of local women in the community by employees. Each business has very detailed employment policies and procedures. Applying human rights in a broad way it should not be condoning or in any way encouraging the sexual abuses of women in the community. When this situation was brought to its attention there was an investigation carried out involving a number of employees in the company and appropriate corrective action was taken.

After Lois Jenson was hired in March 1975 to work at Eveleth Taconite Co.'s iron ore mine located in Minnesota, U.S., she and other women subsequently hired were subject to persistent sexual harassment, abusive language, violent threats, lewd propositions, stalking and intimidation. After Ms. Jenson's complaints to the company were ignored, she filed a complaint with the Minnesota Human Rights Department. This led to the first class action sexual discrimination lawsuit in the U.S. The company, which was found guilty of not preventing sexual harassment, was ordered to educate its employees about sexual harassment and the women were awarded an average \$10,000. On appeal, the Eight Circuit Court of Appeals ordered a new jury trial for the damages. In December 1998, 15 women settled with the company for \$3.5 million in total just before the trial started (Bingham and Gensler, 2003; Seitzman, 2005).

As mentioned earlier in this document, the large number of women and children working in small-scale mining operations in developing countries results in workplace fatality rates up to 90 times higher than in industrialized countries (ILO, 1999).

4.4 Pariah or Failing States

This section includes two case studies from Burma and one from DRC, followed by an examination of how some major companies deal with issues of concern in difficult countries. Two very different mining situations in Burma, one small-scale artisanal, the second large and modern, illustrate the depth, breadth and persistence of the failure of engagement and isolation policies. In the Mongbwalu area, DRC, a conflict zone, a major gold company's reported support of warlords gained worldwide attention. The company acknowledgement that its business principles were placed at risk and its engagement with human rights advocacy groups to avoid such problems provides an example where engaging with critics to seek positive outcomes is a win-win approach.

Examining concerns about human rights inevitably draws attention to pariah (or failing) states, such as Burma (Myanmar) and Sudan, which are widely recognized to be human rights abusers. Mining companies working in such countries attract attention because there is a widespread view that foreign investment and any industrial activity supports repressive regimes. Critics of such countries raise questions about the legitimacy of the regime and its right to allow foreign companies

to develop the state's resources. Some may ask whether withdrawing operations will help human rights by showing concern, or hurt people by causing economic hardship. In such situations there is a clear point of conflict with civil society on human rights concerns.

The objective is that foreign businesses should not be complicit in a government's repression of its people, nor help to support a repressive regime where the political system of a state is responsible for or carries out brutal human rights violations (Jungk, 2001). While many believe that doing business in countries with bad governments does not necessarily weaken human rights, it is suggested that there are some situations where blanket prohibitions are necessary, such as those countries under unilateral, regional or multinational (i.e. United Nations) sanctions (Jungk, 2001).

Also it is suggested that the prohibition applies where there is a clear popular sentiment against foreign commercial activities, such as Burma where the military prevented the elected government from taking office, and those elected continue to call for economic sanctions (Kyi, 1995; DFAIT, 1999; Battle, 2000; Cook, 2001). Obviously, companies should not operate where there is an unequivocal record of human rights violations such as "Germany under the Nazi regime, Cambodia under the Khmer Rouge, or Rwanda in 1994" (Jungk, 2001).

Some see gradations of "acceptability" in the case of other states and their human rights records, applying different standards for different regimes in conflict or war zones, and states with bad governments, or repressive regimes, e.g., Sudan, Afghanistan, DRC, Colombia, Indonesia and China. An approach to handle the broad and difficult questions involved is suggested in a flowchart with a recommended decision-making process that could be adopted when dealing with bad governments (see Fig. 4.6) (Jungk, 2001).

When considering difficult countries, mining companies are generally faced with two different conditions. The more common situation is one where there were no serious problems when the company first became involved with a particular country and decided to invest, but subsequently, often many years later, the local political and safety situation deteriorated. In this scenario, the company is faced with the decision whether it should withdraw from the country by selling or abandoning its investment. The alternative is for it to remain in anticipation that either conditions will improve, or it could be an influence for positive change, causing conditions to improve. Certain major companies have withdrawn from substantial investments in countries where there are significant human rights abuses. The "messy" situation has the potential to get better, but there is the view that in certain countries companies can expect no positive outcome. The mining company that does not have any involvement in a failing or difficult state yet there are potential investments that are attractive faces a different situation. The company, believing that it will be commercially successful,

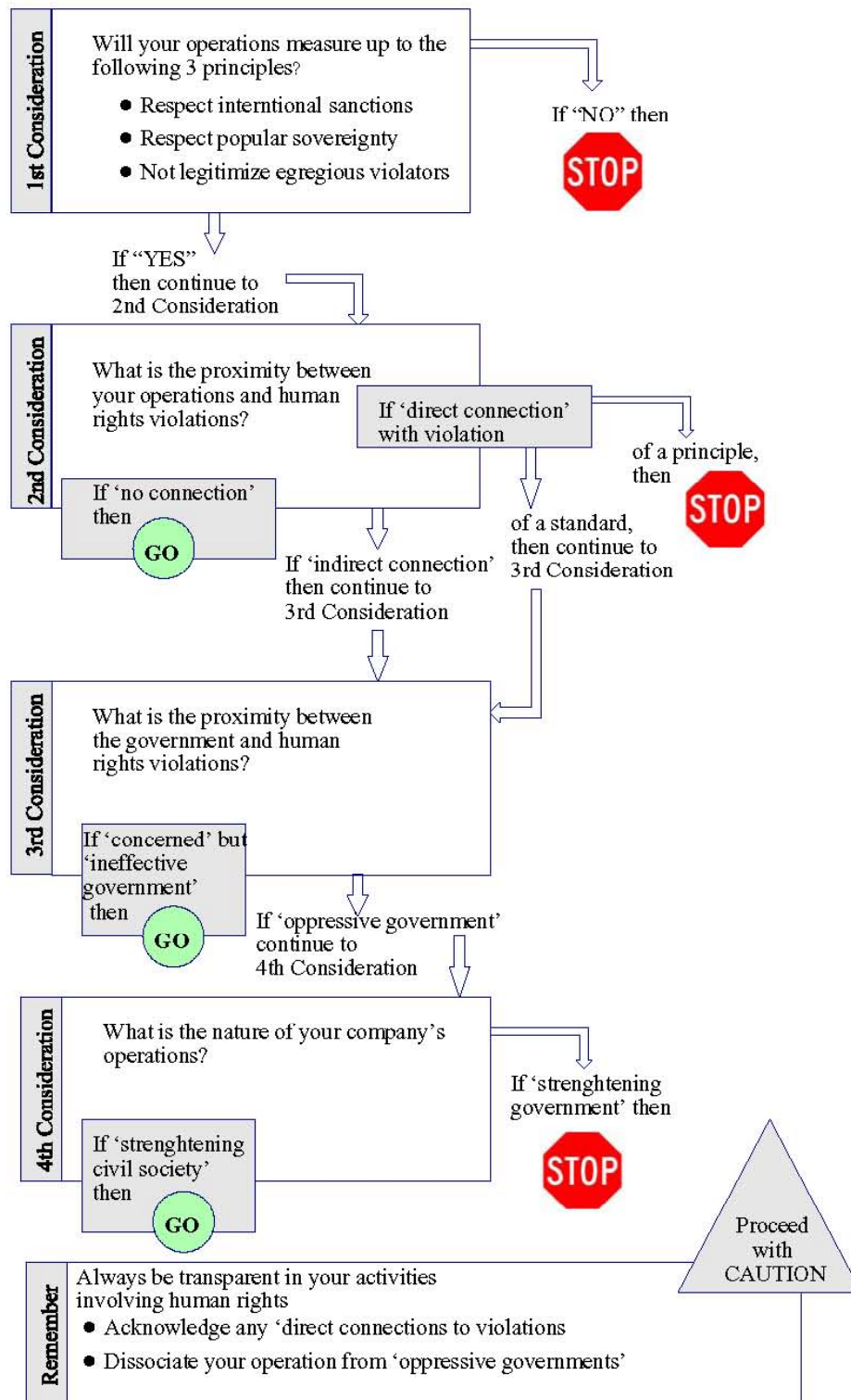


Fig. 4.6. Decision-making process when dealing with bad governments.
After Jungk, 2001

would then be able to direct benefits to the local community. Some major corporations and many NGOs consider that there are some countries where there are no long term benefits to be gained for a corporation to become involved.

Many NGOs and some companies consider that even if a corporation adheres to human rights principles it cannot avoid human rights violations taking place. Interestingly, no matter how good a corporate citizen the corporation may be, if it is involved in such a country where there are some human rights abuses by state security forces, the corporation may become legally liable in the U.S. Clearly, if the country is unstable or there are grey areas, the company needs to set up minimum standards of behaviour. Naturally, its priority will be to respect the safety of its employees. In making an adequate risk assessment the company needs to evaluate if the dictatorship is not supported in its own country. In a dictatorship, people are ordered to do things and are expected not to ask questions. As soon as the regime loses control, things can fall apart. Being hierarchical, mining companies do not like dissent. They are used to a control and command management style and are not often able to deal with lateral structures that can be annoying because they need to have consent. In some countries, regimes may be so corrupt and brutal that their populations suffer. Any profits from the extractive industry that go to support government activities often do not benefit the local communities. Angola, Sierra Leone and DRC, for example, are countries with significant natural resources where the economies and general populations have not benefited and where the revenues from resource exploitation have served to fuel conflict. Companies become very defensive in such situations and it is suggested that they ought to think about the nature of the regime and ask themselves whether they can do anything to improve the situation.

4.4.1 Burma

Burma is considered important in the international debate on the politics of adopting constructive engagement or economic sanctions (Bray, 2001). Burma has been ruled by military and quasi-military regimes since 1962 during which time the economy deteriorated and there has been a failure to establish effective, broad-based political institutions. Aung San Suu Kyi, the detained pro-democracy leader and Nobel Peace Prize winner, led the National League for Democracy (NLD) to a landslide national election victory in 1990, after which the military regime (which lacks popular support or political legitimacy), refused to cede power (Kamdar, 2008). A major role in the debate is played by non-state interests, including NGOs and companies (Bray, 2001).

The international community disagrees on how to deal with the situation in Burma. Aung San Suu Kyi supported the call for economic and political sanctions. In 1995, she said that it was too early for foreign investors to put their money into Burma: "In the long run, it will be the businessmen

themselves who will be hurt by investing at the wrong time.” (Kyi, 1995). The United States imposed sanctions on new investment in Burma; Canada asked its business community not to enter into new investments until the situation improves; the European Union and the United Kingdom suspended aid and imposed an embargo on arms. In contrast, Japan and Australia have pursued engagement, and other countries in the region have sought engagement by admitting Burma as a member of ASEAN in 1997. The most critical problems are revenue allocation, human rights abuses by security forces and the use of forced labour. The challenge to the international community remains: “how to encourage progress in Burma’s political dialogue and, in the worse case, how to respond to failure?” (Bray, 2001).

Despite attempts at engagement and economic sanctions, reports confirm Burma’s deterioration of human rights including extrajudicial and arbitrary executions, mass arrests, enforced disappearances, forced relocation, rape, torture, inhuman treatment, denial of freedom of assembly and movement forced labour (United Nations, 2001). “Abundant evidence” was found of widespread forced labour in portering, construction, maintenance and servicing of military camps and other work in agriculture, logging and other infrastructure work carried out by the military, sometimes to profit private individuals (United Nations, 1998a). In September 2008, following a letter from the British government, Lloyd’s of London asked its insurance brokers to reconsider their involvement with the regime although financial services and energy are not included in EU sanctions against Burma. American insurers have also been pressured by the U.S. government to end business with the junta. (Mathiason, 2008).

In addition, reports reflected decayed infrastructure, poor health care and education, extensive poverty, malnutrition, drugs and HIV/AIDS, with about a quarter of all children aged 10 to 14 working, and large numbers of political prisoners (EarthRights, 2001; Amnesty, 2001; United Nations, 1998a).

Jade Mining

The jade underground, open pit, and underwater mining operations in the Kachin region of northern Burma illustrate the confluence of appalling environmental conditions, human rights abuses, jade and heroin smuggling (Müller, 1997). Artisanal and small-scale miners dig, light dynamite fuses with cigarettes, pry jadeite deposits, dive without equipment, move and load the finest quality jade all by hand, with no safety equipment. The workers in these mines use mining methods that were considered primitive 100 years ago. For three decades jade from the mines in the area was used to finance a civil war, even after a cease-fire there has been no improvement in conditions.

Although one piece of imperial jade could be worth \$40 – \$50,000, most workers make 50 daily trips up and down the mine for \$1 per day wages, one third spent for water and food. Despite the low wage, there are few other opportunities for work and when the jade runs out, this economic boom will end. A film documentary by Jorg Müller showed jade secreted out of the country by smugglers using boats and elephants, paying “taxes” to the Shan to move through areas under their control en route to Thailand or China where the price of jade fetched ten times that paid in Burma (Müller, 1997). Heroin and amphetamines trade used the same route. A later report said that the Burmese government had taken control of most of the mining operations in areas that used to smuggle jade and gems. With lower taxes smugglers find trading with Rangoon more profitable than with Yunnan, China (Lintner, 1997).

All large projects in Burma need approval from the State Peace and Development Council (SLORC) first, and must pay royalties as well under-the-table money to sign any contract (Bangkok Post, 2001). It is impossible for any foreign joint venture not to be linked to the Burmese military since the government’s main holding companies are part of the military government. Although approximately 45% of the Burmese national budget is spent on defence, the question remains, where do the royalty payments go?

The United Nations Special Rapporteur²³ suggested the international community should try to evaluate the effect of sanctions on the most vulnerable groups of Burma’s population. “Co-ordinated efforts to alleviate the humanitarian situation does not require or imply renouncing the long-term objective of helping democratic transition: there is no permanent solution for the pressing needs of the Myanmar peoples outside the framework of a process of transition to democratic constitutionalism” (United Nations, 2001a). It is equally clear, that modern techniques, equipment, safety regulations and monitoring are mandatory to effect change and it is equally clear that industry can and should play a significant role.

Copper Mining

By contrast to the jade mines, the Monywa copper mine is a modern operation with ISO 14001 certification for environmental management and protection. Prior to February 2007, the mine was operated by Myanmar Ivanhoe Copper Co. Ltd. (MICCL), a Yangon-based company owned 50/50 by the Canadian company Ivanhoe Mines and the Burmese state Mining Enterprise No.

²³ The UN Commission on Human Rights resolution 1992/58 of 3 March 1992, established the mandate of the Special Rapporteur on the situation of human rights in Myanmar, with terms of reference “to establish direct contacts with the Government and with the people of Myanmar, including political leaders deprived of their liberty, their families and lawyers, with a view to examining the situation of human rights in Myanmar and following any progress made towards the transfer of power to a civilian government and the drafting of a new constitution, the lifting of restrictions on personal freedoms and the restoration of human rights in Myanmar”.

1. Construction of the project was financed using a U.S.\$90 million project loan facility provided by Marubeni UK plc and Nissho Iwai Europe plc, a syndicate of Japanese trading houses. The mine is voluntarily cleaning up environmental damage caused by an earlier operator, describes economic and social benefits to the community from the project, and its reports on worker health and safety conditions, human rights record, and environmental management are independently verified on an annual basis, and has published a “statement of values and responsibilities” (see Appendix V) that included support for the United Nations Declaration of Human Rights.

The company asserts that any suggestion that it paid bribes to participate in this project is false and defamatory (Ivanhoe, 2000a). It said its investment was “either misunderstood, or deliberately misrepresented by people promoting various agendas of social and political advocacy” (Kunz, 2001a). The company provided a portion of revenues from its mine for health care and education services to local communities.

The company reported that “International criticism of the government and the imposition of economic sanctions against Myanmar by the United States and Canada has already served to limit Ivanhoe’s access to North American mine suppliers and could adversely affect ... [its] ability to access capital markets” (Ivanhoe, 2000b).²⁴ The company emphasized that the delay or cancellation of the project’s second stage, suggested by the United States and Canada, would deny jobs to thousands of Burmese; and that “Ivanhoe’s withdrawal from Myanmar would not bring about... changes in government” It stressed its investment in Burma was not in contravention of any Canadian government sanctions; and that while there were extensive reports of forced labour being used elsewhere in Burma, there was no evidence or allegations that involuntary labour was used by the company. The company has clearly stated that it does not hold a political brief nor does it participate in political causes. The company president was reported to have “defended the company against charges that it was dealing with an illegitimate regime by claiming that military rule was probably the only workable form of government in the country” (Irrawaddy, 2000). He was quoted as saying “There are 146 different tribes and ethnic groups that have been at civil war for decades and decades...It’s complicated. The military government, unfortunately, is probably the only form of government that can deal with such a complex problem” (Kunz, 2000). He later clarified that he was not suggesting that a strong national government has to be a military government to be effective, nor that they can disregard human rights.

Others noted that the “repressive government in Burma had been threatening the security,

²⁴ Nevertheless in 2001, the company raised U.S.\$16 million

safety and well being of Burmese citizens for over a decade and Burma is a case study of how people may be deprived of their human security by a handful of military rulers acting in the name of national security...People may be rounded up simply for listening to short-wave radio stations or talking to foreigners.” (Zaw, 2000)

Canadian and International labour groups called on the company to withdraw from Burma because the joint venture provides “funds for the coffers of a regime that has been irrefutably linked to forced labour and narcotics trafficking” (ICEM, 2001).

The company referred to the “alleged forced-labour practices in the country” and “the very idea of the use of forced labour by anybody, anywhere, is as abhorrent to Ivanhoe as it is to any right-thinking person” (Kunz, 2001b). It denied using infrastructure mentioned by the labour groups. In 2006, when Rio Tinto agreed to invest in a major copper project in Mongolia that Ivanhoe controlled, part of the conditions attached to the investment was that Ivanhoe divest its interests in Burma, which occurred by February 2007 when the assets were transferred to an independent, third party trust to sell them (Ivanhoe, 2007). In 2007, Ivanhoe criticized the “unwarranted assaults on Buddhist monks and civilians” during demonstrations in which more than 30 people were killed (Delaney, 2007; Ivanhoe, 2007a). The failure of constructive engagement and sanctions to improve Burma’s human rights condition remains a challenge.

4.4.2. Mongbwalu, DRC

The problem that arose in the Mongbwalu area of war-torn DRC, involved exploration in a conflict zone and reported financial and logistical support to warlords with security forces alleged to have committed war crimes and crimes against humanity. It provides an example of problems that can occur in conflict zones.

Gold mining has been going on in the Ituri province, DRC since the Australians discovered gold there in about 1903 with some 10 million ounces of gold extracted from the province during the past hundred years. Artisanal miners are very active in the area. The region hosts one of the continent’s primary gold regions.

AGA acquired an interest in Concession 40 in the Mongbwalu area in 2004 through AngloGold’s merger with Ashanti Gold Fields who had been active in that area since around 1996 when it bought their interest from the previous Belgian operators of the Kilo Moto mines in the Kimin region near Mongbwalu. All companies, including Ashanti, pulled out of the region around 1998 at the beginning of the Second Congo War.

Between 1997 and the end of 2004, Ashanti Gold Fields and subsequently AngloGold

Ashanti made an assessment as to whether it was possible to do business in Mongbwalu and Bunia, in the Ituri region with integrity. “With integrity” was defined as consistent with the company’s business principles and policies. They sought the views and the opinions of the DRC Government, which was responsible for security and safety in the region, but also would benefit substantially though royalties and the cash results from the success of any large-scale project in the region.

The systematic assessment process included consulting with the DRC Government, the United Nations (Ambassador Swing, UN Secretary-General Special-Representative to the DRC), and with people in Mongbwalu from the parish priest to the single doctor trying against overwhelming odds to administer health care in Mongbwalu. AGA decided at the end of 2004, given the undertakings that MONUC would be very soon be establishing a camp in town of Mongbwalu, that it was plausible it could put a team onto the ground in Mongbwalu to begin the exploration project.²⁵

Human Rights Watch (HRW) published a report in 2005, alleging that AngloGold Ashanti had provided financial and logistical support to the Nationalist and Integrationist Front (FNI); a faction alleged to have committed war crimes and crimes against humanity and that was in control of the Mongbwalu area. HRW claimed the company knew or should have known this. As a company committed to corporate social responsibility, its operations should not have supported known armed human rights abusers. HRW alleged the business case trumped human rights (HRW, 2005).

AngloGold Ashanti (AGA) exploration team arrived on the ground in Mongbwalu in December 2004. In January 2005, it was approached by the Nationalist and Integrationist Front (FNI) for the payment, initially of a very substantial amount of money \$35,000, to allow them to travel to Kinshasa to take part in multi-party talks there. Over a four-day period of very unpleasant negotiations, (it was really a process of threats and rebuttal), following which the AGA people on the ground decided to pay eight thousand dollars in the interest of their own immediate safety in the face of a clear and present danger.

AGA’s critics made a couple of points. First, that the company should not have been there; it had placed itself in harm’s way by getting into a position where such a demand might be made. AGA responded “perhaps.” With the benefit of hindsight, AGA acknowledged this might not have happened if it had waited until March 2005 when MONUC eventually put one a camp in Mongbwalu.

²⁵ International Alert was suggesting in 2004, that it was early to be getting into the DRC because of the lack of governance, the reality on the ground, millions of people living in constant fear and subject to pillage, rape and arbitrary extortion by a multiplicity of armed factions and militia. This insecurity in the daily lives of ordinary people was a factor, not unique to the non-government groups but including paramilitary groups linked to the Ministry of Defense and the Presidency, with a number of autonomously war lord fiefdoms in Kilo Moto, etc. Although investment and development of resources can be very useful for establishing peace and economic stability in a country it presents a dilemma: If socially-responsible companies that respect human rights should not have been there, should they have waited and permit others including Chinese and Malaysian companies who have no social responsibility go in there to make a deal with the power structure in the Congo?

AGA said it was a very difficult decision to take at the time. The question was how to balance integrity with the contribution that would be made to local development. AGA does not believe they were being gratuitous in this respect or suggesting that it was only the welfare of the community that they were seeking, it was exploring for gold.

After the Human Rights Watch Report, AGA sent a high level delegation to Mongbwalu to reassess its presence there. It found the unambiguous support of community representatives, organs of Civil Society including the local parish priest, hospitals, schools, the mayor, and the 50-person police force armed with a single gun. They believed that it was appropriate for Anglo Gold Ashanti to have been there. Nevertheless, being there placed AGA's compliance with its own principles at a very real risk. Senior management found no fault with the people on the ground in Mongbwalu having paid \$8000, and nobody suggested that they should or could have done anything else.

The payment was made on Saturday and was known about at Head Office in Johannesburg on the Monday. AGA made a full disclosure of what had happened when the newspapers in Johannesburg asked if any payment had been made to any groups after the extortion had taken place and when things were starting to attract the attention of several investigations into AGA activities in DRC. AGA made a public statement about it then, having informed MONUC, the DRC government and its partner, Okimo.

Within a few weeks, when it became apparent that there was another clear possibility that the FNI was going to approach AGA again for a further payment, the camp was evacuated of everybody other than security personnel there for the security of its assets. People did not return to the ground until after MONUC had established a base and had given reasonable assurances that the matter was under control with the FNI fast becoming part of the mainstream political process.

The other very substantial critique is that AngloGold Ashanti sought the permission of, and required the approval of, a militia grouping with the most appalling human rights records in order to allow them to do business in Mongbwalu. AGA is adamant that is incorrect, as it never sought approval. Anyone who did speak to them did not have the capacity or the authority to either ask or to receive the approval of anyone, especially a militia group, and it was never the intention that they should approve. While some might have told various commentators that they gave AGA their approval is their own business and might be their interpretation of what was going on. AGA gave an absolute assurance that it was not its intention to do so.

Following its investigation AGA believed that as things were on the ground in Mongbwalu and Bunia it was possible and desirable to be conducting an exploration project in Mongbwalu. If the

circumstances were to change, i.e., there was a breakdown in civil order, if the institutions of civil society were not able to perform their functions properly, if the growing control on safety and security in Mongbwalu was lost, AGA said it would leave.

AGA, as a South African company believes it has a very substantial role to play in promoting and in supporting the peace process and the return of democracy to DRC. Its investigation support and conversations with the head of the Mongbwalu region and others led it to believe it is impossible or most unlikely guerrilla forces would return to the region.

AGA was concerned that HRW, despite asking questions, at no stage shared its conclusions or offered the opportunity to rebut any allegations in the report which they gave it to Reuters before they presented it to AGA's CEO. That this is HRW's usual approach when releasing reports was perceived as a particularly bad reason for doing so in this case.

AGA acknowledged that since the publication of the HRW report it had constructive conversations with HRW, and found they shared a common concern for the future of the region and about illegally mined gold being used to fund war and continuing military activities.

Comments

The conversation that HRW had with AGA about allegations of relationships with DRC warlords was quite heartening in terms of trying to work out ways to ensure that the problem does not happen again²⁶ (HRW, 2005). AGA and HRW both agree they had a very constructive dialog about issues of concern in DRC. The company was prepared to admit mistakes and since it was very keen to get things right for the future means that these discussions can have positive outcomes.

The broader question is whether one can mine in DRC and under what kind of difficult conditions should a company go there or not? Some say companies should leave, or it is too early to invest, while other companies have different principles. The fact that in DRC the mining areas are so distant from Kinshasa, the capital, means that the players have a problem because they cannot form a dialogue –distance leads to things becoming vague.

The argument about what was, or what was not, part of the relationship with the warlord identified by HRW is a sterile debate. It illustrated much about the nexus of logistical, financial and political credibility. Clearly there really was a relationship, but the question is not: "Was there?" or, "Wasn't there?" The question is: "How do you make sure that kind of thing cannot happen in the

²⁶ HRW's point was that AngloGold Ashanti "should have waited until there was a legitimate government authority in charge before proceeding with its activities, rather than dealing with armed groups implicated in gross human rights violations. Since the report was released, we welcome AngloGold Ashanti's commitment to suspend their operations if it requires supporting such groups in the future and we further welcome their public commitment to have no direct or indirect links with such armed groups." (Van Woudenberg, 2000)

future? HRW was encouraged that AGA seemed to regard that as an important question. Not that all companies will follow AGA but their example is quite important and significant.

When a company has a set of principles it is essential that those principles are in place in every level of the company; if they are only in place at head office, they become irrelevant. When a company that has high standards on paper finds out its people had a relationship with a warlord, clearly it has made a mistake.

There are circumstances when business could be welcomed in DRC. Business can help in conflict zones and those that support human rights help stability. Conversely, businesses that have relations with warlords are not helping, and are certainly not helping local people. Human rights advocacy NGOs say the bottom line in conflict zones is: “Don’t do business with people who will kill people.”

Treating DRC as a whole it is possible to talk to the government and try set up open courts and potentially avoid corruption. When government does not control an area companies need to be much more careful. For example, if de facto control of an area is held by a murderous warlord that is when the company should say no. The counter argument is that others will come in if the company does not. That is often presented as an excuse.

4.4.3 Other Countries

In difficult countries, Rio Tinto tries to avoid aggravating the risks faced by employees and their families and local communities around the operations. Its human rights policy and guidelines deal with difficult situations where there is an investment in a country that then goes through a period of deteriorating human rights. There are a number of views about this problem, particularly amongst some of the NGOs, such as Amnesty International, which say since business has a lot of influence, it could threaten to pull out, giving a clear signal to the regime that they would have to change their ways. In some countries there are doubts that this make an iota of difference. In such situations where there is an investment with employees on the ground, contractual obligations, and the company is providing economic activity to a very wide area; by walking away from it could be creating a worse situation. Rio Tinto approaches such situations on an ad hoc basis. It does makes representations to governments but will not make so much noise and nuisance as to place people at risk on the ground.

Other major companies are confronted by these problems, for example, in June 2008, there was a front page story in the London Times accusing Anglo American of making a substantial new investment in its Platinum mine in Zimbabwe at a time of increased violence by President Mugabe’s followers. In fact, this project had stated five years previously, did not require any new investment

into the country, and was essential to avoid nationalization (Robertson and Webster, 2008, Anglo American, 2008). The company confirmed that it was “deeply concerned about the current political situation ... and condemns the human rights abuses that are taking place” (Anglo American, 2008).

One company operating in Colombia adopted the approach of a low-key presence to lower the possibilities of its employees being kidnapped. Very aware of security problems, it endeavoured to maintain good local relationships by establishing a wide range of interactions with local community groups and NGOs, who it believes regard it as a good corporate citizen. In the case of new ventures elsewhere, it is very careful to consider the community and social aspects. Since its ideals are important, if the human rights situation in the country conflicts with its internal business principles, it asserts it will not invest.

In one very unusual instance, a U.S.-based mining company was asked by the U.S government to intervene with the host government and appeal for the release of two political prisoners. This situation was in a country with a particularly repressive regime in which that company was a major investor and the U.S. government was applying pressure for the release of the prisoners. The company was concerned about its reputation and the country’s overall human rights record. It was not in the interest of the company to have a bad record and reputation. The outcome was considered positive as the political prisoners were eventually released.

4.4.4 Dilemmas

There are going to be more instances in conflict zones where countries with weak governments but large potential resources. More challenges will arise as Chinese, Malaysian, Russian and Indian growth leads to their companies buying into these places. It’s a challenge that drives the desperation on the part of some western companies coming into competition for resource with companies that may not have many scruples (not to say there are many scruples in the other companies).

Where there are weak, fragile governments with no rule of law, or an established regulatory environment, attempts to improve the situation start by encouraging a stronger rule of law. If the government has enough power to change things, pressure needs to be brought to bear on the government. Beyond that, in countries where donor countries are very important, international pressure should be brought to bear to create a framework. Where the government is not in a position, to act where it does not have full control of the country such as in DRC, NGOs are suggesting companies should hold off from investing.

Donor governments have an important role to play in such situations. Problems arise when

the donor government has its own mining industry, such as Canada. CIDA could play an important role but the questions arises as to what extent donor agencies are aware of the role they could play in facilitating a dialog where there is a cultural divide between the parties and a lack of understanding and knowledge.

When going into a county that has just emerged from conflict, a company had to be careful not to inadvertently take sides. According to the interviews, Rio Tinto had an exploration program in Northern Ireland at a time when the Irish Republican Army (IRA) was chasing people out of houses. Some questions arose whether they were complicit in the Northern Ireland problems. There is a grain of truth in everything, but it is essential to find that grain to avoid getting an incorrect picture. Although the camera cannot lie, the picture and perception depend on the angle of view.

Although other large companies have similar approaches to Rio Tinto, new players such as the Chinese and other state enterprises do not share the same values, which is why Rio Tinto and others want a level playing field. Adopting codes and standards such as the Equator principles is one approach. Another is to bring them along side in a project; for example, Rio Tinto has been working with the Chinese in an iron ore project in Australia through a 60%-40% joint venture with the Chinese government for longer than 20 years. They now fully understand what Rio Tinto does and how. They know that if they want to be in a project with Rio Tinto how they would be expected to do it. If they want to do something differently by themselves no one can stop them.²⁷

Another example is that a proposal for Rio Tinto to work with the Russians in 1970s fell apart because the Russians talked about using prisoners as slave labour, and wanted a production sharing agreement. There were also some technical problems. When the Russians came back to talk to Rio Tinto about the project in the mid-1990s, they worked with Rio Tinto's technical people going through what Rio was doing, why and how; and went back to Russia accepting it was not a viable project. While it may be different for junior companies, Rio Tinto forges relationships that can be expected to last and they work within those relationships.

It was pointed out during the research that when a company is operating in a country where conditions deteriorate, the community in the area relies on the operation and the company recognizes that it has an obligation to the community and will attempt to engage with the government. Companies are putting systems in place to implement human rights policies in the field to ensure they are effective. Members of the VPs have found it useful to be in the process as it provides an

²⁷ In March 2008, Anglo American and Rio Tinto confirmed they would only participate in joint ventures with Chinese companies that complied with Western environmental and human rights standards. Rio Tinto was planning a series of such joint ventures in Latin America and Africa (Power 2008).

opportunity to talk to others about how to deal with the concerns. Companies with senior management concerns supported by clear Board policies about social questions have prepared such tools as guidance manuals, actions plans and checklists. Often they will examine them to identify any gaps and focus on what can be done about them. In some cases auditors are engaged for compliance check in social areas beyond health and environmental compliance. A practical problem for the VPs has been dealing with reporting. A manual was developed for risk assessment. People are trained in the concepts and business units are asked to report back to head office about the results of training and implementation. It is essential to recognize when there is a problem to deal with it. One company noted that it is more difficult to define the problem than find solutions. It is when a company is in complete denial that there is a real problem. The importance of building positive relationships cannot be overemphasized.

Risk Assessment

Some companies focus on security and political awareness, maintaining lists of countries where they could not realistically work. However, it was noted that as time passes and resources become scarcer, companies may decide to become more adventuresome and prepared to take more risk. It was pointed out that a formal detailed risk analysis must be made and a risk management plan prepared.

Risk assessment and conflict analysis are perceived as being weak. Although some companies have very sophisticated analysis and risk assessment, it is restricted to what might actually impact on the company such as the impact of corruption. However, on-going security analysis tends to be one-dimensional with questions such as: What is the risk of sabotage? or kidnapping? What is the risk of criminal activity and how is it going to affect our investment? The question not asked is: Why might there be criminal activity? What is driving it and causing it? and, therefore: What can we do about it? The current approach is risk management, not risk avoidance. While the threat is from a lot of unemployed young men running around the town night and day, the question not asked is: What can we do about unemployment?

The limited scope of analysis and understanding processes means the companies do not really understand what they are getting into. Hence, they are going to run into all sorts of problems whether they are the most well-intentioned companies or not. Doing proper analysis is not necessarily expensive. Doing desk-based research takes about two weeks. The analyst needs to look at different types of problems beyond the ones normally examined. When starting to invest, there is the need for an on-going process looking at a broader scope of question slightly differently.

Some NGOs ask whether it is possible to do business without getting into trouble in countries where violent conflict continues, such as DRC. Since it may not even be possible to apply the VPs in such places, a more rigorous risk assessment could lead to “no go” decisions. No project in a conflict-prone country can have a neutral impact. In such politically unstable countries, project finance funds investments for natural resources projects often linked to violent conflict. There are pressures on those involved with providing project finance to adopt a more conflict-sensitive approach by strengthening the Equator principles to ensure that it is clear that financing is not available to companies in conflict and conflict-prone areas.

Whether it is acquiring a junior company or buying assets one is always going to be in a more vulnerable position because of not necessarily knowing what they have done. Reports of mining companies paying money to warlords illustrates that there is still a long way to go. It would be too easy to say that nothing has changed; whereas with policies, principles and guidelines it says no more than some people in companies are doing stupid things and, in areas where millions have died and conflict is going on, paying off warlords is dreadful for the company’s reputation. The seriousness with which companies deal with problems is the yardstick by which they need to be judged.

4.5 National and Regional Jurisdiction Conflict

Projects are challenged by a growing realization that in countries with weak or undemocratic governments, the taxes and revenues from mining operations are not benefiting the local communities, and may not even be providing benefits to the economic and social development of the country (Hodges, 2001). While this is a common situation in failing or “Pariah) states discussed in the previous section, in many other countries conflicts arise between national, regional and local jurisdictions about what constitutes an appropriate distribution of the benefits and impacts from project developments. At one extreme, the national government receives all the economic benefits from a project while the local community suffers from all the adverse impacts. Interests at the regional and local level seek an “equitable” share of a project benefits, compensation for adverse impacts and participation is the decision whether or not a project should proceed. A human rights approach to development and poverty elimination includes a focus on the needs identified by poor people, and encourages their participation at all stages (Häusermann, 1998).

Some governments are making changes in the way mining royalties are distributed, and even how decisions about mining projects are decided. They are making provisions to involve people from affected communities in the decision-making process, and for mining royalties/taxes to be shared between the central, regional, and local governments. However, devolution of authority from a

federal government to the district and provincial level, especially in countries with weak institutions, requires the strengthening of local technical and decision-making capacity to deal with problems in a credible way, although this may be difficult to establish.

Rights-related conflicts that impact projects revolve around sub-jurisdictions versus national jurisdiction, and the extent to which mining companies are subject to one or the other when the two are in conflict: e.g., central government versus local government and community, as in Indonesia and Papua New Guinea. During a short visit to Bougainville in January 1968, the Australian Federal Minister for External Territories explained to disgruntled villagers that although any mine is not for their benefit but the Nation as a whole, “they would receive compensation but no special benefits.” (Australia, 1999)

Countries rich in mineral resources with weak legal and regulatory frameworks, in particular at the municipal (local, rural) level, lacking transparency and corrupt governments have performed worse in economic and social development than countries that are not mineral-rich. Abundant natural resources lead to power struggles for their control with “massive population displacements, rapid urbanization, deepening poverty and strains on the family structure ...[and] the formation of a new post-colonial elite” (Hodges, 2001). The problem of development not being managed with a human rights approach is exemplified in Angola. If properly managed, Angola, with plentiful resources of oil, diamonds and minerals, should be amongst the best performing developing country economies. However, mismanagement, corruption, lack of good governance, lack of transparency, ideological differences, and conflict for resources resulted in economic decline and human rights abuses of its population (Hodges, 2001). “Wars in Angola, Liberia, DRC, and Sierra Leone arise from the struggle for control of ... resources. Likewise various conflicts in Asia and Latin America are fuelled by the profit in trade in illegal commodities” (de Soysa, 2000).

Challenges also arise from junior companies, state enterprises, and other developing and emerging country companies who show little regard for environmental, social and human rights responsibility, especially when they invest in conflict zones and countries with weak, corrupt governments where there are large potential resources. The perception is that “China’s influence threatens to wipe out a decade’s worth of efforts to improve African human rights and government transparency” (Behar, 2008).

There are many arguments about sharing the economic rent from mineral resources. In the past the argument was principally between the mining company and the host government. The responsibility of the state to distribute the benefits in whatever way it determined was a matter of national sovereignty. Often the benefits were not distributed to the community. There may be a

competing set of priorities for governments to decide between the mining community, the local community, indigenous people, or to support poorer people in other parts of the country.

The Bougainville Copper case discussed earlier in this chapter in the context of human rights violations as a result of conflict involving security forces, was also discussed in the sections on indigenous peoples' rights, and also provides an example how disputes about what is an equitable share of the benefits between the central government and the local people where the project is situated. According to an interview, some people at the time, such as Paul Quodling, Bougainville Copper's general manager, argued that the proportion of revenue going back to the Bougainville people was insufficient for their requirements. The problem was not the size of the cake, but who got what proportions of the cake. Rio Tinto had been constrained by government pressures that it accepted which later had negative implications to its business.

There is always a tension between the government and local communities. When a large multinational moves in to a developing country and develops a large resource, the revenue stream goes back to Central government. The Central Government attitude tends to be that they do not need to return any revenue flow back to that region because the mining company is going to look after it. The company will become a quasi-governmental agency as it will put in roads and build clinics. However, the company is a miner; it is not a medical provider or educationalist. In some instances it has had to become that. A problem arises as the mining communities see all the revenues being paid to a Central Government using it; in their eyes, to enrich other parts of the country; leaving them looking to the mining company to invest in the community. One way forward would be to allocate parts of royalties between the central, regional and local governments. However, it is essential that the local government has adequate capacity to handle it. There is a trend towards devolution of power, for example in Indonesia there are semi-autonomous provinces where the trend is towards a rise of the power of the governors and the weakening of the Central government. One of the most important questions is the company's relationship with local communities.

It is essential to manage expectations because there are many local communities desperate for development that see dollar signs in their eyes when a mining company comes along, believing they will have riches beyond Preces. Closure, rehabilitation, and the encouragement of sustained economic activity are seen as important concerns.

In order to ensure their projects evolve responsibly with the optimum chances of success, geoscientists and mining engineers should be mindful that communities may claim development rights that do not have clear boundaries, and which are seen to depend on the relationship of the community to the land and the area, how long the community has been there, and the fragility of its

culture. Do such rights mean that communities have to be involved with decisions, or should be required to give informed prior consent? A challenge posed by the development rights of communities is whether trade-offs — e.g., between social benefits to local communities and government revenues against the environmental degradation and social costs — are acceptable when determining whether resources should be developed (Veiga et al., 2001). However, because there are fundamental conflicts between rights and well-being, conflicts between an individual's rights versus community rights, and conflicts between community rights versus national rights, it is not clear that a rights calculus will produce the maximum well-being. It is a social problem, not an engineering area, but because the projects are the catalyst for the problems, geoscientists and mining engineers must become engaged in a positive way. Nevertheless, the final responsibility for resolving the questions is considered to lie with the leaders of the stakeholder groups.

Coed-y-Brenin & Mawddach Estuary, U.K.

This case is included to illustrate the problems that a company can encounter when it unquestionably follows a government's request.

There was public reaction after Rio Tinto carried out an exploration program in mid-Wales that the British Government of the day had asked Rio Tinto to undertake in the Snowdonia area. The exploration program in the 1960s found a copper deposit at Coed-y-Brenin, and a gold deposit in the Mawddach estuary. There was a strong message from the government to look for these resources. British governments had been encouraging local prospecting and the Wilson government was proposing direct incentives (Lovins, 1971). The public reaction was: "Do you dig National Parks? How dare you set foot in these sort of areas?" It was not until the public expressed outrage at the possibility of mining in National Parks, that anybody in the company thought it was anything other than right to do what the Government wanted. A critic conceded that the company's claim that the government "encouraged it to seek minerals in Snowdonia is very probably true" (Lovins, 1971).

The exploration program in mid-Wales followed the Avonmouth lead scare. Rio Tinto was again set back on its heels. The lesson learned was: "Don't do what the government wants, At least don't take it at face value: Go out. Find out for yourself what people think in addition to what their governments wants." Quite a number of the lessons learned at the time were said to have stood the company in good stead.

4.6 Corruption

Corruption crosses all the points of conflict discussed in this document. It impacts everyone in visible and hidden ways. Corrupting influences increase costs, undermine democracy and the rule

of law, distort trade and undermine ethics. The global civil society Organisation Transparency International was established in 1993 to lead a global fight against corruption (TI, 2008). This section examines a few examples of corrupting influences in mining in the 19th century. Rio Tinto's concern about corrupt practices is examined. Processes that it and other mining companies have put in place to deal with ethical questions of concern are discussed.

The Romans maintained close supervision of their mines and controlled production to maintain prices. Privately owned mines paid a tax. Those owned by the State were leased. Payments and royalties were frequently subject to “excessive abuses and corruption, while monopolies were created by adventurers and tax-gatherers” (Mining Journal, 1910).

4.6.1 Rio Tinto, Spain

After the riot at Rio Tinto in 1888, the Governor supported the company suggesting, “all acts of hostility to the company will be considered hostility against the Government.” Initially Parliament enacted a decree prohibiting open-air calcination. Key political figures were paid by the Company to maintain their support. The town of Rio Tinto was “a feudal one of a company more powerful than the Russian Czars” (Blanco, 1994). Hence the company was successfully in having the open-air calcination prohibition decree revoked (Blanco, 1994).

When Matheson's group took over in 1873, the anarchists at Rio Tinto were already established at the centre of politics in the province. The towns and villages in the area were governed under a system which avoided or rigged elections and was controlled by powerful groups of political manipulators who had evolved through the “long-standing practice of mutual accommodation among politicians, party bosses and arrangers of one sort and another” (Checkland, 1967).

Matheson interviewed all middle level and senior management candidates for jobs including a Dr. George Morrison, recommended by the senior medical officer. The Chairman was sure Morrison “could help bring the word of Grace to the heathen in Rio Tinto.” Morrison, who had been promoted to Chief Medical Officer, immediately resigned his appointment when he “received an astonishing letter” in response to his report of discovering “an extensive series of frauds in the druggist department involving several thousands of pounds” which were “insignificant compared with other frauds that soon after came to light, of which some of the directors who had admonished me had not been guiltless” (Pearl, 1967).

Observers noted that the Rio Tinto Company evaded taxes and resorted to bribing politicians to lower them when the Spanish government increased them after 1900. The company complained about paying about £100,000 on net annual profits in the range £1.2-1.5 million (Harvey, 1981).

Taxes were considered “hindrances” (Rio Tinto, 1900).

In the 1960s RTZ required employees to sign a statement before they were employed that under no circumstances would they accept from or offer a bribe to anyone; doing so would be considered gross misconduct and cause for immediate dismissal. Apparently years before people had been giving bribes that the company knew about. A pragmatic view was that with a long term project, there would be many governments in place over say, 25 years, and once a bribe was paid, it would be necessary to keep on paying bribes in the future –the rule by 1969 was “no bribes under any circumstances to anybody.”

No one can control where a mineral deposit is located —geology determines that. The only decision is whether to mine it or not. There are certain terms and conditions imposed by license requirements etc. The remaining obligations are the same as building a factory in any country: obtain all the appropriate approvals, permissions, etc. and then spend the money to develop it. The State’s obligation to make sure it can happen. That is the way the system is supposed to work. People pay taxes to get protection in a system of non-bribing, non-corruption, non-private armies, etc. At Rio Tinto they say the company has never condoned anything else.

It was not only individual mining companies, but other British companies who were having problems competing overseas against companies from other domiciles that have different ethics when it came to develop a mine or chemical plant, etc. There was needed for coercive measures that would involve companies, governments, non-governmental organizations, and the international agencies.

The formation of Transparency International (TI) was welcomed and supported by Rio Tinto as it shared TI’s aims and objectives of fighting against corruption. Rio Tinto believed that if TI succeeded in eliminating corruption companies would start getting a level playing field.

Rio Tinto, Shell and BP were the three original companies invited by the British Prime Minister, Tony Blair, to support the Extractive Industries Transparency Initiative (EITI) launched by the U.K. government in 2003. Anglo American, BHPBilliton and ICMM joined from the mining sector. EITI’s objective is an approach to level the playing field by publishing details of payments made to the government. The participants agree that in countries where mining and oil companies extract resources there should be a fair return back to the citizens of that country. The citizens of a country cannot know what a fair return is unless their government is prepared report the income publicly. The next step is to account for where the money has gone, what was done with it, and how it was spent. This is all part and parcel of accountability. Accountability for companies, accountability for governments, and accountability for NGOs.

Rio Tinto has a whistle blower program (*Speak-OUT*) that provides a mechanism for employees to confidentially inform (without fear or reprisal) senior management about any possible actions that are illegal, contrary to its business policies and practices, or cause for concern.

One Rio Tinto executive says personal experience shows there is more integrity to be found at Rio Tinto than working with international NGOs, The World Bank, or the United Nations. People in the company are able to talk about ethics and integrity because they are not tied to the political flavour of the month. Because they do not rely on where donor money will come from, they have no motivation to promise anything to funding, whether the promises can be met or not.

4.6.2 Other Companies

AGA has a “whistle blower” process inside the company, contracted out for reasons of independence and anonymity, for the confidential reporting of violations of any acts of an unethical or illegal nature, including human rights or any other kind of personal violation. Other major companies have similar programs, for example, Xstrata also has a confidential ethics line contracted out to operate as a confidential “whistle-blower” facility. BHP Billiton has business conduct helpline and fraud hotline systems. Other mining companies have processes.

Companies expressed concern about working in corrupt countries with a lack of good governance and / or with political and civil discontent. Concern was expressed about putting funds into very corrupt countries. It makes no difference whether a company pays four cents or four million dollars, aligning with rebel group can be a disaster. Despite the rich mineral potential, the point comes where the risk of aligning with warlords outweighs reality, although the commercial thrust can easily so easily take over. Huge gaps are seen in conditions in newly emerging states and elsewhere.

One mining company was aware of political risk, and risks to its reputation. Since mining is vulnerable to the results of basic judgments made about political stability and human rights at the risk assessment stage, it is important to be cautious without being averse to political risk. Because many managers are geologists or engineers, it saw the need to give them help and guidance to make sure they understand the country situation. There are countries where human rights, corruption and stability represent major areas of concern that present political risk problems.

Another mining company considers countries for mining operations or mineral exploration on the basis that it would not enter the country if it thought there were security problems. It does not have specific guidelines on human rights and considers that, as a relatively small mining company, it will evaluate situations on a case-by-case basis. It has some limited exposure to exploration in developing countries. It does not have a stated corporate policy about working in countries with

regimes in politically sensitive situations. However, it developed a profitable project in a successful partnership with indigenous peoples in a developed country.

4.7 Development of Safeguard Policies

This section examines in some detail how, in response to the environmental, social and human rights problems they encountered, safeguard policies have evolved at Rio Tinto and some other mining companies. It analyzes concerns held by advocacy NGOs about voluntary codes, and finds that do not have consequences for violations or those companies that do not implement the recommended processes. Recent debates in Canada about the broad problem of Canadian mining companies operating in developing countries further demonstrate a need for action on the part of home governments to regulate the industry in situations where the host governments fail to exercise their obligations under international law to protect human rights.

4.7.1 Rio Tinto

This section includes extracts from and summaries of interviews with current and former executives and staff of Rio Tinto and/or RTZ (Rio Tinto and RTZ are used synonymously). In the late 1960s, Rio Tinto was very much the darling of the British financial institutions and commentators – it seemed the company could do nothing wrong, having developed during the 1962-1969 period so fast and successfully that they believed it had the Midas touch. In 1969 one of the major British newspapers, had a report on Rio Tinto under the headline “Has Rio Tinto Run Out of Steam?” That article was said to have garnered more attention within the company than anything else. It provided an impetus to say to the outside world that the company had all sorts of profitable projects in the pipeline. Previously there was very little shareholder engagement since it was thought shareholders were very happy!

Experiences in the late 1960s and the early 1970s caused the Company to start asking questions about itself. Its then Chairman, Sir Val Duncan, a Christian Scientist, was characterized as an entrepreneur with a very solid personal creed such that he did not believe anyone could question his motives since his word was his bond, i.e., he was a very British gentleman of the time.

He believed he had defined a winning business strategy, recognizing the Company could not be successful as a one product, one country-company as was the old Rio Tinto Company. In his view it was necessary to go out into the world where the product was likely to be found. He understood that to be in the mining business, one had to be able to persuade people that digging up their back yard is a good idea, convincing them in such a way that they would be supportive. If the people did

not have the wherewithal, work skills etc, to be able to do it for themselves, it was essential to be able to develop them. His favourite saying was an old proverb: you can give a man a fish to eat for a day; but teach a man how to fish and he will eat for the rest of his life. He and the other senior executives shared a similar outlook, approach and philosophy as to the way they operated.

There was a great soul searching internally when people started asking: “Are you sure you are doing this properly? We don’t like the way you are doing it. Are you running out of steam?”

Although Rio Tinto changed its strategic approach and the way it did things, many people on the outside still thought of it as the same old style company with one mine in Spain. In the 1980s, it started asking itself: “What do we do? How do we do it?” “How do we work?”

Until the early 1990s, the company culture had always been: “We’ll tell you what it is all about; We don’t want to listen to you; We are a no comment company; We want to keep our heads down; We are not prepared to engage in public policy debates.” By 1995 the culture of Rio Tinto had changed somewhat as Rio Tinto moved away from its sterile approach.

According to an interview, in the 1990s, Parliamentarians would say: “Oh Rio Tinto, it used to be called RTZ, that dreadful South African mining company that supported Apartheid. I protested against you and Barclays and Shell and General Motors and Ford, staying in Apartheid South Africa—the leopard doesn’t change its spots...”

The company was being attacked for doing everything wrong by many critics and receiving negative publicity. It experienced demonstrations and protests by Native Americans in full headdress and Diak warriors at its annual meetings, which became legends. The company was not prepared to have a constructive dialog whenever NGOs and others criticized it. Any and all good practices around the group were well hidden. People inside the company thought that things could not be so bad if it was still doing well as a business.

The company realized this was not a good situation if it was ever to attract public trust, and obtain a “social license to operate.” It understood the need to start engaging with Civil Society and begin explaining to people what it did as it engaged in more constructive dialogs with stakeholders.

The challenge was how to change perceptions and convince people to re-examine Rio Tinto, rather than just accept at face value that it was a bad company. The company deliberately set out to do that in a non-challenging approach. It asked: “Look if we are doing things wrong in your eyes, please come and tell us how we can start doing them right.” This was a way to transfer the onus to critics who would have to visit operations themselves before they passed judgment. The result was that critics usually admitted that things were not quite what they expected to find.

The company's message started to go out. A major company adversary visited Palabora in South Africa and Rössing Uranium in Southwest Africa. When he came back he said he had misjudged the company for many years. "You really have done a good job. I'm now going to stand up in public and say so." At a public meeting where someone was attacking Rio Tinto on Anti-Apartheid, Anti-nuclear policies, and about Rössing Uranium, that adversary asked if the critic had been there and seen things. "If you haven't then shut up. I've been there; I've seen it. It's not what you say." When he sat down there was a deathly hush in the place. That was seen as the key moment when things started to change. People started talking to their friends and contacts. Over a period of years the company started to convince people.

In addition to wanting critics to take another look at the company, with all the bad press it was receiving, the question arose as to how the company would be able access future deposits to assure its future. Another factor was that it was costing a small fortune to fight and consuming a lot of staff time flying journalists around the world to look at things for themselves (because nobody would believe the Company). Rio Tinto asked: "How do we stop fighting?" It needed to turn things around, embrace the concerns and hopefully spend money constructively, rather than defensively. It tried many things, including advertising campaigns in the early 80s in an evolutionary approach. To some a degree it was trial and error using the best available techniques at the time, learning from that and doing something different or changing what they were doing significantly, whichever worked. Surveys show a strong trend that the attitude towards Rio Tinto has changed positively. However, there is a lot of angst towards mining in general that leaves much to be done.

"The Way We Work"

Rio Tinto's Statement of Business Principles ("The Way We Work" – see Appendix VI) started to evolve formally from 1995-1996, when they were still embedded in Environmental Health & Safety Policies, Employment Policies, etc. The then Chairman, Sir Robert Wilson, determined a need to clearly articulate the company's core values and develop a comprehensive set of business principles. This was done by identifying best practice around the group; getting external inputs from NGOs; and having a dialog with the business units to see what could be developed as best practices and implementable business principles.

During the first stage, people in all parts of the Group around the world were asked: What are the core values that you believe in as far as the way we work are concerned? What is it that makes you happy about what you do? and: What is it that you would never allow under any circumstances?

At the second stage, the company instituted a dialog with a number of NGOs (Amnesty

International, WWF) and some organizations that were members of the World Business Council for Sustainable Development (WBCSD), asking: What would you expect core values to be? and: What would you expect people not to do under any circumstance? The company also reviewed existing codes and principles as part of an attempt to identify what Civil Society was expecting from it.

It took about three years to produce and first publish in 1997, “The Way We Work” which clearly articulated the Company’s core values, together with detailed policies and procedures. Sending a copy to everyone in the Company publicized this, and going through it with them made sure they understood what it meant. By early in 1999, it was said to be well and truly ingrained throughout the company.

“The Way We Work” was seen a formalization of what existed in the company rather than something totally different. It helped cement what was going with people outside the company when asking them to come take another look at Rio Tinto. People in the company saw “The Way We Work” reflected values held by Sir Robert Wilson, the Chairman, a man of utmost integrity, and that it made good business sense in addition to good ethical sense.

After developing “The Way The Work”, Rio Tinto and other major mining and metals companies understood there was only so much as a company on its own. Since industry tends to be judged by the worst performers –even if a company was seen as the best of a bad lot, it was still in bad company. To a large extent the reputation of the mining industry stands and falls on the weakest performer. Rio Tinto and the industry can always improve their reputations but they are only as good as the weakest member of their business units. The mining industry as a whole and its leaders realized they had a responsibility to try tackle the problems, including the artisanal mining situation. They recognized that if they did not act together they were going to be out of business.

In 2002, Rio Tinto re-examined “The Way We Work” to see whether or not it still met Civil Society’s expectations. It embarked on another internal review amongst the senior members of the executive of its business units to see whether or not it could be improved upon; where there were difficulties in implementation, or problems emerging with the internal control auditing procedures. The non-executive Social and Environmental Accountability Committee of the main board that reviewed recommendations from the internal consultation process made suggestions. Some NGOs were asked what they thought about the existing statement. Aron Cramer, President & CEO, BSR, was reported to have made a comprehensive peer review of best practice across all sectors. He had been asked to visualize where society’s expectations for an extractive company such as Rio Tinto were going in the future. He determined that the existing statement of business principles were current, however he made some suggestions for improvement, many of which were embraced.

The company returned to the business units to ensure its senior business operators were comfortable with the changes and could meet all the policies on political involvement, human rights, communities, sustainability etc. The process, a major effort both internally and externally, resulted in issuing the second iteration of “The Way We Work” in 2002, which the interviewees insist, will continue to evolve. BHP Billiton and other mining companies have policies that say they will not dispose of mine waste, i.e., tailings, into waterways. However, as mentioned above, the Grasberg mine in which Rio Tinto has a 40 percent interest, dumps 230,000 tonnes of tailings daily into the Ajikwa River, leading the Norwegian sovereign wealth to sell its substantial shareholding in Tinto after it was unable to cause any change in operating conditions (Robertson, 2008).

The company reports on its sustainable development performance linked to principles in its statement of business practice, alphabetically: starting with Communities.

Before starting exploration, Rio Tinto does an anthropological baseline study. In exploration when setting up systems for a project, there are early surveys and scoping studies, either formal or informal, which are part of the risk assessment. In any kind of project surveys are done to find out what’s going on. That means understanding the community and its needs and priorities. A social and community risk assessment is done as part of any new project. Human rights questions are part of the overall risk assessment.

Biodiversity is one of the things considered in risk assessment, for example Rio Tinto has a major programme in Madagascar. At the biodiversity site in Guinea, Conservation International helped with biodiversity. There may be local partnerships between the company and local NGOs that are specific to an area or there are global bases that can be drawn upon.

In addition to the range of skills that are used at Rio Tinto (engineering skills, geological skills, etc.), all staff has either to have or be trained up in a full range of environmental and social awareness. Anyone who is hired is required to be sensitive to community concerns and have a community relations’ competency. These elements are part and parcel of the way in which it now conducts its business. Rio Tinto put a lot of effort into ensuring that people are aware and trained in these matters so that there are no surprises as to what they are expected to perform against since whatever their responsibilities might be, everything has an environmental and social aspect to it. At the corporate level there are value diversity workshops, which every employee must take: these are half-day workshops about diversity within the group. In London, the corporate model looked at diversity on site for all employees across the different levels. Some sites, such as in Zimbabwe, used Rio Tinto’s corporate model, other sites have had their own cultural awareness models depending upon what it might be; in Australia there is a whole series of Aboriginal awareness training

workshops. Each site determines what is appropriate.

Rio Tinto has competency reviews that people go through to make sure they have all the appropriate skills. On roles where communities' issues is part of their responsibility, anybody from a geologist, to an environmentalist, to a managing director, will have certain areas where they are supposed to understand about community competencies. Business units examine the most appropriate communication and consultation methods for their geologists and seek guidance as required.

While it is a very technically driven company essentially run by engineers, over time other factors have become part and parcel of the way in which projects are examined. Projects are examined in a totality, not just their financial return, but the social and environmental impacts which are deemed to be just as important and have to be managed as well as the financial and pure engineering factors.

Some are concerned things in this area could be heading to the point where there is a policy, a guide, a guideline, a guidance. The problem with guides, guidelines and guidance, is said to be that once someone has them in their head they believe they know it all, whereas they need to evolve all the time. Guidelines and guidance can sometimes be problematic and get in the way if they are spelled out in too much detail. It is preferable to set values, otherwise there could be managers sitting around in the world surrounded by volumes of material that needed reading to find out what they were supposed to do. If that happened, then the company would have the wrong manager there in the first place, as the manager is not trusted.

A common sense approach relies on getting the right people in the right place at the right time. People matter; the way people think and the way they get involved. With the right people doing the right things in the right place, things work. There are going to be problems sometimes. What really counts is: how the problem is dealt with; what is done, and how to learn from it. If Rio Tinto had any success in the past, it was said to have been getting that more right than wrong.

Indicators, Monitoring and Verification

Rio Tinto's reporting on social and environmental performance has evolved over the years in an attempt to become clearer and more directly linked to its business principles. Internal reporting seeks to be on meaningful things that drive performance, are useful for managers and above, and robust enough to be included in the overall reporting system. For example, if something were being done on a regional basis, at a corporate level, and also at the business units, looking at each would be a rigorous approach.

Attempting an open and transparent approach, Rio Tinto's system to verify performance detail and data is carried out independently in a variety of ways, including random telephone calls and random spot checks. The process is not across every single business unit or every operation across all the continents. It is left up to the independent verifiers to target any group operation, either by going in and doing a very detailed paper search with verification following the paper train, or by telephone investigations and verification. An assurance process described in Rio Tinto's annual review assesses whether the company is producing meaningful information that is going to be useful, not only to the company, but also to its stakeholders, in determining how well it is performing against all its business principles and practices.

At the exploration stage a project will include an initial site assessment. There are ongoing reviews every three years that make assessments of what is being done. While an operation might be able to conceal problems for a while, if it were ongoing it would be identified either in a review at the exploration stage, or, if a formal project, through a "Technical Evaluation Group" team review that corporate does as part of Rio Tinto's internal assurance that people are doing what they say they are doing. For example, community affairs would be looking at community risk to see if the project people really have identified what the community is saying. Some 5-6 sites are selected each year for compliance reviews as part of the internal safeguards to make sure that, in addition to reporting up through their responsibility channel, any problems will get found out. It is part of corporate values to do things properly.

Reporting

Rio Tinto reports development indicators against the Global Reporting Initiative (GRI) sustainability reporting framework and guidelines. In the absence of generally accepted social indicators, an in-house anthropologist drew up its own indicators and uses its community five-year plans.

The international policy debate influences people to ensure things are fully documented. Rio Tinto implemented a new document management system to make information easily available. It wants to make sure its indicators are verifiable and its policy has teeth. Internal guidance was prepared after many people asked: "Well your policy is great. How do you do it?" Internal guidance and Rio Tinto's proprietary internal systems continue to be developed by the company. Other companies have spent a lot to have guidance prepared for them.

All companies in the Rio Tinto group have to report externally to their communities. A very decentralized company, Rio Tinto has policies and guidance as to what should be done in

environmental management and community plans, etc. People at the local level have to develop plans to respond to the local community situation, as head office is not in a position to decide what is appropriate for a community when they do not know those people. Site people have to listen to the community about its priorities and respond to whatever they may be.

Rio Tinto develops and exchanges best practices around the group. It holds a cooperative forum so people can see what others are doing. It holds regional workshops to orient and train people. The basics and the bottom line is the project people should be listening to their local communities, and from that facilitating and responding, and explain the company cannot do everything, not is it appropriate for the company to do everything as it does not want to take over the role that government should be playing. Within the guidelines, project people are expected to be creative, imaginative, and respond to what the community wants.

Rio Tinto has not closed many mines. One it closed is the Flambeau mine in Wisconsin, a high-grade copper mine with a small ore reserve that ran for about six years. When the mine was opened it attracted a lot of people there to take advantage of the economic activity that was generated. The company said the mine said would buy goods and services only if a supplier could show a business plan as to how it was going to continue to sustain its activity after the mine had closed. Since the mine was only going to be there for six years, it actively supported local business to ensure that if people were attracted and moved into the area they would still have a sustainable livelihood after they had developed business, not just relying on the mine. A major concern for Rio Tinto is how can it create economic activity, make it grow, try to find new markets; and be a catalyst for access to capital for local entrepreneurial people in the community.

Comments

Some advocacy NGOs believe that in companies, such as Rio Tinto, which were the focus of activist campaigns, the message has got through and as a result of changes in behaviour they are attracting much less attention from advocacy groups than in the past. Others remain unconvinced believing that the leopard had “not changed its spots since it got the wind up in 1995 and came out with *The Way We Work*.” One said during an interview there was “no evidence that Rio Tinto was doing anything other than keeping away from all the controversies.” Acknowledging that “to a considerable extent, Rio Tinto’s style of pre-emptive advocacy has succeeded in taking the wind out of our sails, it is more difficult now to stand up in a meeting in which Rio Tinto makes a presentation and claim (which we did in the 1980s and much of the 1990s) that they could not be trusted an inch.” It was conceded “there are people in Rio Tinto who genuinely believe what they say” although concerning problems, “the number of issues has not reduced.” Problems cited revolved around “free,

fully-informed, prior consent” of indigenous peoples, labour relations, and health and safety.

Riverine disposal of mine tailings from the Bougainville adversely affected drinking water, timber, and hunting and fishing. Current riverine disposal of mine tailings from the Grasberg mine (40 percent Rio Tinto) has caused significant damage to the environment and affects the lives of the thousands of people in the Irian Jaya.

An incident was cited in which a team from Imperial College, London, known as Parrots in Peril, came across a Rio Tinto prospecting team in the Podocarpus National Park in Ecuador (Mines and Communities, 2006). When it was raised at the company’s 1993 annual meeting, the Chairman said the company policy was not to be in National Parks and he would check it out. The company withdrew leaving a small-scale miners’ cooperative it had sponsored operating within the park boundaries. Apparently the manager was fired. The company disposed of all its exploration concessions in the country by 1997.

4.7.2 Other Major Companies

Similarly to Rio Tinto, other major international mining companies have developed clear human rights, social and environmental policies and procedures that include moral considerations. They are concerned that their long-term business considers the needs of other stakeholders. Some participate in the UN Global Compact, they and others have either joined or follow the VPs and the EITI. However, some mining companies are still trying to define what constitutes human rights in terms of their business activities.

Anglo American

Anglo American plc asserts in its statement of business principles that “as a good corporate citizen” it “respects the dignity and the human rights of individuals and the communities that host [its] operations” and makes a commitment to “make a lasting contribution to the economic and educational well-being of these communities.” Anglo American has developed a socio-economic assessment toolbox (SEAT). It uses guidelines and check lists to identify gaps and then develops action plan to resolve them. The SEAT process includes: (a) profile operations and the host community; (b) engage all local stakeholders; (c) identify positive and negative operational impacts, and critical community socio-economic development problems; (d) develop a management plan to mitigate any negative aspects, maximize benefits and collaborate with communities on broader development challenges; (e) prepare a report with stakeholders as the basis for ongoing engagement with the host community. Since 2003, the SEAT process has been used at more than 55 operations in 16 countries (Anglo American, 2003).

AngloGold Ashanti

Safeguard Policy Dynamics

Information from extensive interviews with senior AngloGold Ashanti executives highlights an important characteristic of the company's approach to issues of concern was its willingness to engage positively with a major human rights critic after it acknowledged that its people on the ground had made payments to warlords.

AngloGold formed in 1998 as a consolidation of the Anglo American Corporation gold mining interests in South Africa and elsewhere, subsequently expanded into Australia, North and South America, East and West Africa. In 2004, it merged with Ashanti Goldfields to form AngloGold Ashanti Limited (AGA). The company has some 20 operations in 11 countries and with listings on five stock exchanges. Its executives have a record of publicly promoting the importance of rights and ethics.

The company's values and business principles (Appendix VI) flowed from those of the Anglo American Corporation (shareholding 16.6%, formerly 51%). Sets of business principles were enunciated to give substance to its broad value statements. These include clear commitments around ethics and governance, health & safety, the environment, and to community and social development. Value statements and principles are aspirational, hence specific policies, procedures and guidelines were prepared that outline expected corporate behaviour.

To deal with issues of concern AGA establishes distinct management systems – define policy, develop implementation plans, implementation and training, monitoring, evaluation and audit that feeds back into the policy plan, i.e., with a classic ISO circle of continuous improvement. In the area of social development and human rights concerns initially the model followed was to use Anglo American's Social Economic Assessment Toolbox as a training mechanism. As experience evolved the company developed its own toolbox with guidelines and training programs for activities at the local operating level.

In a relatively decentralized company, management of various areas takes place with corporate-wide policy set at the central level together with oversight, followed by local implementation that allows for different social and environmental dynamics. Central to the way AGA operates is to obtain other stakeholders' perspectives, and achieve some shared vision of what it is doing, and how it is going to happen on a site-by-site basis. To manage any tensions, the company seeks to involve the relevant stakeholders, reach some kind of collective consensus around who is actually responsible for what, and then communicate that decision in a transparent manner. AGA's

objective has been to inform, train, and equip its managers and communities to deal with these problems. Typically at an operational level people interact with the rural communities on a regular basis in addition to regular social economic audits.

Community and Social Development

A holistic approach to community and social development is essential. While various aspects may be given different emphases, they cannot be isolated since there are inherent linkages; for example, health and safety considerations interrelate with community matters; as do environmental, ethics and governance concerns.

To meet its stated value of leaving a community better off as a result of the company being there, AGA has set up funds that targets health care and education projects, in and around the communities in which it operates, and around the communities from where it predominantly draws its labour force. The company spent U.S.\$8.05 million globally in 2007 on corporate social investment (CSI) funding to sustainable community-based projects. In 2007 that fund spent some around U.S.\$1.88 million in Southern Africa on 68 projects with the largest proportions spent on education, HIV/AIDS, welfare and development, skills training and job creation. In Ghana, a major malaria programme at Obuasi reduced the incidence in the region by an estimated 74% in just less than two years.

Although, at the exploration phase, before an economically viable deposit was outlined in Mongbwalu AGA initiated baseline studies to obtain a good understanding of community activity in region, health care, education, etc., as a prelude to how it would going about closing the operation down when the ore body is eventually depleted.

The company's approach is to make a judgment about the mineral prospectivity of a region, and then decide about its capacity to do business depending on the challenges faced in the country, ranging from safety and security, through land tenure, through to the fiscal and the banking circumstances, and the host government's attitude towards multi-party democracy.

A matter of concern is to identify which are the key indicators to measure. For example, in education does one use the traditional measure of how many how many classrooms have been built, or how much money was spent on education? Or should one examine what has happened to literacy rate in the area? An associated dilemma is to assign causality, for example, where there was no classroom and one was built, that necessarily directly increased the literacy level.

The question always arises as to how closely do company policy and practices align? Life is not always as simple as saying here is the policy and practices will naturally flow therefrom. At

AGA, internal governance is assured through Board sub-committees, for example, one oversees implementation in the areas of safety, health and sustainable development. Other Board sub-committees examine governance questions and ethical considerations. There is the usual internal and external reporting and Board instruction. In terms of independence of directors and the role of non-executive directors, on all board sub-committees non-executive directors hold material roles (generally the role of chairman).

AGA's sustainable development reporting and assurance practices currently (2008) follow and report against Global Reporting Initiatives (GRI) G3 guidelines, ICMM principles, the Voluntary Principles on Security and Human Rights, the Extractive Industries Transparency Initiative and the UN Global Compact. All its mines are compliant with ISO 14001. Assurance for AGA Report to Society is provided annually by PriceWaterhouseCoopers. In addition the company's internal audit team ensure checks and balances are continuously in place.

AGA was one of the founding members of ICMM. The company understands it is in its interest to try to take a leadership position with its peer companies in promoting a common set of principles because the mining industry is tarred with the same brush if nothing happens.

BHP Billiton

Similarly, BHP Billiton, in its sustainable development policy states that "Wherever we operate we will...ensure we...understand, promote and uphold fundamental human rights within our sphere of influence, respecting the traditional rights of Indigenous peoples and valuing cultural heritage" In terms of human rights it has made commitments to the UN Universal Declaration of Human Rights, the United Nations Global Compact, the Voluntary Principles on Security and Human Rights and the World Bank Operational Directive on Involuntary Resettlement.

Others

It was noted that there has been greater push from NGOs for legally binding norms that the UN's Special Representative initially rejected. The question has arisen about human rights in the context of globalization with Chinese, Russian companies and what can be done about companies unable or unwilling to live up to values? Should there be a global convention to include them? The focus had been on best practice and not much about what is happening on the ground. Governments have pushed back against the norms (two voted against the resolution with two abstentions). Several mining companies expressed concern that mining enterprises from some developing countries and emerging economies such as China, Russia and DRC, that do not embrace human rights principles or corporate social responsibility place those that do at a competitive disadvantage in countries with

weak institutional frameworks and local laws, a lack of commitment to the rule of law, weak capacity to enforce legislation and/or corrupt systems. A difficult problem is how come to terms with parastatals and others with a different philosophy towards rights and respect together with different expectations.

Companies that have clear policies and developed tools to use for engagement find that their companies are perceived as doing better according to surveys and other measures taken (since surveys are not effective in all project areas) to track opinions held by cross sections of stakeholder groups.

One company pointed out examples of junior companies who forget that due to global communication what they say in one place gets heard around the world. If they tell villages a about what will be given to them is vastly different to what is said to investors, it will create opposition to a project. Companies can forget that much of the finance may be coming from North American NGOs who are very likely to be examining closely what companies report to those exchanges where their shares are traded.

Some companies, anticipating they might be a target of politically motivated and anti-mining groups, adopted safeguard policies, monitoring and verification procedures that articulated their values. A high level committee including the Company Chairman and a member of senior management included independent experts in various roles with other company members kept to an absolute minimum to enhance transparency and being seen to be doing better. Members of the committee were encouraged to be critical and point out any areas where the company was wrong or uncommunicative. This approach is an effective vehicle for change. A major company's local managers are asked at the beginning of each year to run operations according to corporate business practices and to give personal undertakings.

A company that acquired a firm whose mines included a uranium operation had to divest itself of that asset to be allowed into "Footsie For Good" (FTSE4Good), an ethical fund index, that at the time had a blanket exclusion of any company with uranium regardless of whether the operation was well run or not. The experience was characterized as "shallow and unrewarding" with the decision made behind closed doors and one that suggested some ethical and transparency panels need to examine their own workings.

Other major mining companies are considering conforming to the VPs. A company that had a code of business ethics, typical of the 1980s and 1990s, prepared a statement of business principles that includes human rights. It took one energy company eighteen months to provide a framework from which it developed a human rights policy for the group.

At an initial stage of developing human rights policy and guidelines, one mining company held workshops for its managers to examine questions of social development and ethical business principles, and its relationship with the community. The company recognized that if it was not aware of what was happening around its operations, problems could lead to a souring of relationships and disruptions of its operations. It recognized the need to be more systematic about mining's social impact; and not just offer a large amount of corporate largesse.

Whereas major companies are mostly operating in the way civil society wishes, this is not the case with all others, and although the industry is uncomfortable dealing with bad behaviour, some say they will be very disappointed if voluntary codes and practice do not work and say it is very sad if legislation is required because of the lowest common denominator. They believe that in a world with many restrictions and much legislation one should avoid more legislation, not at all costs, but as the last resort.

Scepticism was expressed in the interviews about the credibility of other mining companies. "In a moment of rational naivety" BHP Billiton was reported to assert that it "would not operate in protected forest area." One advocacy NGO alleged the company had "a lot of murky past" that was "closer to the surface than for most other companies."

Some suggest that communities are not having better experiences with mining although companies appear to be trying to do better. To many it is more important what a company does on the ground than what it says. Strong feelings are held that communities are frustrated since they have no outlet for their grievances. Communities, opposed to any type of mining, who are in conflict with both companies and their own governments, find they have no redress. NGOs are concerned that promises made by investors are often not fulfilled although one said that more intelligent companies recognize it makes more sense to engage with the communities. While NGOs may be critical of how a major company operated in certain areas they conceded it was reputable company that can engage and operates with good standards of behaviour.

Mention was made about mining in protected forest and tribal areas in India where there are local companies operating in those areas. It was claimed that foreign mining companies align with local companies to gain access to contentious areas. An advocacy group's report was cited that raised questions about mining companies' assertions about environmental standards and adherence to human rights principles where past bad experiences leave local communities sceptical (ChristianAid, 2004).

Apparently insurgents in Mindanao had said they would block mining mineral projects "contrary to the good will of the people." There are reports that potential targets of the New People's

Army include several Canadian companies such as TVI Pacific, Crew Gold, and Atlatl Resources (Asian Pacific Post, 2007). A mining activist was shot in the Philippines by an armed guard working for Pelican Resources of Australia.

Comments on Safeguard Policies

The major international mining companies at the Board level have enunciated their values, sets of business principles, and policy on human rights. Senior management and their staff expended a lot of effort to establish safeguard policies in support of their values, business principles and policies. They have used local knowledge of conditions where they operate to develop comprehensive codes of conduct and practices to incorporate into guidelines and training programmes. Internal and independent external monitoring, verification and reporting of compliance have been established. Companies have established programmes that allow anonymous and confidential reporting of incidents by employees and non-employees with a follow-up mechanism. These are useful models to adopt for mining companies seeking to implement a successful programme of human rights. There are concerns that at times of financial crisis and low metal prices, companies may reduce their expenditures on corporate social responsibility, (CSR). To counter this tendency a successful CSR program should be aligned with business goals to avoid it becoming superfluous (Immelt, 2008). Immelt suggests that components of effective CSR include running a company based on trust with compliance, governance and transparency; maintaining a long-term commitment to its people, and orienting the company to solve social problems.

4.7.3 Junior Companies

The interviews determined that the non-technical fundamentals of a successful program could be summarized as: mutual respect; active listening to people, their questions and concerns; and establish credibility by taking action. One of the areas for the growth of environmental consulting in Canada was because government policy required developers to hire independent environmental experts because nobody trusted the companies. During the past 30-35 years consultants' credibility deteriorated. The perception is that since a company pays them for they are in its pocket. Now state and federal agencies are retaining outside experts bringing a total of six groups of experts to review a project. Since they are all seen to be pro-development, the question is whether they can be trusted? Or, are they in somebody's pocket? Communities believe they need their own capabilities.

Case studies have demonstrated the breadth of problems encountered when seeking to achieve a sustainable mining community (Veiga et al, 2001). Successful junior exploration companies recognize that it essential to respect people's traditions, needs and fears, especially in

small, remote communities. They need to be aware of water sources and any actions they might take that could endanger vegetation, the wilderness or any animals “Intruders” need to explain who they are, why they are in the area, and what they are doing. Whether they will be accepted depends on their initial attitude. When starting any program it is essential to ask: “What risks are being created for the local community?” It is critical to assess the impacts on the community and environment that will develop over time. Local people do not want to be patronized, they want to be informed and participate in decision-making. Certainly charity does not work – it has been proven that companies cannot buy their way out of any situation. A company needs to have a serious concern about what remains after the project has ended and whether any economic activity established will be sustainable. Some companies strive to employ, as much as possible, local people in technical, non-technical and management functions.

Environmental, human rights and social baseline data acquisition represents a major cost and effort at a potentially major project’s initial stages. Local people have legitimate concerns about how the project will impact water, game and fish that are the basis of their subsistence way of life. One company spent eight months preparing a detailed response to 180 questions that it received.

Nevertheless, according to Rio Tinto, problems with the junior companies will continue. The problem that arises when a company is not managing and in control of a project, but has someone else doing things for it, is how can it apply its standards? Rio Tinto’s approach is to give any partner, such as a junior company or a contractor, a copy of “The Way We Work”, and go through it with them. The company’s statement of business practices requires it to encourage its principal partners, suppliers, contractors, and others to adhere to the policies and practices that it has established.

4.7.4 Rio Tinto and the Voluntary Principles

According to an interview, the British Government had been doing precious little about security and human rights problems when Shell and Rio Tinto leaned on the Foreign Office saying: “Look these are the facts of life chums, put your money where your mouth is.” To give them credit they did exactly that, becoming staunch supporters (this section is developed from interview with Rio Tinto).

On across industry questions, the International Chamber of Commerce was more involved than anybody else. Each of the major companies had a common concern with instances of problems arising somewhere in the world. They asked: “What are the generic things about this and how do we cope with them as a major company whether in mining, chemicals or oil?”

At the height of the Anti-Apartheid movement, Sullivan developed business principles to

guide companies operating in South Africa (Sullivan, 1977). These evolved into the Global Sullivan Principles at the time when Rio Tinto and others were developing codes of conduct. Sullivan was asked if there was a way to develop the principles into worldwide principles that were not as prescriptive and with less reporting requirements than the original South African Sullivan principles, which were expensive to put into, effect. Rio Tinto believed that usually the small and medium sized companies that caused the biggest problems rather than the majors.

The *Voluntary Principles on Security and Human Rights* (VPs) developed on a parallel course. Talks were in progress with the Sullivan Group at the same time as the U.S.-U.K. Voluntary Principles group was being set up with government involvement. A question arose about the best vehicle for dealing with the problem. It was decided that the government route was the way to go for security questions, as it was essential to have governments involved, and the Sullivan approach for social responsibility questions.

With both the governments and companies involved with the VPs, when allegations of problems arise, there can be a proper investigation with which most people will be satisfied. The VPs may need to be toughened, but at least they are in place.

4.7.5 Advocacy NGOs Views of the Voluntary Principles

A human rights advocacy NGO discussing the VPs, observed that the problem is not that there are not the policies and codes for multilateral agencies and companies (the policies are pretty good) but implementation is weak with more effort required applying policies at the operational level. It is time to focus on how to monitor and hold companies to account for the things they have signed on to and work out what those things mean in practical terms. The lack of experience is in how to apply them in practice, how to draw lessons from that and disseminate that information and promote values in practice.

Differences between companies and within companies between project sites are seen as inevitable. A lot of companies tried to implement the VPs across the whole company, rather than pilot them properly in one place, make sure they work, and then take that learning experience to other sites. The best way to convince engineers and project managers to adopt something is evidence that it has worked and benefited a project elsewhere.

The VPs have two pages of principles with a short paragraph under each principle explaining what it is. Give that to fifty companies and what does it mean in implementation terms? For example, a principle says make a background check on all prospective security personnel for human rights abuses. How is it done? What suggestions? What examples? What good practice? It is

essential to flesh the principles with examples of practice to develop more rigour, more consistency, and a better understanding of how these things need to be done. Otherwise they become box checking. The VPs include risk assessment. Every company does its own qualitative risk assessment. The question becomes: How good is the risk assessment? One can check the box background check after asking a friend in the local police service if he knew if his soldiers or his people had any human rights abuses. He said, No. Right: Done it. This extreme example illustrates the need for something that has more guidance and some process of holding companies to account.

There needs to be more rigorous implementation. Companies are perceived as being shy about sharing information. More clarity is needed on the rules of engagement. A major deficiency in many countries is having a mechanism to hold governments to account. To deal with this in DRC, an advocacy NGO is focusing on developing Civil Society and other actors' capacity and ability to hold the government to account. The challenge is to get government commitments to the VPs, EITI, etc.

Companies not part of the VPs process are probably doing more to operationalize the principles than some companies in the process as they have less of a public relations gain. Company members of the VPs can say they are involved and that sound good. If outside the process, signing and integrating principles in its business is done with more seriousness because there is less reputational gain. A comparison study would be interesting.

If the Voluntary Principles on Security and Human Rights (VPs) were part of the OECD guidelines for multinational enterprises it would be a start moving towards regulations despite the OECD complaint mechanism being very unsatisfactory. As more companies sign up to principles and codes emerging de facto regulations are turning them into soft law, for example, BP has been writing the VPs into its contracts. One can expect to see more of that.

When examining Corporate Social Responsibility (CSR) for security and human rights it almost seems impossible to avoid the argument about voluntary vs. mandatory (or regulatory). The VPs offer a good example for getting through the dichotomy. NGOs can and ought to argue for more regulation, as do some companies. It is very much a sliding scale with nuances that make it uninteresting to try to define things as being regulatory or non-regulatory. People need to understand it is a natural fluid and dynamic process. Although the VPs by their very nature are voluntary, in a number of cases they are in fact far from voluntary, for example as part of the statutory packages which means VPs have a direct legal standing in the host country. The VPs were part of a package that the Indonesian parliament approved for a development project. There are direct references to the VPs in reports of the office of the Human Rights Commission, the IFC and others. The VPs are becoming best practice and beyond that in some parts of the world. A deficiency lies in the area of

collective in-country processes. If there is an in-country process involving just the local government, NGOs and the companies in a local process, potentially the VPs can be used as a platform for a national discussion around security feedback. There are good examples of this in Columbia; more is needed in other countries.

The problem of countries such as China, Lebanon and India not adopting voluntary principles and codes appears to be used as a smokescreen to allow a company to compete with companies from those countries. The argument is that a company has to use exactly the same techniques and values as the competition—which often does not have any. Nevertheless it is accepted that some companies do have an interest in behaving ethically.

4.7.6 Voluntary vs. Mandatory

One advocacy NGO expressed concerns that while some companies are willing to exert their influence and power to obtain projects, they are less concerned about the negative impact of their operations in the developing countries, which causes NGOs to pressure them to make concessions to local communities. This leads into the major debate between voluntary initiatives vs. consequences for a corporation's responsibility for violations of human rights or complicity in human rights abuses.

Although companies tell human rights NGOs that they have no business to interfere on human rights because of sovereignty questions, they will readily intervene on taxation, labour law disputes, or when foreign courts make rulings against them. A Chevron lobbyist who asked not to be identified talking about the firm's arguments to U.S. officials was quoted in the press as saying: "The ultimate issue here is Ecuador has mistreated a U.S. company." He asserted: "We can't let little countries screw around with big companies like this—companies that have made big investments around the world." (Isikoff, 2008)

It appears to some that the U.K. only wants to have voluntary initiatives, and to avoid disadvantaging British companies it will not take action under the EITI if other countries do not. The dynamics around the EITI provide an example of in-country processes.

An NGO concerned that the OECD guidelines for multinational enterprises do not work expressed scepticism about the Extractive Industries Transparency Initiative (EITI) actually effecting any change in corrupt behaviour. The EITI is seen as a way of diverting attention albeit with some promotional visibility.

For the OECD guidelines to be effective implies there are adequate resources and a willingness to investigate, which have been major barriers. Home legislation is an important and tempting solution to hold companies responsible for their actions overseas however, the reality is that

the failure of governments to use the instruments they have lead some advocacy groups to conclude there is nothing in place to deter companies. Media attention with a large lawsuit, while very difficult to achieve, is seen as a threat by companies. NGOs, concerned about the weakness they find with National Focal Points, some of whom appear to have a work ethic of doing as little as possible, have been pushing the OECD guidelines to test their limitations. This has shown up a weakness with the guidelines. Even when there is an investigation that “upheld the majority of the allegations” there appear to be no substantive consequences to the company involved (OECD, 2008). The trend towards regulation is extremely difficult for many reasons. One is the competitive disadvantage that would mean if one government, even if it wanted to, introduced regulations that would place its companies at a competitive disadvantage to those from countries who are not going to regulate. The EU and multilateral agencies are places where it could occur.

An NGO concern is sovereign governments in developing countries are placed in difficult positions as to obtain desperately needed investment they become held hostage to companies as they are pressured to enact legislation to protect investor rights to the extent that it undermines the rule of law. This makes it very difficult for locally-affected people to get protection from harmful activities by mining company operations. There is a pressing need to focus on institutional weaknesses in many developing countries. Massive investment at certain times in a country’s development is not always positive.

UN Norms

Based on the interviews NGOs are concerned about criticisms that a UN statement of principles would place unfair expectations on business beyond what is demanded by governments. One commented that “business keeps repeating *untruisms*” and if they do it enough it becomes a truism. Often companies are perceived to want to have nothing to do with human rights because of worries that to do so hints of liability.

The adversarial discussion about the draft “Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises with Regard to Human Rights” (the Norms) did not benefit anyone. Opposition to them led by the International Chamber of Commerce while Amnesty International led the group in favour. The dissention was exacerbated after the norms were accepted by the then Sub-Commission on Prevention of Discrimination and Protection of Human Rights²⁸ in 2003. The unproductive adversarial climate was calmed in 2005 when the Secretary-General announced the appointment of a Special Representative for Human Rights that those in the centre,

²⁸ In 1999, renamed the Sub-Commission on the Promotion and Protection of Human Rights.

such as the International Business Leaders Forum (IBLF) hoped would lead to a consultative process with a more productive discussion.

There had been an expectation this would lead to a revised focus largely based on the norms. [However, in 2006, the Special Representative rejected the norms in vitriolic terms. Resentment about that decision was expressed in a letter signed by a coalition of more than 100 NGOs (NGOs, 2006).] Notwithstanding their rejection by industry lobbyists, some companies have found the UN Norms to be a good starting point, and extracted large portions of them to develop their own human rights policies.

Human Rights Impact Assessment

NGOs are promoting the use of Human Rights Impact Assessment Studies to be undertaken at a project's feasibility, pre-feasibility or scoping study stages. When the relationship between the company and its stakeholders deteriorates to a polarized state it is too late to expect any positive outcome.

The International Business Leaders Forum (IBLF) is developing policies on human rights with the IFC, Global Compact and the mining industry. This is not a tool but a guide to try to discuss some of the lessons that the advanced companies have made on human rights impact assessment. An assessment guide is a step forward. The Danish human rights impact assessment tool covers the area broadly and others have developed approaches. There are far too few using these tools. There are some very important lessons to be learned from these projects. A fashionable way of looking at human rights is the degree to which companies are complicit in abuses as a consequence of what they are doing. Progressive companies talk about a more integrated mainstream approach whereas others are clearly outside. NGOs want to see more reporting on progress, more in-country dialog, and maintaining a focus on human rights impact assessment.

Monitoring and verification of human rights performance are challenging tasks. Emerging new players from developing countries in the competition for resources have posed a very difficult problem in seeking a "level playing field." NGOs and others initially did not highlight the lack of respect for good business practice by State companies nor give enough thought about how to tackle the problem. NGOs need to campaign to prod governments to take action. There are an increasing number of examples of countries where projects, for political and other reasons, become impossible for listed companies in the West with strong values, and end up in the hands of state-owned enterprises. Another area where more pressure needs to be brought to bear is with junior companies. An example of an ill-conceived community project in DRC was cited in which a junior company built

a hospital without funding for medicines and almost no pay for the doctors.

The discussion about human rights and mining's impact is moving towards the smaller companies. The larger companies are more sensitive to the concerns. There is a sense that mining companies understand much more so than they did that human rights is not something they can just forget about.

Thirty years ago many companies around the world would have never thought about communicating with stakeholders. The approach was to determine whoever had power, sign and agreement, and pay whatever money was necessary to make things happen. Although it is not completely accepted that the world has totally changed, there is a significant move away from the thinking that government power is enough to protect the project.

4.7.7 Recent Debates: Canadian RoundTables

The absence of Canada (where there are a large number of mining companies) in the VPs is a problem that goes back to when they were initially being established. There is nothing to prevent any company or country from adopting the VPs without being a formal member. NGOs have to pressure companies, the IFC, and Export Agencies to ensure the VPs are adopted and apply pressure on the OECD to include the VPs in its guidelines for multinational enterprises.

The Canadian government has expressed concern about foreign companies registering in Canada, and what might be required to stem the “flag of convenience” registration used to skirt responsible mining regulation in developing countries. The attraction of Canadian registration is the availability of, and access to, financing. One way to hold state enterprises and junior mining companies to account would be by developing a global concept of liability.

A series of Parliamentary sub-Committee hearings were held on the activities of Canadian mining companies overseas and the broad problem of corporate social responsibility concerning their activities in developing countries (Canada, 2005b). RoundTable meetings and an Advisory Group's report were part of the government's response (Canada, 2005c; CSR Advisory Group, 2007).

In Canada, many attempt to refute specific allegations of human rights abuses cited during a series of four RoundTable meetings in Canada focusing on corporate social responsibility (Foster, 2007). While lauding collaborative efforts between mining companies, NGOs and government, the results have been less encouraging than a paid consultant to the process suggested (Cooney, 2007). The RoundTable meetings advisory group report contained a caveat that “the CSR standards and reporting frameworks recommended ... fall short of addressing the full range of issues of concern regarding the extractive industry, particularly with regard to human rights.” (CSR Advisory Group,

2007).

Many RoundTable discussions were held in private, at those open to the public, as the Montreal Gazette reported, journalists “were not welcome to report what is seen or heard” (Moore, 2006).

The sheer number and geographical diversity of alleged human rights abuses (57 in 30 countries) by Canadian mining and exploration companies in many developing countries demonstrates the need to engage more effectively with Civil Society to ameliorate damaged reputations. The United Nations and Governments document the more serious allegations of human rights abuses. Alongside evidence of human rights violations in the extractive industries, there are continuing allegations against the same companies for creating long-lasting environmental damage that will negatively impact local and indigenous populations for generations.

Responding to pressure from a group of Goldcorp Inc.’s investors: The Public Service Alliance of Canada –PSAC– Staff Pension Fund, The Ethical Funds Company, The First Swedish National Pension Fund and The Fourth Swedish National Pension Fund. In April 2008, the company agreed to an independent human rights impact assessment of its operations in Guatemala and the investors withdrew a shareholder resolution that had demanded such an assessment. The investors had been critical of the company for longer than two years. They filed the resolution after a visit to Goldcorp's Marlin mine in Guatemala during which they met NGOs, indigenous people, government authorities and company representatives (Ethical Funds, 2008).

Historically, voluntary industry-driven principles on good corporate behaviour tend to set lowest common denominator standards to include all companies, even those with bad records. Enforcement of principles within industry organizations is poor. Industry’s failure to improve standards and enforcement will lead to greater pressure on and by the government to reign-in industry. As industry resents further government control over its activities, companies should therefore be more motivated to take care of their business internally, effectively and transparently.

Since most Canadian extractive companies claim to agree with government goals of supporting sound human rights, environmental and socially responsible operations, how can good corporate behaviour be achieved which is fair, equitable, just and, yet, pragmatic?

Comments

There are some obvious gaps that became apparent from the Canadian RoundTable process that need to be filled, in particular:

- Canada should join with the governments of the United States, Great Britain, the Netherlands and Norway in actively supporting the *Voluntary Principles for Security and Human Rights* and urge Canada's larger mining companies to join the *Voluntary Principles* process.
- Membership of organizations such as The Mining Association of Canada and the Prospectors and Developers Association of Canada should stipulate environmental and human rights standards for all members and require independent external auditing and transparent reporting mechanisms.
- Canada should enforce laws and regulations governing the social and environmental performance of companies traded on Canadian stock exchanges.

Adopting practical alternatives based on best practices elsewhere, holds the potential to deal with pressing environmental and human rights problems that Canadian extractive industries face around the world.

4.8 Summary

The research shows there has been an evolution of thinking and how similar problems and conflicts have arisen throughout history. The Romans were aware that better working conditions led to improved production. There have been conflicts between mining and the environment and between mines and communities from earliest times.

When the Rio Tinto Company was founded in the 1800s, its chief executive was sensitive to contemporary philanthropic principles. At the same time as he was funding scholarships to encourage improved local education, his Puritanical work ethic triumphed over humanitarian concerns. Again, the business case trumped all other considerations. When the mine owners were adamant about asserting that their property rights had priority over the environmental, social and human rights of the community, it inexorably led to riots in 1888.

The mine manager at the Rio Tinto mine at the beginning of the 20th century recorded “feelings of dismay, of the misery and desolate condition of life of those thousands of wretched beings – slaves – who had perished ... some succumbing to sickness and hunger, but the many more sinking under the harder physical cruelty and associated unhealthy condition of life imposed by those inhuman captors and oppressors ... condemnation of an offender ‘to the mines’ was thus the equivalent to a sentence of death” (Nash, 1904). He observed “the extraordinary civilization of Greece was but the outcome of ... the art of working in blueing, smelting and refining metals” (Nash, 1904).

Sir Mark Turner, a senior Rio Tinto executive asserted that “[t]he real entrepreneur, who builds new projects, is essentially an individualist and, though often benevolent, invariably an autocrat. Rio Tinto believed that it was right to diversify overseas and impolitic to have 100% ownership of raw materials in a foreign country.” (Turner, 1968)

Rio Tinto has reacted to public pressure and organized protests including those organized by an NGO, *People against Rio Tinto and its Subsidiaries (Partizans)*, established in 1978. However, it was an article in the business press with a theme “Has RTZ Run Out of Steam?” that became the wake up call for the company to examine how it was perceived and engage in dialogues. Clearly perceptions have changed since annual meetings in recent years have been much quieter events than less than a decade ago. Rio Tinto does not appear to take on the role of a crusader, instead focusing on its competitive advantage as a leader in these matters. For example, in the case of its investment in a Mongolian project, one of its conditions was that its’ partner divest holdings in Burma.

The interviews with various stakeholders have provided data that show how mining companies’ safeguard policies have evolved over time as a result of situations on the ground and in response to pressures from Civil Society. Major companies recognize that changes in their behaviour and positive relationships in the countries and with the communities where they operate are essential for their survival.

There are principles and codes of behaviour to guide companies. Some of the interviews with major and junior companies confirmed that rather than be reactive to a crisis in a country, corporations need to have informed leadership on human rights with Board support. An essential ingredient for an effective rights-based approach to development is clearly articulated executive concern, supported by Board policy, with operational guidance, monitoring, verification and reporting.

The interviews determined that it is often difficult to translate corporate policy to operational activities. Mine managers or employees may not be aware of a company’s policies. Companies and other stakeholders recognize that accountability is difficult. Some companies use widely available tools and others have developed proprietary methodologies to address environmental, social and human rights concerns.

It is essential to train managers to understand the implications of social business principles and empower local managers. Some companies expect new employees to be sensitive to community concerns and make efforts to ensure engineers are aware of human rights and receiving training through seminars and workshops at the site level. Companies need to avoid differences and

understand any gaps between what its head office says and what happens in the field.

All interviewees stressed the importance of engagement, two-way communication about the company's activities, and respect for people's needs and fears. They confirmed it is essential to gain an in depth understanding of local conditions, with risk assessments and conflict analyses that are not superficial and get regularly updated.

The unresolved new challenges as junior companies and developing country and emerging market enterprises vie to buy into conflict zones and other countries where there are large potential resources with weak, corrupt governments that do not protect human rights. In such places there are inherent problems of instability and inequitable distribution of resource development benefits. It is a challenge that drives the desperation on the part of some companies coming into competition for resources with companies that may not have many scruples.

While the focus has shifted from some major mining companies, there are still allegations of complicity in human rights abuses (Oxfam). Much of the criticism is focused on the plethora of junior exploration companies roaming the world essentially unregulated. There are also concerns about enterprises from the developing countries that do not hold high standards of corporate social responsibility. When Talisman, the Canadian Talisman was pressured to withdraw from the Sudan, it eventually sold its interest. The owners of the projects are Malaysian, Indian and Chinese companies.

Leaders in the mining industry recognize that it tends to be judged by the worst performers. In the absence of holding those to account, although difficult to establish, there is a trend towards regulation and the establishment of clear legal norms.

CHAPTER 5: Discussion

“It’s as well to ask yourself what you stand for, what you do well, or risk losing any special identity in a very crowded stadium of people shouting for attention.” (Rusbridger, 2006)

The discussion in this Chapter represents the author’s analysis of the problems taking into account the results of the interviews and literature research. Conflicting perceptions of mining as a positive or negative activity are not new. Despite more than 2,000 years of conflict caused by mining’s impact on the environment and society, the industry has not gone away nor has the demand for minerals and metals. Mining was the basis for economic activities and the development of countries in Europe, and in the U.S., Canada and Australia. However, it has failed to fulfill an expectation to fuel economic development and poverty alleviation in many countries of post-colonial Africa, Central and South America. In these countries the well being of the population and environment is not a high government priority, rather, as a result of corruption, natural resources tend to be used for the benefit of the political elite.

Human rights concerns had not been a significant concern to Civil Society until the late 20th Century, and attempts to correct violations were weak and ineffective. A seminal event occurred in 1995, when the government of Nigeria executed nine people, (among them Ken Saro-Wiwa who had campaigned against environmental damage by major resource companies), focused worldwide attention on corporations and human rights. These executions refuted the concept promoted by Governments and companies that expanded business and trade would improve conditions in countries with pervasive violations of human rights.

Sensational revelations in 1996 of complicity in human rights violations by major multinational corporations in various sectors, including British Petroleum Company, Carlsberg, Disney, Freeport-McMoRan, Heineken, Nike, Royal Dutch/Shell, Total, and Unocal, further undermine the premise that positive changes will result simply by increasing business and trade. Circumstances have changed to a large extent since the 1990s, when the extractive industries did not even attempt to present a façade of being troubled, and were only superficially reactive, and certainly not proactive in effecting positive change.

Mining companies have had to focus on human rights because of security problems and associated abuses of human rights caused by the use of police and security forces, private security companies and mercenaries in many countries in Africa, Asia, Central and South America as globalization and the Internet spread information. In addition to problems related to public and private security forces, mining companies have had to adopt safeguard policies in response to conflicts over the rights of indigenous people in the areas of mining operations; conflicts revolving

around labour rights, and the right to organize; in reaction to campaigns against doing business with pariah (or failing) states which are human rights abusers; and in attempts to deal with conflicts between sub- and national jurisdictions, and to what extent the mining company is subject to one or the other. The cases show that the mining industry has been reactive to problems after they have occurred, not proactive in preventing them. Although the industry has proposed and engaged with stakeholders to develop voluntary codes and initiatives to address major concerns in an effort to stave off legislation, the lack of any effective consequences for subsequent violations has driven demands for effective legislation to hold companies to account.

Some of the conflicting accounts of allegations of abuses illustrate the difficulties of distinguishing between the perception and the reality of a situation. It may not be necessary to separate the two, even when the perception is negative but the reality refutes the perception. Although there are substantial human rights problems to deal with, some of the cases examined also illustrate that the industry has a major credibility problem because of the public's perception of its behaviour. The general public perception, when there are problems, is that corporations are bad and the government is good; but there are other situations.

There is a broad spectrum of views about mining companies concerning human rights. Some mining companies, aware of the relationship between their activities and their impact on people, communities and the environment, have developed policies, principles and guidelines for human rights. Interviews explored how Rio Tinto became more aware of corporate social responsibility and developed its statement of business principles that cover human rights. Initially, the company developed (over a two-year period) a policy to cover social involvement at the exploration phase that includes some guidelines on engaging with local authorities and other groups.

In general, companies appear to be more comfortable exerting their influence where they recognize they have a legitimate stake because of being in a dominant position in the economy. Human rights NGOs consider it unhelpful to analyze a mining company's level of responsibility by the size of operations, especially since there are few situations where it will be in a dominant position. The right thing for it to do will depend on the corporation's internal governance. NGOs see the inherent problem of indirect lobbying, especially with human rights concerns, is the refusal to do something publicly when the public demands it (with the accompanying consequences as in 1995 when the government of Nigeria executed nine people).

Where there is a government that has rights and sovereignty, some companies, although willing to intervene on taxation matters, prefer to defer to it on human rights. Rather than just react to a crisis in a country, corporations need to have informed leadership on human rights with Board

support. They have concerns that rights are appended to many things and recognize that economic, social and cultural rights are aspirational. For an effective rights approach to development there needs to be a clearly articulated management commitment endorsed by Board policy with operational guidance, monitoring, verification and reporting.

It is often difficult to translate corporate policy to operational activities. Companies rely on their operations to understand the situational ethics. They recognize that accountability is difficult and there are many expectations. After defining a statement of principles, the next task is to devise training modules for new and existing managers to understand the implications of social business principles. Local managers need to be empowered with some degree of specificity. Problems within a company can be the difference between what its head office says and what happens in the field – it needs to understand the gap.

In one way or another, all of the interviewees stressed the importance of engagement, two-way communication about the company's activities, and respect for people's needs and fears. Prior to activities in an area, the company is well advised to garner an in-depth understanding of local conditions, with risk assessments and conflict analyses that are more than superficial and are continuously updated, with an emphasis on risk avoidance.

The main ingredients for success include having a presence and engaging positively with the local community, maintaining perseverance and patience in dealing with stakeholders.

The interviews with Rio Tinto and other major companies as well as junior companies confirmed that safeguard policies and procedures, and even management structures, have evolved over time in response to problems on the ground and pressures from Civil Society. While, some advocacy NGOs remain unconvinced that the leopard has “changed its spots” they acknowledged that some companies do have an interest in behaving ethically. Companies understand that human rights concerns are not something they can ignore. Those prepared to admit problems were welcomed to work with human rights NGOs to determine how to avoid them recurring.

New dilemmas have arisen around junior companies and State Enterprises who, having less regard for environmental, social and human rights responsibility and awareness may become the developer of a project. There are going to be more instances of problems and instability in conflict zones where countries with weak governments have large potential resources. There will be more challenges as Chinese, Malaysian, Russian and Indian growth sees their companies buy into these places. There are pressing needs to confront corruption and institutional weaknesses in conflict zones and other developing countries.

Many ethics tools, principles, guidelines and standards exist that support good practice in the area of rights, corporate social responsibility and sustainable development. These were found to be ineffective without independent monitoring, verification and reporting about performance. The mining industry tends to be judged by the worst performers, and in the absence of holding those to account there is a trend towards regulation and the establishment of clear legal norms. These would hold mining companies and their staff accountable when there is evidence of environmental and/or human rights violations associated with their activities overseas where the local governments fail to enforce their primary responsibilities under international law to protect human rights. There are no longer any reasons for a home government and its mining industry not to effectively support human rights and exemplary environmental performance.

To better understand and appreciate the complexities of the impact on human rights resulting from corporate behaviour, the research examined events around many incidents typical of points of conflict concerning human rights and the operations of mining companies. While incidents may be similar in that they encompass human rights abuses by state security forces in which mining companies were alleged to have been complicit, they are completely different in terms of corporate responses. Conflict often involved countries with weak, corrupt institutions, in areas of poverty with indigenous peoples, although the specific dynamics of conflict differed. There were sharp contrasts between how companies involved reacted and engaged. The case studies illustrate the complexity and convergence of other concerns when there are allegations of human rights abuses, such as the rights of indigenous people and communities in the areas of mining operations; questions of conflict revolving around labour rights; and the issues of conflict between sub-jurisdictions or communities and the national jurisdiction. While not all companies will have to deal with security problems, the complexities and the challenges faced are similar to those faced by natural resources companies all over the world.

A more detailed and nuanced analysis of the case studies enables two important conclusions to be drawn. The first is that a lack of relationship skills and insensitivity to the concerns of others can lead to problems. Because of this, mining companies need to educate their employees and engage positively to support and promote human rights in such areas as respect for human rights, conditions of work and wages, and development opportunities. The second conclusion is that mining companies must ensure that appropriate institutional capacity is developed in both government and state security forces to avoid human rights abuses.

The cases involving human rights abuses by state security forces often followed a foreign mining company's demand that the host governments provides protection. The most obvious

conclusion to be drawn from this is that there may be unintended adverse consequences when a company believes that what it is doing is right, without considering geopolitics, local culture and history, or local concerns. These unintended consequences were seen to have been exacerbated when a country has weak and corrupt institutions, and when effective investigations and punishment of those responsible for human rights abuses are delayed (if they are carried out at all).

Two issues alluded to in the case studies are: first, the inherent constraints imposed by local circumstances on a mining company's ability to conduct business as it wishes; and, second, to what extent a government's conduct may be influenced. Can or should a corporation use its capacity to influence a local government's behaviour in a positive way? Clearly corporations do have opportunities to exert an influence—for good or for ill. It is argued that larger companies have more of a responsibility to use their influence to promote and protect human rights, and to encourage governments to recognize and comply with international human rights standards. Should all mining companies take an active role in encouraging governments to recognize and comply with international human rights standards? The case studies have shown that corporations could have a positive influence when they develop, adopt and implement a human rights code of conduct.

Not surprisingly, we have also seen that there are always more questions than satisfactory answers. Mistakes of the past need to be acknowledged and examined to ensure that lessons are learned to ensure suitable measures are taken to avoid repeating them. There are often pressures or temptations to ignore or de-emphasize bad news, but with current demands for full disclosure and transparency, squarely facing up to reality early can avoid problems later. Human rights concerns must be considered important enough to be material to the mining industry. To not accept this premise will lead to tragedies with huge costs and financial losses.

Many lessons can be learned from Rio Tinto's experiences, initially at a single operation in Spain, and subsequently as it expanded to many operations and commodities in geographically diverse locations. Some key events selected for this research illustrate how the company reacted to events at milestones in the company's evolution and examine the development of its safeguard policies. Despite strong moral and ethical values held by its leaders, the company was embroiled in many social conflicts during its history. In Spain in 1888, a major conflict erupted between the mine, its workers led by a coalition of local communist organizers, Anti-Smoke League officials, local political leaders, and landlords and farmers, whose only common interest was hostility towards the company. The cases concerning the use of security forces show how the confluence of interrelated problems can easily result in loss of life, the case of the Rio Tinto mine in Spain with the riots in Spain in 1888 was included for historical context. Despite widespread criticism in the Spanish press,

there do not appear to have been any consequences to the company. The human rights movement did not become powerful enough to influence change for a century. Neither were there any consequences or change in the environmental pollution from the mine until twenty years after the event. At the time, the company's paternalistic approach and its control over its workforce only strengthened. Festering labour disputes resulted in a major strike at the Rio Tinto mine in Spain in the 1920s.

Some times with the best of intentions very good explanations are given locally that seem to make a lot of sense. Reports may represent a local management perspective rather than a genuinely local perspective. One of the lessons learnt from the early Rio Tinto days in Spain was that with a localized work force and an expatriate management there is a potential for problems unless the two are integrated. There will be problems unless the corporation's objective is to obtain the highest possible degree of localization throughout its overseas organizations.

Rio Tinto became involved with several controversial overseas projects after it left Spain of which Bougainville was the first. In Papua New Guinea, disaffection between Bougainvilleans and the copper/gold mine led to the most extreme consequences: the closure of the mine and a civil uprising in which thousands of lives were lost. Bougainville Copper's interrelated problems leading to the most serious result of these examples of conflict. It illustrates the extent of conflict that can result from the lack of recognition of respect of indigenous people's rights to resources and to share in the benefits of development. It demonstrates the need to be aware of the stakeholder power matrix in pre-existing conditions and analyze the opinion of the local people involved. Adverse environmental impacts in many cases may be an underlying factor if not the trigger for conflict, for example at the Rio Tinto mine in Spain in 1888 and Bougainville in 1989.

At Rössing, Namibia (former South West Africa), operating problems and conditions concealed by local management led to a re-engineering of the technical and social aspects of the uranium mine. Experiences with exploration in the U.K. demonstrate pitfalls of following government directives without checking public opinion. Reactions from the investment community in the late 1960s and negative public perceptions and pressure from activist NGOs led the company to re-examine how it engaged with stakeholders and to become proactive. It subsequently determined that it had to speak for itself and make its own decisions.

At Morro do Ouro, Brazil, where artisanal miners were shot by company security personnel, the company endeavoured to gain a better understanding of artisanal mining and the local community, leading to proactive measures to support local economic development. It demonstrates that when there is a prosperous operation in a poor community it is essential to have more sharing and how an operation becomes unsustainable with high local unemployment levels.

More recent experiences at Diavik diamond mine in Canada and a titanium mine in Madagascar demonstrate how the company has changed its approach to issues of concern to Civil Society. Recognizing the limitation of what one company can achieve, Rio Tinto took a leadership role promoting positive values.

Together with the examples from Rio Tinto are other incidents typical of points of conflict concerning human rights and mining operations. They provide a better understanding and appreciation of the complexities of the impact on human rights resulting from corporate behaviour. Although the incidents are similar with human rights abuses by state security forces with alleged mining company complicity, they are very different in the corporate responses. Often there is more than a single problem involved in a point of conflict. Many of the conflicts include disputes about land ownership and compensation for its use, environmental impact and political considerations

It is instructive to see how the response of Freeport in Indonesia, a large, highly profitable, multinational company that previously did not perceive it had any obligations to protect human rights of the local population, used its resources and capacity to effectively engage positively and proactively to promote and protect human rights. While the “Freeport model” is not perfect and the company has fallen short of fully implementing its model, it still has the potential to enhance human rights and to create an atmosphere of justice and security for many mining operations and the communities where they are located. The positive aspects of this program should not be negated because of incomplete implementation and unwise payments to police and military officials.

Grasberg’s complex problems led to serious human rights violations but a more positive outcome. Freeport’s management had not recognised its role to protect the human rights of the local population and lacked having proper human rights safeguards in place. Since the events, the company introduced actions to deal with human rights concerns that appear to have been successful and provide a useful model for others to follow. Mining directly changed the land and the lives of the original indigenous population. The challenge faced by Freeport in Papua and others elsewhere is how can an “outsider” best influence the establishment of a fair and judicious security system where none has previously existed, where corruption and lack of training abounds and where the “outsider” is transforming the society into which it intruded?

In the Bolivian case, an initial labour dispute encountered by a junior company spiralled out of control with no apparent positive results. This case highlights that although there are reporting requirements under Canadian Securities regulations, there is a lack of enforcement. There is often pressure to ignore or bury bad news, but with growing demands for full disclosure and transparency, a prompt acknowledgement of reality might avoid later problems. This case begs the question that if

human rights concerns are not considered important enough to be material to the mining industry what will it take to put them at the top of the agenda?

Companies should avoid a paternalistic approach and be aware that there may be deeply held differences in values, bearing in mind that whenever mining developments come into a community there will be a major impact on human rights at all stages of the mining cycle. The research shows that there is a clear interaction between human rights and sustainable development. It found that when mining companies have clear and serious commitments to human rights, and have adopted safeguard policies and practices supported by training programmes such that their development engineers engage with stakeholders to ensure a holistic practical approach, positive outcomes are more likely to occur.

Some companies, with serious senior management commitment to sustainability and rights concerns, have introduced safeguard policies, practices, monitoring, verification and reporting mechanisms, thus improving their position on human rights as well as enhancing their relationships with other stakeholders. The other companies need to come out from behind their rhetoric and adopt serious policies and procedures.

CHAPTER 6: New Tools and Policy Recommendations

The research shows that meaningful respect for human rights across an organization requires a serious senior management commitment supported by a clear Board policy enunciating its business principles. After a corporate policy towards human rights has been developed, it takes considerable time for the policy to move through the organization to its business units. It is clear that codes of conduct should reflect the best practice of operating units in dealing with different questions, but may also require operating units to establish new (or adopt existing) operational procedures that conform to corporate principles. In other words, codes of conduct have both a ‘bottom-up’ and a ‘top-down’ orientation.

Internal policy guidance for security and human rights at the operational level is needed to cover various topics, including labour rights, rights of indigenous peoples, community relations, and interaction with local communities. Companies have to determine how to deal with labour disputes that impact their workers’ human rights, which have interrelated, but different problems from those concerning the impact of the company on indigenous people and others in and around an operation.

Business units have to consider wage levels, overtime payments, local legal requirements and agreements. Operating units need to consider what are the ground rules on workers’ rights when the workers refuse to cooperate. If there are unions, are there standard procedures for grievances? Is there a forum for consultation and discussion of disputes? Are they in a free environment? Or do they require working with their own security forces or local police and militia? Recruitment procedures should be scrutinized to ensure there is local employment and education and training programs may be needed to upgrade local skills to ensure that local employment targets can be met or exceeded.

The most subjective matters are living conditions and personal security. Business units need to be concerned if the local people who complain have a fear of reprisals from outside forces, and need to protect their workers. There may be the question of whether the local militia is involved in keeping indigenous people away from operations for fear that they will cause problems. The operating unit has to ensure that any abuses are reported internally and forwarded to senior management. Similarly, it needs to report internally on any conflicts with the federal government. Generally the responsibility chain is that health and safety will report to the plant manager who reports to operations. It may not seem to be in their self-interest to report, but the business unit has to ensure that this happens.

Business units have to become receptive to ideas of sharing and divulging information about

problems rather than keeping them secret. Some companies will have to revise or create internal policy and management systems to make sure information about managing human rights concerns is transferred across business units. Corporate management should encourage operations to learn from one another's experience.

The business units will have to deal with difficulties of working with NGOs and Government. Among the responsibilities of the business unit are to avert crises and conflicts before they begin. They also have to ensure that employees and the local community are aware of the policies and that there is an adequate procedure to ensure that problems are aired and given consideration.

Once business units have acknowledged a responsibility for human rights, they need to provide human rights training for their employees, and establish responsibility and authority for human rights performance and ensure there is regular monitoring and reporting. An independent audit and review process, which is essential for credibility, should be implemented with appropriate provision for remedial action and accountability for any deficiencies.

One approach is for the company to create a positive atmosphere clearly defining what they stand for. Then if there are any problems they should be reported to the local Human Rights Commission (for example, in Indonesia to the Indonesian Human Rights Commission), which is considered a better first step than going to the press. Employees should report what they have seen, and be encouraged to take a stand for what they believe in. To obtain intelligence about what is going on, all company staff, security and communications, and development people can be required to fill out a form annually, confirming that they have not participated in or seen any human rights abuses. If employees have seen anything relevant, the details have to be reported (Freeport, 2001a). There should also be a mechanism with a channel for confidential reporting by people not working for the company that would include problems concerning security in and around the operation whether involving the company directly or not and including actions by government or private security forces. The reporting systems need to include a mechanism by which, if any validity is found to the report, there is follow up and the matter is dealt with, and in any event the findings and actions reported.

Another formal approach is to empower workers at the plant to report if there are problems and raise the concerns at a level where they can be dealt with. Reporting on a regular basis works well with corporations in the area of industrial health and safety for companies that want safe factories. To ensure that one knows what is going on requires having multiple sources of information.

6.1 Practical Approaches

Some practical approaches being used effectively, which have good potential to deal with the

pressing human rights concerns identified during the research that the mining industry faces around the world, are described in this section.

6.1.1 Risk Management

A formal detailed risk analysis is recommended at the initial stage. A risk management plan should be prepared with an emphasis on risk avoidance. This implies identifying the underlying cause of any risk. When starting to invest, there is the need for an on-going process to assess the broad scope of questions. A particularly relevant tool kit available to companies is *AS/NZS 4360 Risk Management Standard*, a national standard that can be used as a framework for establishing the context, identification, analysis, evaluation, treatment, monitoring and communication of risk. AS/NZS 4360, not limited to security, environmental or social problems, provides a generic guide for managing risk across a very wide range of activities, decisions or operations of any public, private or community enterprise, group or individual.

6.1.2 Conflict Zones

Another relevant toolbox recommended is the *Conflict-Sensitive Business Practice: Guidance for Extractive Industries* developed for companies concerned about improving their impact on host countries to understand, assess and minimize conflict risk, and actively contribute to peace (International Alert, 2005). Also available is OECD's *Risk Awareness Tool for Multinational Enterprises in Weak Governance Zones* (OECD, 2006)

6.1.3 Best Practices

This research examined some of the best operating practices within mining and mineral exploration companies. A recommended approach is to follow the “Freeport” model:

1. Establish a local development fund that provides revenue for the development of the local community ensuring that the local community has an effective voice in determining how development projects are selected and prioritized;
2. Appoint a high-level employee to act as a liaison with public and/or private security forces;
3. Ensure that there are adequate living and recreational facilities for government security forces;
4. Establish a corporate social, employment, and human rights policy;
5. Introduce human rights training for unarmed security personnel (also open to government

security personnel), and provide support for the government in establishing the rule of law and a legal system for all parties in the area;

6. Institute an independent audit of human rights practices.

While the “Freeport model” is in no way perfect it still has the potential to enhance human rights and to create an atmosphere of justice and security for many mining operations and the communities where they are located.

A holistic approach is required. In remote locations mining companies need to be respectful of community pressures and societal demands and engage in meaningful dialogue. Successful implementation will flow from approaches that have “top-down” responsibility coupled with “bottom-up” implementation at the mine level backed by training programmes. Industry, professional and trade organizations that make commitments to support human rights have an important support role to play.

Companies are recommended to publish their values, principles and social, employment and human rights policies and codes of conduct. As a practical matter, companies could follow Rio Tinto’s example of developing and publishing codes of conduct for business units to ensure they are aware of the need to engage in dialogue to build relationships. The research has shown that companies including Anglo American plc, AngloGold Ashanti Limited, Freeport-McMoRan and others have adopted this approach. Clearly companies can attempt to minimize adverse environmental, social and human rights impact, by engaging responsibly with the community, economic empowerment, developing skills for health and education. A mining company needs to be aware of its responsibility for the use of its products in the supply chain and emphasize the need to build credibility and contribute to the public policy debate.

Expanding on a suggestion from a junior company, it would be helpful for stock exchanges to adopt minimum human rights standards as a listing requirement with a rating system for companies so investors can more easily make informed decisions on their investments and support socially responsible business. A recommended approach is for industry to commit to adopting standards, abide by them, and report regularly to an appropriate regulatory body. There is need for a mechanism for monitoring and dispute resolution capable of enforcing established standards and best practice.

6.1.4 Voluntary Principles on Security and Human Rights

The Voluntary Principles on Security and Human Rights (VPs), developed from a dialogue between the U.S. and U.K. governments with extractive sector companies and NGOs, provide a guide for companies wishing to maintain the safety and security of their operations while ensuring respect

for human rights and fundamental freedoms (see Appendix II). It appears that the VPs, in spite of some tensions and implementation problems, have made a real difference in human rights promotion in many places, including tough places such as Indonesia and Colombia. A critical recommendation is for countries with extractives industries' companies to join the VPs and urge all extractive companies and their governments to apply for membership. This is an essential practical first step to ensure that security and human rights concerns are dealt with responsibly. However, it is disappointing to find that more than seven years after their introduction neither Australia nor Canada, two major mining countries, have joined the process.

6.1.5 Implementation

In order to ensure the effectiveness of voluntary, non-binding approaches, it is recommended that corporations clearly enunciate their business principles (a) develop comprehensive codes of conduct; (b) establish training and management practices to implement the codes; (c) establish internal audit procedures; (d) have independent external auditing of performance; and (e) publicly report on the results (TCCR, 2000). Auditing and the verification of performance imply the establishment of benchmarks and standards for measurement.

To implement a successful programme of human rights in a company, as mentioned above, it is essential to adopt a holistic approach.

- A company's Board policy should enunciate a clear statement of its values, business principles and policy on human rights to be widely distributed throughout the company and to other stakeholders.
- A company's Board should establish a human rights and social performance committee to which human rights performance are made regularly to keep the board informed.
- Company management should establish safeguard policies at the central level and use local knowledge of conditions where it operates to develop plans to implement.
- At a minimum, a company should commit to support the core human rights instruments, follow all the World Bank Safeguard Policies, the Voluntary Principles on Security and Human Rights, and the Equator Principles.
- Implementation plans should include guidance, guides, monitoring, verification and reporting of compliance.
- It is essential to incorporate independent external monitoring into a meaningful reporting system.

- A company should commission an independent human rights audit of the type commissioned by Freeport-McMoRan especially in countries with limited capacity, weak infrastructure, and corrupt systems.
- In addition to continuous internal monitoring and reporting, a program should be established to allow for anonymous and confidential reporting of incidents by employees and non-employees that includes a follow up mechanism by which, if any validity is found to the report, the matter is dealt with, and in any event the findings and actions reported.
- The company should establish in a clear, transparent and public way how and to whom it will report on human rights and any incidents. The places where it reports should include any in-country human rights commission, the company's embassy, and major human rights organizations, such as Human Rights Watch or Amnesty International.
- The company needs to make a serious commitment to risk assessment and management, especially in conflict zones and strive to follow best practices. It should identify internally in advance, conditions and risks that would unacceptable and make a situation a "no go" condition regardless of how much money could be made. The essential practical first step for a company to ensure that security and human rights concerns are dealt with responsibly is to adopt the Voluntary Principles on Security and Human Rights, which include a risk assessment section.

There are many suitable models identified by the research that could be followed both by major multinational mining corporations as well as junior companies. Available toolboxes include, for example:

- International Alert's *Conflict-Sensitive Business Practice: Guidance for Extractive Industries*;
- OECD's *Risk Awareness Tool for Multinational Enterprises in Weak Governance Zones*;
- The Danish Institute for Human Rights' *Human Rights Compliance Assessment Quick Check*; and
- *AS/NZS 4360 Risk Management Standard*.

Policies included as appendices provide practical examples of positive approaches,

- The Voluntary Principles on Security and Human Rights (Appendix II);

- Confederation of Norwegian Business Industry's checklist for businesses serious about dealing with human rights and their ethical responsibility for operations (Appendix III);
- Freeport-McMoRan's social, employment and human rights policy: (Appendix IV);
- Ivanhoe Mines' statement of values and responsibilities (Appendix V);
- Rio Tinto's statement of business practice (Appendix VI);
- AngloGold Ashanti statements of values and business principles (Appendix VII).

These and other tools cited show there is no lack of toolboxes to help companies understand and assess the risks they may face.

An interesting approach to seek appropriate human rights and social performance together with technical and economic performance was taken in 2007 by a Government in a transparent international tender request for proposals (RFP) to develop a major copper project (Aynak, 2007). The RFP required all bidders to formally include in their proposal confirmation that, if successful, they would adhere to all World Bank/IFC Performance Safeguards, the Equator Principles, the Voluntary Principles on Security and Human Rights and agree to undertake risk assessment and management along the lines of *AS/NZS 4360 Risk Management Standard*.

Human rights awareness training curricula have been developed by various organizations. Although some mining companies have published details of social-economic impact assessment toolboxes, the mining industry appears to consider training curricula and detailed guidelines to be proprietary information. The petroleum industry and others have published toolkits and curricula for human rights awareness training (IPIECA, 2006; Shell, 1998 and 1998a; Amnesty, 2008, DIHR, 2008). Examples of the syllabus of three typical human rights courses are shown in Table 6.1.

Table 6.1 Typical Human Rights Courses for Business

COURSE A ^A	COURSE B ^B	COURSE C ^C
1 Introduction to international human rights 2 Global and regional human rights instruments, & reporting and monitoring mechanisms 3 Domestic implementation of human rights principles, standards and guidelines 4 Principles of non-discrimination 5 Civil and political rights 6 Right to access to information 7 Economic, social and cultural rights 8 Introduction to the human rights based approach to development 9 Corruption and human rights	1 The Development of Human Rights 2 International Law and Human Rights 3 Human Rights – the Role of Business	1. Introduction to Human Rights 2. The principles of human rights based approaches 2.1 Human rights defined 2.2 Development defined. 2.3 Human Rights based approaches 3. Evolution of global commitment to human rights based approaches 3.1. Progress in international practice 3.2. Challenges 4. What difference can human rights based approaches make?

Sources: ^A DIHR (2008); ^B Shell (1998 and 1998a); ^C Amnesty (2008)

6.1.6 Monitoring Performance

There is a need for oversight, especially if the company has a loose management structure and the country unit is given autonomy with attendant delays in the reporting mechanisms. If there are no procedures and policies, the business unit may not recognize that a problem could exist. Unsurprisingly, getting involved makes a lot of difference and it depends on the implementation procedure. Major problems are involved with defining benchmarks and monitoring performance since there is a need for monitoring corporate performance around human rights. Monitoring is required to anticipate and prepare for a mining company's operations potential conflicts with human rights. When in operation, there should be regular monitoring to ensure that the business unit, its partners, contractors and suppliers comply with corporate guidelines on human rights, and to identify matters that need improvement and act on them (Frankental and House, 2000). Measurement audit standards and verifiable procedures for human rights are difficult to identify. A new field to measure human rights performance is being developed by academics, auditing firms, NGOs and others.

Monitoring a company's operations for human rights compliance requires an independent external vetting procedure. There is a challenge in defining credible monitoring that will satisfy NGOs and with which companies could be comfortable. Successful monitoring will depend on whether any changes identified as necessary are then made in the corporation's directives on human rights to ensure more effective and transparent behaviour.

Engaging stakeholders, local or international groups could meet the public's demands for transparency and monitoring. For monitoring to be effective it is necessary to get the companies to collaborate and get comfortable with the process of engaging with NGOs and they could explore better relationships with environmental NGOs active in the area who are interested in human rights. With more verification comes the question how to make the company accountable. Industry wide collaboration is a more obvious way. Labour groups already monitor health and safety and this could be extended to human rights as in the collective agreement with Statoil (Statoil et al., 2001). Each company supporting the Global Sullivan Principles is asked to provide "an annual update of progress against its ... commitment to these Principles" at an annual meeting with intergovernmental bodies, NGOs, and business organizations (GSP, 2008).

It will be a slow process determining how to collaborate more. However, to be successful the parties have to work together, and recognize that more collaboration is the trend, and will become a reality over time. NGOs are concerned with process and the method of monitoring and verifying human rights compliance, whether it is the role of an NGO – or a for-profit company, independent of

the company, or through some connection or relationship with locals and stakeholders. However, to achieve change in behaviour, there is a need to engage, getting the parties to talk to each other.

CHAPTER 7: Conclusion

The four research questions posed at the beginning of this document were answered and the stated objectives achieved leading to the following conclusions:

1. While there has been a significant improvement in the general sensitivity of the mining industry to human rights concerns during the past 10 years, the reality on the ground has not kept pace with the industry's aspirational rhetoric, glossy brochures and public relations campaigns. Respect for human rights and protection of vulnerable groups including children, women, and indigenous peoples still needs attentions and improvement throughout the industry.

The focal points of conflict where mining companies have found themselves involved with human rights concerns are varied, interrelated and complex. Company human rights policies and procedures to support them were identified and although some companies have adopted and implemented safeguard policies and practices, others have opposed demands for substantial change to improve human rights deterred by the perception of the potential billions of dollars of profits and investments at risk.

The research concluded that a failure of some companies to institute clear human rights policies with procedures and guidelines to implement them, together with ongoing allegations of corporate complicity in human rights abuses are contributing reasons why companies are not seen to be doing better or creating a more positive perception.

A growing concern stems from state enterprises and others that do not have serious commitments to human rights and have not adopted or implemented safeguard policies and practices. While it is more difficult to conceal incidents, as globalization and the Internet spread information so quickly in ways that never occurred in the past, some serious allegations of human rights abuses still seem to attract more attention than others.

Mining companies continue to be accused of complicity in many human rights violations. Unfortunately they have done less to insulate themselves from future human rights violations than to make themselves appear to look better. Although some of the major and few junior companies have enunciated their values and business principles, and signed on to voluntary initiatives and codes to recognise and protect human rights, very few have implemented transparent, independent mechanisms to monitor compliance and report on what is happening at their operations. Freeport's example of an independent transparent human rights compliance audit has not been followed even by

itself (Freeport is no longer doing transparent human rights audits).

2. Many host countries, (China, DRC, Sierra Leone, for example) have failed to fulfill their obligations under international law to provide human rights protection, thus placing the onus of human rights protection solely on corporations conducting operations in their countries. Evidently corporations are unable to protect human rights effectively when host countries are not committed to human rights. This questions whether corporations should operate in countries that have little or no commitment to human rights.
3. Recent evidence and allegations of complicity in human rights abuses by mining companies confirm that voluntary initiatives alone are inadequate.

Despite publicly agreeing to adhere to human rights standards contained in voluntary initiatives (such as the Voluntary Principles on Security and Human Rights and the OECD Guidelines for Multinational Enterprises), a number of mining companies have failed to actively implement the guidelines and they continue to have human rights violations at their operations.

While some major and junior companies have adopted policies and procedures designed to protect human rights and mitigate potential conflict with other stakeholders, others still do not recognize or accept any responsibility for human rights. The absence of robust independent monitoring, verification and reporting fails to ensure that the actions on the ground comply with the voluntary codes of conduct.

4. The failure of voluntary initiatives to resolve human rights problems has led to requests that home countries and/or international organizations create binding regulations for human rights compliance by companies that trade stock on major stock exchanges. Such proposals have been debated in the Canadian, Australian and U.K. Parliaments.

Without these regulations, there are inadequate mechanisms to hold corporations to account for complicity in human rights abuses in their operations overseas.

5. There are enough examples of policies, codes, principles, checklists, voluntary initiatives, best practices, monitoring, verification and compliance reporting case studies, that no company can claim a lack of available models for programs for human rights compliance. Existing tools in use were examined which are excellent models for incorporating human rights concerns into projects, however, their weaknesses lie in the areas of independent monitoring and verification of performance and any significant consequences for non-compliance.

When companies fail to have programs in place to respect and protect human rights, one must presume that they do not wish to protect the human rights of employees, vulnerable groups, indigenous peoples or others.

Examples of business principles and corporate policies on human rights are included as appendices.

6. At a minimum, a company should commit to support the core human rights instruments, following all the World Bank Safeguard Policies, the Voluntary Principles on Security and Human Rights, and the Equator Principles.

To improve the performance and perception of the impact of their activities on human rights, it is essential that companies clearly enunciate their values, sets of business principles, and policy on human rights with procedures, guidelines and training programmes to implement them at the local level. Internal and independent external monitoring, verification and reporting of compliance are essential. Instituting programmes that allow anonymous and confidential reporting of incidents by employees and non-employees with a follow-up mechanism are useful for mining companies seeking to implement a successful programme of human rights

A company should identify internally in advance, human rights conditions and risks that would be unacceptable as a place to invest and make a situation a “no go” condition regardless of how much money could be made.

7. The example of the Rio Tinto began with the case of the Rio Tinto mine in Spain for historical context.

Due to the access provided to historical documents and the company’s current and former executives there is a preponderance of case studies from that company. The interviews were a source of critical material to supplement written accounts. The Rio Tinto cases came from key events in the company’s history, illustrating how the company’s safeguard policies evolved. It has done an admirable job dealing with human rights concerns and has created a workable and transparent plan to mitigate potential human rights and community relations’ problems.

CHAPTER 8: Claim for Originality of Research

This dissertation contributes to a better understanding of what is required for engineers and others to integrate considerations relating to human rights when designing and managing mineral exploration and mining operations.

In this respect, this dissertation delivers several new contributions to the field, including:

- A categorized database of cases concerning human rights and the mineral industry
- Identifying policies and procedures in companies; why companies cannot do or be perceived as doing better; and shows how these problems can be mitigated.
- A compilation of some relevant existing tools.
- Collection and analysis of original data about the evolution of attitudes and perceptions at and about Rio Tinto's diverse operations worldwide.
- Recommended set of principles and measures for mining companies on human rights concerns, that could be used by companies, governments and civil society, in order to improve transparency.

CHAPTER 9: Suggestions for Future Work

Future work is suggested in the following areas:

- Additional in depth research into best practices on the part of mineral exploration and mining companies, specifically in the areas of how robust are the standards and what is required to ensure credible, transparent internal and external reporting, responsibility and accountability;
- Case studies determining to which parties and in what proportion income from mineral resources is distributed in different countries.
- Suitable pressures to ensure States take responsibility and use/adaptation of the existing human rights machinery to implement human rights commitments in relation to business enterprises;
- Case studies of best practices on the part of governments: supplemented by research on various policy instruments available to governments to promote and protect human rights in relations to business;
- Case studies to determine how human rights impact assessment tools could be more effectively used.

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CATEGORIZED ALLEGATIONS OF HUMAN RIGHTS ISSUES

Year	Country	Commodity	Project	Category	Human rights issues
2000-2001	1 Angola	Diamonds	Various	S, B	Conflict diamonds; ex-Unita at Lunda Suli; government forces attacked and killed miners in Uíge
2006	1 Angola	Diamonds	Sociedade Mineira do Cuango Minera	S, B	Security companies resp for killings, torture, beating and other abuses
2007	2 Argentina	Copper/gold	Alumbreira/Alstrata	E, L	claim social damage/violation of environment, labor laws and human rights
2003	2 Argentina	Gold	Esquel	P	Community/environment
2005	3 Australia	Uranium	Jabiluka	H, I	Indigenous peoples' land rights
2001	3 Australia	Iron Ore	Pilbara	L	Labor rights
1997	3 Australia	Iron Ore	Yandiocogina mine	I, P	Indigenous peoples' land rights
1995	3 Australia	Zinc	Pasminco	I, P	Indigenous peoples' land rights
2006	4 Bangladesh	Coal	Global Coal Management	P, S, I	riots re 40,000-100,000 local people to be displaced for mine, 5 killed including 14-yr boy
2006	5 Bolivia	Tim	Huanuni mine	L, S	clashes between rival bands of miners, threw sticks of dynamite & fired guns, at least 16 dead/more than 60 injured.
2001	5 Bolivia		Various	C	Child labor; health & safety
1996	5 Bolivia	Gold	Amayapampa etc.	L, S	Management/Labor dispute including control of mines; disputes between company/local people/workers; 10 people killed.
1992	6 Bosnia & Herzegovina	Iron Ore	New Ljubija Mines	S, B, L	discrimination in employment, mass killings and torture 1992-1995
2006	7 Botswana	Diamonds	de Beers/BHP Billiton	I, P, S	Relocate San Bushmen from the Central Kalahari Game Reserve (CKGR); police used tear gas & rubber bullets to disperse demonstrators who had staged a peaceful protest, relocation for diamond mine
2005	9 Brazil	Alumina	Alcoa	H	OECD social & environmental complaint disputed by company
2001	9 Brazil	Gold	Barra Grande Dam	C, H, B	Child labor; health & safety, child prostitution at mining camps; illegal mining; indigenous peoples' rights; forced labor miners.
2000	9 Brazil	Gold	Various	S	
1998	9 Brazil	Gold	Morro do Ouro mine	I, P	Indigenous people, thousands died
			Yanomami		
2005	8 Bulgaria	Gold	Dundee Precious Metals	H, L	Local council opposes project impact on health and environment & resettlement
2001	10 Burkina Faso	Gold	Ada Tepe	C	Child labor
2001	11 Burma/Myanmar	Jade	Various mines	B, U	Use of forced labor for infrastructure, poor health & safety condition:
2001	11 Burma/Myanmar	Copper	Ivanhoe, Monywa	B, U	Use of forced labor for infrastructure; support of bad government
2001	11 Burma/Myanmar	Emeralds/gold	Various	C	Child prostitution in mining areas
1993	12 Cambodia	Gold	Ratanakiri	S	Police/illegal miners shot
2005	13 Canada	Gold	Golden Giant Mine	H	Company fined C\$120,000 for health & safety violation, first degree burns
2001	13 Canada	Diamonds etc	Various	I, P	Disputes over native land claims
1992	13 Canada	Coal	Westray	H	Workers killed due to unsafe mining
1993	13 Canada	Coal	Nova Scotia	C	Child labor
2006	14 Chile	Gold/Silver	Kinross/Goldcorp	L, S	Union claims management harass/threaten union members; mercury contamination [formerly Placer Dome] no details of "human rights violations, environmental abuses and livelihood destruction perpetrated by Canadian companies" "baseless"
2006	14 Chile	Gold	Pascua-Lama	H	Health & Safety conditions, 92 died in accident
2001	15 China	Coal	Jiangsu province	H	200 died in mine flood
2001	15 China	Tin	Guangxi province	H	
2001	15 China	Asbestos	—	H, B	Forced labor, health & safety conditions
2001	15 China	Coal	Sichuan province	H, B, U	Prisoner-miners killed in mine flood
2001	15 China	Coal	Various	H, C	Health & Safety (4,205 killed in accidents during 9 months); child labor
2001	15 China	Coal	Wanbao coal mine, Jilin province	H	Fire in illegal government-owned mine killed 30

CATEGORIZED ALLEGATIONS OF HUMAN RIGHTS ISSUES

2001-1990	16 Colombia	Coal	Coal	Drummond Coal Exxon	L S, I	Union leaders murdered [2 incidents] Army used to crush strike
2006	16 Colombia	Gold	Kedahda (AngloGold Ashanti/Bema)	Magdalena River	S, I	Colombian army killed civilian and wounded others
1997	16 Colombia	Gold	Agricultural Miner's Federation	Various	S, I	Agricultural Miner's Federation leader killed by paramilitary; union leaders assassinated
2007	16 Colombia	Coal	Glencore	Hierbabuena mine	L, S	Labour rights abuses, attempt on life of trades unions
2001	16 Colombia	Gold/meralds/coal		Various	C, H	Child labor; health & safety
2001-2005	17 Congo, D.R.	Gold	Gold/Diamonds/Cobalt	Various	B, C, S	Forced Child labor; conflict diamonds; government security guards/Zimbabwe soldier shot/killed illegal miners/prison labor
2005	17 Congo, D.R.	Gold	Mongbwalu	Mongbwalu	P, B, J	AngloGoldAshanti provided funds to warlords killing local villagers
2005	17 Congo, D.R.	Gold	Durba, Haut Uélé District	Durba, Haut Uélé District	P, B, J	Gold traded to benefit FAPC militia
2005	17 Congo, D.R.	Copper	Anvil Mining	Dikulushi Copper Mine	S, B	Anvil mining provided support to government security forces killing local villages in Kilwa area
2005	17 Congo, D.R.	diamonds		??	P, B, J	=== supporting local war lords killing local villagers
2005	17 Congo, D.R.	tin	Afinex	Wakali	S, B, L	miners, supplying Afrimex, work in appalling conditions, sometimes at gunpoint
2001	17 Congo, D.R.	Cobalt/copper		Kipushi	L, S	Police forcibly dispersed labor demonstrators
2006	18 Congo, D.R.	Gold	Banro Corporation	South Kivu/Maniema	B, S	activist killed by military w/local gov involvement
1997	19 Costa Rica	Gold	Vanessa Ventures	Placer Dome	P	threatening lawsuits to pressure government/community leaders
2001	20 Côte d'Ivoire	Gold		Various	P	local opposition led to withdraw
2006	21 Ecuador	Copper	Ascendant Copper	Junin	C, B	Child labor; forced and bonded child labor
2006	21 Ecuador	Gold	IAM Gold	Quimsacocho	S, I	abusive tactics against activists/death threats/community opposition
1993	21 Ecuador	Gold		Rio Bomboiza	H, P	Demands to revoke concession for environmental/health impact
2007	22 EL Salvador	Gold	Pacific Rim	El Dorado	I, P	Indigenous peoples' (Shuar) land rights
2006	22 EL Salvador	Gold	Au Martinique Silver Inc.	Chalatenango	L, H	general criticism; company commitment to human rights etc
2006	22 EL Salvador	Gold/Silver	Intrepid Mines	Various	I, H	Lack of consultation with local property owners/arsenic & cyanide
2001	23 Georgia	Gold	Ashanti Gold Fields	Obuasi	L	indigenous peoples opposed to project
2005	24 Ghana	Gold	Newmont	Ahafo	S, U, A	Shooting, torture etc of artisanal miners
2004	24 Ghana	Gold	Bogoso Gold Ltd/Golden Star	Dumase	P, E	Resettlement, health&safety, drowning crossing tailings dam; farmer shot; labor protestors shot/wounded
2001	24 Ghana	Gold		Bibiani	H, I	cyanadie spill into river
2000	24 Ghana	Gold		Grinding ore at home	P	Property rights (Kyekeywere village demolition)
1999	24 Ghana	Gold	Ghana Australia	Tarkwa	S	Miner killed in conflict
1992	24 Ghana	Gold	Goldfields etc	el Estor	C, H	Child labor; silicosis
2006	25 Guatemala	Nickel	Skye Resources	Glammis	H, S	Increase in disease, resettlement, violent demonstrations
2005	25 Guatemala	Gold	INCO/Eximbal	el Estor	S, I	Farmer killed/20 seriously injured, refuse to consult w/indigenous peoples (Q'eqchi)
1977	25 Guatemala	Nickel	Granite/sand	hual material	P, I	Police shot demonstrators against mill transport over local bridge; security guard shoot villager in ba
2001	26 Guinea	Diamonds	Vanessa Ventures/Shoreham Resources	Marud Mountain area	S, I	1977-1983 violence/repression/murder of 100 Mayas & others (activists, university students, professors) cites 1999
1999	26 Guinea	Diamonds		Marud Mountain area	C	Child labor
2006	27 Guyana	Gold		Marud Mountain area	C	Child labor
					I, S	Amerindians; limited protection for indigenous peoples, poverty rights issues; unresolved indigenous land claims

CATEGORIZED ALLEGATIONS OF HUMAN RIGHTS ISSUES

2001 1997	Guyana Honduras	Gold Gold	Various San Andrés/San Martín	I, P, C P, H	Indigenous peoples land rights; child prostitution at mining camps Property rights/health & safety
2006 2005 2005 2001 2001 2001	India India India India India India	Iron Ore/Granite Bauxite Copper smelter Vedanta Vedanta	Hospet-Bellary region, Kamataka state C Kalahandi district, Orissa Turicorin, Tamil Nadu Jharkhand area Various	I, S, P E I, P H	Claim child labour in iron ore/granite mining Claim forced resettlement, houses bulldozed, tribals beaten Claim ignored court order to remove slag and phosphogypsum waste Indigenous peoples rights Health & Safety (192 people killed in mining accidents during 9 months)
1999 1986? 2004 2001 2001 2001 2000 1999 1994	India Indonesia Indonesia Indonesia Indonesia Indonesia Indonesia Indonesia Indonesia	Bauxite Nickel Gold Coal Copper/Gold Gold Beach sands Gold Copper/Gold	Alcan/Norsk Hydro Karonsi/Dongi Minahasa Raya, Buyat Bay South Kalimantan Grassberg, West Papua Central Sulawesi Sulewesi Aurora Grassberg, West Papua	S B, I H P S I, P P P, H S	Former Judge described repressive measures: large scale arrests, disruption of public meetings by force, violent beatings to disperse gatherings, official encouragement to employ private goons by UAIL, midnight raids by the police unmitigated violence on women and children etc Complicit with criminal corrupt regime (Suharto); displaced without compensation for 30 years allegation of health problems caused by mine tailings in Buyat Bay Illegal miners 3 killed/12 wounded in ambush with alleged military involvement (FBI investigation) Indigenous peoples land rights Illegal miners Illegal miners, mercury health hazard 4 shot by rebel, many villagers killed by army; land rights, ownership, independence movement
1989 1945 2003 2001 2000	Indonesia Japan Korea, DPR Korea, DPR Kosovo	Gold Coal Coal Zinc	East Kalimantan Mitsui Mining Co Haengyong Russian Far East Various mines/smelter	S, I U B, H U P, H, L	National Human Rights accepted claims of military forces/RT security personnel 1989-1992 burning villages & forced evictions of small scale miners from area of PT Kelian mine Chinese forced labor during W.X.II: current claims for compensator forced labor in coal mine 6,000 DPRK workers in North Korean-run mining camps; torture Health & Safety, employment, environmental conditions; ownership right
2000 2000 2001	Laos Liberia	Sapphires Diamonds	Huay Xay, near Bokeo Various	P, J C	Ownership dispute, smuggling counterclaim, Danes held without trial, then served 7 mo of 3-yr sentence for embezzlement Child labor
2007 2001	Madagascar Mali	Ilmenite Salt	Fort-Dauphin region Various	I, E B	Friends of Earth criticises project as threat to biodiversity/exacerbate poverty Formerly slavery, hereditary servitude (Bellah/other Tuareg)
1990 2006 2006	Mali Mexico Mexico	Gold Copper	Sadiola La Caridad	H, P S, L L, B	Increase in disease, resettlement w/compensation Two workers shot by police in April at picket line, workers fired Claim blocked trade unions/threatened unionists
2005	Mexico	Coal	Grupo Mexico/Industrial Mineral Mexico	H	270 coal miners killed in mine accident
1998 2001 2006 2001 1919- 2001 2006 2007	Mexico Mongolia Mongolia Namibia Nauru Nepal New Caledonia Niger	Gold Coal Copper Zinc Phosphate Coal/quarries Nickel Uranium	Cerro de San Pedro, San Luis Potosi Various Ivanhoe Mines Scorpion zinc mine British Phosphate Commissioners Various Goro Agadez region, Imouraren project	S, H C P S, L I, P I, L, P S, L, H	concerns of pollution, activists attacked Child labor at abandoned mines Street demonstrations against mining contracts and benefits etc Labor rights: striking workers violent/ police intervention; company negotiated peaceful settler Indigenous people removed; 80% island uninhabitable; indigenous peoples land rights Bonded labor indigenous peoples protests/blockades; use of riot police; threat to traditional hunting/fishing Discrimination, exclusion and marginalization, rebel attacks

CATEGORIZED ALLEGATIONS OF HUMAN RIGHTS ISSUES

2001	44	Niger	Gold		Various	C	Prostitution near mine sites	
1999	44	Niger	salt, gypsum, gold		small scale mining	C	Child labor	
2001	45	Pakistan			Various	H	Health & safety	
2006?	46	Papua New Guinea	Gold	Placer Dome (Barrick)	Porgera	S, I	8-20 villagers killed by security forces	
1990	46	Papua New Guinea	Copper/Gold		Bougainville	S, I, P	10,000-15,000 people killed; land rights, labor rights, resource issues, share of revenue, independence movement	
2006	47	Peru	Gold	Monterrico Metals	Huancabamba	S, P, I	Alleged social responsibility manager led violent attack on community leaders organizing a forum on mining	
2005	47	Peru	Copper		Rio Blanco, Monterrico Metals	I, P	Protesters shot (1 killed), 3 mine officials kidnapped, farmers concerned about pollution; community benefit	
2005	47	Peru	Gold	Plexmar Resources	Suyo	I, P, H	Indigenous peoples land rights, environment	
2004	47	Peru	Gold	Newmont	Yannoccha	H, I	Mine blockaded, withdrew application for expansion area, water contamination concerns; community benefits	
2001	47	Peru	Gold		Aguarana/Huambisa/Achuar	I, P	Indigenous peoples land rights	
2001	47	Peru	Gold		Various	C	Child labor	
2001	47	Peru	Gold	Manhattan Minerals	Tambogrande	P	Community/environment/benefits	
2000	47	Peru	Gold		Yannoccha	H	Health & Safety	
1999	47	Peru	Gold		Underground mines	C	Child labor	
1999	47	Peru	Gold		Madre de Dios	B	Forced labor stopped by 2001 by government	
1981	47	Peru**	Gold	BHP Billiton	Tintaya	P, H	Land expropriation led to economic & cultural destruction, poverty & heavy metals in water contributed to health problems; 34 cases of alleged human rights violations	
2006	47	Peru	Gold	Newmont	Yannoccha	I, P, L	Mine blockade, one died, employees kidnapped; strike working conditions	
2008	48	Philippines	Gold		Oceana Gold	I, P, B	Investigate	
2007	48	Philippines	Nickel	Pelican Resources	San Fernando, Sibuyan Island	I, S, P	Protestor shot dead by company security officer; local people against mining project	
2006	48	Philippines	Nickel	Crew Development Group	Victoria, Mindoro	I, P	Indigenous people opposed to project in forest area	
2005	48	Philippines	Gold		Mindanao	I, P, B	Allegations of abuses, property expropriation, hearing by Canadian parliamentary committee	
2004	48	Philippines	Nickel	Midex Resources (Crew Development)	Mindoro	I, S	local opposition, activist assassinated, pressure on gov to delay env protection	
2002	48	Philippines	Lead	Doe Run	La Oroya	H, I	Pollution, health problems, indigenous people in poverty, lead poisoning	
2001	48	Philippines	Gold, etc		Various	I, P	Indigenous peoples land rights	
1999	48	Philippines	Gold, etc		small scale mining/quarries	C	Child labor	
1993	48	Philippines	Copper	Placer Dome	Marcopper, Marinduque	E, H	Health and environmental issues (1975-1981/1998/1993/1996)	
1981	49	Poland	Coal		Wujek mine	S, L	Labor dispute; civil rights abuse	
2000	50	Romania	Gold	Gabriel Resources	Rosa Montana	E, P	Relocation of villagers, environmental concerns	
2001	51	Sierra Leone	Diamonds		Various	C, B	Former RUF commanders force children to mine diamonds	
1996	51	Sierra Leone	Diamonds		Various	S, P	Conflict diamonds, mercenaries	
1983	51	Sierra Leone	Rutile	Sierra Rutile Ltd/Nord Resources Corp	Bonthe/Moyamba	H, S	Increase in disease, resettlement, conflict/corruption	
2007	52	South Africa	Platinum	Anglo Platinum/Implats/ Lonmin/Xstrata		H	Workers & communities health risks	
2001	52	South Africa	Gold		North West Province mines	H	Health & safety	
2001	52	South Africa	Gold		East Rand Proprietary Mines	S, L	Security guards shot/killed 21 wounded 14 in labor dispute	
1988	53	Spain	Copper		Rio Tinto mine	S, H	Soldiers shot into the crowd of demonstrators killed 200/wounded 000	
2000	54	Sri Lanka	Phosphate		Eppawela	P	Fundamental rights (land/livelihood)	

CATEGORIZED ALLEGATIONS OF HUMAN RIGHTS ISSUES

2001	55	Suriname	Gold		Maroon/Amerindian	I, P, H	Indigenous peoples land rights; illegal mining; mercury contamination
2001	55	Suriname	Bauxite		Maroon	I, P	Indigenous peoples land rights
2001	55	Suriname	Gold	BHP Billiton/ALCOA	Various	B	Trafficking in women/girls; prostitution at mining camps
1999	56	Tanzania	Gemstones		Underground mines	C, B	Child labor, forced and bonded labor; child soldiers/prostitutes
2005	57	Thailand	Potash	Asia Pacific Resources		P	Compensation, environmental concerns, activists claim death threats
2006	58	Tibet	Gold/Copper	Continental Minerals	ShenHongmon Gold Mine	B, P	Complicity enabling genocide, forced labor, forced resettlement
2006	58	Tibet	Gold	Eldorado Gold Corp	Tanjingshan Gold	B, P	Complicity enabling genocide, forced labor, forced resettlement
2006	58	Tibet	Gold	Dynasty Gold Corp	Red Valley Gold	B, P	Complicity enabling genocide, forced labor, forced resettlement
2006	58	Tibet	Gold	Inter-Citic Minerals Inc	Dachang Gold	B, P	Complicity enabling genocide, forced labor, forced resettlement
2006	58	Tibet	Copper/Gold	TVI Pacific	Tibet Autonomous	B, P	Complicity enabling genocide, forced labor, forced resettlement
1993	58	Tibet	Gold		Dardo/Darwa counties	B, H	Forced labor, poor working conditions
58	Tibet		Copper/Zinc	SinoGold		B, P	Complicity enabling genocide, forced labor, forced resettlement
58	Tibet			Orchid Capital		B, P	Complicity enabling genocide, forced labor, forced resettlement
58	Tibet			GobiMin	Malongian	B, P	Complicity enabling genocide, forced labor, forced resettlement
2001	59	Turkmenistan	Kaolin		Kizlkaya prison near Dasjoguz	U, H	Prisoners forced to work in mine; health & safety
2001	60	Ukraine	Coal		Various	H	Health & safety (5.2 deaths/million tons raw coal)
1816- 61	United Kingdom	Coal			Wales	S, L	Labor disputes; strikes/general strikes; police and soldiers shoot miners
1783	61	United Kingdom	Lead		Aberystwyth	B	Coal price riots
1982	62	United States	Zinc		Red Dog	I, P	Indigenous peoples' land rights
1928	62	United States	Coal		Alabama coal mines	U	Use of convict labor
1920	62	United States	Coal		Matewan, WV	S, L	Hoodlums hired by agency working for coal operators evicting miners seeking to join union; 12 people killed in gun fight
1914	62	United States	Coal		Ludlow massacre	S, L	Colorado militiamen, coal company guards & thugs planned attack shot/burned to death 20 people inc. 12 women/small children
1897	62	United States	Anthracite (coal)		Lattimer massacre	L, H	Strike against low wages, poor working conditions/sporadic work; 19 marchers killed/abt 50 wounded by Sheriff etc.
1892	62	United States	Lead/Silver		Frisco mill etc, ID	L	Coeur d'Alene Miners' Strike, fighting between union/nonunion; mill dynamited; several killed
1877	62	United States	Anthracite (coal)		Reading railway PA mines	S, L	20 Molly Maguires hung by co for murdering 24 mine foremen and superintendents over mine conditions pardoned in 1879.
63	Uzbekistan	Gold		Oxus Gold		S, B, U	Government forces of partner shot hundreds of unnamed protesters in Andijan, widespread torture
2006	64	Venezuela	Gold		La Parangua	I, S	Illegal artisanal miners; 8 killed followed by violent protests, Miners blocked access to the town, burning army vehicles and destroyed the mayor's residence in the nearby town of Maripa.
1993	64	Venezuela	Gold		Yanomami	I, P	Indigenous people, 16 killed by Brazilian garimpeiros
1997	65	Vietnam	Gold		Various	C, P	Child labor/illicit mining
2001	66	Yugoslavia			Various	L	Labor rights
2006	67	Zambia	Copper		Chambisi mine	L, S, H	Protesting Chinese-imposed working conditions, mgrs shoot and wound 5
2001	67	Zambia	Copper		Various	H	Health & safety (employers assaulted workers)

S=security; I=Indigenous Peoples; L=Labour; C=Child Labour; H=Health&Safety; P=Property; B=Life&Liberty; U=Cruel&Unusual Punishment; J=Access to Justice, E=Environment

Note: The allegations of human rights issues were not independently investigated and no opinion is expressed as to the validity of the cases cited or whether and to what extent the companies might be liable for their presumed actions. However, the number of cases reported and the seriousness of the allegations make it clear that there are real problems with social responsibility in the extractive industries and that companies and host governments are not taking actions necessary to the avoid or mitigate the negative impacts that mining activities are having in developing countries.

** It was reported in 2005, that 34 cases of alleged human rights violations in Peru had been submitted to Human Rights Commission, of which 4 had been dealt with, and some unsubstantiated were dismissed.

DECLARATIONS AND CONVENTIONS

Universal Declaration of Human Rights, G.A. res. 217A (III), U.N. Doc A/810

Adopted and proclaimed by General Assembly resolution 217 A (III) of 10 December 1948 © United Nations
PREAMBLE

Whereas recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world,

Whereas disregard and contempt for human rights have resulted in barbarous acts which have outraged the conscience of mankind, and the advent of a world in which human beings shall enjoy freedom of speech and belief and freedom from fear and want has been proclaimed as the highest aspiration of the common people,

Whereas it is essential, if man is not to be compelled to have recourse, as a last resort, to rebellion against tyranny and oppression, that human rights should be protected by the rule of law,

Whereas it is essential to promote the development of friendly relations between nations,

Whereas the peoples of the United Nations have in the Charter reaffirmed their faith in fundamental human rights, in the dignity and worth of the human person and in the equal rights of men and women and have determined to promote social progress and better standards of life in larger freedom,

Whereas Member States have pledged themselves to achieve, in co-operation with the United Nations, the promotion of universal respect for and observance of human rights and fundamental freedoms,

Whereas a common understanding of these rights and freedoms is of the greatest importance for the full realization of this pledge,

Now, Therefore THE GENERAL ASSEMBLY proclaims THIS UNIVERSAL DECLARATION OF HUMAN RIGHTS as a common standard of achievement for all peoples and all nations, to the end that every individual and every organ of society, keeping this Declaration constantly in mind, shall strive by teaching and education to promote respect for these rights and freedoms and by progressive measures, national and international, to secure their universal and effective recognition and observance, both among the peoples of Member States themselves and among the peoples of territories under their jurisdiction.

Article 1.

All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.

Article 2.

Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Furthermore, no distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs, whether it be independent, trust, non-self-governing or under any other limitation of sovereignty.

Article 3.

Everyone has the right to life, liberty and security of person.

Article 4.

No one shall be held in slavery or servitude; slavery and the slave trade shall be prohibited in all their forms.

Article 5.

No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.

Article 6.

Everyone has the right to recognition everywhere as a person before the law.

DECLARATIONS AND CONVENTIONS

Article 7.

All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination.

Article 8.

Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law.

Article 9.

No one shall be subjected to arbitrary arrest, detention or exile.

Article 10.

Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him.

Article 11.

(1) Everyone charged with a penal offence has the right to be presumed innocent until proved guilty according to law in a public trial at which he has had all the guarantees necessary for his defence.

(2) No one shall be held guilty of any penal offence on account of any act or omission which did not constitute a penal offence, under national or international law, at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the penal offence was committed.

Article 12.

No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honour and reputation. Everyone has the right to the protection of the law against such interference or attacks.

Article 13.

(1) Everyone has the right to freedom of movement and residence within the borders of each state.

(2) Everyone has the right to leave any country, including his own, and to return to his country.

Article 14.

(1) Everyone has the right to seek and to enjoy in other countries asylum from persecution.

(2) This right may not be invoked in the case of prosecutions genuinely arising from non-political crimes or from acts contrary to the purposes and principles of the United Nations.

Article 15.

(1) Everyone has the right to a nationality.

(2) No one shall be arbitrarily deprived of his nationality nor denied the right to change his nationality.

Article 16.

(1) Men and women of full age, without any limitation due to race, nationality or religion, have the right to marry and to found a family. They are entitled to equal rights as to marriage, during marriage and at its dissolution.

(2) Marriage shall be entered into only with the free and full consent of the intending spouses.

(3) The family is the natural and fundamental group unit of society and is entitled to protection by society and the State.

Article 17.

(1) Everyone has the right to own property alone as well as in association with others.

DECLARATIONS AND CONVENTIONS

(2) No one shall be arbitrarily deprived of his property.

Article 18.

Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance.

Article 19.

Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.

Article 20.

(1) Everyone has the right to freedom of peaceful assembly and association.

(2) No one may be compelled to belong to an association.

Article 21.

(1) Everyone has the right to take part in the government of his country, directly or through freely chosen representatives.

(2) Everyone has the right of equal access to public service in his country.

(3) The will of the people shall be the basis of the authority of government; this will shall be expressed in periodic and genuine elections which shall be by universal and equal suffrage and shall be held by secret vote or by equivalent free voting procedures.

Article 22.

Everyone, as a member of society, has the right to social security and is entitled to realization, through national effort and international co-operation and in accordance with the organization and resources of each State, of the economic, social and cultural rights indispensable for his dignity and the free development of his personality.

Article 23.

(1) Everyone has the right to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment.

(2) Everyone, without any discrimination, has the right to equal pay for equal work.

(3) Everyone who works has the right to just and favourable remuneration ensuring for himself and his family an existence worthy of human dignity, and supplemented, if necessary, by other means of social protection.

(4) Everyone has the right to form and to join trade unions for the protection of his interests.

Article 24.

Everyone has the right to rest and leisure, including reasonable limitation of working hours and periodic holidays with pay.

Article 25.

(1) Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.

(2) Motherhood and childhood are entitled to special care and assistance. All children, whether born in or out of wedlock, shall enjoy the same social protection.

DECLARATIONS AND CONVENTIONS

Article 26.

- (1) Everyone has the right to education. Education shall be free, at least in the elementary and fundamental stages. Elementary education shall be compulsory. Technical and professional education shall be made generally available and higher education shall be equally accessible to all on the basis of merit.
- (2) Education shall be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms. It shall promote understanding, tolerance and friendship among all nations, racial or religious groups, and shall further the activities of the United Nations for the maintenance of peace.
- (3) Parents have a prior right to choose the kind of education that shall be given to their children.

Article 27.

- (1) Everyone has the right freely to participate in the cultural life of the community, to enjoy the arts and to share in scientific advancement and its benefits.
- (2) Everyone has the right to the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author.

Article 28.

Everyone is entitled to a social and international order in which the rights and freedoms set forth in this Declaration can be fully realized.

Article 29.

- (1) Everyone has duties to the community in which alone the free and full development of his personality is possible.
- (2) In the exercise of his rights and freedoms, everyone shall be subject only to such limitations as are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society.
- (3) These rights and freedoms may in no case be exercised contrary to the purposes and principles of the United Nations.

Article 30.

Nothing in this Declaration may be interpreted as implying for any State, group or person any right to engage in any activity or to perform any act aimed at the destruction of any of the rights and freedoms set forth herein.

DECLARATIONS AND CONVENTIONS

International Covenant on Economic, Social and Cultural Rights, G.A. res. 2200A (XXI), 21

U.N. Document. A/6316 (1966), 993 U.N.T.S. 3, entered into force Jan. 3, 1976. © United Nations

PREAMBLE

The States Parties to the present Covenant, Considering that, in accordance with the principles proclaimed in the Charter of the United Nations, recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world,

Recognizing that these rights derive from the inherent dignity of the human person,

Recognizing that, in accordance with the Universal Declaration of Human Rights, the ideal of free human beings enjoying freedom from fear and want can only be achieved if conditions are created whereby everyone may enjoy his economic, social and cultural rights, as well as his civil and political rights,

Considering the obligation of States under the Charter of the United Nations to promote universal respect for, and observance of, human rights and freedoms,

Realizing that the individual, having duties to other individuals and to the community to which he belongs, is under a responsibility to strive for the promotion and observance of the rights recognized in the present Covenant,

Agree upon the following articles:

PART I

Article 1

1. All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.
2. All peoples may, for their own ends, freely dispose of their natural wealth and resources without prejudice to any obligations arising out of international economic co-operation, based upon the principle of mutual benefit, and international law. In no case may a people be deprived of its own means of subsistence.
3. The States Parties to the present Covenant, including those having responsibility for the administration of Non-Self-Governing and Trust Territories, shall promote the realization of the right of self-determination, and shall respect that right, in conformity with the provisions of the Charter of the United Nations

PART II

Article 2

1. Each State Party to the present Covenant undertakes to take steps, individually and through international assistance and co-operation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the present Covenant by all appropriate means, including particularly the adoption of legislative measures.
2. The States Parties to the present Covenant undertake to guarantee that the rights enunciated in the present Covenant will be exercised without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.
3. Developing countries, with due regard to human rights and their national economy, may determine to what extent they would guarantee the economic rights recognized in the present Covenant to non-nationals.

Article 3

The States Parties to the present Covenant undertake to ensure the equal right of men and women to the enjoyment of all economic, social and cultural rights set forth in the present Covenant.

DECLARATIONS AND CONVENTIONS

Article 4

The States Parties to the present Covenant recognize that, in the enjoyment of those rights provided by the State in conformity with the present Covenant, the State may subject such rights only to such limitations as are determined by law only in so far as this may be compatible with the nature of these rights and solely for the purpose of promoting the general welfare in a democratic society.

Article 5

1. Nothing in the present Covenant may be interpreted as implying for any State, group or person any right to engage in any activity or to perform any act aimed at the destruction of any of the rights or freedoms recognized herein, or at their limitation to a greater extent than is provided for in the present Covenant.

2. No restriction upon or derogation from any of the fundamental human rights recognized or existing in any country in virtue of law, conventions, regulations or custom shall be admitted on the pretext that the present Covenant does not recognize such rights or that it recognizes them to a lesser extent.

PART III

Article 6

1. The States Parties to the present Covenant recognize the right to work, which includes the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts, and will take appropriate steps to safeguard this right.

2. The steps to be taken by a State Party to the present Covenant to achieve the full realization of this right shall include technical and vocational guidance and training programmes, policies and techniques to achieve steady economic, social and cultural development and full and productive employment under conditions safeguarding fundamental political and economic freedoms to the individual.

Article 7

The States Parties to the present Covenant recognize the right of everyone to the enjoyment of just and favourable conditions of work which ensure, in particular:

- (a) Remuneration which provides all workers, as a minimum, with: (i) Fair wages and equal remuneration for work of equal value without distinction of any kind, in particular women being guaranteed conditions of work not inferior to those enjoyed by men, with equal pay for equal work; (ii) A decent living for themselves and their families in accordance with the provisions of the present Covenant;
- (b) Safe and healthy working conditions;
- (c) Equal opportunity for everyone to be promoted in his employment to an appropriate higher level, subject to no considerations other than those of seniority and competence;
- (d) Rest, leisure and reasonable limitation of working hours and periodic holidays with pay, as well as remuneration for public holidays

Article 8

1. The States Parties to the present Covenant undertake to ensure:

- (a) The right of everyone to form trade unions and join the trade union of his choice, subject only to the rules of the organization concerned, for the promotion and protection of his economic and social interests. No restrictions may be placed on the exercise of this right other than those prescribed by law and which are necessary in a democratic society in the interests of national security or public order or for the protection of the rights and freedoms of others;
- (b) The right of trade unions to establish national federations or confederations and the right of the latter to form or join international trade-union organizations;
- (c) The right of trade unions to function freely subject to no limitations other than those prescribed by law and which are necessary in a democratic society in the interests of national security or public order or for the protection of the rights and freedoms of others;
- (d) The right to strike, provided that it is exercised in conformity with the laws of the particular country.

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2. This article shall not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces or of the police or of the administration of the State.

3. Nothing in this article shall authorize States Parties to the International Labour Organisation Convention of 1948 concerning Freedom of Association and Protection of the Right to Organize to take legislative measures which would prejudice, or apply the law in such a manner as would prejudice, the guarantees provided for in that Convention.

Article 9

The States Parties to the present Covenant recognize the right of everyone to social security, including social insurance.

Article 10

The States Parties to the present Covenant recognize that:

1. The widest possible protection and assistance should be accorded to the family, which is the natural and fundamental group unit of society, particularly for its establishment and while it is responsible for the care and education of dependent children. Marriage must be entered into with the free consent of the intending spouses.

2. Special protection should be accorded to mothers during a reasonable period before and after childbirth. During such period working mothers should be accorded paid leave or leave with adequate social security benefits.

3. Special measures of protection and assistance should be taken on behalf of all children and young persons without any discrimination for reasons of parentage or other conditions. Children and young persons should be protected from economic and social exploitation. Their employment in work harmful to their morals or health or dangerous to life or likely to hamper their normal development should be punishable by law. States should also set age limits below which the paid employment of child labour should be prohibited and punishable by law.

Article 11

1. The States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions. The States Parties will take appropriate steps to ensure the realization of this right, recognizing to this effect the essential importance of international co-operation based on free consent.

2. The States Parties to the present Covenant, recognizing the fundamental right of everyone to be free from hunger, shall take, individually and through international co-operation, the measures, including specific programmes, which are needed:

(a) To improve methods of production, conservation and distribution of food by making full use of technical and scientific knowledge, by disseminating knowledge of the principles of nutrition and by developing or reforming agrarian systems in such a way as to achieve the most efficient development and utilization of natural resources;

(b) Taking into account the problems of both food-importing and food-exporting countries, to ensure an equitable distribution of world food supplies in relation to need.

Article 12

1. The States Parties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.

2. The steps to be taken by the States Parties to the present Covenant to achieve the full realization of this right shall include those necessary for:

(a) The provision for the reduction of the stillbirth-rate and of infant mortality and for the healthy development of the child;

(b) The improvement of all aspects of environmental and industrial hygiene;

(c) The prevention, treatment and control of epidemic, endemic, occupational and other diseases;

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(d) The creation of conditions which would assure to all medical service and medical attention in the event of sickness.

Article 13

1. The States Parties to the present Covenant recognize the right of everyone to education. They agree that education shall be directed to the full development of the human personality and the sense of its dignity, and shall strengthen the respect for human rights and fundamental freedoms. They further agree that education shall enable all persons to participate effectively in a free society, promote understanding, tolerance and friendship among all nations and all racial, ethnic or religious groups, and further the activities of the United Nations for the maintenance of peace.

2. The States Parties to the present Covenant recognize that, with a view to achieving the full realization of this right:

- (a) Primary education shall be compulsory and available free to all;
- (b) Secondary education in its different forms, including technical and vocational secondary education, shall be made generally available and accessible to all by every appropriate means, and in particular by the progressive introduction of free education;
- (c) Higher education shall be made equally accessible to all, on the basis of capacity, by every appropriate means, and in particular by the progressive introduction of free education;
- (d) Fundamental education shall be encouraged or intensified as far as possible for those persons who have not received or completed the whole period of their primary education;
- (e) The development of a system of schools at all levels shall be actively pursued, an adequate fellowship system shall be established, and the material conditions of teaching staff shall be continuously improved.

3. The States Parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians to choose for their children schools, other than those established by the public authorities, which conform to such minimum educational standards as may be laid down or approved by the State and to ensure the religious and moral education of their children in conformity with their own convictions.

4. No part of this article shall be construed so as to interfere with the liberty of individuals and bodies to establish and direct educational institutions, subject always to the observance of the principles set forth in paragraph 1 of this article and to the requirement that the education given in such institutions shall conform to such minimum standards as may be laid down by the State.

Article 14

Each State Party to the present Covenant which, at the time of becoming a Party, has not been able to secure in its metropolitan territory or other territories under its jurisdiction compulsory primary education, free of charge, undertakes, within two years, to work out and adopt a detailed plan of action for the progressive implementation, within a reasonable number of years, to be fixed in the plan, of the principle of compulsory education free of charge for all.

Article 15

1. The States Parties to the present Covenant recognize the right of everyone:

- (a) To take part in cultural life;
- (b) To enjoy the benefits of scientific progress and its applications;
- (c) To benefit from the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author.

2. The steps to be taken by the States Parties to the present Covenant to achieve the full realization of this right shall include those necessary for the conservation, the development and the diffusion of science and culture.

3. The States Parties to the present Covenant undertake to respect the freedom indispensable for scientific research and creative activity.

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4. The States Parties to the present Covenant recognize the benefits to be derived from the encouragement and development of international contacts and co-operation in the scientific and cultural fields.

PART IV

Article 16

1. The States Parties to the present Covenant undertake to submit in conformity with this part of the Covenant reports on the measures which they have adopted and the progress made in achieving the observance of the rights recognized herein.

2.

(a) All reports shall be submitted to the Secretary-General of the United Nations, who shall transmit copies to the Economic and Social Council for consideration in accordance with the provisions of the present Covenant;

(b) The Secretary-General of the United Nations shall also transmit to the specialized agencies copies of the reports, or any relevant parts thereof, from States Parties to the present Covenant which are also members of these specialized agencies in so far as these reports, or parts thereof, relate to any matters which fall within the responsibilities of the said agencies in accordance with their constitutional instruments.

Article 17

1. The States Parties to the present Covenant shall furnish their reports in stages, in accordance with a programme to be established by the Economic and Social Council within one year of the entry into force of the present Covenant after consultation with the States Parties and the specialized agencies concerned.

2. Reports may indicate factors and difficulties affecting the degree of fulfilment of obligations under the present Covenant.

3. Where relevant information has previously been furnished to the United Nations or to any specialized agency by any State Party to the present Covenant, it will not be necessary to reproduce that information, but a precise reference to the information so furnished will suffice.

Article 18

Pursuant to its responsibilities under the Charter of the United Nations in the field of human rights and fundamental freedoms, the Economic and Social Council may make arrangements with the specialized agencies in respect of their reporting to it on the progress made in achieving the observance of the provisions of the present Covenant falling within the scope of their activities. These reports may include particulars of decisions and recommendations on such implementation adopted by their competent organs.

Article 19

The Economic and Social Council may transmit to the Commission on Human Rights for study and general recommendation or, as appropriate, for information the reports concerning human rights submitted by States in accordance with articles 16 and 17, and those concerning human rights submitted by the specialized agencies in accordance with article 18.

Article 20

The States Parties to the present Covenant and the specialized agencies concerned may submit comments to the Economic and Social Council on any general recommendation under article 19 or reference to such general recommendation in any report of the Commission on Human Rights or any documentation referred to therein.

Article 21

The Economic and Social Council may submit from time to time to the General Assembly reports with recommendations of a general nature and a summary of the information received from the States

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Parties to the present Covenant and the specialized agencies on the measures taken and the progress made in achieving general observance of the rights recognized in the present Covenant.

Article 22

The Economic and Social Council may bring to the attention of other organs of the United Nations, their subsidiary organs and specialized agencies concerned with furnishing technical assistance any matters arising out of the reports referred to in this part of the present Covenant which may assist such bodies in deciding, each within its field of competence, on the advisability of international measures likely to contribute to the effective progressive implementation of the present Covenant.

Article 23

The States Parties to the present Covenant agree that international action for the achievement of the rights recognized in the present Covenant includes such methods as the conclusion of conventions, the adoption of recommendations, the furnishing of technical assistance and the holding of regional meetings and technical meetings for the purpose of consultation and study organized in conjunction with the Governments concerned.

Article 24

Nothing in the present Covenant shall be interpreted as impairing the provisions of the Charter of the United Nations and of the constitutions of the specialized agencies which define the respective responsibilities of the various organs of the United Nations and of the specialized agencies in regard to the matters dealt with in the present Covenant.

Article 25

Nothing in the present Covenant shall be interpreted as impairing the inherent right of all peoples to enjoy and utilize fully and freely their natural wealth and resources.

PART V

Article 26

1. The present Covenant is open for signature by any State Member of the United Nations or member of any of its specialized agencies, by any State Party to the Statute of the International Court of Justice, and by any other State which has been invited by the General Assembly of the United Nations to become a party to the present Covenant.
2. The present Covenant is subject to ratification. Instruments of ratification shall be deposited with the Secretary-General of the United Nations.
3. The present Covenant shall be open to accession by any State referred to in paragraph 1 of this article.
4. Accession shall be effected by the deposit of an instrument of accession with the Secretary-General of the United Nations.
5. The Secretary-General of the United Nations shall inform all States which have signed the present Covenant or acceded to it of the deposit of each instrument of ratification or accession.

Article 27

1. The present Covenant shall enter into force three months after the date of the deposit with the Secretary-General of the United Nations of the thirty-fifth instrument of ratification or instrument of accession.
2. For each State ratifying the present Covenant or acceding to it after the deposit of the thirty-fifth instrument of ratification or instrument of accession, the present Covenant shall enter into force three months after the date of the deposit of its own instrument of ratification or instrument of accession.

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Article 28

The provisions of the present Covenant shall extend to all parts of federal States without any limitations or exceptions.

Article 29

1. Any State Party to the present Covenant may propose an amendment and file it with the Secretary-General of the United Nations. The Secretary-General shall thereupon communicate any proposed amendments to the States Parties to the present Covenant with a request that they notify him whether they favour a conference of States Parties for the purpose of considering and voting upon the proposals. In the event that at least one third of the States Parties favours such a conference, the Secretary-General shall convene the conference under the auspices of the United Nations. Any amendment adopted by a majority of the States Parties present and voting at the conference shall be submitted to the General Assembly of the United Nations for approval.

2. Amendments shall come into force when they have been approved by the General Assembly of the United Nations and accepted by a two-thirds majority of the States Parties to the present Covenant in accordance with their respective constitutional processes.

3. When amendments come into force they shall be binding on those States Parties which have accepted them, other States Parties still being bound by the provisions of the present Covenant and any earlier amendment which they have accepted.

Article 30

Irrespective of the notifications made under article 26, paragraph 5, the Secretary-General of the United Nations shall inform all States referred to in paragraph I of the same article of the following particulars:

- (a) Signatures, ratifications and accessions under article 26;
- (b) The date of the entry into force of the present Covenant under article 27 and the date of the entry into force of any amendments under article 29.

Article 31

1. The present Covenant, of which the Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited in the archives of the United Nations.

2. The Secretary-General of the United Nations shall transmit certified copies of the present Covenant to all States referred to in article 26.

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International Covenant on Civil and Political Rights, G.A. res. 2200A (XXI), 21 U.N. GAOR

U.N. Document. A/6316 (1966), 999 U.N.T.S. 171, entered into force Mar. 23, 1976. © United Nations

PREAMBLE

The States Parties to the present Covenant,

Considering that, in accordance with the principles proclaimed in the Charter of the United Nations, recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world,

Recognizing that these rights derive from the inherent dignity of the human person,

Recognizing that, in accordance with the Universal Declaration of Human Rights, the ideal of free human beings enjoying civil and political freedom and freedom from fear and want can only be achieved if conditions are created whereby everyone may enjoy his civil and political rights, as well as his economic, social and cultural rights,

Considering the obligation of States under the Charter of the United Nations to promote universal respect for, and observance of, human rights and freedoms,

Realizing that the individual, having duties to other individuals and to the community to which he belongs, is under a responsibility to strive for the promotion and observance of the rights recognized in the present Covenant,

Agree upon the following articles:

PART I

Article I

1. All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.
2. All peoples may, for their own ends, freely dispose of their natural wealth and resources without prejudice to any obligations arising out of international economic co-operation, based upon the principle of mutual benefit, and international law. In no case may a people be deprived of its own means of subsistence.
3. The States Parties to the present Covenant, including those having responsibility for the administration of Non-Self-Governing and Trust Territories, shall promote the realization of the right of self-determination, and shall respect that right, in conformity with the provisions of the Charter of the United Nations.

PART II

Article 2

1. Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.
2. Where not already provided for by existing legislative or other measures, each State Party to the present Covenant undertakes to take the necessary steps, in accordance with its constitutional processes and with the provisions of the present Covenant, to adopt such legislative or other measures as may be necessary to give effect to the rights recognized in the present Covenant.
3. Each State Party to the present Covenant undertakes:
 - (a) To ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity;

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- (b) To ensure that any person claiming such a remedy shall have his right thereto determined by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by the legal system of the State, and to develop the possibilities of judicial remedy;
- (c) To ensure that the competent authorities shall enforce such remedies when granted.

Article 3

The States Parties to the present Covenant undertake to ensure the equal right of men and women to the enjoyment of all civil and political rights set forth in the present Covenant.

Article 4

1. In time of public emergency which threatens the life of the nation and the existence of which is officially proclaimed, the States Parties to the present Covenant may take measures derogating from their obligations under the present Covenant to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with their other obligations under international law and do not involve discrimination solely on the ground of race, colour, sex, language, religion or social origin.
2. No derogation from articles 6, 7, 8 (paragraphs I and 2), 11, 15, 16 and 18 may be made under this provision.
3. Any State Party to the present Covenant availing itself of the right of derogation shall immediately inform the other States Parties to the present Covenant, through the intermediary of the Secretary-General of the United Nations, of the provisions from which it has derogated and of the reasons by which it was actuated. A further communication shall be made, through the same intermediary, on the date on which it terminates such derogation.

Article 5

1. Nothing in the present Covenant may be interpreted as implying for any State, group or person any right to engage in any activity or perform any act aimed at the destruction of any of the rights and freedoms recognized herein or at their limitation to a greater extent than is provided for in the present Covenant.
2. There shall be no restriction upon or derogation from any of the fundamental human rights recognized or existing in any State Party to the present Covenant pursuant to law, conventions, regulations or custom on the pretext that the present Covenant does not recognize such rights or that it recognizes them to a lesser extent.

PART III

Article 6

1. Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life.
2. In countries which have not abolished the death penalty, sentence of death may be imposed only for the most serious crimes in accordance with the law in force at the time of the commission of the crime and not contrary to the provisions of the present Covenant and to the Convention on the Prevention and Punishment of the Crime of Genocide. This penalty can only be carried out pursuant to a final judgement rendered by a competent court.
3. When deprivation of life constitutes the crime of genocide, it is understood that nothing in this article shall authorize any State Party to the present Covenant to derogate in any way from any obligation assumed under the provisions of the Convention on the Prevention and Punishment of the Crime of Genocide.
4. Anyone sentenced to death shall have the right to seek pardon or commutation of the sentence. Amnesty, pardon or commutation of the sentence of death may be granted in all cases.
5. Sentence of death shall not be imposed for crimes committed by persons below eighteen years of age and shall not be carried out on pregnant women.

DECLARATIONS AND CONVENTIONS

6. Nothing in this article shall be invoked to delay or to prevent the abolition of capital punishment by any State Party to the present Covenant.

Article 7

No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his free consent to medical or scientific experimentation.

Article 8

1. No one shall be held in slavery; slavery and the slave-trade in all their forms shall be prohibited.

2. No one shall be held in servitude.

3.

(a) No one shall be required to perform forced or compulsory labour;

(b) Paragraph 3 (a) shall not be held to preclude, in countries where imprisonment with hard labour may be imposed as a punishment for a crime, the performance of hard labour in pursuance of a sentence to such punishment by a competent court;

(c) For the purpose of this paragraph the term "forced or compulsory labour" shall not include:

(i) Any work or service, not referred to in subparagraph (b), normally required of a person who is under detention in consequence of a lawful order of a court, or of a person during conditional release from such detention;

(ii) Any service of a military character and, in countries where conscientious objection is recognized, any national service required by law of conscientious objectors;

(iii) Any service exacted in cases of emergency or calamity threatening the life or well-being of the community;

(iv) Any work or service which forms part of normal civil obligations.

Article 9

1. Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law.

2. Anyone who is arrested shall be informed, at the time of arrest, of the reasons for his arrest and shall be promptly informed of any charges against him.

3. Anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release. It shall not be the general rule that persons awaiting trial shall be detained in custody, but release may be subject to guarantees to appear for trial, at any other stage of the judicial proceedings, and, should occasion arise, for execution of the judgement.

4. Anyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings before a court, in order that court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful.

5. Anyone who has been the victim of unlawful arrest or detention shall have an enforceable right to compensation.

Article 10

1. All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person.

2.

(a) Accused persons shall, save in exceptional circumstances, be segregated from convicted persons and shall be subject to separate treatment appropriate to their status as unconvicted persons;

(b) Accused juvenile persons shall be separated from adults and brought as speedily as possible for adjudication. 3. The penitentiary system shall comprise treatment of prisoners the essential aim of which shall be their reformation and social rehabilitation. Juvenile offenders shall be segregated from adults and be accorded treatment appropriate to their age and legal status.

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Article 11

No one shall be imprisoned merely on the ground of inability to fulfil a contractual obligation.

Article 12

1. Everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence.
2. Everyone shall be free to leave any country, including his own.
3. The above-mentioned rights shall not be subject to any restrictions except those which are provided by law, are necessary to protect national security, public order (ordre public), public health or morals or the rights and freedoms of others, and are consistent with the other rights recognized in the present Covenant.
4. No one shall be arbitrarily deprived of the right to enter his own country.

Article 13

An alien lawfully in the territory of a State Party to the present Covenant may be expelled therefrom only in pursuance of a decision reached in accordance with law and shall, except where compelling reasons of national security otherwise require, be allowed to submit the reasons against his expulsion and to have his case reviewed by, and be represented for the purpose before, the competent authority or a person or persons especially designated by the competent authority.

Article 14

1. All persons shall be equal before the courts and tribunals. In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law. The press and the public may be excluded from all or part of a trial for reasons of morals, public order (ordre public) or national security in a democratic society, or when the interest of the private lives of the parties so requires, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice; but any judgement rendered in a criminal case or in a suit at law shall be made public except where the interest of juvenile persons otherwise requires or the proceedings concern matrimonial disputes or the guardianship of children.
2. Everyone charged with a criminal offence shall have the right to be presumed innocent until proved guilty according to law.
3. In the determination of any criminal charge against him, everyone shall be entitled to the following minimum guarantees, in full equality:
 - (a) To be informed promptly and in detail in a language which he understands of the nature and cause of the charge against him;
 - (b) To have adequate time and facilities for the preparation of his defence and to communicate with counsel of his own choosing;
 - (c) To be tried without undue delay;
 - (d) To be tried in his presence, and to defend himself in person or through legal assistance of his own choosing; to be informed, if he does not have legal assistance, of this right; and to have legal assistance assigned to him, in any case where the interests of justice so require, and without payment by him in any such case if he does not have sufficient means to pay for it;
 - (e) To examine, or have examined, the witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;
 - (f) To have the free assistance of an interpreter if he cannot understand or speak the language used in court;
 - (g) Not to be compelled to testify against himself or to confess guilt.
4. In the case of juvenile persons, the procedure shall be such as will take account of their age and the desirability of promoting their rehabilitation.
5. Everyone convicted of a crime shall have the right to his conviction and sentence being reviewed by a higher tribunal according to law.

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6. When a person has by a final decision been convicted of a criminal offence and when subsequently his conviction has been reversed or he has been pardoned on the ground that a new or newly discovered fact shows conclusively that there has been a miscarriage of justice, the person who has suffered punishment as a result of such conviction shall be compensated according to law, unless it is proved that the non-disclosure of the unknown fact in time is wholly or partly attributable to him.

7. No one shall be liable to be tried or punished again for an offence for which he has already been finally convicted or acquitted in accordance with the law and penal procedure of each country.

Article 15

1. No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence, under national or international law, at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time when the criminal offence was committed. If, subsequent to the commission of the offence, provision is made by law for the imposition of the lighter penalty, the offender shall benefit thereby.

2. Nothing in this article shall prejudice the trial and punishment of any person for any act or omission which, at the time when it was committed, was criminal according to the general principles of law recognized by the community of nations.

Article 16

Everyone shall have the right to recognition everywhere as a person before the law.

Article 17

1. No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation.

2. Everyone has the right to the protection of the law against such interference or attacks.

Article 18

1. Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have or to adopt a religion or belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching.

2. No one shall be subject to coercion which would impair his freedom to have or to adopt a religion or belief of his choice.

3. Freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others. 4. The States Parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians to ensure the religious and moral education of their children in conformity with their own convictions.

Article 19

1. Everyone shall have the right to hold opinions without interference.

2. Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.

3. The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:

(a) For respect of the rights or reputations of others;

(b) For the protection of national security or of public order (ordre public), or of public health or morals.

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Article 20

1. Any propaganda for war shall be prohibited by law.
2. Any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law.

Article 21

The right of peaceful assembly shall be recognized. No restrictions may be placed on the exercise of this right other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others.

Article 22

1. Everyone shall have the right to freedom of association with others, including the right to form and join trade unions for the protection of his interests.
2. No restrictions may be placed on the exercise of this right other than those which are prescribed by law and which are necessary in a democratic society in the interests of national security or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others. This article shall not prevent the imposition of lawful restrictions on members of the armed forces and of the police in their exercise of this right.
3. Nothing in this article shall authorize States Parties to the International Labour Organisation Convention of 1948 concerning Freedom of Association and Protection of the Right to Organize to take legislative measures which would prejudice, or to apply the law in such a manner as to prejudice, the guarantees provided for in that Convention.

Article 23

1. The family is the natural and fundamental group unit of society and is entitled to protection by society and the State.
2. The right of men and women of marriageable age to marry and to found a family shall be recognized.
3. No marriage shall be entered into without the free and full consent of the intending spouses.
4. States Parties to the present Covenant shall take appropriate steps to ensure equality of rights and responsibilities of spouses as to marriage, during marriage and at its dissolution. In the case of dissolution, provision shall be made for the necessary protection of any children.

Article 24

1. Every child shall have, without any discrimination as to race, colour, sex, language, religion, national or social origin, property or birth, the right to such measures of protection as are required by his status as a minor, on the part of his family, society and the State.
2. Every child shall be registered immediately after birth and shall have a name.
3. Every child has the right to acquire a nationality.

Article 25

Every citizen shall have the right and the opportunity, without any of the distinctions mentioned in article 2 and without unreasonable restrictions:

- (a) To take part in the conduct of public affairs, directly or through freely chosen representatives;
- (b) To vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors;
- (c) To have access, on general terms of equality, to public service in his country.

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Article 26

All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

Article 27

In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practise their own religion, or to use their own language.

PART IV

Article 28

1. There shall be established a Human Rights Committee (hereafter referred to in the present Covenant as the Committee). It shall consist of eighteen members and shall carry out the functions hereinafter provided.
2. The Committee shall be composed of nationals of the States Parties to the present Covenant who shall be persons of high moral character and recognized competence in the field of human rights, consideration being given to the usefulness of the participation of some persons having legal experience.
3. The members of the Committee shall be elected and shall serve in their personal capacity.

Article 29

1. The members of the Committee shall be elected by secret ballot from a list of persons possessing the qualifications prescribed in article 28 and nominated for the purpose by the States Parties to the present Covenant.
2. Each State Party to the present Covenant may nominate not more than two persons. These persons shall be nationals of the nominating State.
3. A person shall be eligible for renomination.

Article 30

1. The initial election shall be held no later than six months after the date of the entry into force of the present Covenant.
2. At least four months before the date of each election to the Committee, other than an election to fill a vacancy declared in accordance with article 34, the Secretary-General of the United Nations shall address a written invitation to the States Parties to the present Covenant to submit their nominations for membership of the Committee within three months.
3. The Secretary-General of the United Nations shall prepare a list in alphabetical order of all the persons thus nominated, with an indication of the States Parties which have nominated them, and shall submit it to the States Parties to the present Covenant no later than one month before the date of each election.
4. Elections of the members of the Committee shall be held at a meeting of the States Parties to the present Covenant convened by the Secretary General of the United Nations at the Headquarters of the United Nations. At that meeting, for which two thirds of the States Parties to the present Covenant shall constitute a quorum, the persons elected to the Committee shall be those nominees who obtain the largest number of votes and an absolute majority of the votes of the representatives of States Parties present and voting.

Article 31

1. The Committee may not include more than one national of the same State.

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2. In the election of the Committee, consideration shall be given to equitable geographical distribution of membership and to the representation of the different forms of civilization and of the principal legal systems.

Article 32

1. The members of the Committee shall be elected for a term of four years. They shall be eligible for re-election if renominated. However, the terms of nine of the members elected at the first election shall expire at the end of two years; immediately after the first election, the names of these nine members shall be chosen by lot by the Chairman of the meeting referred to in article 30, paragraph 4.

2. Elections at the expiry of office shall be held in accordance with the preceding articles of this part of the present Covenant.

Article 33

1. If, in the unanimous opinion of the other members, a member of the Committee has ceased to carry out his functions for any cause other than absence of a temporary character, the Chairman of the Committee shall notify the Secretary-General of the United Nations, who shall then declare the seat of that member to be vacant.

2. In the event of the death or the resignation of a member of the Committee, the Chairman shall immediately notify the Secretary-General of the United Nations, who shall declare the seat vacant from the date of death or the date on which the resignation takes effect.

Article 34

1. When a vacancy is declared in accordance with article 33 and if the term of office of the member to be replaced does not expire within six months of the declaration of the vacancy, the Secretary-General of the United Nations shall notify each of the States Parties to the present Covenant, which may within two months submit nominations in accordance with article 29 for the purpose of filling the vacancy.

2. The Secretary-General of the United Nations shall prepare a list in alphabetical order of the persons thus nominated and shall submit it to the States Parties to the present Covenant. The election to fill the vacancy shall then take place in accordance with the relevant provisions of this part of the present Covenant.

3. A member of the Committee elected to fill a vacancy declared in accordance with article 33 shall hold office for the remainder of the term of the member who vacated the seat on the Committee under the provisions of that article.

Article 35

The members of the Committee shall, with the approval of the General Assembly of the United Nations, receive emoluments from United Nations resources on such terms and conditions as the General Assembly may decide, having regard to the importance of the Committee's responsibilities.

Article 36

The Secretary-General of the United Nations shall provide the necessary staff and facilities for the effective performance of the functions of the Committee under the present Covenant.

Article 37

1. The Secretary-General of the United Nations shall convene the initial meeting of the Committee at the Headquarters of the United Nations.

2. After its initial meeting, the Committee shall meet at such times as shall be provided in its rules of procedure.

3. The Committee shall normally meet at the Headquarters of the United Nations or at the United Nations Office at Geneva.

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Article 38

Every member of the Committee shall, before taking up his duties, make a solemn declaration in open committee that he will perform his functions impartially and conscientiously.

Article 39

1. The Committee shall elect its officers for a term of two years. They may be re-elected.
2. The Committee shall establish its own rules of procedure, but these rules shall provide, *inter alia*, that:
 - (a) Twelve members shall constitute a quorum;
 - (b) Decisions of the Committee shall be made by a majority vote of the members present.

Article 40

1. The States Parties to the present Covenant undertake to submit reports on the measures they have adopted which give effect to the rights recognized herein and on the progress made in the enjoyment of those rights:
 - (a) Within one year of the entry into force of the present Covenant for the States Parties concerned;
 - (b) Thereafter whenever the Committee so requests.
2. All reports shall be submitted to the Secretary-General of the United Nations, who shall transmit them to the Committee for consideration. Reports shall indicate the factors and difficulties, if any, affecting the implementation of the present Covenant.
3. The Secretary-General of the United Nations may, after consultation with the Committee, transmit to the specialized agencies concerned copies of such parts of the reports as may fall within their field of competence.
4. The Committee shall study the reports submitted by the States Parties to the present Covenant. It shall transmit its reports, and such general comments as it may consider appropriate, to the States Parties. The Committee may also transmit to the Economic and Social Council these comments along with the copies of the reports it has received from States Parties to the present Covenant.
5. The States Parties to the present Covenant may submit to the Committee observations on any comments that may be made in accordance with paragraph 4 of this article.

Article 41

1. A State Party to the present Covenant may at any time declare under this article that it recognizes the competence of the Committee to receive and consider communications to the effect that a State Party claims that another State Party is not fulfilling its obligations under the present Covenant. Communications under this article may be received and considered only if submitted by a State Party which has made a declaration recognizing in regard to itself the competence of the Committee. No communication shall be received by the Committee if it concerns a State Party which has not made such a declaration. Communications received under this article shall be dealt with in accordance with the following procedure:
 - (a) If a State Party to the present Covenant considers that another State Party is not giving effect to the provisions of the present Covenant, it may, by written communication, bring the matter to the attention of that State Party. Within three months after the receipt of the communication the receiving State shall afford the State which sent the communication an explanation, or any other statement in writing clarifying the matter which should include, to the extent possible and pertinent, reference to domestic procedures and remedies taken, pending, or available in the matter;
 - (b) If the matter is not adjusted to the satisfaction of both States Parties concerned within six months after the receipt by the receiving State of the initial communication, either State shall have the right to refer the matter to the Committee, by notice given to the Committee and to the other State;
 - (c) The Committee shall deal with a matter referred to it only after it has ascertained that all available domestic remedies have been invoked and exhausted in the matter, in conformity with the generally recognized principles of international law. This shall not be the rule where the application of the remedies is unreasonably prolonged;
 - (d) The Committee shall hold closed meetings when examining communications under this article;

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(e) Subject to the provisions of subparagraph (c), the Committee shall make available its good offices to the States Parties concerned with a view to a friendly solution of the matter on the basis of respect for human rights and fundamental freedoms as recognized in the present Covenant;

(f) In any matter referred to it, the Committee may call upon the States Parties concerned, referred to in subparagraph (b), to supply any relevant information;

(g) The States Parties concerned, referred to in subparagraph (b), shall have the right to be represented when the matter is being considered in the Committee and to make submissions orally and/or in writing;

(h) The Committee shall, within twelve months after the date of receipt of notice under subparagraph (b), submit a report:

(i) If a solution within the terms of subparagraph (e) is reached, the Committee shall confine its report to a brief statement of the facts and of the solution reached;

(ii) If a solution within the terms of subparagraph (e) is not reached, the Committee shall confine its report to a brief statement of the facts; the written submissions and record of the oral submissions made by the States Parties concerned shall be attached to the report. In every matter, the report shall be communicated to the States Parties concerned.

2. The provisions of this article shall come into force when ten States Parties to the present Covenant have made declarations under paragraph I of this article. Such declarations shall be deposited by the States Parties with the Secretary-General of the United Nations, who shall transmit copies thereof to the other States Parties. A declaration may be withdrawn at any time by notification to the Secretary-General. Such a withdrawal shall not prejudice the consideration of any matter which is the subject of a communication already transmitted under this article; no further communication by any State Party shall be received after the notification of withdrawal of the declaration has been received by the Secretary-General, unless the State Party concerned has made a new declaration.

Article 42

1.

(a) If a matter referred to the Committee in accordance with article 41 is not resolved to the satisfaction of the States Parties concerned, the Committee may, with the prior consent of the States Parties concerned, appoint an ad hoc Conciliation Commission (hereinafter referred to as the Commission). The good offices of the Commission shall be made available to the States Parties concerned with a view to an amicable solution of the matter on the basis of respect for the present Covenant;

(b) The Commission shall consist of five persons acceptable to the States Parties concerned. If the States Parties concerned fail to reach agreement within three months on all or part of the composition of the Commission, the members of the Commission concerning whom no agreement has been reached shall be elected by secret ballot by a two-thirds majority vote of the Committee from among its members.

2. The members of the Commission shall serve in their personal capacity. They shall not be nationals of the States Parties concerned, or of a State not Party to the present Covenant, or of a State Party which has not made a declaration under article 41.

3. The Commission shall elect its own Chairman and adopt its own rules of procedure.

4. The meetings of the Commission shall normally be held at the Headquarters of the United Nations or at the United Nations Office at Geneva. However, they may be held at such other convenient places as the Commission may determine in consultation with the Secretary-General of the United Nations and the States Parties concerned.

5. The secretariat provided in accordance with article 36 shall also service the commissions appointed under this article.

6. The information received and collated by the Committee shall be made available to the Commission and the Commission may call upon the States Parties concerned to supply any other relevant information. 7. When the Commission has fully considered the matter, but in any event not later than twelve months after having been seized of the matter, it shall submit to the Chairman of the Committee a report for communication to the States Parties concerned:

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(a) If the Commission is unable to complete its consideration of the matter within twelve months, it shall confine its report to a brief statement of the status of its consideration of the matter;

(b) If an amicable solution to the matter on the basis of respect for human rights as recognized in the present Covenant is reached, the Commission shall confine its report to a brief statement of the facts and of the solution reached;

(c) If a solution within the terms of subparagraph (b) is not reached, the Commission's report shall embody its findings on all questions of fact relevant to the issues between the States Parties concerned, and its views on the possibilities of an amicable solution of the matter. This report shall also contain the written submissions and a record of the oral submissions made by the States Parties concerned;

(d) If the Commission's report is submitted under subparagraph (c), the States Parties concerned shall, within three months of the receipt of the report, notify the Chairman of the Committee whether or not they accept the contents of the report of the Commission.

8. The provisions of this article are without prejudice to the responsibilities of the Committee under article 41.

9. The States Parties concerned shall share equally all the expenses of the members of the Commission in accordance with estimates to be provided by the Secretary-General of the United Nations.

10. The Secretary-General of the United Nations shall be empowered to pay the expenses of the members of the Commission, if necessary, before reimbursement by the States Parties concerned, in accordance with paragraph 9 of this article.

Article 43

The members of the Committee, and of the ad hoc conciliation commissions which may be appointed under article 42, shall be entitled to the facilities, privileges and immunities of experts on mission for the United Nations as laid down in the relevant sections of the Convention on the Privileges and Immunities of the United Nations.

Article 44

The provisions for the implementation of the present Covenant shall apply without prejudice to the procedures prescribed in the field of human rights by or under the constituent instruments and the conventions of the United Nations and of the specialized agencies and shall not prevent the States Parties to the present Covenant from having recourse to other procedures for settling a dispute in accordance with general or special international agreements in force between them.

Article 45

The Committee shall submit to the General Assembly of the United Nations, through the Economic and Social Council, an annual report on its activities.

PART V

Article 46 .

Nothing in the present Covenant shall be interpreted as impairing the provisions of the Charter of the United Nations and of the constitutions of the specialized agencies which define the respective responsibilities of the various organs of the United Nations and of the specialized agencies in regard to the matters dealt with in the present Covenant.

Article 47

Nothing in the present Covenant shall be interpreted as impairing the inherent right of all peoples to enjoy and utilize fully and freely their natural wealth and resources.

PART VI

Article 48

1. The present Covenant is open for signature by any State Member of the United Nations or member of any of its specialized agencies, by any State Party to the Statute of the International Court of Justice,

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and by any other State which has been invited by the General Assembly of the United Nations to become a Party to the present Covenant.

2. The present Covenant is subject to ratification. Instruments of ratification shall be deposited with the Secretary-General of the United Nations.

3. The present Covenant shall be open to accession by any State referred to in paragraph 1 of this article.

4. Accession shall be effected by the deposit of an instrument of accession with the Secretary-General of the United Nations.

5. The Secretary-General of the United Nations shall inform all States which have signed this Covenant or acceded to it of the deposit of each instrument of ratification or accession.

Article 49

1. The present Covenant shall enter into force three months after the date of the deposit with the Secretary-General of the United Nations of the thirty-fifth instrument of ratification or instrument of accession.

2. For each State ratifying the present Covenant or acceding to it after the deposit of the thirty-fifth instrument of ratification or instrument of accession, the present Covenant shall enter into force three months after the date of the deposit of its own instrument of ratification or instrument of accession.

Article 50

The provisions of the present Covenant shall extend to all parts of federal States without any limitations or exceptions.

Article 51

1. Any State Party to the present Covenant may propose an amendment and file it with the Secretary-General of the United Nations. The Secretary-General of the United Nations shall thereupon communicate any proposed amendments to the States Parties to the present Covenant with a request that they notify him whether they favour a conference of States Parties for the purpose of considering and voting upon the proposals. In the event that at least one third of the States Parties favours such a conference, the Secretary-General shall convene the conference under the auspices of the United Nations. Any amendment adopted by a majority of the States Parties present and voting at the conference shall be submitted to the General Assembly of the United Nations for approval.

2. Amendments shall come into force when they have been approved by the General Assembly of the United Nations and accepted by a two-thirds majority of the States Parties to the present Covenant in accordance with their respective constitutional processes. 3. When amendments come into force, they shall be binding on those States Parties which have accepted them, other States Parties still being bound by the provisions of the present Covenant and any earlier amendment which they have accepted.

Article 52

Irrespective of the notifications made under article 48, paragraph 5, the Secretary-General of the United Nations shall inform all States referred to in paragraph 1 of the same article of the following particulars:

- (a) Signatures, ratifications and accessions under article 48;
- (b) The date of the entry into force of the present Covenant under article 49 and the date of the entry into force of any amendments under article 51.

Article 53

1. The present Covenant, of which the Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited in the archives of the United Nations.

2. The Secretary-General of the United Nations shall transmit certified copies of the present Covenant to all States referred to in article 48.

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C169 Indigenous and Tribal Peoples Convention, 1989

Convention concerning Indigenous and Tribal Peoples in Independent Countries

Date of adoption: 27 June 1989, Date of coming into force: 5 September 1991.

© International Labour Organization (ILO):

The General Conference of the International Labour Organisation,

Having been convened at Geneva by the Governing Body of the International Labour Office, and having met in its 76th Session on 7 June 1989, and

Noting the international standards contained in the Indigenous and Tribal Populations Convention and Recommendation, 1957, and

Recalling the terms of the Universal Declaration of Human Rights, the International Covenant on Economic, Social and Cultural Rights, the International Covenant on Civil and Political Rights, and the many international instruments on the prevention of discrimination, and

Considering that the developments which have taken place in international law since 1957, as well as developments in the situation of indigenous and tribal peoples in all regions of the world, have made it appropriate to adopt new international standards on the subject with a view to removing the assimilationist orientation of the earlier standards, and

Recognising the aspirations of these peoples to exercise control over their own institutions, ways of life and economic development and to maintain and develop their identities, languages and religions, within the framework of the States in which they live, and

Noting that in many parts of the world these peoples are unable to enjoy their fundamental human rights to the same degree as the rest of the population of the States within which they live, and that their laws, values, customs and perspectives have often been eroded, and

Calling attention to the distinctive contributions of indigenous and tribal peoples to the cultural diversity and social and ecological harmony of humankind and to international co-operation and understanding, and

Noting that the following provisions have been framed with the co-operation of the United Nations, the Food and Agriculture Organisation of the United Nations, the United Nations Educational, Scientific and Cultural Organisation and the World Health Organisation, as well as of the Inter-American Indian Institute, at appropriate levels and in their respective fields, and that it is proposed to continue this co-operation in promoting and securing the application of these provisions, and

Having decided upon the adoption of certain proposals with regard to the partial revision of the Indigenous and Tribal Populations Convention, 1957 (No. 107), which is the fourth item on the agenda of the session, and

Having determined that these proposals shall take the form of an international Convention revising the Indigenous and Tribal Populations Convention, 1957;

adopts the twenty-seventh day of June of the year one thousand nine hundred and eighty-nine, the following Convention, which may be cited as the Indigenous and Tribal Peoples Convention, 1989;

PART I. GENERAL POLICY

Article 1

1. This Convention applies to:

- (a) tribal peoples in independent countries whose social, cultural and economic conditions distinguish them from other sections of the national community, and whose status is regulated wholly or partially by their own customs or traditions or by special laws or regulations;
- (b) peoples in independent countries who are regarded as indigenous on account of their descent from the populations which inhabited the country, or a geographical region to which the country belongs, at the time of conquest or colonisation or the establishment of present state boundaries and who, irrespective of their legal status, retain some or all of their own social, economic, cultural and political institutions.

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2. Self-identification as indigenous or tribal shall be regarded as a fundamental criterion for determining the groups to which the provisions of this Convention apply.
3. The use of the term *peoples* in this Convention shall not be construed as having any implications as regards the rights which may attach to the term under international law.

Article 2

1. Governments shall have the responsibility for developing, with the participation of the peoples concerned, co-ordinated and systematic action to protect the rights of these peoples and to guarantee respect for their integrity.
2. Such action shall include measures for:
 - (a) ensuring that members of these peoples benefit on an equal footing from the rights and opportunities which national laws and regulations grant to other members of the population;
 - (b) promoting the full realisation of the social, economic and cultural rights of these peoples with respect for their social and cultural identity, their customs and traditions and their institutions;
 - (c) assisting the members of the peoples concerned to eliminate socio-economic gaps that may exist between indigenous and other members of the national community, in a manner compatible with their aspirations and ways of life.

Article 3

1. Indigenous and tribal peoples shall enjoy the full measure of human rights and fundamental freedoms without hindrance or discrimination. The provisions of the Convention shall be applied without discrimination to male and female members of these peoples.
2. No form of force or coercion shall be used in violation of the human rights and fundamental freedoms of the peoples concerned, including the rights contained in this Convention.

Article 4

1. Special measures shall be adopted as appropriate for safeguarding the persons, institutions, property, labour, cultures and environment of the peoples concerned.
2. Such special measures shall not be contrary to the freely-expressed wishes of the peoples concerned.
3. Enjoyment of the general rights of citizenship, without discrimination, shall not be prejudiced in any way by such special measures.

Article 5

In applying the provisions of this Convention:

- (a) the social, cultural, religious and spiritual values and practices of these peoples shall be recognised and protected, and due account shall be taken of the nature of the problems which face them both as groups and as individuals;
- (b) the integrity of the values, practices and institutions of these peoples shall be respected;
- (c) policies aimed at mitigating the difficulties experienced by these peoples in facing new conditions of life and work shall be adopted, with the participation and co-operation of the peoples affected.

Article 6

1. In applying the provisions of this Convention, governments shall:
 - (a) consult the peoples concerned, through appropriate procedures and in particular through their representative institutions, whenever consideration is being given to legislative or administrative measures which may affect them directly;
 - (b) establish means by which these peoples can freely participate, to at least the same extent as other sectors of the population, at all levels of decision-making in elective institutions and administrative and other bodies responsible for policies and programmes which concern them;

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(c) establish means for the full development of these peoples' own institutions and initiatives, and in appropriate cases provide the resources necessary for this purpose.

2. The consultations carried out in application of this Convention shall be undertaken, in good faith and in a form appropriate to the circumstances, with the objective of achieving agreement or consent to the proposed measures.

Article 7

1. The peoples concerned shall have the right to decide their own priorities for the process of development as it affects their lives, beliefs, institutions and spiritual well-being and the lands they occupy or otherwise use, and to exercise control, to the extent possible, over their own economic, social and cultural development. In addition, they shall participate in the formulation, implementation and evaluation of plans and programmes for national and regional development which may affect them directly.

2. The improvement of the conditions of life and work and levels of health and education of the peoples concerned, with their participation and co-operation, shall be a matter of priority in plans for the overall economic development of areas they inhabit. Special projects for development of the areas in question shall also be so designed as to promote such improvement.

3. Governments shall ensure that, whenever appropriate, studies are carried out, in co-operation with the peoples concerned, to assess the social, spiritual, cultural and environmental impact on them of planned development activities. The results of these studies shall be considered as fundamental criteria for the implementation of these activities.

4. Governments shall take measures, in co-operation with the peoples concerned, to protect and preserve the environment of the territories they inhabit.

Article 8

1. In applying national laws and regulations to the peoples concerned, due regard shall be had to their customs or customary laws.

2. These peoples shall have the right to retain their own customs and institutions, where these are not incompatible with fundamental rights defined by the national legal system and with internationally recognised human rights. Procedures shall be established, whenever necessary, to resolve conflicts which may arise in the application of this principle.

3. The application of paragraphs 1 and 2 of this Article shall not prevent members of these peoples from exercising the rights granted to all citizens and from assuming the corresponding duties.

Article 9

1. To the extent compatible with the national legal system and internationally recognised human rights, the methods customarily practised by the peoples concerned for dealing with offences committed by their members shall be respected.

2. The customs of these peoples in regard to penal matters shall be taken into consideration by the authorities and courts dealing with such cases.

Article 10

1. In imposing penalties laid down by general law on members of these peoples account shall be taken of their economic, social and cultural characteristics.

2. Preference shall be given to methods of punishment other than confinement in prison.

Article 11

The exaction from members of the peoples concerned of compulsory personal services in any form, whether paid or unpaid, shall be prohibited and punishable by law, except in cases prescribed by law for all citizens.

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Article 12

The peoples concerned shall be safeguarded against the abuse of their rights and shall be able to take legal proceedings, either individually or through their representative bodies, for the effective protection of these rights. Measures shall be taken to ensure that members of these peoples can understand and be understood in legal proceedings, where necessary through the provision of interpretation or by other effective means.

PART II. LAND

Article 13

1. In applying the provisions of this Part of the Convention governments shall respect the special importance for the cultures and spiritual values of the peoples concerned of their relationship with the lands or territories, or both as applicable, which they occupy or otherwise use, and in particular the collective aspects of this relationship.
2. The use of the term *lands* in Articles 15 and 16 shall include the concept of territories, which covers the total environment of the areas which the peoples concerned occupy or otherwise use.

Article 14

1. The rights of ownership and possession of the peoples concerned over the lands which they traditionally occupy shall be recognised. In addition, measures shall be taken in appropriate cases to safeguard the right of the peoples concerned to use lands not exclusively occupied by them, but to which they have traditionally had access for their subsistence and traditional activities. Particular attention shall be paid to the situation of nomadic peoples and shifting cultivators in this respect.
2. Governments shall take steps as necessary to identify the lands which the peoples concerned traditionally occupy, and to guarantee effective protection of their rights of ownership and possession.
3. Adequate procedures shall be established within the national legal system to resolve land claims by the peoples concerned.

Article 15

1. The rights of the peoples concerned to the natural resources pertaining to their lands shall be specially safeguarded. These rights include the right of these peoples to participate in the use, management and conservation of these resources.
2. In cases in which the State retains the ownership of mineral or sub-surface resources or rights to other resources pertaining to lands, governments shall establish or maintain procedures through which they shall consult these peoples, with a view to ascertaining whether and to what degree their interests would be prejudiced, before undertaking or permitting any programmes for the exploration or exploitation of such resources pertaining to their lands. The peoples concerned shall wherever possible participate in the benefits of such activities, and shall receive fair compensation for any damages which they may sustain as a result of such activities.

Article 16

1. Subject to the following paragraphs of this Article, the peoples concerned shall not be removed from the lands which they occupy.
2. Where the relocation of these peoples is considered necessary as an exceptional measure, such relocation shall take place only with their free and informed consent. Where their consent cannot be obtained, such relocation shall take place only following appropriate procedures established by national laws and regulations, including public inquiries where appropriate, which provide the opportunity for effective representation of the peoples concerned.
3. Whenever possible, these peoples shall have the right to return to their traditional lands, as soon as the grounds for relocation cease to exist.
4. When such return is not possible, as determined by agreement or, in the absence of such agreement, through appropriate procedures, these peoples shall be provided in all possible cases with lands of

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quality and legal status at least equal to that of the lands previously occupied by them, suitable to provide for their present needs and future development. Where the peoples concerned express a preference for compensation in money or in kind, they shall be so compensated under appropriate guarantees.

5. Persons thus relocated shall be fully compensated for any resulting loss or injury.

Article 17

1. Procedures established by the peoples concerned for the transmission of land rights among members of these peoples shall be respected.
2. The peoples concerned shall be consulted whenever consideration is being given to their capacity to alienate their lands or otherwise transmit their rights outside their own community.
3. Persons not belonging to these peoples shall be prevented from taking advantage of their customs or of lack of understanding of the laws on the part of their members to secure the ownership, possession or use of land belonging to them.

Article 18

Adequate penalties shall be established by law for unauthorised intrusion upon, or use of, the lands of the peoples concerned, and governments shall take measures to prevent such offences.

Article 19

National agrarian programmes shall secure to the peoples concerned treatment equivalent to that accorded to other sectors of the population with regard to:

- (a) the provision of more land for these peoples when they have not the area necessary for providing the essentials of a normal existence, or for any possible increase in their numbers;
- (b) the provision of the means required to promote the development of the lands which these peoples already possess.

PART III. RECRUITMENT AND CONDITIONS OF EMPLOYMENT

Article 20

1. Governments shall, within the framework of national laws and regulations, and in co-operation with the peoples concerned, adopt special measures to ensure the effective protection with regard to recruitment and conditions of employment of workers belonging to these peoples, to the extent that they are not effectively protected by laws applicable to workers in general.
2. Governments shall do everything possible to prevent any discrimination between workers belonging to the peoples concerned and other workers, in particular as regards:
 - (a) admission to employment, including skilled employment, as well as measures for promotion and advancement;
 - (b) equal remuneration for work of equal value;
 - (c) medical and social assistance, occupational safety and health, all social security benefits and any other occupationally related benefits, and housing;
 - (d) the right of association and freedom for all lawful trade union activities, and the right to conclude collective agreements with employers or employers' organisations.
3. The measures taken shall include measures to ensure:
 - (a) that workers belonging to the peoples concerned, including seasonal, casual and migrant workers in agricultural and other employment, as well as those employed by labour contractors, enjoy the protection afforded by national law and practice to other such workers in the same sectors, and that they are fully informed of their rights under labour legislation and of the means of redress available to them;

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(b) that workers belonging to these peoples are not subjected to working conditions hazardous to their health, in particular through exposure to pesticides or other toxic substances;

(c) that workers belonging to these peoples are not subjected to coercive recruitment systems, including bonded labour and other forms of debt servitude;

(d) that workers belonging to these peoples enjoy equal opportunities and equal treatment in employment for men and women, and protection from sexual harassment.

4. Particular attention shall be paid to the establishment of adequate labour inspection services in areas where workers belonging to the peoples concerned undertake wage employment, in order to ensure compliance with the provisions of this Part of this Convention.

PART IV. VOCATIONAL TRAINING, HANDICRAFTS AND RURAL INDUSTRIES

Article 21

Members of the peoples concerned shall enjoy opportunities at least equal to those of other citizens in respect of vocational training measures.

Article 22

1. Measures shall be taken to promote the voluntary participation of members of the peoples concerned in vocational training programmes of general application.

2. Whenever existing programmes of vocational training of general application do not meet the special needs of the peoples concerned, governments shall, with the participation of these peoples, ensure the provision of special training programmes and facilities.

3. Any special training programmes shall be based on the economic environment, social and cultural conditions and practical needs of the peoples concerned. Any studies made in this connection shall be carried out in co-operation with these peoples, who shall be consulted on the organisation and operation of such programmes. Where feasible, these peoples shall progressively assume responsibility for the organisation and operation of such special training programmes, if they so decide.

Article 23

1. Handicrafts, rural and community-based industries, and subsistence economy and traditional activities of the peoples concerned, such as hunting, fishing, trapping and gathering, shall be recognised as important factors in the maintenance of their cultures and in their economic self-reliance and development. Governments shall, with the participation of these people and whenever appropriate, ensure that these activities are strengthened and promoted.

2. Upon the request of the peoples concerned, appropriate technical and financial assistance shall be provided wherever possible, taking into account the traditional technologies and cultural characteristics of these peoples, as well as the importance of sustainable and equitable development.

PART V. SOCIAL SECURITY AND HEALTH

Article 24

Social security schemes shall be extended progressively to cover the peoples concerned, and applied without discrimination against them.

Article 25

1. Governments shall ensure that adequate health services are made available to the peoples concerned, or shall provide them with resources to allow them to design and deliver such services under their own responsibility and control, so that they may enjoy the highest attainable standard of physical and mental health.

2. Health services shall, to the extent possible, be community-based. These services shall be planned and administered in co-operation with the peoples concerned and take into account their economic, geographic, social and cultural conditions as well as their traditional preventive care, healing practices and medicines.

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3. The health care system shall give preference to the training and employment of local community health workers, and focus on primary health care while maintaining strong links with other levels of health care services.

4. The provision of such health services shall be co-ordinated with other social, economic and cultural measures in the country.

PART VI. EDUCATION AND MEANS OF COMMUNICATION

Article 26

Measures shall be taken to ensure that members of the peoples concerned have the opportunity to acquire education at all levels on at least an equal footing with the rest of the national community.

Article 27

1. Education programmes and services for the peoples concerned shall be developed and implemented in co-operation with them to address their special needs, and shall incorporate their histories, their knowledge and technologies, their value systems and their further social, economic and cultural aspirations.

2. The competent authority shall ensure the training of members of these peoples and their involvement in the formulation and implementation of education programmes, with a view to the progressive transfer of responsibility for the conduct of these programmes to these peoples as appropriate.

3. In addition, governments shall recognise the right of these peoples to establish their own educational institutions and facilities, provided that such institutions meet minimum standards established by the competent authority in consultation with these peoples. Appropriate resources shall be provided for this purpose.

Article 28

1. Children belonging to the peoples concerned shall, wherever practicable, be taught to read and write in their own indigenous language or in the language most commonly used by the group to which they belong. When this is not practicable, the competent authorities shall undertake consultations with these peoples with a view to the adoption of measures to achieve this objective.

2. Adequate measures shall be taken to ensure that these peoples have the opportunity to attain fluency in the national language or in one of the official languages of the country.

3. Measures shall be taken to preserve and promote the development and practice of the indigenous languages of the peoples concerned.

Article 29

The imparting of general knowledge and skills that will help children belonging to the peoples concerned to participate fully and on an equal footing in their own community and in the national community shall be an aim of education for these peoples.

Article 30

1. Governments shall adopt measures appropriate to the traditions and cultures of the peoples concerned, to make known to them their rights and duties, especially in regard to labour, economic opportunities, education and health matters, social welfare and their rights deriving from this Convention.

2. If necessary, this shall be done by means of written translations and through the use of mass communications in the languages of these peoples.

Article 31

Educational measures shall be taken among all sections of the national community, and particularly among those that are in most direct contact with the peoples concerned, with the object of eliminating prejudices that they may harbour in respect of these peoples. To this end, efforts shall be made to

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ensure that history textbooks and other educational materials provide a fair, accurate and informative portrayal of the societies and cultures of these peoples.

PART VII. CONTACTS AND CO-OPERATION ACROSS BORDERS

Article 32

Governments shall take appropriate measures, including by means of international agreements, to facilitate contacts and co-operation between indigenous and tribal peoples across borders, including activities in the economic, social, cultural, spiritual and environmental fields.

PART VIII. ADMINISTRATION

Article 33

1. The governmental authority responsible for the matters covered in this Convention shall ensure that agencies or other appropriate mechanisms exist to administer the programmes affecting the peoples concerned, and shall ensure that they have the means necessary for the proper fulfilment of the functions assigned to them.

2. These programmes shall include:

(a) the planning, co-ordination, execution and evaluation, in co-operation with the peoples concerned, of the measures provided for in this Convention;

(b) the proposing of legislative and other measures to the competent authorities and supervision of the application of the measures taken, in co-operation with the peoples concerned.

PART IX. GENERAL PROVISIONS

Article 34

The nature and scope of the measures to be taken to give effect to this Convention shall be determined in a flexible manner, having regard to the conditions characteristic of each country.

Article 35

The application of the provisions of this Convention shall not adversely affect rights and benefits of the peoples concerned pursuant to other Conventions and Recommendations, international instruments, treaties, or national laws, awards, custom or agreements.

PART X. PROVISIONS

Article 36

This Convention revises the Indigenous and Tribal Populations Convention, 1957.

Article 37

The formal ratifications of this Convention shall be communicated to the Director-General of the International Labour Office for registration.

Article 38

1. This Convention shall be binding only upon those Members of the International Labour Organisation whose ratifications have been registered with the Director-General.

2. It shall come into force twelve months after the date on which the ratifications of two Members have been registered with the Director-General.

3. Thereafter, this Convention shall come into force for any Member twelve months after the date on which its ratification has been registered.

Article 39

1. A Member which has ratified this Convention may denounce it after the expiration of ten years from the date on which the Convention first comes into force, by an act communicated to the

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Director-General of the International Labour Office for registration. Such denunciation shall not take effect until one year after the date on which it is registered.

2. Each Member which has ratified this Convention and which does not, within the year following the expiration of the period of ten years mentioned in the preceding paragraph, exercise the right of denunciation provided for in this Article, will be bound for another period of ten years and, thereafter, may denounce this Convention at the expiration of each period of ten years under the terms provided for in this Article.

Article 40

1. The Director-General of the International Labour Office shall notify all Members of the International Labour Organisation of the registration of all ratifications and denunciations communicated to him by the Members of the Organisation.

2. When notifying the Members of the Organisation of the registration of the second ratification communicated to him, the Director-General shall draw the attention of the Members of the Organisation to the date upon which the Convention will come into force.

Article 41

The Director-General of the International Labour Office shall communicate to the Secretary-General of the United Nations for registration in accordance with Article 102 of the Charter of the United Nations full particulars of all ratifications and acts of denunciation registered by him in accordance with the provisions of the preceding Articles.

Article 42

At such times as it may consider necessary the Governing Body of the International Labour Office shall present to the General Conference a report on the working of this Convention and shall examine the desirability of placing on the agenda of the Conference the question of its revision in whole or in part.

Article 43

1. Should the Conference adopt a new Convention revising this Convention in whole or in part, then, unless the new Convention otherwise provides-

(a) the ratification by a Member of the new revising Convention shall ipso jure involve the immediate denunciation of this Convention, notwithstanding the provisions of Article 39 above, if and when the new revising Convention shall have come into force;

(b) as from the date when the new revising Convention comes into force this Convention shall cease to be open to ratification by the Members.

2. This Convention shall in any case remain in force in its actual form and content for those Members which have ratified it but have not ratified the revising Convention.

Article 44

The English and French versions of the text of this Convention are equally authoritative.

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December 19, 2000

Voluntary Principles on Security and Human Rights

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

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

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

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

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

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

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

Acknowledging that home governments and multilateral institutions may, on occasion, assist host governments with security sector reform, developing institutional capacities and strengthening the rule of law, we recognize the important role Companies and civil society can play in supporting these efforts;

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

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RISK ASSESSMENT

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

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

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

- Identification of security risks. Security risks can result from political, economic, civil or social factors. Moreover, certain personnel and assets may be at greater risk than others. Identification of security risks allows a Company to take measures to minimize risk and to assess whether Company actions may heighten risk.
- Potential for violence. Depending on the environment, violence can be widespread or limited to particular regions, and it can develop with little or no warning. Civil society, home and host government representatives and other sources should be consulted to identify risks presented by the potential for violence. Risk assessments should examine patterns of violence in areas of Company operations for educational, predictive and preventative purposes.
- Human rights records. Risk assessments should consider the available human rights records of public security forces, paramilitaries, local and national law enforcement, as well as the reputation of private security. Awareness of past abuses and allegations can help Companies to avoid recurrences as well as to promote accountability. Also, identification of the capability of the above entities to respond to situations of violence in a lawful manner (i.e., consistent with applicable international standards) allows Companies to develop appropriate measures in operating environments.
- Rule of law. Risk assessments should consider the local prosecuting authority and judiciary's capacity to hold accountable those responsible for human rights abuses and for those responsible for violations of international humanitarian law in a manner that respects the rights of the accused.
- Conflict analysis. Identification of and understanding the root causes and nature of local conflicts, as well as the level of adherence to human rights and international humanitarian law standards by key actors, can be instructive for the development of strategies for managing relations between the Company, local communities, Company employees and their unions, and host governments. Risk assessments should also consider the potential for future conflicts.
- Equipment transfers. Where Companies provide equipment (including lethal and non-lethal equipment) to public or private security, they should consider the risk of such transfers, any relevant export licensing requirements, and the feasibility of measures to mitigate foreseeable negative consequences, including adequate controls to prevent misappropriation or diversion of equipment which may lead to human rights abuses. In making risk assessments, companies should consider any relevant past incidents involving previous equipment transfers.

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INTERACTIONS BETWEEN COMPANIES AND PUBLIC SECURITY

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

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

Security Arrangements

- Companies should consult regularly with host governments and local communities about the impact of their security arrangements on those communities.
- Companies should communicate their policies regarding ethical conduct and human rights to public security providers, and express their desire that security be provided in a manner consistent with those policies by personnel with adequate and effective training.
- Companies should encourage host governments to permit making security arrangements transparent and accessible to the public, subject to any overriding safety and security concerns.

Deployment and Conduct

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

Consultation and Advice

- Companies should hold structured meetings with public security on a regular basis to discuss security, human rights and related work-place safety issues. Companies should also consult regularly with other Companies, host and home governments, and civil society to discuss security and human rights.

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Where Companies operating in the same region have common concerns, they should consider collectively raising those concerns with the host and home governments.

- In their consultations with host governments, Companies should take all appropriate measures to promote observance of applicable international law enforcement principles, particularly those reflected in the U.N. Code of Conduct for Law Enforcement Officials and the U.N. Basic Principles on the Use of Force and Firearms.
- Companies should support efforts by governments, civil society and multilateral institutions to provide human rights training and education for public security as well as their efforts to strengthen state institutions to ensure accountability and respect for human rights.

Responses to Human Rights Abuses

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

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INTERACTIONS BETWEEN COMPANIES AND PRIVATE SECURITY

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

- Private security should observe the policies of the contracting Company regarding ethical conduct and human rights; the law and professional standards of the country in which they operate; emerging best practices developed by industry, civil society, and governments; and promote the observance of international humanitarian law.
- Private security should maintain high levels of technical and professional proficiency, particularly with regard to the local use of force and firearms.
- Private security should act in a lawful manner. They should exercise restraint and caution in a manner consistent with applicable international guidelines regarding the local use of force, including the U.N. Principles on the Use of Force and Firearms by Law Enforcement Officials and the U.N. Code of Conduct for Law Enforcement Officials, as well as with emerging best practices developed by Companies, civil society, and governments.
- Private security should have policies regarding appropriate conduct and the local use of force (e.g., rules of engagement). Practice under these policies should be capable of being monitored by Companies or, where appropriate, by independent third parties. Such monitoring should encompass detailed investigations into allegations of abusive or unlawful acts; the availability of disciplinary measures sufficient to prevent and deter; and procedures for reporting allegations to relevant local law enforcement authorities when appropriate.
- All allegations of human rights abuses by private security should be recorded. Credible allegations should be properly investigated. In those cases where allegations against private security providers are forwarded to the relevant law enforcement authorities, Companies should actively monitor the status of investigations and press for their proper resolution.
- Consistent with their function, private security should provide only preventative and defensive services and should not engage in activities exclusively the responsibility of state military or law enforcement authorities. Companies should designate services, technology and equipment capable of offensive and defensive purposes as being for defensive use only.
- Private security should (a) not employ individuals credibly implicated in human rights abuses to provide security services; (b) use force only when strictly necessary and to an extent proportional to the threat; and (c) not violate the rights of individuals while exercising the right to exercise freedom of association and peaceful assembly, to engage in collective bargaining, or other related rights of Company employees as recognized by the Universal Declaration of Human Rights and the ILO Declaration on Fundamental Principles and Rights at Work.
- In cases where physical force is used, private security should properly investigate and report the incident to the Company. Private security should refer the matter to local authorities and/or take disciplinary action where appropriate. Where force is used, medical aid should be provided to injured persons, including to offenders.
- Private security should maintain the confidentiality of information obtained as a result of its position as security provider, except where to do so would jeopardize the principles contained herein.

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

- Where appropriate, Companies should include the principles outlined above as contractual provisions in agreements with private security providers and ensure that private security personnel are adequately trained to respect the rights of employees and the local community. To the extent practicable, agreements between Companies and private security should require investigation of unlawful or abusive behavior and appropriate disciplinary action. Agreements should also permit termination of the relationship by Companies where there is credible evidence of unlawful or abusive behavior by private security personnel.
- Companies should consult and monitor private security providers to ensure they fulfil their obligation to provide security in a manner consistent with the principles outlined above. Where appropriate, Companies should seek to employ private security providers that are representative of the local population.
- Companies should review the background of private security they intend to employ, particularly with regard to the use of excessive force. Such reviews should include an assessment of previous services provided to the host government and whether these services raise concern about the private security firm's dual role as a private security provider and government contractor.
- Companies should consult with other Companies, home country officials, host country officials, and civil society regarding experiences with private security. Where appropriate and lawful, Companies should facilitate the exchange of information about unlawful activity and abuses committed by private security providers.

CONFEDERATION OF NORWEGIAN BUSINESS AND INDUSTRY:
CHECKLIST FOR CORPORATIONS/ENTERPRISES INTERESTED IN INVESTING
STRATEGIC EFFORTS IN HUMAN RIGHTS ISSUES

The following checklist is intended to be a tool for companies interested in devising their own strategies for dealing with human rights in accordance with internationally recognised human rights standards. * The checklist applies to companies' ethical responsibility for their own operations.

The proposals are not intended to be exhaustive. This document is a reference guide for corporate managers who wish to clarify the fundamental ethical values inherent in their company, and to ensure that the company pursues a policy that complies with international human rights conventions and standards. In some cases, the areas addressed will be covered by national legislation. Where such national legislation maintains a higher standard than international legislation for the protection of human rights, companies should follow the national laws. Where, on the other hand, national legislation does not take sufficient account of human rights, companies should take international human rights standards as the basis for their policies in this area.

Below, please note the verbatim wording of the most relevant articles in the Universal Declaration on Human Rights, followed by checkpoints about how companies should use these articles in formulating their internal policies and in connection with routine operations. Occasional references are also made to key ILO conventions of relevance to the checklist.

- Right to freedom from discrimination
- The right to personal safety and security
- Ban on slavery
- Ban on torture
- The right to freedom of opinion and expression
- The right to freedom of peaceful assembly and association
- The right to free participation in political life
- The right to work
- The right to rest and leisure
- The right to an adequate standard of living
- The right to education
- The right of minorities and indigenous peoples to protect their identity

Right to freedom from discrimination

The Universal Declaration, Article 2:

"Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status."

- Does the company have guidelines that prohibit discrimination based on race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status - and are these guidelines enforced in connection with recruitment, training and promotions?
- Has the company drawn up guidelines that comply with ILO Convention No. 111 (1958), which prohibits sexual discrimination?
- Does the company have guidelines to ensure that its products and services are accessible to every potential customer, without prejudice on the grounds of personal characteristics or identity?
- Does the company have guidelines to prevent sexual harassment at work?
- Does the company make efforts to determine whether potential business associates, suppliers and partners have any explicit policy in the above-mentioned areas?

* Confederation of Norwegian Business and Industry (NHO), 1998.

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The right to personal safety and security

The Universal Declaration, Article 3:

"Everyone has the right to life, liberty and security of person."

- Does the company have guidelines which ensure safe and healthy working conditions for employees, and are the rules observed?
- Where the company uses private security guards, have guidelines been drawn up to determine acceptable actions/courses of action that can be implemented against people who represent a threat to the company's security?
- Where the company uses public police or security guards, have guidelines been drawn up to determine exactly when and how they should be used, especially in situations in which one has experienced that the same personnel have represented a threat to the local populace?
- Where the company makes goods or services that can potentially be used to violate human rights or for end products that can be used for such violations, have control procedures been instituted to keep the products from falling into the wrong hands?
- If management were to learn that the company's products or services had been used to violate people's life, liberty or personal security, does it have rules that can be applied to prevent further business contact with such trading partners?

Ban on slavery

The Universal Declarations Article 4:

"No one shall be held in slavery or servitude; slavery and the slave trade shall be prohibited in all their forms."

- Does the company have procedures that prevent slavery, forced child labour or hard labour performed by prisoners?
- Does the company have guidelines that prevent collaboration, trade and partnership with or deliveries from enterprises that use slaves, forced child labour or hard labour performed by prisoners?
- Does the company fulfil the standards set out in the UN Convention on the Rights of the Child and ILO Conventions No. 29 (1930) concerning Forced Labour and No. 138 (1973) concerning Minimum Age?

Ban on torture

The Universal Declaration, Article 5:

"No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment."

- Does the company have procedures in place to prevent it from dealing with business associates that employ corporal punishment or other forms of physical or mental pressure on their employees?
- If the company uses private-sector security guards, has it (or the security company being used) drawn up rules to ensure that the security personnel do not employ methods that might be construed as torture or cruel, inhuman, or degrading treatment or punishment?
- Have the security guards received training in compliance with the UN Code of Conduct for Law Enforcement Personnel?

The right to freedom of opinion and expression

The Universal Declaration, Article 19:

"Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers."

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STRATEGIC EFFORTS IN HUMAN RIGHTS ISSUES

- Has the company prepared guidelines that recognise and protect employees' right to freedom of opinion and expression?
- Does the company make efforts to determine whether potential business associates, sub-contractors and partners have an explicit policy in this area?

The right to freedom of peaceful assembly and association

The Universal Declaration, Article 20:

1. *"Everyone has the right to freedom of peaceful assembly and association."*

2. *"No one may be compelled to belong to an association."*

- Has the company considered, or possibly prepared procedures to prevent the authorities from intervening in employees' right to freedom of peaceful assembly and association? How would the company respond if an order were issued to dissolve the trade unions, and threats were made to imprison company employees?
- Has the company drawn up guidelines that forbid it from intervening in employees' freedom of association and their right to organise, for example, through threats of termination on the grounds of trade union activism?
- Has the company familiarised its employees with the international ILO regulations concerning the protection of the right of assembly and association, particularly ILO Conventions No. 87 (1948) and No. 98 (1949)?
- Does the company make efforts to determine whether potential business associates, sub-contractors and partners have a comparable policy in respect of these rights?

The right to free participation in political life

The Universal Declaration, Article 21:

1. *"Everyone has the right to take part in the government of his/her country, directly or through freely chosen representatives."*

2. *"Everyone has the right to equal access to public service in his/her country."*

3. *"The will of the people shall be the basis of the authority of government; this will shall be expressed in periodic and genuine elections which shall be by universal and equal suffrage and shall be held by secret vote or by equivalent free voting procedures."*

- Has the company drawn up guidelines that prohibit intervention into or a reduction of employees' right to participate freely in their country's government or to equal access to public service in their country?
- Does the corporation/company make efforts to determine whether business associates, partners or sub-contractors have guidelines in this area?

The right to work

The Universal Declaration, Article 23:

1. *"Everyone has the right to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment."*

2. *"Everyone, without any discrimination, has the right to equal pay for equal work."*

3. *"Everyone who works has the right to just and favourable remuneration, ensuring for him/herself and his/her family an existence worthy of human dignity, and supplemented, if necessary, by other means of social protection."*

4. *"Everyone has the right to form and to join trade unions for the protection of his/her interests."*

- Has the company drawn up guidelines that help ensure the right of employees and future employees to free choice of employment, to just and favourable conditions of work, and to protection against arbitrary or unjust unemployment?
- Has the company drawn up guidelines to prevent discrimination in connection with hiring on the grounds of ethnic background, nationality, philosophy of life, religion, cultural characteristics or political views?

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STRATEGIC EFFORTS IN HUMAN RIGHTS ISSUES**

- Does the company have guidelines that guarantee equal pay for equal work?
- Does the company have guidelines that prohibit intervention in employees' right to freely form or join trade unions to protect their interests?
- Does the company have guidelines that ensure employees' right to enter into collective agreements, including their right to strike?
- Is it important to the company that partners and suppliers do not have discriminatory hiring practices and that they do what they can to ensure a safe, healthy environment for their employees?

The right to rest and leisure

The Universal Declaration, Article 24:

"Everyone has the right to rest and leisure, including reasonable limitation of working hours and periodic holidays with pay."

- Has the company drawn up guidelines that ensure employees' right to rest and leisure?
- Does the company have regular working hours that ensure employees a reasonable limit on their working hours?
- Does the company make efforts to determine whether potential business associates, partners, and suppliers have similar guidelines in this area?

The right to an adequate standard of living

The Universal Declaration, Article 25:

1. *"Everyone has the right to a standard of living adequate for the health and well-being of him/herself and of his/her family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his/her control."*
2. *"Motherhood and childhood are entitled to special care and assistance. All children, whether born in or out of wedlock, shall enjoy the same social protection."*

- Has the company devised guidelines and schemes to help ensure the survival of employees who have had to resign due to circumstances beyond their control? The phrase 'such schemes' refers, e.g., to pension schemes, health and retirement insurance, rental housing, emergency contingency schemes, etc.
- Has the company drawn up guidelines and schemes that permit absence due to the illness of children without this having any effect on the employment situation?
- Does the company make efforts to determine whether business associates, partners and suppliers have developed similar arrangements for their employees?

The right to education

The Universal Declaration, Article 26:

"Everyone has the right to education. Education shall be free, at least in the elementary and fundamental stages. Elementary education shall be compulsory. Technical and professional education shall be made generally available and higher education shall be equally accessible to all on the basis of merit."

- Has the company drawn up guidelines to prevent child labour when such labour means eliminating or reducing children's right to education?
- Has the company devised training and human resources development programmes to enable employees to improve their skills and qualifications?
- Does the company make efforts to determine whether potential business associates, partners or suppliers follow similar guidelines?

The right of minorities and indigenous peoples to protect their identity

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CHECKLIST FOR CORPORATIONS/ENTERPRISES INTERESTED IN INVESTING
STRATEGIC EFFORTS IN HUMAN RIGHTS ISSUES

The UN Convention on Civil and Political Rights, Article 27:

"In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practise their own religion, or to use their own language."

- Does the company recognise the right of minorities and indigenous peoples to protect and respect their cultural identity and integrity?
- Does it acknowledge the moral and material interests collateral to this right?
- Has the company drawn up guidelines that specifically ensure employees who belong to minorities the right to practice their own culture, profess and practice their own religion, and use their own language?
- Has the company familiarised its employees with the international ILO regulations on the protection of indigenous peoples, particularly ILO Convention No. 169 (1989)?
- Does the company recognise that employees who belong to minorities or indigenous populations must not be subject to discrimination because they belong to a minority or have indigenous origins?
- Does the company attach importance to whether potential business associates, partners and suppliers follow the same guidelines?

Source: *Human Rights from the Perspective of Business & Industry - a Checklist*. Oslo, Norway: Confederation of Norwegian Business and Industry, NHO, 1998.

FREEPORT MCMORAN COPPER & GOLD SOCIAL, EMPLOYMENT & HUMAN RIGHTS POLICY

Sustainable Development
Policies

Freeport-McMoRan Copper & Gold

Social, Employment & Human Rights Policy

General

Freeport-McMoRan Copper & Gold Inc. ("FCX" or "the Company") believes that, as a responsible corporate citizen, it is the duty of the Company to foster positive social and employment relationships in every area of operation. FCX is committed to the continuous improvement of those relationships and dedicated to ensuring that its operations are conducted in a manner consistent with the *Universal Declaration of Human Rights* and other applicable international standards of human rights, the laws and regulations of the host countries in which FCX operates, and the culture of the people who are indigenous to the Company's operational areas. FCX will work to be a partner in the social and economic development of the people in and around its areas of operations.

Objective

The objective of this document is to clearly establish the Company's policy on Social, Employment, and Human Rights, specifically how it is applied to its social interaction with the community, its relationships with employees, and its conduct with regard to human rights and security.

Coverage

This policy applies to all employees of FCX and its operating affiliates, including PT Freeport Indonesia (PTFI). Note: Employees of privatized or contractor companies doing business with PTFI must comply with this policy. Alternatively, the privatized or contractor company may implement a policy similar to this policy for their respective employees.

Policy

1. Social Interaction with the Community

FCX has always been cognizant of its multiple responsibilities toward the development of the local people. The Company has conducted its Indonesian operations with concern for and a sense of responsibility toward its Indonesian Papuan employees and the indigenous people who live around its operations area. The Company's commitment to the community is evident from our various social programs. In addition to our contributions toward community development, we recognize the importance of understanding the perspectives and respecting the rights of the indigenous population.

To achieve these objectives, FCX and its operating affiliates will:

- Build relationships with people in the host country and especially with people indigenous to areas of operations or exploration
- Work continuously to understand the culture and social patterns of the people in the host country and especially the people indigenous to areas of operations or exploration. To accomplish this, the Company and its affiliates will undertake social, cultural, and health studies
- Consult with local populations about important operational issues that will impact their communities
- Work with the host country's government, the local people, and responsible non-governmental organizations to create and periodically update social integration and/or sustainable development plans for all operational sites. These plans shall address the issue of economic and social viability of each operating area after cessation of operations
- Encourage awareness among our employees of attitudes, beliefs, and values of the local community
- Recognize its significant impact on the local indigenous population and voluntarily recognize this in various ways.

2. Employee Relations

FCX is committed to supporting certain fundamental principles within the area of employment and employee relations, including the elimination of discrimination in the workplace, the freedom of association and the right to collective bargaining, the elimination of forced and compulsory labor, and the abolition of child labor.

To support these principles, FCX and its operating affiliates will:

- Obey the laws and regulations of the host country with respect to employment practices
- Adhere to applicable international standards of health and safety

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- Employ as many citizens of the host country as practicable and, wherever practicable, employ people who are indigenous to the operational or exploration site
- Provide training to citizens of the host country with a primary focus on those indigenous to the operational or exploration area to prepare them for employment in the operation
- Promote employees on the basis of their willingness and ability to perform the job without discriminating on the basis of age, gender, ethnicity, race, color, language, sexual preference, religion, political affiliation, or tribal affiliation. However, special efforts will be made to train and hire people indigenous to each operational or exploration area
- Ensure that employees are fairly remunerated
- Establish a favorable work environment free of discrimination and harassment, including but not limited to sexual harassment

FREEPORT MCMORAN COPPER & GOLD SOCIAL, EMPLOYMENT & HUMAN RIGHTS POLICY

- Respect the employee's right to join a union or other coordinated association
- Prohibit the employment of forced, bonded, or child labor. PTFI currently has a comprehensive set of procedures and code of conduct that can be found in the *Industrial Relations Guidebook* and the *Collective Labor Agreement*.

3. Human Rights

a. Definition, Commitment, and Objectives

The *Universal Declaration of Human Rights* (UDHR) contains a good definition of human rights.

FCX, its affiliates, and its employees are dedicated to the promotion of the rule of law and protection of human rights at all operational sites. The Company is committed to ensuring that its operations are conducted in a manner that respects the UDHR, the *Voluntary Principles on Security and Human Rights*, other applicable international standards of human rights, the laws and regulations of the host country, and the culture of the people who are indigenous to the areas in which the Company operates.

FCX has instituted several methods of accountability, including an annual certification process and the engagement of an independent firm to audit the Company's implementation of the Social, Employment, and Human Rights Policy. Employees are expected to respect human rights principles and to report any acts that may constitute violations of human rights.

The Company and its affiliates will:

- Educate employees about human rights
- Notify all employees that the Company requires them to treat employees and non-employees in and around areas of operation with dignity and respect
- Take appropriate action against any employees who violate the human rights of others
- Report any credible accusation of human rights violation to the appropriate government authorities and other agencies
- Provide the Company's full cooperation with any responsible human rights investigation and support appropriate punishment for any proven violations
- Protect all employees who report suspected human rights violations
- Work proactively to create a constructive climate for promotion of human rights in all areas where we operate by implementing programs and policies aimed at building positive relationships and by setting a good example
- Take appropriate steps to ensure that no party uses our property and/or equipment to engage in actions that violate human rights.

b. Human Rights and Security

FCX, together with several other companies from the United States and the United Kingdom, helped to establish the *Voluntary Principles on Security and Human Rights*. This document was formulated as part of a dialogue between the governments of the United States and the United Kingdom and a number of companies and non-governmental

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organizations. It covers both interactions between companies and public security, such as police or military, and interactions between companies and private security.

To uphold human rights standards, PTFI's Security Personnel will:

- Carefully screen all potential new hires to avoid hiring anyone who has been credibly implicated in human rights abuses or has a criminal record
- Respect all people's human rights throughout their daily activities; this includes those persons accused of illegal activity. Among other things, this means avoiding discrimination on the basis of age, gender, ethnicity, race, color, language, sexual preference, religion, political affiliation, or tribal affiliation; arbitrary interference with any person's privacy; and any inhuman or degrading treatment
- Monitor our equipment and facilities to prevent misuse by parties that may be engaged in actions that violate human rights
- Consult regularly with local communities on security matters
- Ensure that all security procedures and policies are publicly available in order to mitigate distrust between operations and local communities
- Train personnel regularly to reinforce the principles set out in the *Voluntary Principles on Security and Human Rights*.

With respect to those security forces not under PTFI's direct control (public security forces), PTFI will:

- Consult regularly on security, human rights, and related work-place safety issues
- Communicate Company policies regarding ethical conduct and human rights
- Support government efforts to provide human rights training and education for all
- Inform the public of any arrangements of support made by PTFI for the benefit of public security so that such support shall be transparent and publicly disclosed
- Monitor the use of equipment provided by the Company and investigate situations in which equipment is used in an inappropriate manner
- Report any credible allegations of human rights abuses by public security in our contracted area of work to the senior military or police official in the area and to the Corporate Human Rights Compliance Officer.

FREEPORT MCMORAN COPPER & GOLD SOCIAL, EMPLOYMENT & HUMAN RIGHTS POLICY

c. Human Rights Reporting

Each operational site will have a Human Rights Compliance Officer (HRCO) and there will be a Corporate HRCO. The HRCOs will be responsible for receiving all reports of possible human rights violations, evaluating those reports, investigating when necessary, forwarding them to appropriate government authorities and, where applicable, to nongovernmental organizations if deemed appropriate. The Corporate HRCO is responsible for documenting all allegations, overseeing all investigations, and making recommendations to correct any existing problems and/or to prevent problems from occurring in the future.

PTFI has set forth a supplementary method of reporting potential human rights violations, which can be found in the Human Rights Implementation Guide and Action Plan (FM-PROC.02).

d. Annual Certification

Each year senior Staff employees, all security employees, and all community development employees will be required to fill out and submit to the Corporate HRCO a Human Rights Assurance Letter stating that they understand the Company's Social, Employment, and Human Rights Policy and that they have neither taken part in any activities that would violate human rights nor have they witnessed any such activities. The Corporate HRCO will make a report to the Public Policy Committee of the FCX Board of Directors each year about human rights and compliance with the Company's Social, Employment, and Human Rights Policy.

PTFI has set forth a supplementary method of annual certification, which can be found in the Human Rights Implementation Guide and Action Plan (FM-PROC.02).

e. Audit

On a periodic basis, the Company will engage an independent firm to conduct an audit of the Company's implementation of this Social, Employment, and Human Rights Policy to assess its effectiveness and the extent of the Company's compliance. The findings from such an audit would be expected to note areas for improvement to

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which the Company will respond with a plan for implementing recommended improvements. Both the audit report and the Company's response would be made publicly available.

Procedure Referenced:

Refer to FM-PROC.02: Human Rights Implementation Guide and Action Plan.

Exceptions

There are no exceptions to this policy.

Available at <http://www.fcx.com/envir/pdf/policies/Social%20Employ%20Human%20Rights.pdf>

IVANHOE MINES STATEMENT OF VALUES AND RESPONSIBILITIES

Ivanhoe Mines
New Horizons
 Our Corporate Citizenship
Statement of Values and Responsibilities[†]
www.ivanhoemines.com

The “environment” is where we all live
 and “development” is what we all do
 in attempting to improve our lot within that abode.

The two are inseparable.

- Gro Harlem Brundtland,
 Chair,
 WORLD COMMISSION ON ENVIRONMENT AND DEVELOPMENT

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GLOBAL CORPORATE CITIZENSHIP

We believe that the realization of a broad, common good can be assisted by enterprise that demonstrates, through its Corporate Citizenship practices, its support for human rights, social justice and sound environmental management – and is encouraged to prosper in a free-market business environment.

- The conduct of Corporate Citizenship throughout Ivanhoe Mines involves the consistent application of strategies and practices that treat people and the environment with respect – while pursuing the underlying business objective of building value.
- Our practices are applied in all of our operations, across national boundaries and prevailing legal codes.
- We are committed to fulfill the responsibilities that are implicit in our Corporate Citizenship values. These values are central to what we do in our work, throughout our organization.
- Conscientious, judicious enterprise, applied to fair and equitable distribution of benefits generated by the responsible development of resources, can help to deliver more benefits to more people. In the process, such enterprise can:
 - facilitate the desirable advancement of individual rights;
 - create opportunities for fulfillment and sustainable economic progress; and
 - build understanding of, and respect for, individual freedoms and democratic principles.

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RESPONSIBLE EXPLORATION AND MINING

This Corporate Citizenship Statement of Values and Responsibilities reflects the obligations and partnerships that naturally accompany the various permissions that we receive to operate in countries and communities with divergent degrees of economic development. Such permissions commonly are subject to review and renewal, and so must be continually earned.

- Our initiatives are formulated and executed within a framework of assessment and consultation. Our commitments extend to our shareholders and our employees, and to all those who have responsible interests in the conduct of our business.
- We place a priority on establishing and maintaining responsible exploration, development and production operations that are guided and sustained by:
 - compliance with established laws and regulations;
 - respect for cultures and customs;
 - identification and management of risks;
 - responsive and effective management of social and environmental impacts; and
 - open and transparent communication and cooperation through trust-based relationships between the company and all of its stakeholders.
- We acknowledge the sovereign rights of nations. However, we are not motivated by political considerations.

[†] available at http://www.ivanhoe-mines.com/i/pdf/Values-Resp_V5.pdf

IVANHOE MINES STATEMENT OF VALUES AND RESPONSIBILITIES

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LEADERSHIP THROUGH ACTION

We endeavour to excel as an example of good corporate citizenship to governments, international agencies, joint-venture partners, host communities, neighbours, employees, contractors and shareholders.

- Consideration of our corporate values and responsibilities and translating them into specific actions begins with decision making by IVANHOE MINES' directors and senior management that guides the planning and conduct of all of our initiatives.
- Ivanhoe sets an example, and potentially influences others, by ensuring that employment standards are consistent with best western practices.
- We support the United Nations Universal Declaration of Human Rights, which is reproduced in this Statement of Values and Responsibilities.
- All employees, contractors and suppliers are made aware of the Universal Declaration of Human Rights, and relevant IVANHOE MINES' policies, and given copies in their national languages. Contractors and suppliers are expected to observe complementary practices, as a minimum, on Ivanhoe worksites.

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PEOPLE ARE OUR TRUE WEALTH

We respect the dignity of each individual and the rights of all people to pursue their ambitions.

- All employees are made aware of human-resource policies that, among other provisions, prohibit workplace discrimination and harassment. For example, in the conduct of our business we do not permit discrimination on the basis of:
 - gender;
 - race;
 - ethnic origin;
 - cultural background;
 - social group;
 - disability;
 - family status;
 - age; or
 - political views.
- Our corporate Code of Business Conduct and Ethics assures equality of opportunity "in all aspects of employment."
- IVANHOE strives to create permanent jobs that lessen the despair of poverty and contribute to improved economic well-being for thousands of families and whole communities in areas where we operate.
- We do not employ children.
- We do not accept involuntary labour.
- We are committed to the assessment of potential human-rights risks associated with security arrangements that may be required from time to time to maintain public and employee safety and to secure corporate assets in compliance with prevailing laws.

IVANHOE MINES STATEMENT OF VALUES AND RESPONSIBILITIES

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SAFE AND HEALTHY JOBS,
SKILLS TRAINING AND THE RIGHT TO WORK

We are committed to the principle that people on our project sites and in our offices work in safe and healthy conditions and receive fair remuneration.

- We respect the right to work for fair wages in safe and healthy conditions as a fundamental human right.
- Worksites are designed to protect the safety and health of all workers. Routine inspections identify and remove, or minimize, potential hazards.
- Safety training and protective equipment is provided for employees in hazardous work areas. Basic safety-awareness briefings and information materials are provided for all employees.
- Employees are encouraged to immediately report unsafe equipment, practices or conditions.

We create opportunities, without discrimination, for individual improvement and advancement, and for the acquisition of knowledge, skills and experience that contribute to sustainable livelihoods.

- All employees are made aware of corporate policies that encourage and facilitate skills training and advancement.
- IVANHOE MINES is committed to the principle that the overwhelming majority of jobs on its projects are made available to nationals of the host countries and is proud of its record of achievement. In addition, a commitment to the training of nationals further contributes to skills pools that are enduring assets in the development of sustainable livelihoods, communities and economies.

SUSTAINING COMMUNITIES
AND RESPECTING DIVERSITY

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We are committed to supporting and strengthening existing communities where we live and work. We encourage supportive, cooperative partnerships to enhance social and economic resources. We respect the diversity of multicultural states and local communities. We involve the public and community leaders in the planning, implementation and operation of our projects.

We consult with and engage stakeholders and communities that have interests in, and are likely to be impacted by, our exploration and development activities. We consult prior to the commencement of work and maintain ongoing, open communications; we continue to consider community and individual concerns in ensuing relationships. We work to understand and respect special interests in obtaining consents, cooperation on participation through suitable partnerships and access to land.

We are committed to supporting, building and maintaining lasting relationships, based on trust and common interests, with local communities directly and indirectly impacted by our business. Through these relationships, we forge partnerships committed to mutual understanding, solidarity on common aims and interests and the equitable and long-term distribution of benefits.

We encourage the growth of local businesses and source goods and services from local suppliers whenever possible. We support strategic initiatives designed to strengthen local supply chains, increase entrepreneurial opportunities and expand the operational capacities of local firms.

We support and encourage programs developed in partnerships with local communities to share the economic benefits of our projects. We work with community representatives to establish priorities and implement the agreed upon measures.

IVANHOE MINES STATEMENT OF VALUES AND RESPONSIBILITIES

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ENVIRONMENTAL RESPONSIBILITY
AND INNOVATION

We believe that people have a right to clean air and water. Ivanhoe Mines is committed to best-practice environmental management and to internationally recognized levels of performance in environmental, health and safety matters.

- Potential impacts of field activities are considered in advance of operations. Appropriate prevention and mitigation measures are devised and implemented. On mineral development projects, extensive studies are completed to establish environmental and social baseline data and to plan to avoid or minimize potential impacts. Essential wildlife habitat is maintained.
- We review our performance and make meaningful improvements that may be identified through our monitoring.
- Corporate and project managements are committed to pursuing practical and proven energy-management initiatives. We test alternative sources of electricity, including generation from sustainable wind and solar power, and support appropriate demonstration installations.

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“Reducing consumption and emissions”

- A particular focus of our energy-use management is controlling the use of carbon-based fuels. We are committed to achieving maximum efficiencies, implementing conservation strategies, reducing consumption and reducing emissions of greenhouse-gases. We recognize that access to alternative energy sources can be limited in remote locations with economic-growth priorities.
- We make responsible use of available water resources and practice conservation, recycling and reuse to the fullest extent wherever possible.
- We are committed to reducing and managing waste production as part of our goal to minimize the environmental intrusions of our business activities.
- Safe and effective handling, treatment and storage of waste rock as a by-product of mining processes – using best available control technologies, design and procedures – is fundamental to our planning, permitting and operations, and to our commitments and obligations to our stakeholders.
- Our planning for the rehabilitation of decommissioned sites is largely completed before the first tonne of ore is processed at any of our projects.
- Environmental remediation and restoration actions are integral to operations and are under-taken throughout the life of each project.
- We comply with all applicable environmental laws and regulations in all jurisdictions in which we operate.

IVANHOE MINES STATEMENT OF VALUES AND RESPONSIBILITIES

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CORPORATE INTEGRITY,
TRANSPARENCY AND ACCOUNTABILITY

We are committed to fostering honesty, integrity and accountability in our business activities. Our reputation is important to our success. We require the highest standards of professional and ethical conduct from our employees, officers and directors. We communicate with stake-holders openly, honestly and with sensitivity.

INTEGRITY

- The company's Code of Business Conduct and Ethics provides guidelines for avoiding conflicts of interest, reviews the prohibition of insider trading in company securities and cautions against the receipt of inappropriate gifts. The Code requires employees and officers to comply with all applicable laws prohibiting improper payments to government officials, including Canada's Corruption of Foreign Public Officials Act and the United States Foreign Corrupt Practices Act of 1977.
- The company's Corporate Disclosure, Confidentiality and Securities Trading Policy establishes procedures for the timely and adequate public release of material information.

TRANSPARENCY

- The company makes regular public filings of corporate and financial information in accordance with Canadian and United States securities laws and with rules established by the New York, Toronto and Nasdaq stock exchanges. The reports also are posted on the Ivanhoe Mines website.

ACCOUNTABILITY

- Employees are encouraged to report violations of laws, rules and regulations. No retaliatory action may be taken against employees who file reports in good faith.
- A whistle-blower policy is in effect throughout the company. The policy provides protection for employees, partners and third-party suppliers who may file confidential complaints about suspected misconduct, or other concerns and allegations. All staff are provided with information about how to file complaints directly or anonymously through a toll-free telephone or Internet services maintained by an independent service-provider. Complaints are investigated promptly.
- Employees who fail to comply with the corporate Ethics Code, or other applicable laws or regulations, may be disciplined through penalties that include dismissal.

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THE UNITED NATIONS'
UNIVERSAL DECLARATION OF HUMAN RIGHTS

On December 10, 1948, the General Assembly of the United Nations adopted and proclaimed the Universal Declaration of Human Rights. Following this historic act, the Assembly called upon all member countries to publicize the text of the Declaration and to cause it to be disseminated, displayed, read and expounded principally in schools and other educational institutions, without distinction based on the political status of countries or territories.

[Text of The United Nations' *Universal Declaration of Human Rights* is included in Appendix V]

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*"...a common standard
of achievement for all peoples..."*

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*"...social progress and better standards of life
in larger freedom."*

IVANHOE MINES STATEMENT OF VALUES AND RESPONSIBILITIES

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EthicsPoint for independent reporting of whistleblower concerns:
https://secure.ethicspoint.com/domain/en/report_custom.asp?clientid=9616

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THE WAY WE WORK

The way we work

September 2005

www.riotinto.com

Our statement of business practice

Rio Tinto

Rio Tinto is a leader in finding, mining and processing the earth's mineral resources. The Group's worldwide operations supply essential minerals and metals that help to meet global needs and contribute to improvements in living standards.

In order to deliver superior returns to shareholders over time, Rio Tinto takes a long term and responsible approach to the Group's business. We concentrate on the development of first class orebodies into large, long life and efficient operations, capable of sustaining competitive advantage through business cycles.

Major products include aluminium, copper, diamonds, energy products (coal and uranium), gold, industrial minerals (borates, titanium dioxide, salt and talc), and iron ore. The Group's activities span the world but are strongly represented in Australia and North America with significant businesses in South America, Asia, Europe and southern Africa.

Wherever Rio Tinto operates, the health and safety of our employees is our first priority. We seek to contribute to sustainable development. We work as closely as possible with our host countries and communities, respecting their laws and customs. We minimise adverse effects and strive to improve every aspect of our performance. We employ local people at all levels and ensure fair and equitable transfer of benefits and enhancement of opportunities.

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Rio Tinto *The way we work* 1

About *The way we work*

***The way we work*, Rio Tinto's statement of business practice, summarises the Group's principles and policies for all employees. It is designed to ensure that we all reflect in our daily work the high standards and values we share, key among which are accountability, fairness, integrity and openness.**

The policies in *The way we work* have been adopted by the Rio Tinto board after wide internal and external consultation. They are communicated to the Group's businesses, together with any guidance and support that may be necessary. Group businesses then put them into practice through local codes of conduct and report on their implementation.

Since the first edition of *The way we work* in 1997, expectations of corporate responsibilities have increased. Although our values and objectives are unchanged, our responses have evolved and been further developed and are reflected in this revised 2003 edition.

In preparing it, we have again received considerable internal input and helpful external comment for which we are grateful. We will continue to address issues as they emerge to ensure *The way we work* remains relevant.

The way we work applies to all Rio Tinto managed businesses and is supported by specific guidance documents, including on assurance mechanisms and compliance verification.

The Group businesses codes of conduct are not comprehensive lists of "do's and don'ts", but set standards of good behaviour and procedures for breaches, with added responsibilities and incentives for managers who have a higher duty of care.

THE WAY WE WORK

Rio Tinto expects business partners, such as associate companies or joint ventures where we do not have operating responsibility, as well as principal contractors, suppliers and others with whom we have a substantial involvement, to maintain high standards themselves. We inform them of Rio Tinto's principles and policies and work with them where appropriate to support their adoption of policies consistent with our own. Rio Tinto is prepared to withdraw from business relationships if any partners do not live up to our values.

2 Rio Tinto *The way we work*

Good business sense

Rio Tinto is in business to create value by finding and developing new, world class deposits and operating and eventually closing the Group's operations, safely, responsibly and efficiently. To do so, we take a disciplined and integrated approach to the economic, social and environmental aspects of all our activities.

We rigorously analyse investment opportunities and put sound management strategies in place to deliver lasting benefits and deal with any adverse effects. We find ways to lift all aspects of the Group's performance so that it stands out by setting or reflecting best practice and by contributing to the global transition to sustainable development.

We recognise and accommodate evolving expectations of international companies within the bounds of our values and business role. Rio Tinto's policies and practices are designed to recognise risks, avoid harm or damage to people or the natural environment and to develop effective relationships both within and outside the workplace.

Through them, the Group contributes to the well being of communities around our operations and provides the resources that society needs. This approach underpins the Group's business success.

Rio Tinto supports and develops Group wide standards. We adopt appropriate internal and independent reporting, verification and assurance mechanisms, in keeping with both global and local responsibilities. We welcome dialogue and engagement with those who share an interest in continually improving our performance through understanding and learning from each other.

We anticipate, participate in developing, and invest in innovative business approaches to align business behaviour with generally accepted principles of best international practice, including corporate governance.

Rio Tinto *The way we work* 3

Openness and accountability

We conduct the Group's affairs in an accountable and transparent manner, reflecting the interests of Rio Tinto shareholders, employees, host communities and customers as well as others affected by the Group's activities.

Transparency

Our commitment, both in principle and practice, is to maximum transparency consistent with good governance and commercial confidentiality.

Rio Tinto disseminates understandable information in a timely way on the Group's operational performance and financial condition. We verify its accuracy, internally and, as appropriate, independently. We avoid selective disclosure.

We give required information to relevant agencies in the jurisdictions where Group businesses operate and widely disseminate it where Rio Tinto shares are traded, through the media as well as directly, including on our own websites. We voluntarily give detailed social and environmental performance data in separate annual reviews. These cover the Group and each Group business, extending further the quality and quantity of publicly available data.

Published material can be accessed through Rio Tinto's external website, www.riotinto.com. Both this and the Group's intranet are linked to other websites maintained by Group businesses, offering easy access to a wealth of additional, detailed information on local operations. Significant events, including financial results presentations and seminars on strategy and corporate social responsibility, are also available on Rio Tinto's internet website, as they happen and as an archive.

Rio Tinto seeks and welcomes constructive criticism. We use face to face and written communication and formal grievance procedures within our workplaces. We also have an additional independent and confidential means of communication and feedback for ideas or concerns about any aspect of Rio Tinto or about the behaviour of individuals, without fear of recrimination, through the Group's *Speak-OUT* system.

Business integrity

We undertake Rio Tinto's business with integrity, honesty and fairness at all times, building from a foundation of compliance with relevant local laws and regulations and international standards.

We support free and fair competition. We promote the rule of law and the Group's high standards wherever we are in the world. We have introduced a compliance programme that all Group businesses are required to put in place. This is based on a continuously developing system of training, monitoring and procedural checks and balances.

4 Rio Tinto *The way we work*

Bribery, in all its forms, is prohibited. We neither promise, offer nor accept bribes or anything which could be taken for one, either directly or indirectly.

THE WAY WE WORK

We only make payments for legitimate business services and at a rate that reflects their market value. We work with business partners, representative agents and intermediaries after making them aware of Rio Tinto's policy and being satisfied that they will not make unauthorised payments indirectly on the Group's behalf.

We disclose any material transaction or relationship that could reasonably be expected to give rise to a conflict of interest but strive to avoid them. Gifts and entertainment are only offered or accepted for conventional social and business purposes and then only at a level appropriate to local circumstances.

Corporate governance

Rio Tinto is committed to high standards of corporate governance, accountability and responsibility.

All shareholders in Rio Tinto Limited and Rio Tinto plc are in the same economic position as if they held shares in Rio Tinto as a single enterprise. They take decisions on matters affecting them all through a joint electoral procedure.

Rio Tinto's directors are common to both Rio Tinto companies. In accordance with best practice, the board comprises a mix of executives and non executives, providing a balance of innovative thinking with business knowledge and experience.

All directors have full and timely access to information they require to discharge their duties and responsibilities fully and effectively. The directors have established board committees which are fundamental to good corporate governance, best practice and control: they are the Nominations committee, the Audit committee, the Remuneration committee and the Committee on social and environmental accountability.

Director's interests in Rio Tinto are fully disclosed. Directors and designated employees are prohibited from short term speculative dealing in Rio Tinto shares and any dealing during close periods. No one may disclose price sensitive information to others or deal in Rio Tinto shares themselves when in possession of it.

Internal controls and reporting procedures

We prepare reports and financial statements giving a true and fair view of our affairs.

Substance rather than form is a fundamental principle of Rio Tinto's reporting. We approach financial and non financial matters with similar rigour.

Our internal control system reviews financial, operational and compliance controls as well as risk management procedures. This is consistent with a responsible assessment and mitigation of risks to provide reasonable assurance

Rio Tinto *The way we work* 5

Openness and accountability continued

against material misstatement or loss.

Each year, the leaders of Group businesses complete a detailed questionnaire to confirm that Rio Tinto's internal controls are operating effectively throughout the Group.

We use the most appropriate accounting and reporting policies, consistently applied and supported by reasonable and prudent judgements. We prepare financial statements in accordance with generally accepted accounting principles.

Rio Tinto requires directors, senior management, financial managers and other staff who exercise judgement in preparing financial statements to conduct themselves with integrity and honesty and in accordance with the ethical standards of their profession or business.

Anyone who becomes aware of or suspects any violation of our obligations should, and is encouraged to, report the facts or their suspicions to senior management or to Rio Tinto's Audit committee as appropriate, directly or through Rio Tinto's *Speak-OUT* programme.

6 Rio Tinto *The way we work*

Corporate policies

The growing world population needs minerals and metals for sustainable development. We do our best to extract and supply them in ways that bring benefits to this and succeeding generations. We apply common values and standards wherever the Group operates, always seeking to respect the different laws, cultures, traditions, customs and employment practices in place.

We recognise that excellence in managing Rio Tinto's health, safety, environment and community responsibilities is essential. We also know that good working relations, internally and externally, are fundamental to the Group's continuing success. We strive to understand and interact constructively with local communities, governments and others in the public and private sectors, including non government organisations.

Rio Tinto's policies, which set the standards underlying our approach, follow in alphabetical order.

Communities

We set out to build enduring relationships with our neighbours that are characterised by mutual respect, active partnership, and long term commitment.

Good management of community relationships is as necessary to our business success as the management of our operations. Good performance requires all of us to accept responsibility for community relationships. We detail local arrangements in rolling Five year communities plans which all operations submit and update annually. The plans are set within the context of this policy and apply throughout the life cycles of the Group's activities.

THE WAY WE WORK

Mutual respect depends on our understanding the issues that are important to our neighbours and on our neighbours understanding what is important to us. Wherever we operate, we do our best to accommodate the different cultures, lifestyles, heritage and preferences of our neighbours, particularly in areas where industrial development is little known. Our communities and environment work is closely coordinated and takes account of peoples perceptions of the effects and consequences of our activities.

We promote active partnerships at international, national, regional, and local levels. They are based on mutual commitment, trust, and openness. Our relationships with communities involve

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Corporate policies continued

consultation to open new facilities, to run existing ones and to close them at the end of their productive lives. In doing so, we support community based projects that can make a difference in a sustainable way without creating dependency. We also assist regional development and training, employment and small business opportunities. In developing countries, we are often asked to support health, education, and agricultural programmes and, in collaboration with others, we help where practical.

Employment

We require safe and effective working relationships at all levels around the Group. Whilst respecting different cultures, traditions and employment practices, we share common goals, in particular the elimination of workplace injuries, and are committed to good corporate values and ethical behaviour.

Rio Tinto employs on the basis of job requirements and does not discriminate on grounds of age, ethnic or social origin, gender, sexual orientation, politics or religion. We may make exceptions to favour local employment where local laws provide. The Group does not employ forced, bonded or child labour.

Being trained to work, and then working, in safe, healthy and environmentally responsible ways comes first and foremost. Beyond that, Rio Tinto believes in enabling employees to develop to the extent of their abilities. We improve our skills and competencies by regular performance reviews, recognising potential, undertaking education, training and coaching as appropriate, and offering professional development opportunities within the Group.

Rio Tinto expects managers to be models of the highest standards of behaviour. We treat each other and those we deal with externally with dignity, fairness and respect. We guard against harassment in the workplace and neither abuse nor mis-use our positions or facilities for personal purposes. We respect our obligations to our colleagues and employer. We work together within and across businesses, cultures and countries to raise performance.

Group businesses' codes of conduct establish sound conditions of work and disciplinary procedures. The Group implements equitable and transparent remuneration and incentive systems. Rio Tinto recognises everyone's right to choose whether or not they wish to be represented collectively.

We live up to the letter and spirit of *The way we work* and our code of conduct.

Environment

Wherever possible we prevent, or otherwise minimise, mitigate and remediate, harmful effects of the Group's operations on the environment.

Excellence in environmental performance is

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essential to our business success. Compliance with all environmental laws and regulations is the foundation on which we build our environmental performance. We support and encourage further action by helping to develop and implement internationally recognised management systems and voluntary commitments.

We similarly approach a comprehensive understanding of the full life cycle and safe use of our products to ensure all their benefits are delivered.

We develop Group wide standards and build systems to identify, assess and manage environmental risk. These apply at each stage of exploration, development, operation and closure, as well as in acquisition and divestment evaluations, to achieve continuous improvement in environmental performance. We also engage with host communities, governments, customers, suppliers and others to the same end.

We obtain assurance on the implementation of our environmental policy, both internally and externally, by regular audits, reviews and reports. Each Group business produces a separate social and environmental report for its local communities.

Human rights

We support human rights consistent with the Universal Declaration of Human Rights and Rio Tinto respects those rights in conducting the Group's operations throughout the world.

We seek to ensure that Rio Tinto's presence fosters sound relationships and avoids civil conflict wherever we are. Rio Tinto respects and supports the dignity, well being and rights of Group employees, our families and the communities in which we live, as well as others affected by the Group's operations.

THE WAY WE WORK

Where those rights are threatened, we seek to have international standards upheld and to avoid situations that could be interpreted as condoning human rights abuses. We ensure that our equipment and facilities are not mis-used in violation of them.

The Group's procedures for using security personnel are based on human rights principles and include guidelines and restrictions on the use of force. These procedures are reinforced by training and applied to contract security personnel as well as to Group employees.

We look for opportunities to support positive efforts to promote broader understanding of human rights values, especially where they assist the Group's local communities. We seek dialogue with others aimed at a practical common effort to promote respect for human rights consistent with the role of business.

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Corporate policies continued

Land access

We seek to secure the widest possible support for our proposals throughout the life cycle of the Group's activities by coordinating economic, technical, environmental and social factors in an integrated process.

We access and use land, rehabilitate unavoidable impacts and work with local communities to help with their needs in the most efficient and effective manner we can. In all cases, this involves ongoing consultation with local people, public authorities and others affected. We accept that this may sometimes result in our not exploring land or developing operations, even if legally permitted to do so.

We are particularly rigorous in assessing the effects of our activities in advance in areas of high conservation or heritage value. We work with others to design appropriate mitigation and management methods, and then monitor them to ensure best practice is followed.

Claims to land can be based on traditional tenure as well as statutory law. Local and national land use policies may also differ. Our objective is to bridge significant gaps between legislated and customary arrangements through the fullest possible understanding of the issues involved.

Where property is affected, its value is assessed and appropriate compensation mutually agreed. We work with others where frameworks do not exist to encourage and help governments put appropriate consultation processes in place.

During mining operations, we may use land that is surplus to operational requirements for a variety of purposes. These include housing, educational, health and recreational facilities as well as for food production, forestry, habitat protection and biodiversity conservation.

When operations are closed, we complete the rehabilitation of land we have disturbed in consultation with our neighbours and in accordance with best environmental practice, relevant laws and regulations.

Occupational health

We strive to protect our physical health and well being in the workplace.

A healthy workforce contributes to business success. We are committed to preventing new cases of occupational disease and have a target of achieving a significant reduction in these cases year on year through the continual identification, evaluation and control of workplace exposures.

We have developed a set of core occupational health standards. We implement these standards in conjunction with education, training, and the incorporation of systems and procedures.

An assurance process entailing regular audits, reviews and reports measures compliance with our occupational health policy and standards.

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Political involvement

Rio Tinto does not directly or indirectly participate in party politics nor make payments to political parties or individual politicians.

Rio Tinto represents views to government and others on matters affecting its business interests and those of shareholders, employees and others involved in our activities. By fostering such public dialogue, we contribute to the development of sound legislation and regulation that is relevant and appropriate to our business interests.

Nothing in Rio Tinto's policy seeks to restrict individuals acting in their personal capacity as citizens from participating in the political process.

Safety

Safety is a core value and a major priority; our goal is zero injuries.

Everyones behaviour contributes to an injury free workplace; full and consistent implementation of and accountability for Rio Tinto's comprehensive standards, guidelines, systems and procedures is required across the world.

Alongside this, we are building a supportive safety culture that requires visible leadership, ongoing education and training and a high level of participation by everyone in the workplace.

THE WAY WE WORK

We place an uncompromising emphasis on hazard identification, risk assessment and risk management. We measure assurance through operational, corporate and external auditing and reporting processes.

Sustainable development

Rio Tinto businesses, projects, operations and products should contribute constructively to the global transition to sustainable development.

We contribute to sustainable development by helping to satisfy global and community needs and aspirations, whether economic, social or environmental. This means making sustainable development considerations an integral part of our business plans and decision making processes.

By focussing on people, the environment, resource stewardship and management systems, we can better manage risk, create business options, reduce costs, attract the best employees, gain access to new markets and resources and deliver a better product to our customers.

In practice, this depends on the active awareness of and support for Rio Tinto's principles and policies by each of us as individuals.

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Appendix

Some international accords supported by Rio Tinto

- **Australian Minerals Industry Code for Environmental Management**
www.minerals.org.au/downloads/pdf/Code2000.pdf
- **Global Sullivan Principles of Social Responsibility**
www.globalsullivanprinciples.org/principles.htm
- **International Chamber of Commerce Business Charter for Sustainable Development**
www.iccwbo.org/home/environment/charter.asp
- **International Council on Metals and Minerals Sustainable Development Framework**
www.icmm.com
- **International Labour Organisation Convention 169: Concerning Indigenous and Tribal Peoples in Independent Countries**
www.unhchr.ch/html/menu3/b/62.htm
- **International Labour Organisation Declaration on Fundamental Principles and Rights at Work**
www.ilo.org/public/english/standards/decl/declaration/text/tindex.htm
- **Organisation for Economic Cooperation and Development Convention on Bribery and Corruption**
www.oecd.org/pdf/M00007000/M00007323.pdf
- **Organisation for Economic Cooperation and Development Guidelines for Multinational Enterprises**
www.oecd.org/pdf/M00021000/M00021070.pdf
- **United Nations Universal Declaration of Human Rights**
www.un.org/Overview/rights.html
- **United Nations Global Compact** www.unglobalcompact.org/
- **US/UK Voluntary Principles on Security and Human Rights**
www.state.gov/www/global/human_rights/001220_fsdl_principles.html
- **World Economic Forum Global Corporate Citizenship Statement**
www.weforum.org/pdf/GCCI/GCC_CEOstatement.pdf

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Rio Tinto's own supplementary guidance documents

Business integrity guidance

Compliance guidelines

Corporate governance guidelines

Environment standards

Financial disclosure guidelines

Human rights guidance

Occupational health standards

Rules for dealing in Rio Tinto securities

Safety standards

These documents provide additional guidance in specific policy areas and further resources are also available on Rio Tinto's intranet and internet websites.

THE WAY WE WORK

For convenience, we use Rio Tinto to describe Rio Tinto Limited and Rio Tinto plc and their affiliated companies, although all of these are independently managed, separate and distinct entities. Rio Tinto plc and Rio Tinto Limited are combined in a dual listed companies structure as a single economic entity.

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ANGLOGOLD ASHANTI LIMITED, VALUES & BUSINESS PRINCIPLES

AngloGold Ashanti Limited**Values:**

People are our business. We treat each other with integrity dignity and respect.

- Safety is our number one value
- We value diversity and are committed to ensuring that the contribution of every individual is recognised and rewarded
- We take responsibility for our actions and deliver on our commitments
- We strive for continuous improvement and excellence through innovation
- We want communities and the societies in which we operate to be better off for us having been there
- We will respect and protect the environment

Our business principles:

We live our values through our business principles and these are applicable to all operations and employees across the group. Our business principles inform the way in which we go about achieving our mission and vision, and the way in which we live our values.

They are:

AngloGold Ashanti – a responsible and ethical corporate citizen.

AngloGold Ashanti as an employer – safety and health.

AngloGold Ashanti as an employer – our labour practices.

AngloGold Ashanti and the environment.

AngloGold Ashanti in the community.

These business principles will continue to evolve as we continue to interact with our stakeholders, both internal and external.

Environment**AngloGold Ashanti and the Environment**

- We recognise that the long-term sustainability of our business is dependent upon good stewardship in both the protection of the environment and the efficient management of the exploration and extraction of mineral resources.
- We will comply with all applicable environmental laws, regulations and requirements.
- We are committed to establishing and maintaining management systems to identify, monitor and control the environmental aspects of our activities.
- The company will ensure that financial resources are available to meet its reclamation and environmental obligations.
- The company will ensure that its employees and contractors are aware of this policy as well as their relevant responsibilities.
- We will conduct audits to evaluate the effectiveness of our environmental management systems.
- We are committed to communicating and consulting with interested and affected parties on environmental aspects of our activities.
- We will work to continually improve our environmental performance; and
- The company will participate in debate on environmental matters at international, national and local levels.

Ethics

These undertakings set out the standards which guide the company and its employees in the overall conduct of our business. They apply to all AngloGold Ashanti operations in every country in which we operate and to all of our employees.

- We will comply with all laws, regulations, standards and international conventions which apply to our businesses and to our relationships with our stakeholders. Specifically, AngloGold Ashanti supports the Universal Declaration of Human Rights, the Fundamental Rights Conventions of the International Labour Organization (ILO) and those principles and values referred to in the United Nations Global Compact.
- Should laws and regulations be non-existent or inadequate, we will maintain the highest reasonable regional standard for that location.
- We will fully, accurately and in a timely and verifiable manner, consistently disclose material information about the company and its performance. This will be done in readily understandable language to appropriate regulators, our stakeholders and the public.
- We will not offer, pay or accept bribes, nor will we condone anti-competitive market practices and we will not tolerate any such activity by our employees.

ANGLOGOLD ASHANTI LIMITED, VALUES & BUSINESS PRINCIPLES

- We prohibit our employees from trading shares when they have unpublished, material information concerning the company or its operations.
- We require our employees to comply with all money handling requirements under applicable law, and we further prohibit them from conducting any illegal money transfers or any form of "money laundering" in the conduct of the company's business.
- We will require our employees to perform their duties conscientiously, honestly and in ways which avoid conflicts between their personal financial or commercial interests and their responsibilities to the company.
- We will take all reasonable steps to identify and monitor significant risks to the company and its stakeholders. We will endeavour to safeguard our assets and to detect and prevent fraud. We will do this in a manner consistent with the international human rights agreements and conventions to which we subscribe.
- We will promote the application of our principles by those with whom we do business. Their willingness to accept these principles will be an important factor in our decision to enter into and remain in such relationships.
- We are committed to seeking out mutually beneficial, ethical long-term relations with those with whom we do business.
- We encourage employees to take personal responsibility for ensuring that our conduct complies with our principles. No employee will suffer for raising with management violations of these principles or any other legal or ethical concern. Although employees are encouraged to discuss concerns with their direct managers, they must, in any event, inform the Group Internal Audit Manager of these concerns. Mechanisms are in place to anonymously report breaches of this statement of principles.
- The company will take the necessary steps to ensure that all employees and other stakeholders are informed of these principles.
- If an employee acts in contravention of these principles, the company will take the appropriate disciplinary action concerning such contravention. This action may, in cases of severe breaches, include termination of employment. In addition, certain contraventions may also result in the commencement of civil proceedings against the employee and the referral of the matter to the appropriate enforcement bodies if criminal proceedings appear warranted.

Health & Safety AngloGold Ashanti as an Employer: Our Commitment to Occupational Health and Workplace Safety

- The company is committed to complying with all relevant occupational health and safety laws, regulations and standards. In the absence of thereof standards reflecting best practice will be adopted.
- We are committed to providing a working environment that is conducive to safety and health.
- The company places the management of occupational safety and health as a prime responsibility for line management, from the executive through to the first line supervisory level.
- We strive for employee involvement and for consultation with employees or their representatives to gain commitment in the implementation of these principles.
- The company is committed to providing all necessary resources to enable compliance with these principles.
- The company will not tolerate or condone breaches of standards and procedures.
- We will implement safety and health management systems based on internationally recognized standards and we will assess the effectiveness of these systems through periodic audit.
- We will conduct the necessary risk assessments to anticipate, minimize and control occupational hazards.
- We will promote initiatives to continuously reduce the safety and health risks associated with our business activities.
- We will set safety and health objectives based on a comprehensive strategic plan and will measure performance against our plan.
- We will monitor the effects of the company's operational activities on the safety and health of our employees and others, and we will conduct regular performance reviews.
- We will provide all necessary personal protective equipment.
- We will establish and maintain a system of medical surveillance for all employees.
- We will communicate openly on safety and health issues with employees and other stakeholders.
- We will ensure that employees at all levels receive appropriate training and are competent to carry out their duties and responsibilities.
- We will require our contractors to comply with these principles and we will seek to influence joint partners to apply them as well.

ANGLOGOLD ASHANTI LIMITED, VALUES & BUSINESS PRINCIPLES

In the Community

- AngloGold Ashanti's aim is to have a positive impact on the people, cultures and communities in which it operates. Accordingly, AngloGold Ashanti will be respectful of local and indigenous people, their values, traditions, culture and the environment.
- We will strive to ensure that surrounding communities are timeously informed of, and where possible, involved in, developments which affect them, throughout the life cycle of our operations.
- We will undertake social investment initiatives in the areas of need where we can make a practical and meaningful contribution. In particular, we will contribute to those areas of education and healthcare which are relevant to our business activities, and those most likely to be sustainable once our operations have come to a conclusion in that community.
- The company will encourage its employees to make themselves available for participatory and leadership roles in community activities.
- We will seek to acquire and use land in a way which promotes the broadest possible consensus amongst interested people. Where involuntary resettlement is unavoidable, we will abide by appropriate guidelines for resettlement, where they exist, and in any event will work with the local communities to develop workable plans for any resettlement which may be necessary.
- We will strive to contribute to the sustainable economic development of host communities through procurement activities; the contribution of redundant assets to the community; assistance in the establishment and growth of small to medium sized sustainable enterprises; and the outsourcing of goods and services from local vendors where appropriate.

Labour Practices AngloGold Ashanti is committed to upholding the Fundamental Rights Conventions of the ILO. Accordingly, we seek to ensure the implementation of fair employment practices by prohibiting forced, compulsory or child labour.

- AngloGold Ashanti is committed to creating workplaces free of harassment and unfair discrimination.
- As an international company, we face different challenges in different countries with regard to, for example, offering opportunities to citizens who may not have enjoyed equal opportunities in the past. In such cases, the company is committed to addressing the challenge in a manner appropriate to the local circumstances.
- We will seek to understand the different cultural dynamics in host communities and adapt work practices to accommodate this where doing so is possible and compatible with the principles expressed in this document.
- The company will promote the development of a work force that reflects the international and local diversity of the organisation.
- The company will provide all employees with the opportunity to participate in training that will improve their workplace competency.
- The company is committed to ensuring that every employee has the opportunity to become numerate and functionally literate in the language of the workplace.
- The company is committed to developing motivated, competent and experienced teams of employees through appropriate recruitment, retention and development initiatives. An emphasis is placed on the identification of potential talent, mentoring and personal development planning.
- Remuneration systems will reward both individual and team effort in a meaningful way.
- Guided by local circumstances, we shall continue to work together with stakeholders to ensure minimum standards for company-provided accommodation.
- The company assures access to affordable health care for employees and where possible, for their families.
- We are committed to prompt and supportive action in response to any major health threats in the regions in which we operate.

Source: www.AngloGoldAshanti.com/values

ETHICAL REVIEW BOARD APPROVAL



The University of British Columbia
Office of Research Services
Behavioural Research Ethics Board
Suite 102, 6190 Agronomy Road, Vancouver, B.C. V6T 1Z3

CERTIFICATE OF APPROVAL- MINIMAL RISK RENEWAL

PRINCIPAL INVESTIGATOR: Marcello M. Veiga	DEPARTMENT: UBC/Applied Science/Mining & Mineral Engineering	UBC BREB NUMBER: H04-80925
INSTITUTION(S) WHERE RESEARCH WILL BE CARRIED OUT:		
Institution UBC Other locations where the research will be conducted: N/A		Site Vancouver (excludes UBC Hospital)
CO-INVESTIGATOR(S): Simon David Handelsman		
SPONSORING AGENCIES: N/A		
PROJECT TITLE: Realities and Perceptions of Human Rights and The Minerals Industry - A Case Study		

EXPIRY DATE OF THIS APPROVAL: December 3, 2008

APPROVAL DATE: December 3, 2007

The Annual Renewal for Study have been reviewed and the procedures were found to be acceptable on ethical grounds for research involving human subjects.

Approval is issued on behalf of the Behavioural Research Ethics Board