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Human Rights in the Minerals Industry

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Abstract

Mining companies have been criticized for their complicity in the human rights abuses of people and indigenous populations at risk. This report provides a background and examines issues related to specific points of conflict concerning human rights where mining companies find themselves involved, specifically: the use of security companies to protect operations; the rights of indigenous people in the areas of mining operations; issues of conflict revolving around labor rights, especially the rights to organize; issues of pariah (or failing) states, such as Burma which are human rights abusers; and issues of conflict between sub-jurisdictions and national jurisdiction, and to what extent the mining company is subject to one or another when the two are in conflict.

The principal reasons why the issue of human rights and the minerals industry is important were identified. The discussion points were organized into four major topics that define the issues and examine trends: (i) the role and responsibilities of a corporation for human rights; (ii) formal codes of practice, existing guidelines, voluntary initiatives, monitoring and reporting practices, regulatory framework, and information related to human rights issues; (iii) role and responsibilities of others; and (iv) trends and emerging issues.

Several case histories were examined to see what rights issues were involved. As the issues were closely examined, the more complex they seemed, and the less pristine the parties appeared. It is unreasonable to expect simple conclusions. The importance lies in the very complexity of the issues. Looking at a variety of real cases confirmed the intricacy of the issues.

These issues are so difficult and important to both the minerals industry and society that they merit an assessment of potential long-range strategies to develop meaningful and attainable methodologies to satisfy the demands of all segments of society and the interests of the broad range of stakeholders.

Notes To This Report

1. This report has been prepared exclusively for, and at the request of, IIED^a's MMSD^b Project.
2. The information contained in this report, which has been prepared for IIED's MMSD project, is based in part, in some instances exclusively, upon interviews with and information supplied by a variety of sources, some of which are in the public domain.
3. The information so supplied to Simon Handelsman, unless otherwise indicated, has not been completely verified independently and therefore, Simon Handelsman assumes no responsibility for its accuracy or completeness.
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^a International Institute for Environment and Development.

^b Mining, Minerals & Sustainable Development.

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I Summary

Mining companies have been criticized for their complicity in the human rights abuses of people and indigenous populations at risk. Human rights include civil, political, economic, social and cultural rights. There is a set of rights clearly articulated in the 1948 Universal Declaration of Rights and accepted by most governments, plus two Covenants and many ILO conventions. This report provides a background and examines issues related to specific points of conflict concerning human rights where mining companies find themselves involved.

- The use of security companies to protect operations;
- The rights of indigenous people in the areas of mining operations;
- Issues of conflict revolve around labor rights, especially the right to organize;
- Issues of pariah (or failing) states, such as Burma, which are human rights abusers;
- Issues of conflict 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.

The principal reasons why the issue of human rights and the minerals industry is important are:

- The points of conflict;
- Pressure from civil society organizations and inter-governmental agencies for mining corporations to engage in positive activity for the support of human rights;
- 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 stakeholders to be engaged in decisions related to mine development, operations and closure; including a broader group of stakeholders: the development rights of communities, inter-generation rights, and the right to determine whether resources should be developed.

This report provides background to the evolution of rights:

- Human rights by virtues of humanity
- Divine endowment
- Utilitarian optimism
- Arbitrary legislated rights

Amnesty International suggested that mining companies also have obligations to ensure that they do not condone or promote the infringement of the following rights by other parties:

- Right to no discrimination
- Right to life and liberty
- Ban on slavery
- Ban on torture
- Right to security of person
- Right to privacy
- Right to property
- Right to freedom of religion
- Right to freedom of opinion
- Right to freedom of association
- Right to protection of labor standards
- 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
- Ban on bribery

Human rights have become a major issue for mining companies since the mid-1990s, and cover a broader scope of issues than corporate responsibility and how mining can contribute to sustainable development. There is a new dynamic in the debate about corporations and human rights. 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.

Mining companies are beginning to recognize the changing relationship between business and society. Risks will exist from lawsuits such as those under the US Alien Tort Claims Act, increased media scrutiny, and socially responsible 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.

When corporations are important in a country's economy there are unique opportunities for them 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. All corporations can have a positive influence if they develop, adopt, and implement a human rights code of conduct and only deal with other enterprises that recognize and follow similar standards.

There is 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. This realization, together with the expansion of foreign direct investment (FDI) and the liberalization of investment rules and taxes by developing countries competing to attract mineral exploration and development, has focused attention on human rights abuses and particularly on the development rights of communities. 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.

Mining companies' impact on human rights starts at exploration access to land and involves adequate compensation. At the development stage there is an increased impact on the local community that distorts the local economy. During mining operations, major issues concern workers' rights, community development, the share of economic rent, and the use of security forces. Major issues on mine closure are the impact on the community and the sustainability of the economy. Extreme cases from Papua New Guinea and Bolivia were

examined.

There are mines located in some parts of the world where people will always be in danger and the mining company wants security forces to ensure its people are safe. The Freeport case shows how a corporation can react positively to human rights issues in response to strong, social, political and financial pressures. Since the company may have no control over the local security forces, it is essential to make sure it has in place as many positive programs and safeguards as possible to avoid human rights abuses. Corporate codes of conduct should provide for both specificity and accountability.

Several cases illustrate the complexity and convergence of other issues when there are allegations of human rights abuses. For example, in India, did unprovoked police shoot demonstrators or were they attacked? Sixty percent of all the killings of unionists in the world happen in Colombia. Eighty-percent of the economy of Kosovo was based on mining. During the UN emergency operations in Cambodia there was a battle between foreign gold miners and local police. There were many allegations of human rights abuses in Indonesia, although some situations were manipulated by outside interests.

Examining issues of human rights inevitably draws attention to pariah (or failing) states that are human rights abusers. The ILO reported the significant use of forced labor in Burma. Some suggest there are gradations of “acceptability” in the case of other states and their human rights records, and apply different standards for different regimes, e.g. Sudan, Afghanistan, Democratic Republic of the Congo, Nigeria, Colombia, Indonesia and China. States with bad governments raise questions for mining companies such as whether they should do business in those countries where their presence can be interpreted as complicity with, implied endorsement of, and as support for a repressive regime. Others ask whether withdrawing operations will help human rights by showing concern, or hurt people by causing economic hardship.

The case studies described in this report represent different country conditions, strong military dictatorships, failing countries with weak, poor or abusive governments, and some democracies. Some countries have effective, strong legal and regulatory frameworks, while in others these are weak. Taking a broad perspective, this work identified a variety of government views. Some governments care less about the human rights of their vulnerable populations than do the corporations. Some corporations are worried that their legal license to operate may be cancelled by governments embarrassed when corporations push them too hard. Some countries are only interested in maximizing the government share of mineral income and are not as concerned about local communities being consulted.

The cases were examined in this report to see what rights issues were involved – the good news from this is that human rights issues have been broadened to include social, economic, cultural rights in addition to civil and political rights. However, the danger is that the breadth of issues may become unmanageable. Certain concepts supported by corporations such as transparency and the sanctity of legal contracts are characterized as Western concepts which are being imposed on the South and East. Human rights and economic rights are not

being pushed by business.

Major issues are establishing benchmarks and 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 issues that need improvement and act on them. Measurement audit standards and verifiable procedures for human rights are difficult to identify.

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. There is a need for adequate independent monitoring and verification. The mining company has to ensure that its business units operate with a clear set of principles from a human rights policy that specifies what the company expects. The December 19, 2000 US/UK Voluntary Principles (the “Principles”) on security and human rights during mining and energy companies' operations overseas represented the result of engagement with a narrow focus on only the most visible single set of issues. Time alone will tell if the voluntary principles will work and everything depends on how the companies behave.

Mining companies that ignore the problems of weak institutions and their social responsibility to respond to the human rights issues will do so at their peril in terms of reputation and may eventually damage their social license to operate. Many of the current problems faced by mining companies are caused by a breakdown in public trust for mining companies' decision-making processes.

Gradually mining corporations are becoming more aware of the human rights implications of their activities on people where they operate, and are realizing that a greater respect for human rights may even lead to improved business performance. Observing human rights helps protect and maintain corporate reputations, and creates a stable and peaceful society where businesses can prosper and attract higher quality staff.

Human rights issues are perceived by mining companies to be in the social-political realm and not in the technical realm and they recognize that this perspective is outside their expertise. Mining companies consider that most environmental issues are manageable as technical problems and if environmental concerns are raised as a human rights issue they do not want to engage in discussions other than of a strictly technical nature. The typical mining company view that the protection of human rights should be the role of government and the mining company should not be involved as human rights issues are outside the range of their expertise is no longer an adequate defense. Human rights unlike most other issues have no generally accepted metrics, they are not quantifiable and remain highly subjective. Corporations have a major problem with the issues because rights are easy to assert, but can be difficult to demonstrate.

A major question is where should mining companies and NGOs be going? Some NGOs only want to become involved if it leads to legislation; whereas corporations want partnerships to achieve better human rights results. An obvious alternative is some sort of integration whereby corporations form a partnership with NGOs, and the corporations have to be in essential compliance with the spirit and objective of the principles. If this route is followed there is a need for NGOs to engage with corporations. In any collaborative effort, NGOs also have to be accountable, as well as corporations.

The different NGOs at the local, national and international levels may have different and competing interests and objectives. Multilateral agencies can also have objectives that conflict with each other and other interest groups. This leads to the question: who speaks for the local community? Who speaks for the community? NGOs can be as manipulative as governments and corporations. As the issues were more closely examined, the more complex they seemed, and the less pristine the parties appeared. It is unreasonable to expect simple conclusions. The importance lies in the very complexity of issues. Looking at a variety of real cases confirmed the intricacy of the issues.

These issues are so difficult and important to both the minerals industry and society that they merit an assessment of potential long-range strategies to develop meaningful and attainable methodologies to satisfy the demands of all segments of society and the interests of the broad range of stakeholders.

2 Methodology

The work had the following stages during a period from June to August 2001, that included forty-four work-days:

- a) Literature search, books, periodicals, workshop and seminar proceedings, published and unpublished literature.
- b) Interviews: structured, semi-structured and open.
- c) Analysis.
- d) Independent review by experts on corporations at major human rights-NGOs and representatives of other interest groups before submitting findings to MMSD.
- e) Reporting.

3 Findings – Human Rights and the Minerals Industry

3.1 Introduction

Mining companies have been criticized for complicity in human rights abuses of host country nationals including indigenous populations at risk. Gradually mining corporations are becoming more aware of the human rights implications of their activities where they operate, and are realizing the positive business implications of dealing appropriately with human rights issues. Respect for human rights helps protect and maintain corporate reputations, and helps create a stable and peaceful society where businesses can prosper and attract higher quality employees. While consumer action is not a normal risk for mining companies, some corporations have interests in more vulnerable sectors, so that

consumer groups combined with labor action could adversely affect their business. The established values of corporations, with profit as the highest priority, are being challenged at major gatherings of world leaders: “To many here, the levers of power around the world are controlled by political leaders who meet in cloistered summits; by free trade organizations that care little about poor or developing countries and by corporations whose principal goal is to fatten the bottom line.”¹

There is a comprehensive set of rights clearly articulated in the 1948 Universal Declaration of Rights and accepted by most governments, plus two Covenants (on civil and political rights, and on economic, social and cultural rights), core Conventions (rights of the child; elimination of discrimination against women, elimination of racial discrimination, and against torture), and the many ILO conventions. Under these UN instruments, the Nation State has the prime responsibility for human rights. However, divers contemporary trends are making human rights a responsibility incumbent on corporations as well.² They include the impact of globalization and trade; increased public sensitivity to labor and environmental conditions; shareholder and other stakeholder demands for greater openness and public accountability; increased attention by more non-governmental organizations (NGOs) to corporate behavior; and an increased reliance on voluntary compliance with corporate international standards.³ This research project sought to determine the reality of human rights issues faced by the minerals industry. Although there are substantial human rights problems to address, some of the cases examined also illustrate that the industry has a major credibility problem because of the public’s perception of its behavior.

There are some explicit points of conflict concerning human rights where mining companies find themselves involved.

a) The use of security companies to protect operations;

Mining companies with operations in countries where state security forces commit human rights abuses receive criticism. Since these abuses are believed to occur because of the presence of the mining company, it is held accountable for preventing such abuses. The problem of the use of security forces by extractive sector corporations was examined in detail in a series of meetings in 2000 convened by the US and UK governments with the participation of major energy and mining companies and also major human rights NGOs. A set of operating principles was agreed upon (see Attachment B) that provides a toolbox from which appropriate solutions may be determined in specific situations.⁴ The more specific the criteria agreed to by the company, the more accountable it is with respect to achieving a particular standard of performance.

¹ With Eye on Unequal World Wealth, Europeans Converge on Genoa, John Tagliabue, New York Times, July 22, 2001

² Exhibit I on the following page contains some situations involving human rights and mining.

³ The Social Responsibility of Transnational Corporations, UNCTAD/ITE/IIT/Misc, 1999.

⁴ "Voluntary Principles on Security and Human Rights." US/UK Governments, December 2000.

- b) The rights of indigenous people⁵ in the areas of mining operations.

Indigenous people raise issues around ownership of land, power to make decisions about their future, the entitlement to benefits from development, the appropriate form of community development, the relationships to government, and with non-indigenous small-scale and artisanal miners. The International Council on Metals and the Environment (ICME) has described five cases concerning mining companies (Cominco, Falconbridge, Hammersley, Placer Dome and WMC) and relations with indigenous communities in the vicinity of mining operations.⁶ Indigenous people are essentially in a different political space from other stakeholders.⁷ There are three relevant statements of various levels of authority in addition to the fundamental human rights principles in the Universal Declaration of Human Rights and the International Covenants on Human Rights:

- i) ILO Convention 169⁸ which 12 countries have ratified, (mostly from Latin America and with mining potential). The questions arise, (i) if a country has ratified the Convention but its legislative and regulatory frameworks are weak, should the mining company respect the Convention as if it were fully implemented? i.e., be self regulating; (ii) in those countries where the Convention is not ratified, should mining companies act as if it were in force?
- ii) The proposed OAS declaration on indigenous peoples' rights.⁹
- iii) UN draft declaration on rights of indigenous peoples¹⁰ that only a few countries have supported and only few believe will ever be adopted.

An additional statement is included in a World Bank directive.¹¹

- c) Issues of conflict revolve around labor rights, especially the right to organize.

The degree of respect for rights within the mining corporation itself is an important test of its overall respect for human rights. Labor rights are human rights that encompass the freedom of association and the right to collective bargaining, in connection with all other rights. Many ILO Conventions define such rights as those against forced labor, health and safety rights, child labor, etc. Labor rights generate specific points of conflict, e.g., six trade unionists per month are killed in Colombia, the right

⁵ Indigenous peoples defined by the United Nations as "those peoples 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."

⁶ Mining and Indigenous Peoples: Case Studies, International Council on Metals and the Environment, 1999.

⁷ 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, from NGOs – Your New Partner in Mining, Friend or Foe, Cooney, James P., 12th Symposium, Mineral Economics Society, CIM, January 2001.

⁸ Convention concerning Indigenous and Tribal Peoples in Independent Countries, (ILO No. 169), 72 ILO Official Bull, 59 entered into force September 5, 1991.

⁹ Proposed American Declaration of the Rights of Indigenous Peoples approved by the Inter-American Commission on Human Rights in 1997. OEA/Ser/L/V/II.95 Doc.6 (1997).

¹⁰ Draft Declaration on the Rights of Indigenous Peoples, E/CN.4/Sub.2/1994/2Add.1 (1994).

¹¹ World Bank Operational Directive 4.20.

to collective bargaining is weak in China. Trade Unions have occasionally negotiated in their labor contracts employee monitoring of human rights abuses, e.g. Statoil.¹² Abuses by contractors, suppliers and partners of mining companies (including government and its agencies, other mining companies and financial institutions) are seen to reflect on a mining company's own performance.¹³ While major mining companies do not employ child labor in their operations, they are challenged to protect vulnerable groups when the indirect supply chain that sustains or services their operations cause concern, such as mine camps, prostitution, food services using children or the use of child labor in upstream activities. The rights of labor are seen by some as a fundamental component of sustainable development. The lack of respect for the rights of labor is used by radical groups to mount a global attack on multinational corporations and the international structures that support them such as the WTO; and

- d) Issues of pariah (or failing) states, such as Burma (Myanmar) that are human rights abusers.

Mining companies working in pariah or failing states become points of conflict because any mining company activity can be interpreted as support for a repressive regime. In this case there is a clear point of conflict with civil society on human rights issues. Questions are raised by critics of such countries about the legitimacy of the regime and its right to allow foreign companies to develop the state's resources. However, there are also gradations of "acceptability" in the case of certain states with varying levels of human rights abuses.

- e) Another point of rights-related conflict revolves around sub-jurisdictions vs. national jurisdiction, and to what extent the mining company is subject to one or the other when the two are in conflict; i.e., central government vs. local government and community as in Indonesia and Papua New Guinea.

There are three principal reasons why the issue of human rights and the minerals industry is important for this MMSD assignment and why it merits study:

- a) Points of conflict described above.
- b) Civil society organizations and inter-governmental agencies are pressuring corporations generally to engage in positive activity for the support of human rights, e.g., Amnesty International has proposed a code of practice for corporations; the UN Global Compact invited corporations to support a set of principles; one NGO, the Fund for Peace, brings corporations and human rights groups together to discuss issues at a regular Foreign Policy roundtable. The International Federation of Chemical, Energy, Mine and General Workers Union, ICEM, has a proposal for global standards on labor rights to be included in labor contracts or otherwise endorsed by companies

¹² Agreement between NOPEF/ICEM and Statoil on the Exchange of Information and the Development of Good Working Practice within Statoil Worldwide Operations, 15 March 2001. (updated and expanded version of an agreement first signed in 1998).

¹³ Sullivan, Rory and Frankental, Peter, Human Rights and Mining: Reconciling Expectations, Perceptions and Reality, University of Warwick, July 2001.

(e.g., the Statoil agreement with NOPEF/ICEM¹⁴); and the OECD has established corporate responsibility on human rights and principles of corporate governance.¹⁵

- c) 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. 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 decisions related to mine development, operations and closure, and the right to benefit from mine developments in their local area. This encompasses issues of a country's capacity to exercise its rights of local community rights vs. 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.

Articulating a corporation's human rights principles in a code of conduct is perhaps the first step to ensuring that the activities of a mining company implement corporate responsibility in a manner that can be monitored and reported. A set of principles suggests a number of actions that corporations can take to achieve better performance, e.g., with respect to human rights and security. Some have suggested that an optimal approach is for the corporation to engage in collaborative efforts with other organizations that have the motivations and capacity to achieve results in this area (e.g., Human Right Watch, International Alert, Amnesty International); develop a code of conduct, implement its provisions and monitor and report on performance.

A major question is where should mining companies and NGOs be going? Some NGOs only want to become involved if it leads to legislation and stricter government regulation of corporations; whereas corporations want partnerships to achieve better human rights results through the voluntary exercise of corporate responsibility. Another motivation for corporations is to neutralize the threat to their reputations and management from outside that NGOs pose, by bringing them "into the tent". An obvious alternative is some sort of integration whereby corporations form a partnership with NGOs, and the corporations have to be in essential compliance with the spirit and objective of the principles. If this route is followed there is a need for NGOs to engage with corporations. In any collaborative effort, NGOs also have to be accountable, as well as corporations. One NGO, the Fund For Peace, suggested trying to get corporations and other NGOs to cooperate in training police around security issues. In Indonesia, another group has a project for training for security issues as outlined in the Voluntary Principles. In one country where there are widespread reports of the use of torture, etc. by security forces, large local

¹⁴ Statoil, op cit.

¹⁵ Organization for Economic Cooperation and Development, "The OECD Guidelines for Multinational Enterprises" (revision 2000).

mining companies fund the training of local police to improve conditions in the areas of their operations.^{16,17}

If human rights codes of conduct for companies become widely accepted, there will be greater predictability and consistency in corporate responsibilities for actions to protect human rights. It would make corporate responsibilities clear, accessible, and unambiguous. When corporations are important in a country's economy there are unique opportunities for them to exert an influence – for good or for ill. It is argued that large companies have a responsibility to use their considerable influence on government and other actors in a country to promote and protect human rights. Should mining companies take an active role in encouraging governments to recognize and comply with international human rights standards? It would appear that all corporations could have a positive influence if they develop, adopt, and implement human rights codes of conduct, and only deal with other enterprises that recognize and follow similar standards.

The Mining, Minerals and Sustainable Development Project, in broadly stating human rights issues as they relate to the mining industry, posed several questions for this review: how does the minerals industry intersect with the human rights agenda (including economic and social rights)? How and why is conflict fueled by the minerals cycle? What is the responsible role of a minerals company operating where human rights are not always respected? And, what are the trends and emerging issues?

There is a broad array of human rights problems. The December 19, 2000 US/UK Voluntary Principles (the “Principles”) on security and human rights (see [Attachment B](#)) during mining and energy companies' operations overseas were used as starting point since they represented a concrete example of reaching agreement with a narrow focus on the most visible single set of issues. The examination of the context and scope of issues on human rights and the mining industry was then broadened and deepened. This report provides background and a view of the remaining points that propel or impede moving forward.¹⁸

The scope of this report includes all problems mining corporations encounter in countries where human rights are an issue. Specific situations are examined for the lessons they can provide.

3.2 What are human rights?

Human rights that impact people's lives can be considered in five general categories: civil, cultural, economic, political and social rights; and they include property, development, health and safety, and environmental issues. Universal standards of human rights are generally recognized and possess a well-grounded legal basis. The 1948 *Universal Declaration of Human Rights* endorsed by most countries was followed by two major Covenants adopted in 1966, the *International Covenant on Civil and Political Rights* (plus two optional protocols),

¹⁶ Brazil: Firm action needed to stop torture, press release, Amnesty International, October 18, 2001.

¹⁷ Personal communication, October 2001.

¹⁸ Background summary first published in *Mining Journal*, pp 178-179, March 9, 2001.

and the *International Covenant on Economic, Social and Cultural Rights*, and the core Conventions (rights of the child; elimination of discrimination against women, elimination of racial discrimination, and against torture). Details of these and other agreements are contained in Attachment A. Two Conventions of The International Labour Organization defined indigenous and tribal peoples rights.^{19,20} Human rights have been formally accepted by various regional organizations and many countries have specific human rights acts. The term “human rights” implies that all people have them.²¹ Secular ethicists discuss rights in the context of freedom and the common good²² concerned with protecting human integrity, freedom and equality.²³ Earlier statements of rights are contained in the 1689 English *Bill of Rights*²⁴ that ended the divine rule of kings, declared that Englishmen possessed “indubitable rights and liberties,” the 1789 French *Declaration of the Rights of Man*²⁵ that affirmed “men are born and remain free and equal in rights,” and the 1789 US *Bill of Rights*.²⁶

A British Government report contained a good comprehensive description of the nature and inter-relationship of rights, and makes clear the responsibility of states, or their representatives, to legislate and enforce respect for human rights.²⁷ 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:

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 Rights²⁸ ... 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]

¹⁹ Indigenous and Tribal Populations Convention, C107, International Labour Organization, 1957.

²⁰ Indigenous and Tribal Populations Convention, C169, International Labour Organization, 1989.

²¹ Vincent, R.J., *Human Rights and International Relations*, Royal Institute of International Affairs, Cambridge University Press, 1986.

²² Cooney, James P., *An Examination and Clarification of Christian Ethical Perspectives and Principles and their Actual or Potential Relationship to Corporations*, MTS thesis, Vancouver School of Theology, 2000.

²³ Eide, Krause and Rosas, Eds, *Economic, Social and Cultural Rights, A Textbook*, Martinus Nijhoff Publishers, 1995, p24

²⁴ Bill of Rights, received Royal Assent, England, December 16, 1689.

²⁵ Declaration of the Rights of Man and of the Citizen, Approved by the National Assembly of France, August 26, 1789.

²⁶ 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.

²⁷ *Human Rights, Foreign & Commonwealth Office Annual Report 2000*, p15, HMSO, 2000.

²⁸ *Universal Declaration of Human Rights*, United Nations, 1948, reproduced in full in Annex A of this report.

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.

Since almost everything can, and often is, defined in terms of rights, it is necessary for this research to consider the issue of rights from a broad and comprehensive arena with the objective of narrowing the focus. Although the UN General Assembly adopted a resolution stating the interdependence of all human rights, geopolitical pressures forced the adoption of two conventions rather than one.²⁹ Western nations endorsed civil and political rights, but were uncomfortable with economic, social and cultural rights. However, as illustrated 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. There are UN bodies linked to economic/social rights, and other rights (UNHCHR and ECOSOC)³⁰.

The many ILO conventions illustrate that there is a huge set of issues: 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 UN Global Compact, which has been criticized by several human rights NGOs.³¹

Earlier, this report discussed the main points of conflict and innumerable rights enunciated in conventions and treaties. As a practical matter this report cannot deal with all rights and will have to focus. To create a focused discussion, this report will select a core group of rights relevant to the activities of mining companies.

²⁹ Eide, Krause and Rosas, op cit, p15.

³⁰ United Nations High Commission for Human Rights (UNHCHR); United Nations Economic and Social Council (ECOSOC)

³¹ Human Rights Watch in its *World Report 2001*, p 474, says 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.”

These rights can best be identified in the proposals put forward by civil society organizations and inter-governmental organizations - such as Amnesty International³² and the Global Compact³³ - with respect to the role of corporations in respecting rights; these proposals can overlap, as shown in Exhibit II on the following page. The Confederation of Norwegian Business and Industry examined human rights and business issues and produced a checklist for companies devising strategies for dealing with human rights which is included in Exhibit II.³⁴ In academic spheres efforts have been undertaken to identify core human rights. Ten fundamental rights that corporations need to respect are identified and shown in Exhibit II.³⁵ 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 include a monitoring and reporting mechanism.³⁶

The rights concerning labor and indigenous people and commonality include a subset of twelve or so 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 address issues of the rights of local communities and indigenous peoples.³⁷ The OECD has issued revised guidelines for corporations.³⁸

Consideration of local communities is a relatively new issue. For example, this consideration was not mentioned by the World Bank Group, as recently as a few years ago, when the Bank was encouraging countries to attract foreign direct investment in the mineral sector.³⁹ Community issues 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.

Amnesty International recently 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."⁴⁰

³² Human Rights Principles for Companies, Amnesty International, 1998.

³³ The Global Compact, United Nations, January 1999.

³⁴ Checklist for corporations/enterprises interested in investing strategic efforts in human rights issues, Confederation of Norwegian Business and Industry (NHO), 1998.

³⁵ Donaldson, Thomas, *Corporations and Morality*, Prentice-Hall, Englewood Cliffs, NJ, 1998.

³⁶ Global Sullivan Principles: Principles, implementation, reporting, <http://global.sullivanprinciples.org/>

³⁷ Permanent Sovereignty over Natural Resources, General Assembly resolution 1803 (XVII), 14 December 1962, United Nations.

³⁸ OECD *op cit*.

³⁹ Handbook: Doing Business with Foreign Partner, An Executive Development Program for The African Investment Conference, Harare, Zimbabwe, Multilateral Investment Guarantee Agency, The World Bank, May 1994.

⁴⁰ Sullivan and Frankental, *op cit*.

Table 1. Rights mining companies should ensure, Amnesty International⁴¹

- | | |
|--------------------------------|--|
| – Right to no discrimination | – Right to freedom of association |
| – Right to life and liberty | – Right to protection of labor standards |
| – Ban on slavery | – 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 |
| – Ban on torture | |
| – Right to security of person | |
| – Right to privacy | |
| – Right to property | |
| – Right to freedom of religion | – Ban on bribery |
| – Right to freedom of opinion | |

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 issues are concerned.⁴² Rights-related issues 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 issues 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 in the 1990s has focused attention on issues of human rights, food security, and development resulting in multilateral agencies adopting new policies and programs on human rights and human development. This pressure has caused the World Bank, the WTO, and global corporations to address the human rights impacts of their economic policies. However, most lists of fundamental rights still tend to focus on civil and political rights, more than economic, social and cultural rights.

3.3 Evolution and expansion of Human Rights concepts

At the beginning of this report it was explained that for many years there has been a set of clearly articulated, generally accepted human rights. However, there is a lot of facile language used to adduce a right to defend virtually any position about anything. 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.⁴³ There are several putative origins of rights:

⁴¹ *ibid.*

⁴² Cooney, *op. cit.*

⁴³ *ibid.*

- 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) The utilitarian optimism suggesting that “things go better with rights” (like “Coke”); and
- d) Arbitrary decisions of legislative bodies, (they 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 which 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?

Arbitrary rights depend on the government. The 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 issues are broader than mining companies and relate in general to corporations and multinationals. The issue 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.

The discussion points may be conveniently organized into four major topics that define the issues and examine trends:

- a) The role and responsibilities of a corporation in respect of human rights;
- b) Formal codes of practice, existing guidelines, voluntary initiatives, monitoring and reporting practices, regulatory framework, and information related to human rights issues;
- c) Role and responsibilities of others; and

d) Trends and emerging issues.

a) The role and responsibilities of a corporation in respect of human rights.

Human rights are a key issue and cover a broader scope of issues than corporate responsibility, broader even than the question of how mining can contribute to sustainable development.⁴⁴ 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 development, and the consequential expansion of foreign direct investment (FDI) 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 issues will do so at their peril in terms of reputation and perhaps of the security of their social license to operate.⁴⁵ 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 issues 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 mining companies' reputations are negatively perceived by the public 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 very difficult. 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

⁴⁴ Developed from a discussion on this subject with Dr Alyson Warhurst, Corporate Citizen Unit, University of Warwick.

⁴⁵ Warhurst, Alyson, Corporate Citizenship and Corporate Social Investment: Drivers of Tri-Sector Partnerships, University of Warwick, 2000.

where and how to exert leverage. NGOs trying to influence company decisions at its business operations 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 have 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. This coherence is attained when a mining company has succeeded in making an overall corporate policy part of its corporate culture.

i) Background and evolution of the dialogue to define role and responsibility from health & safety to environment to economic to social/political, et al.

Until the "modern age" human rights have not been a concern for society in general, and mining in particular.

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.⁴⁶

As recently as the mid-1900s, convicts were essential for profitable coal mining in the US.⁴⁷ Convicts were cheap and also used when workers went on strike. Until 1928 Alabama supplied convicts to work in mines.⁴⁸ There are recent reports that prisoners are forced to mine asbestos without protective clothing in China,⁴⁹ and to work at gold mines in Tibet.⁵⁰

The mining industry experienced labor/capital conflicts in the US with the Molly Maguires in the 1860s/70s, and in the UK the army was used against coal miners in the early 20th century.

Children comprised as much as twenty-five percent of the coal mining labor force in Nova Scotia, Canada until 1923 when legislation ended the

⁴⁶ Investigation into the mercury spill of June 2, 2000 in the vicinity of San Juan, Choropampa and Magdalena, Peru, Report of the Independent Commission to the Office of Compliance Advisor/Ombudsman of the International Financial Corporation and the Multilateral Investment Guarantee Agency, July 2000, p10.

⁴⁷ Podobnik, Bruce M., Dynamics of class conflict in mining: towards a world-historical interpretation, Working Paper 21, Johns Hopkins University, 1998.

⁴⁸ Blackmon, Douglas A., Hard Time: From Alabama's Past, Capitalism and Racism In a Cruel Partnership Til 1928, Companies 'Leased' Convicts, Most of Them Black and Many Doomed Sent to the Mines for 'Gaming', Wall Street Journal, July 16, 2001.

⁴⁹ The blood and sweat behind a cup of tea, New Internationalist (Adelaide) quoted in The Week, August 4, 2001.

⁵⁰ Marshall, Steven D., Chinese laogai: a hidden role in Developing Tibet, American University, Washington DC, USA, September 1999 provided the following account: "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."

practice.⁵¹ The large number of women and children currently working in small-scale mining operations in developing countries, results in workplace fatalities rates up to 90 times higher than in industrialized countries.⁵²

Mining conditions in many countries became 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 some countries there are still reports of many mining-related deaths which indicates health and safety problems, e.g. during a single week there were reports from China that 200 miners may have died in a flooded tin mine in Guangxi,⁵³ while 92 miners were killed in a coal mine explosion in eastern Jiangsu.⁵⁴ There were 5,300 coal mine deaths reported in 2000, and many thousands more said to be unreported.⁵⁵ South Africa is another example where there are alarming mine safety statistics.

Labor unrest continues to be an issue 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.⁵⁶ South African coal and gold miners are experiencing labor disputes.⁵⁷ Union officials are being killed at an unprecedented rate in Colombia.⁵⁸ When a Colombian labor union went on strike against a coal mine, the President of the country called in the military forces to crush the workers' rights to freedom of association. Eventually, however, the workers achieved what they wanted because of external support for the miners and pressure brought to bear on the government, a co-owner of the mine.⁵⁹

The mining industry has a tradition of using workers only for their muscle. Typically, they are not paid to think, and if they do, they are punished. With an average of eighteen years service in the US coal mining industry, labor believes that it has a lot of good ideas to offer, but believes it is blocked because if management accepts this it would in effect have to give up some of its powers to the worker. Although the potential payoff is huge, the conflict culture held by front line managers is hard to change since they feel threatened. However, there are exceptions. At the Araxa mine in Brazil, where over ninety percent 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

⁵¹ McIntosh, Robert, *Boys In The Pits: Child Labour in the Coal Mines*, McGill-Queen's University Press, 305 pp., 2000.

⁵² Social and labour issues in small-scale mining, ILO, May 1999.

⁵³ Mine flood kills hundreds, Bangkok Post, July 31, 2001.

⁵⁴ Mine search ends, Bangkok Post, July 30, 2001.

⁵⁵ Mine Flood Shows How China Uses Prison Labor, New York Times, May 22, 2001.

⁵⁶ Maitland, John, *Human Rights and Workplace Change*, AusIMM '99, Australian Institute of Mines and Metallurgy, Canberra, 19 March 1999.

⁵⁷ South African Mining, Industrial Sectors Hit by Labor Unrest, Wall Street Journal, July 26, 2001.

⁵⁸ Kovalik, Dan, *Colombia: A Case of Genocide Against Unionists*, A Special Report for the National Labour Committee, March 2001.

⁵⁹ Personal communication, June 2001.

suggesting changes in how they do their jobs, since his view is that “after ten years they know better than I how to do their work.”⁶⁰ How to ensure workers rights, health and safety is the first priority of organized labor, but in many countries they would also want a more effective voice in decisions that affect them. 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 issues to create non-tariff barriers to commerce.⁶¹ Industrial groups are more aware of Brazilian NGOs being active with issues of employment rights and health and safety rather than hearing concerns about guarantees of other human rights.

Although some companies have a long history of taking their social responsibility seriously, (e.g. Tata Industries since it was founded in the 1800s⁶²), human rights did not become a major issue for corporations until the mid-1990s. In 1995, Nigeria executed nine people (among them Ken Saro-Wiwa) who had campaigned against environmental damage by major energy companies especially Shell Oil. There was a new dynamic in the debate about corporations and human rights.⁶³

...corporations and governments had touted the positive impact of business and trade in enhancing respect for human rights in countries with widespread violations. They had promised that corporations would bring greater respect for essential human and labor rights, such as freedoms of association and expression, as well as an end to cruelty and discrimination and inequality on the basis of ethnicity or gender. However, during 1996 multinational corporations in several product sectors – Royal Dutch/Shell, British Petroleum Company, Total, Unocal, Freeport-McMoRan, Nike, Disney, Heineken, and Carlsberg, – were placed on the defensive by damaging exposures of corporate complicity in human rights violations...

These issues were initially publicized by a growing number of activist groups....Extensively covered in the media ... this had an important positive effect.

...

However, with billions of dollars' worth of investment and profit at stake, most of the business community resisted pressure. Generally corporations in oil, mining and heavy manufacturing made no pretense of concern.

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 have 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

⁶⁰ Personal communication and site visit, August 1999.

⁶¹ Personal communication, Dr. José Mendo de Souza, Executive Secretary, IBRAM, Brazilian Institute of Mining, October 2001.

⁶² Avery, Christopher L, *Business and Human Rights in a Time of Change*, Amnesty International, p79, 2000.

⁶³ Ganesan, Arvind, *Corporations and Human Rights*, Human Rights Watch, <http://www.hrw.org/about/initiatives/corp.html>.

1990, the distance between national politics and international issues has reduced. Human rights is an international issue that has a growing implications for national governments. To some extent this has been fueled by the dramatic increase in the number of interested NGOs.

Globalization has inspired a new criticism of national sovereignty. About half of the largest economies are corporations, not countries.⁶⁴ 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.⁶⁵ It is no longer enough for corporations to maximize shareholder value within local laws. 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,⁶⁶ and companies need to build long-term trust with shareholders and stakeholders by reporting on their progress on human rights issues.⁶⁷

Finally, mining companies are beginning to recognize the changing relationship between business and society with the transformation from a production-based society (capital, land and labor) to a knowledge-based society, and the shift in values priorities that accompanies that change.⁶⁸

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.⁶⁹ 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.

There is a widely held view that foreign investment supports oppressive regimes, e.g., in October 1995, Aung San Suu Kyi, the Nobel Peace Prize winner, said that it was too early for foreign investors to put their money into Burma, and "In the long run, it will be the businessmen themselves who will be hurt by investing at the wrong time."

⁶⁴ Corporate vs Country Economic Clout: The Top 100, Nation, December 6, 1999.

⁶⁵ Mokhiber, Russell, and Robert Weissman. *Corporate Predators: The Hunt for Mega-Profits and the Attack on Democracy*. Monroe, Maine: Common Courage, 1999.

⁶⁶ Proposed draft Human Rights Code of Conduct for Companies, E/CN.4/Sub.2/2000/xx, Commission on Human Rights, United Nations.

⁶⁷ Avery, op cit, p11.

⁶⁸ Druker, Peter, *Post-Capitalist Society*. Harper-Business, New York, 1993.

⁶⁹ Avery, op cit, p15.

The privatization of functions formerly the exclusive domain of Governments, deregulation to attract investment, competition between countries to attract mineral exploration and development has led to an “increase in the role and responsibility attributed to private actors.”⁷⁰ 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.”⁷¹ 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.”⁷²

One reason mining companies have had to focus on human rights is because of security issues 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 Colombia, Indonesia, Papua New Guinea, and Democratic Republic of Congo, Senegal and Angola. In the oil and gas sector, companies face similar issues in some of the same countries such as Colombia and Indonesia, but also in other countries such as Nigeria. 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.”⁷³

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, Sierra Leone, etc. One issue involving a major multinational mining company in Brazil was when people from the local community who were coming onto property and foraging there for scraps were shot by security guards. This did nothing to improve the relationship between the company and the community.

The linkage of human rights with other issues 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 issues 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.

⁷⁰ Statement of the Committee on Economic, Social and Cultural Rights on Globalization and Economic, Social and Cultural Rights, adopted on 11.5.1998, (<http://www.unhchr.ch/html/menu2/6/cescrnote.htm>.)

⁷¹ Danailov, Sylvia, *The Accountability of Non-State Actors for Human Rights Violations: the Special Case of Transnational Corporations*, October 1998.

⁷² Danailov, op cit.

⁷³ Danailov, op cit.

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 issues such as human rights.⁷⁴ 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.⁷⁵

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.⁷⁶ While it is improbable that major mining companies would employ child labor 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 labor 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.

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 issues 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.

ii) Mining company impact on human rights in a country

(1) Impact of mining on the local community from exploration to closure.

The earliest impact on the mineral cycle in a country occurs at the exploration stage. During initial prospecting, geologists, geophysicists, geochemists and others require access to the land to make preliminary technical assessments. Exploration personnel may make outrageous promises to local communities that they have no ability to deliver. The best explorers are characterized as anti-social people and that does not lead to building good relations.⁷⁷ Lack of relationship skills and of sensitivity to the concerns of others can lead to problems, such as that experienced by CRA Exploration in Bougainville in 1964 when villagers told the company: “We don’t

⁷⁴ How do we stand? People, Planets & Profits, The Shell Report 2000.

⁷⁵ *ibid.*

⁷⁶ Sullivan and Frankental, *op cit.*

⁷⁷ Thompson, Ian, COOP meeting, Vancouver, July 2001.

want any prospectors in this area.”⁷⁸

Gold discoveries in Papua in the 1920s attracted adventurers. Gold miners were welcomed by the colonial administrators who ignored abuses as they collected royalties and license fees. “Miners on occasion gunned down those who reacted aggressively to their intrusion.”⁷⁹ Labor 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 villagers’ rights as landowners or stakeholders.⁸⁰ “Many Melanesians believe that this set a pattern of callous exploitation that continues to this day.”⁸¹

Land and access rights can come into conflict at the exploration stage. In 1968 CRA funded an investigation of local land tenure on Bougainville.⁸² 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.”⁸³ 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.”⁸⁴ “There was opposition to mining on Bougainville from the very beginning. Bougainvillians felt that their permission had not been sought...Negotiations had been made according to 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.”⁸⁵

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.

During the first weeks of CRA’s activities on Bougainville, prospectors collected and analyzed stream sediments, and established a preliminary laboratory. The number of people increased as more

⁷⁸ Denoon, Donald, *Getting under the shin*, Melbourne University Press, 2000.

⁷⁹ Sillitoe, Paul, *Social Change in Melanesia*, Cambridge University Press, 2000.

⁸⁰ Denoon, *op cit.*

⁸¹ Sillitoe, *op cit.*

⁸² 69/2158, BCL’s six-monthly report to the Administration for the first half of 1968.

⁸³ Sillitoe, *op cit.*

⁸⁴ *Bougainville: The Peace Process and Beyond*, History of the Bougainville Conflict, Joint Standing Committee on Foreign Affairs, Defense and Trade, Parliament of Australia, 1999.

⁸⁵ *ibid.*

work progressed and within six months the first drill rig arrived followed by larger drill rigs and a helicopter to move heavy equipment. The project had 150 people, four drills and two helicopters working at the site by mid 1965, which increased to 10 drills eighteen month later.⁸⁶

Today, 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). 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.”⁸⁷

Exploration and mining companies need to be aware of the degree of their contact with the local community and explain what they are doing at an initial stage. However this may conflict with the need for secrecy and confidentiality at the prospecting stage or at least until the concession is secured. The construction phase is the stage with the most community impact as large numbers of people are brought in to build the mine and plant. This is when the project is potentially at its most vulnerable.

Exploration has social, economic, and political impacts on human rights. Compensation to landowners for their losses of property rights may need to take into account the right to as adequate a standard of living as the land previously provided.

As the project proceeds there is a transition through various phases, in which each has its own specialists/teams. There is a need to maintain continuity and consistency in contact with the community. This raises the question as to how the teams and various stages of the project pass along to each other and maintain the relationships.

At the construction stage the owners often hand over control of the project to temporary, outside management which is concerned with the management of contractors and sub-contractors. Some companies have their own construction-management teams that maintain control of overall construction management, although individual contracts are outsourced to other firms. The owners need to be aware of how to manage a process that has huge social impact. At Panguna, during construction the work force peaked at more than 10,000, most of whom did not come from Bougainville Island. Most of the skilled workers were foreign and two-thirds of the laborers were not from the island.⁸⁸

During mining operations, some of the issues facing mining

⁸⁶ Denoon, op cit.

⁸⁷ Sillitoe, op cit.

⁸⁸ Denoon, op cit.

companies and their operations include revenue sharing between local community, region and central governments, access to jobs, training and establishing sustainable development of the local economy and labor rights.

The Panguna mine project included roads, port facilities, power stations, a new town at Arawa, employees' housing, health, education, and sports facilities. 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."⁸⁹ Bougainvilleans resented the apparent inequitable treatment of their labor rights.⁹⁰

Before the mine was developed, Bougainvilleans depended on agriculture, and after its closure have an even greater dependence on agriculture due to a lack of other sustainable economic activities. Hence any loss or damage to the land threatens the basis upon which their survival depends. Mining operations replaced agricultural land and "tailings disposal has contributed to the loss of land in the Jaba River valley and with it drinking water, timber, and hunting and fishing areas. Deposition of tailings has also blocked tributary streams, causing flooding and the loss of fish, which can no longer migrate for spawning, and made access to some regions, especially on the north bank of the Jaba, difficult and dangerous."⁹¹

During and after mine closure, challenges for mining company operations and their management include sustainability of the local economy and the sustainable development issues discussed in the section following: "issues for operational management".

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 the 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, and bear 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.

iii) Issues for operational management

Clearly, issues in remote areas that have not experienced any development are not the same as those in areas that have been previously exposed to development. A major issue is whether the business unit is

⁸⁹ Bougainville: The Peace Process and Beyond, History of the Bougainville Conflict, Joint Standing Committee on Foreign Affairs, Defense and Trade, Parliament of Australia, 1999.

⁹⁰ *ibid.*

⁹¹ Connell, John and Howitt, Richard, Eds, Mining and Indigenous Peoples in Australasia, Sydney University Press, 1991.

held to local/host country legal standards or to home country standards that are company wide. Conflicts between the standards need to be identified and a suitable approach to problems developed.

Corporate business units need to look at the impacts caused by the nature of their operations. Mining companies are aware that at all stages of operations, including reclamation, they need to make less environmental impact, but they also have to examine other issues related to mining developments, including human rights and indigenous concerns. The business unit may face situations where not all members of the community agree on development issues, for example, there may be conflicts between those who perceive mining developments having a negative impact on their vested interests, while others are more interested in the possibilities of employment and economic benefits.

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. Codes of conduct should reflect the best practice of operating units in dealing with different issues, 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 issues, including labor rights, rights of indigenous peoples, community relations, and interaction with local communities. Business units have to consider wage levels, overtime payments, local legal requirements and agreements. The most subjective issues 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 whether the local militia is involved in keeping indigenous people away from operations for fear that they will cause problems.

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 issues? Are they in a free environment? Or do they require working with their own security forces or local police and militia?

Operating units may often have to consider situations where conflict between the local population and the central government creates problems, e.g., Freeport McMoRan in West Papua. 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. Recruitment procedures should be scrutinized to ensure there is local employment and education and training programs may be needed to upgrade local skills. Generally the responsibility chain is that health & 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 issues is transferred across business units. Corporate management should encourage operations to learn from one another's experience.

The business units will have to address issues of working with NGOs and Government. Human rights is about respecting workers' rights, about not abusing people working for the business unit, not employing contractors who abuse human rights, e.g., employ forced labor, child workers, and not abusing the rights of the community. As an example, Rio Tinto's social responsibility was questioned when information was obtained indicating rough diamonds from its Argyle mine were being cut and polished by children in India.⁹²

Among the responsibilities of the business unit is to avert crises and conflicts before they begin. The business unit has to ensure that its employees and the local community are aware of the policies and that there is an adequate procedure to ensure that issues 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 may be implemented with appropriate provision for remedial action and accountability for any deficiencies.

iv) Current spectrum of views of mining companies

There is a broad spectrum of views of 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. The Voluntary Principles on security and human rights, welcomed publicly by two major mining companies (and being considered by others), are discussed below.

Some mining companies are trying to define what constitutes human rights in terms of their business activities. One company that is aware of corporate social responsibility already has a statement of business principles. It intends to specifically expand its statement to cover human rights when it has determined limits to the definition of human rights issues. It already believes in fair treatment. As a first step, 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. The company is not under pressure as it is unaware of any problems associated with its overseas operations.

⁹² Jordan, Bill, Statement of Business Practice, letter to Rio Tinto, dated 14 April 1998

One company operating in Colombia tries to maintain a more low-key presence to lower the possibilities of its employees being kidnapped. It is very aware of security problems. It understands it enjoys good local relationships and has established a wide range of relationships with local community groups and NGOs who regard it as a good corporate citizen. In the case of new ventures elsewhere, it is very careful to consider the community and social side of a deal. Since its ideals are important and if the human rights situation in the country conflicts with their internal business principles it cannot do a deal.

Another mining company that has adopted a statement of values and responsibilities (including support for the United Nations Declaration of Human Rights) emphasizes that it does not hold any political briefs nor participate in political causes.

Other major mining companies are considering conforming with the US-UK Voluntary Principles on security and human rights during mining and energy companies' operations overseas. One company already has a code of business ethics, typical of the 1980s and 1990s, and is working on a statement of business principles that includes human rights. A draft text is being reviewed internally and then will go to its Executive Committee for approval. It took one energy company eighteen months to provide a framework from which it developed a human rights policy for the group.

A company is more comfortable exerting its influence where it recognizes it has a legitimate stake because of a dominant position in the economy. Human rights NGOs consider it not helpful 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 depends on its internal governance. The NGOs see the inherent problem of indirect lobbying, especially with human rights issues, is the refusal to do something publicly when the public demands it with the accompanying consequences as in the case of Nigeria. Corporations need to have informed leadership on human rights and board support rather than react to a crisis in a country. Issues for a company can be the difference between what its head office says and what happens in the field and it needs to understand the gap.

It may be 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.

As an initial stage of developing human rights policy and guidelines, one mining company is holding workshops for its managers to examine issues of social development and ethical business principles, its relationship with the community. The company recognized that if it is

not aware of what is happening around its operations, problems could lead to 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 lot of corporate largesse.

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 are major 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.

Where there is a government that has rights and sovereignty some companies do not want to second guess the government and are trying to determine a way to deal with the problems. They have concerns that rights are appended to many things and note that economic, social and cultural rights are aspirational.

Some 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."⁹³ Mining industry performance is judged by the actions of the worst company and the industry may have to address questions of sanctions against those companies.

In one very unusual instance, a US-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 US 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.

⁹³ Sullivan and Frankenthal, *op cit*.

b) Formal codes of practice, existing guidelines, voluntary initiatives, monitoring and reporting practices, regulatory framework, and information related to human rights issues

Codes of practice, guidelines and voluntary initiatives are approaches to regulate corporate behavior that have five origins:⁹⁴

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

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. Some are intended to provide a general toolbox that can be adapted to deal with the specific conditions encountered in different countries. Although many of these 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, such as The World Bank and UN Commission on Human Rights, which are at an early stage in attempting to draft principles for corporate behavior integrating key human rights into business practice.⁹⁵ In any event the codes and principles are considered ineffective unless there is provision for effective independent monitoring and verification of compliance.

i) How to get intelligence about what is happening

NGOs will be gathering information about human rights situations in a country, and corporations should make use of these sources. It is necessary to look at what companies are not doing or what they are doing that could be done better. To make a proper risk assessment, it is necessary to communicate with third party risk analysts. It is easier when an independent risk assessment organization is more involved in assessing country risk at the pre-investment stage. Abusive human rights conditions tend to show up in the preliminary country risk assessment. Such a study should not just cover business, fiscal, and political risk analysis, but how the government functions. This can be done in-house or by a third party but the mining company should explain its principles clearly to the analysts. Some information required to accomplish this takes longer to find. To expedite the process, corporations have to establish internal policies and principles; and make sure that policy reflects the principles. Some companies will have to revise or create internal policy to make sure this is consistent across business units. For

⁹⁴ Danailov, op cit.

⁹⁵ Guidelines on human rights conduct of companies are being drafted by the UN Working Group on the Working Methods and Activities of Transnational Corporations, a sub-group of the UN Sub-Commission on the Promotion and Protection of Human Rights. For more details see below in section 3 c) iv) *United Nations and NGOs input on human rights issues*.

the information gathering process to work well, it should include meetings with NGOs, Government, and other companies.

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,⁹⁶ 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.⁹⁷

Another formal approach is to empower workers at the plant to report if there are problems and raise the issues at a level where they can be addressed. 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.

ii) 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 issues are establishing 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 issues that need improvement and act on them.⁹⁸ 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 a independent external vetting procedure. There is a challenge in defining credible monitoring that will satisfy NGOs and with which

⁹⁶ e.g. in Indonesia to the Indonesian Human Rights Commission.

⁹⁷ Human Rights Policy and Implementation, Freeport McMoRan Copper & Gold Inc., 2001.

⁹⁸ Frankental, Peter and House, Frances, Human rights, is it any of your business, Amnesty International and The Prince of Wales Business Leaders Forum, April 2000.

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 behavior.

Some well-known NGOs will not provide monitoring services since they do not have the expertise. While there are some organizations who believe they should not provide monitoring support services to corporations, others are of the view that they should make an attempt and learn by their mistakes. Monitoring behavior in the extractive sector has not been a major focus of those monitoring groups who are getting involved by default as an extension of their work with the apparel and footwear industries. There is a need for external monitoring of the use and selection of external security forces.

The public demands transparency and monitoring could be done by engaging stakeholders, local or international groups. 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. Labor groups already monitor health and safety and this could be extended to human rights as in the collective agreement with Statoil.⁹⁹ 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.¹⁰⁰

It will be a slow process figuring out how to collaborate more, but 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 behavior, there is a need to engage, getting the parties to talk to each other.

iii) 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 issues of stakeholder engagement in monitoring and benchmarking to help decide which benchmarks should apply. In order to ensure the effectiveness of voluntary, non-binding approaches, corporations need to (a) develop comprehensive codes of conduct; (b)

⁹⁹ Statoil, op cit

¹⁰⁰ Global Sullivan Principles, op cit.

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.¹⁰¹ Auditing and the verification of performance imply the establishment of benchmarks and standards for measurement.

An approach described to establish benchmarks, in general terms, is to consider three sets of issues: (a) working conditions (use OSHA standards as a basis);¹⁰² (b) wages; (c) security.¹⁰³

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 they 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 an issue 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.

There may be legal agreements on living conditions but these are a most subjective issue. However, in the case of personal security several questions arise: 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 issues? 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, are the existing regulatory and administrative

¹⁰¹ "Corporate Social & Environmental Responsibility - Commitment, Conduct & Transparency." Toronto: TCCR: The Taskforce on the Churches and Corporate Responsibility, 2000.

¹⁰² http://www.osha-slc.gov/OshStd_toc/OSHA_Std_toc.html

¹⁰³ 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.

frameworks adequate to enforce regulations? There may well be a need to train locally the people 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.

iv) Existing standards, codes and voluntary principles

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), does not yet specifically deal with human rights and the mining sector, although a pilot audit project proposed for mining is being considered.

Currently ad hoc standards, benchmarks and compliance reports are being developed to make sure a corporation complies. For example, some corporations have developed guidelines on social and environmental issues, and have developed, or are developing, guidelines to handle security internally, and human rights issues. In Australia, a group of NGOs developed principles for mining companies that included issues of human rights, land rights, ownership and indigenous peoples.¹⁰⁴

The ICFTU has developed a basic code of conduct for labor practices that can be used as a benchmark in analyzing voluntary codes of labor practice adopted by companies.¹⁰⁵ Codes of conduct generally define minimum standards of behavior 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.¹⁰⁶

(1) 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.

¹⁰⁴ Principles for the conduct of company operations within the mineral industry, Australian Asia Pacific Mining Network, October, 1998.

¹⁰⁵ A basic code of labour practice, ICFTU, 1997.

¹⁰⁶ Sullivan and Frankental, op cit.

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 behavior 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 principle 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 labor agreements is a step on the way to putting them into practice. The key issues for mining corporations in their performance are accountability, transparency and their relationships with civil society.

(2) 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 issues 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.¹⁰⁷

v) 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 addresses the rights of workers and entrepreneurs in the industry.¹⁰⁸ 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

¹⁰⁷ Sec Justiça Global, www.global.org.br

¹⁰⁸ Global Code of Ethics for Tourism, World Tourism Organization, Santiago, 1999.

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, labor and non-governmental organizations.¹⁰⁹

Media and consumer pressure about child labor 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.¹¹⁰ 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 US 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.¹¹¹

In response to demands that product labels guarantee products are made under decent conditions, the RUGMARK label certifies carpet manufacturers who meet requirements that assure no child labor 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 percent of all Indian production and nearly 70 percent of Nepalese production.¹¹²

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

¹⁰⁹ Draft Protocol of Implementation, Global Code of Ethics for Tourism, World Tourism Organization.

¹¹⁰ Golodner, Linda F., Apparel Industry Code of Conduct: A Consumer Perspective on Social Responsibility, Notre Dame Center for Ethics and Religious Values in Business, October 6, 1997

¹¹¹ Workplace code of conduct, Amended Agreement, Fair Labor Association, 2001.

¹¹² Golodner, op cit.

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. 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.

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 will be a problem if the firm publishing the findings glosses over the negative and accentuates the positive. Then the auditor could dissociate publicly from the report. There is a question of whether one can create standards. The first task is to define standards and the questions. The difficulty is how 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 to collect the data (keeping the identity of the interviewees confidential), interpret it, and obtain 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.¹¹³

CVRD, the Brazilian iron ore company, includes a social report with its annual report that showed nine percent 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.¹¹⁴ 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 center 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.¹¹⁵

¹¹³ The Shell Report 2000.

¹¹⁴ Social Report 2000, Companhia Vale do Rio Doce.

¹¹⁵ Stakeholders, CBMM, Companhia Brasileira de Metalurgia e Mineração, <http://www.us.cbmm.com.br>, 2001

vi) *Standards to protect vulnerable groups; role of labor; accountability, transparency, relationships with Civil Society*

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.¹¹⁶ 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.”¹¹⁷ As mentioned above, organized labor proposed global standards on labor rights which was adopted by Statoil in its collective agreement.¹¹⁸ The OECD has established corporate responsibility on human rights and principles of corporate governance.

vii) *Guidelines to handle security internally, and on human rights issues (US-UK Voluntary Principles on Security and Human Rights)*¹¹⁹

Security and human rights abuses are the most clearly defined set of issues 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 issues of land rights, access to resources, and revenue benefits to the community (as distinct from the regional and national government).

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 US interests at stake. In the mid-1990s US/UK 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 later in this report. Whether it was true, fair or not, this coverage caused a problem for US foreign policy. Reputations were at risk while the companies had a willingness and ability to remain engaged in “difficult” countries. The US Government was concerned about the combination of media and NGO attention, the impact of operations and the extent to which governance was a backdrop

¹¹⁶ International Labour Organization Tripartite Declaration of Principles Concerning Multinational Enterprises and Social Policy; Organisation for Economic Co-operation and Development Guidelines for Multinational Enterprises; UN Global Compact

¹¹⁷ The Working Group on the Working Methods and Activities of Transnational Corporations, (a sub-group of the UN Sub-Commission on the Promotion and Protection of Human Rights) prepared Draft Universal Human Rights Guidelines for Companies, E/CN.4/Sub.2/2001/WG.2/WP.1/Add.1, Commission on Human Rights United Nations, 21 May 2001. For more details see below in section 3 c) iv) *United Nations and NGOs input on human rights issues*.

¹¹⁸ Statoil, op cit.

¹¹⁹ This section draws extensively from remarks made during 2001 by Bennett Freeman, former US Deputy Assistant Secretary of State for Democracy, Human Rights and Labor

in some countries with broader US interests at stake. Since the case of Nigeria, mentioned above [see section 2 a) i) above], 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 issue 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, education, and transport issues. Newmont Corporation encountered these issues in Peru and Indonesia. Human rights and labor rights are intertwined.

Although companies had guidelines to handle security internally, until recently they generally did not address human rights issues. Some companies, such as Shell and BP have now incorporated human rights considerations.

The US State Department was looking at issues of corporate responsibility and human rights in general. Of approximately a dozen countries with human rights and security problems, as shown above, three countries were the most visible – Colombia, Indonesia and Nigeria. In 1999, the US Government decided to take a direct role in the issues. 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, Prince of Wales Business Leaders Forum, etc. At the same time there was a growing interest in the issues at the UK Foreign Office. Working together to address mutual problems, governments, companies and NGOs had the focus and opportunity to develop a dialogue on a specific set of issues and find common ground.

Major oil and mining companies, human rights and corporate responsibility organizations, and the US and UK governments recognized that security and respect for human rights could and should be consistent.¹²⁰ The companies recognized that there was a difficult and sensitive confluence of human rights and security issues. 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.

In March 2000, responding to pressures, seven major oil and gas companies (of which five are publicly identified), two mining companies,

¹²⁰ Freeman, Bennett, Drilling for common ground, Foreign Policy, July/August 2001.

nine NGOs, and two governments decided to concentrate on what could be accomplished within a year. 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.

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."¹²¹ 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.

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.

These three substantive categories are introduced in the following subsections.

(1) 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 issues 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 Attachment B(2)).

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

¹²¹ Freeman, Bennett, Finding Common Ground: The Voluntary Principles on Security and Human Rights, Human Rights & Business matters, Amnesty International (UK) Business Group Newsletter No. 5, 2001.

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.

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 issues and question the company's management at Annual General Meetings).¹²²

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 US Alien Tort Claims Act, increased media scrutiny, and socially responsible 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.¹²³

(2) 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 (described below), and those of the oil operations of Chevron in Colombia and Shell in Nigeria (mentioned above). The Freeport case and two other examples of the relationships between companies and state security forces are described in sub-section (4) below.

There may be unintended consequences when the company thinks what it is doing is right without considering the geo-politics or local issues. 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

¹²² Warhurst op cit.

¹²³ Östenson, Ollie, *The Stakeholder: Interests and Objectives, Sustainable Development and the Future of Mineral Investment*, UNEP, 2000.

innocently provided, but were then used to dig graves – an outcome that the company had not realized would happen.

(3) Interactions between companies and corporate private security providers

Concerns about the interaction between mining companies and private security providers have frequently been raised and discussed in detail.^{124,125} The “Sandline affair” in 1997, when the Papua New Guinea entered into a contract for mercenaries to capture Bougainville, attracted worldwide attention.¹²⁶ Before the mercenaries arrived, the army arrested Sandline officials and the Prime Minister resigned.¹²⁷ The activities of Executive Outcomes and its relationship with Branch Energy in Sierra Leone, other African countries and elsewhere were situations that also gained the focus of public attention.^{128,129}

The discussion on security and human rights was kept broad enough to develop Principles applicable beyond the countries causing most concern. At the end of 2000, after only four one-day meetings but several thousand hours of input, drafting, negotiating and internal checking, the process produced the Voluntary Principles. The number of participants that took part in the discussions was limited to two governments (US State Department-UK Foreign Office) as the sponsors were not confident that they could do more in less than a year with additional governments and companies engaged.

Together with US/UK governments the following participants were identified:

Texaco Chevron Conoco BP-Amoco Shell	Freeport McMoRan Rio Tinto	Amnesty International Human Rights Watch Business for Social Responsibility Fund for Peace International Alert Prince of Wales Business Leaders Forum Council on Economic Priorities Lawyers Committee for Human Rights	International Federation of Chemical, Energy, Mine and General Workers
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Implications from developing the Voluntary Principles:

- (i) The process is a concrete example of human rights and corporate responsibility in action.

¹²⁴ Lilly, Damian. "The Privatization of Security and Peacebuilding, a Framework for Action." London: International Alert, 2000.

¹²⁵ Special Rapporteur on the use of Mercenaries. Human Rights Commission of the United Nations. *Towards a Spiral of Violence? The Dangers of Privatising Risk Management of Investments in Africa. Mining Activities and the Use of Private Security Companies. Memorandum*, Feb 2000.

¹²⁶ Robert Friedland: The King of the Canadian Juniors, Australian Broadcasting Corp., 6 April 1997

¹²⁷ Joint Standing Committee on Foreign Affairs, Defense and Trade. *Bougainville: The Peace Process and Beyond; Completed Inquiry*, 27 September 1999.

¹²⁸ The Diamond Mercenaries of Africa, Australian Broadcasting Corp, 4 August 1996.

¹²⁹ SA mercenaries leave Sierra Leone – with mixed feelings, Daily Mail & Guardian, Feb 11, 1997.

- (ii) Demonstration of companies willingness to engage with critics.
- (iii) Willingness of NGOs to find common ground on issues.
- (iv) Recognition by two governments that their foreign policies have now become inter-linked with human rights issues 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 voluntary principles are viewed as an example of a non-binding approach. Skepticism about such voluntary principles is a valid concern. However, the State Department/Foreign Office wanted to deal with the realm of 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 issues were fully addressed and resolved to their satisfaction. The process itself was a challenge to the NGOs. However, even if the principles were non-binding, the process crystallized a comprehensive document with reference to soft law. Time will tell if the parties will continue the dialogue with positive results.

There is criticism by some that there was a narrow focus on a single set of human rights issues 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 is a useful starting point. The starting thesis for the Voluntary Principles was that security and human rights involved the most clearly defined set of issues (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.

In December 2000, the two governments announced the Voluntary Principles. The NGOs and oil and mining companies indicated they supported the process and welcomed the principles. The press noted that this was the first time that US and UK major oil and mining companies were prepared to address these complex issues. This process saw a convergence of corporate responsibility and human rights that can now move forward to address the broader issues. A key point to note was the convening power of the two governments

in the process: without which the discussions would not have been launched.

As discussed earlier in this report, there are several sets of human rights issues (such as labor rights and the freedom of association, and the right to collective bargaining) that are both interwoven with other rights and separate. There is also a bigger set of relationships around the issues of security and human rights such as the broader issues of the mining company's relationship with the community and indigenous peoples and its interaction with them.

The broader and even more difficult set of issues are concerned with companies operating in Burma, Sudan and some other countries, for example: should Premier be in Burma or Talisman in Sudan; i.e., should they be in those countries in the first place? The Voluntary Principles did not address this question because, as explained above, the group adopted a narrow focus on the issue of security and human rights. Going beyond the scope of the Voluntary Principles takes one into much deeper and broader issues of concern that might need a decade to reach any agreement. Simplistically, the goal of the Voluntary Principles was characterized as not being to "save the world" but to explore what was realistically achievable using a narrowly defined set of issues.

The Voluntary Principles, although prescriptive and specific, are aspirational. They are non-binding but ambitious and are positioned to become the standard for the energy and mining sectors.

This model could be used in other issues. Where there is a convergence of interests, there is optimism for finding common ground. A pragmatic approach is to move issue by issue in the area of human rights to build a broader social license to operate. There is a need to develop a more sympathetic and inclusive globalization as trade expands and companies are faced with more social issues associated with growth.

(4) Examples of interactions between mining companies and state security forces

Three examples of human rights abuses by state security forces in which mining companies were alleged to have been complicit follow.

(i) Indonesia

The case of Freeport McMoRan Copper and Gold Inc. and its Indonesian affiliate, PT. Freeport Indonesia illustrates the complexities of issues that surround mining operations in areas of weak governance, corrupt administration, 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.

Background

Freeport signed a contract of work with the government of the Republic of Indonesian in 1967. That was five years after the administration of West Papua was handed over to the Indonesian Government by the United Nations Temporary Executive authority and two years prior to the United Nations mandated “Act of Free Choice” (1969) that ratified the transfer of authority over the government of West Papua from the Netherlands to Indonesia. The Secretary-General’s special representative and many educated Papuans at the time at the “Act of Free Choice” believed that the “Act” did not reflect the will of the Papua people; that belief has grown over the 32 years since West Papua’s formal incorporation within Indonesia’s Province of Irian Jaya.^{130,131}

The People of Irian Jaya are ethnically and culturally different from the other people in Indonesia. Papuans are Melanesians; most other Indonesians are sub-groups of Malay and Chinese. Melanesians like many other indigenous people, have deep physical, spiritual and emotional roots in the land. Indonesian agrarian law, as set out in the constitutions of 1945 and 1949, establishes the government as 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 recognize community land rights and provide legal protection for those traditional land rights. Furthermore, all surface and subsurface resources belong to the government.

Mining companies in Indonesia work under a system of contract at work (COW) with the Government of Indonesia. The Government owns the resource; mining companies work the deposit but do not own it. Many resource sites, including Freeport’s, are designated as “National Treasures.”

Many of these factors put the government of Indonesia and local people on a collision course. Land is life for the people; for the government, land is a resource to be exploited¹³². Beyond mining activities, which takes up very little land, the government of Indonesia embarked on an extensive program of transmigration in which Indonesians from overpopulated areas of Java and Bali move to new, less populated areas. By 1998, over 700,000 ha of land in Irian Jaya was turned over to transmigrants. In comparison, Freeport’s mining activities

¹³⁰ West Papua, Plunder in Paradise, Anti-Slavery Society, Indigenous Peoples and Development Series, Report No. 6, 1990.

¹³¹ See John Saltford, *United Nations Involvement with the Act of Self-Determination in West Irian (Indonesian West New Guinea) 1968 to 1969*. (Private Publication).

¹³² See Paul Sillitoe, *Social Change in Melanesia: Development and History*. (Cambridge: Cambridge University Press, 2000). See also Greg Churchill, *The Status of Traditional Land Rights in Irian Jaya under Indonesian Law*. (Private Publication, August 1995).

take up about 1,400 ha. A large number of transmigrants are located in Freeport's mining area.

Local people would prefer to be ruled under their system of traditional law that assumes they live in an area where they can disengage from each other. However, they are moving away from remote areas into more inhabited areas. The traditional "payback" system still works when people live far enough away from each other, so that when the system of paybacks is completed there is a way to disengage and stay disengaged (some grievances can last for several generations). The company is not the government, and does not want to be. Good governance requires support and an understanding of the law by all parties.

Since the Indonesians took over control of West Papua there have been clashes between Indonesian security forces and freedom fighters from the Organisasi Papua Merdeka-Free Papua movement (OPM). These clashes have been periodic and widely-spaced geographically. The most serious recent conflicts were in Biak, the Jayapura area, Manokwarri and the Sorong area. By contrast where Freeport's mine operates, Mimika, has been relatively free of conflict and will be discussed later in this report.

The conflict between freedom fighters and security forces have brought accusations of human rights violations. Although the Papuans, and especially the OPM, were accused of perpetrating human rights violations, most often the security forces face 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 published report by ACFOA (Australian Council for Overseas Aid, an NGO).¹³³ 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.

The 1994 Events at Freeport

On November 18, 1994 a Freeport employee working on the

¹³³ The original report about events in 1994 in Freeport's operations area was published by the Australian Council for Overseas Aid (ACFOA). The report was titled *Troubles at Freeport: Eyewitness accounts of West Papuan resistance to the Freeport-McMoRan mine in Irian Jaya, Indonesia and Indonesian military repression, June 1994—February 1995*. Bishop Munninghoff, the Roman Catholic Bishop of Jayapura, whose report became the basis for the ACFOA report, was more sanguine in his report. He wrote, "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." See Munninghoff, *A Report on the Human Rights Violations against the Local People in the Area around Timika, Region of FakFak, Irian Jaya, Year 1994-1995*.

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 had done before them.¹³⁴

Freeport at that time had an internal, unarmed security force of some 200 men. Government security forces were about equal in number. Freeport's security personnel, although unarmed, had access to 10 vehicles and logistic support; government security personnel, although armed, 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, mostly to patrol the 65 miles of the road used between the coast and the mine.

The government identified those who killed the employee as part 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 into custody about 20 local people some of whom have never been found and are presumed dead; others, including women, were locked in shipping boxes under inhumane conditions. In spite of the security forces' efforts, the freedom fighters escaped from the area.¹³⁵

These activities led to increasing activities on the part of the local population against the Government of Indonesia. These culminated 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 who were arrested, one man was shot and killed.¹³⁶

Freeport's Role

There are no accusations that Freeport personnel directly participated in any of these events. The most complete report was made by Bishop Munninghof of the Catholic Diocese of Jayapura. Bishop Munninghof neither exonerated nor implicated Freeport for the human rights violations reported;

¹³⁴ Freeport communications; also Munninghoff, pp.4-5.

¹³⁵ Munninghoff, pp. 6-9.

¹³⁶ Munninghoff, pp. 18-24.

it simply recounted the events as attested by a large number of witnesses. The report made it clear that the direct violations were done by government security forces.

However, there were other factors that complicated the situation. It is claimed that the vehicles 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 twelve years earlier for storage. The question was 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 organizations and human rights NGOs said yes; whereas Freeport disagreed. Some local people and NGOs further complained that security forces either wouldn't be in the area at all, or at least wouldn't be there in such numbers if Freeport weren't operating in the area. 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."¹³⁷ 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 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 the events of 1995 and 1996 were not strikingly different from what had taken place in the area prior to late 1994, there may be some discernable connection. Three events were initiated by the local people: first, in January 1996, the kidnapping of WWF (Worldwide Fund for Nature/World Wildlife Fund) researchers from an area 100 miles (160 kilometers) 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 US 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, alleging human rights

¹³⁷ Indonesia Human Rights Practices, 1995, US Department of State, March 1996.

violations against the local people by the Indonesian security forces supported by Freeport.

Freeport took five specific actions: first, it established the Freeport Fund for Irian Jaya Development; second, it hired a high level employee to act as a liaison with security forces; third, it built living and recreational facilities for government security forces, fourth, it established a corporate Social, Employment and Human Rights Policy; and fifth, it introduced human rights training for Freeport's unarmed security personnel to which government security personnel are invited, and provides support for the government in establishing the rule of law and a legal system for all parties in the area.¹³⁸

Allegedly, the WWF kidnappings were carried out by Kelley Kwalik and his followers, i.e., the same group that was suspected of shooting the Freeport employee in November 1994. When the kidnapping first took place, the OPM claimed it was being undertaken to force the closure of Freeport's operations but that claim was never corroborated. Six of the thirteen hostages were expatriates from Great Britain, the Netherlands and Germany. The German hostage was released within days of the incident; the others remained in control of the OPM until the end of April.

The International Committee of the Red Cross (ICRC) became deeply involved in negotiations with the kidnappers. Great Britain 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, so although neither Freeport nor Timika was directly involved in the hostage situation, much of the news about the events carried the name of Freeport with it. The crisis ended with a security raid in late April 1996, after the withdrawal of the ICCR negotiators. Several Indonesian hostages were killed, reportedly by their abductors, 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. Although these actions had no direct connections to Freeport and its operations, in the eyes

¹³⁸ Institute for Human Rights Study and Advocacy in Irian (IHRSTAD), *Report of the Human Rights Violations and Disasters in Bella, Alima, Jila and Mapnduma, Irian Jaya*. (May, 1998—private publication).

of many of the local people, none of this would have taken place if Freeport were not operating in the area.

There remains a mystery about the origin of the March 1996 riots, first in Tembagapura and later in Timika. Several different groups claim responsibility for the first riot, which took place on Sunday afternoon, March 12. No one was killed and there were only a few minor injuries. Damage, however, 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, mostly from accidents in stolen vehicle crashes. 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.¹³⁹

At the urging of national and international NGOs, the local community filed lawsuits in the United States against Freeport-McMoRan Copper & Gold Inc., the parent company of PT Freeport Indonesia. The suits filed in US Federal court on behalf of Tom Beanal, and in Louisiana state court on behalf of Yosepha Alomang, allege 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. Both cases were dismissed by the courts, although the State court case is still undergoing appeal. 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 which are outlined below.

The first and most substantive change made by Freeport was to restructure Freeport's community development program to give the local community a greater voice in the process and to expand the scope of the program from just focusing on the two most local indigenous groups (the Amungme and Kamoro) to give equal treatment to the 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 agreed to restructure its program by introducing the Freeport Fund for Irian Jaya Development (FFIJD), which provides one-percent of PT Freeport Indonesia's net revenue for the development of the local people. The FFIJD has been attacked by some of the local people and criticized by a number of NGOs and in response to these criticisms it has been restructured several times. However, despite difficult beginnings, the FFIJD has provided benefits to the local people in health care, education

¹³⁹ See *General Chronology of Recent Events at P. T. Freeport Indonesia, Irian Jaya*. (company internal document, April, 1996)

and the development of village infrastructure and over the past few years the local people have gained a stronger voice in the use of the FFIJD funds. Since 1996 the FFIJD has provided over \$74 million for the people around Freeport's mine.

The second action was to hire an experienced expatriate to coordinate relations with the Indonesian security forces. This has been controversial, but successful. 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 they 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 behavior as unacceptable and believed that a more proactive relationship with the security forces could avoid further incidents from occurring in the future. Critics, on the other hand, claim that such a relationship only enhances Freeport's relationship with government security forces to the detriment of the local population.

The third action caused even more criticism: that was the building of barracks and recreational facilities for the security forces that were being assigned to the area in greater numbers than previously. 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 would those who were well housed and fed and could possibly have family members with them. Critics again said that Freeport was just making life better for those who regularly abused the people. Although there is no long-term evidence whether Freeport or its critics are right, the human rights record in the area, with the exception of a minor incident in December 1999, 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. This policy sets out for employees, contractors and the government of the Republic of Indonesia 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. All reported human rights violations are liable to company disciplinary action and such violations are reported to the Indonesian Human Rights Commission.¹⁴⁰

The fifth action supports the fourth. Freeport's Security Department has undertaken human rights training for 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 set up courts to hear criminal and civil cases. Until recently there were no courts and jails in the area.

Conclusions

It is clear that Freeport's management did not recognize their role to protect the human rights of the local population until after the accumulation of events in 1994-1996. This, 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. There were no security forces in the area then and very little communication between government and the company about security issues. 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 whether Freeport could have prevented the events of 1994 and 1996 from occurring. However if Freeport had made preparations for such eventualities, this would have better served both the local people and the company.

Since that time Freeport has taken specific actions to address those issues. Although some of the actions described above were controversial, so far they 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 issues. It was one of the two mining companies that agreed to the US/UK Voluntary Principles on Human Rights and Security (see below) and is

¹⁴⁰ See Freeport-McMoRan Copper & Gold Inc., *Social, Employment and Human Rights Policy*. This policy was passed by Freeport's Board of Directors in February 1999 and revised and approved by the Board in February 2001.

discussing a role in the United Nations Global Compact. It is now an active participant in the Fund for Peace Human Rights Roundtable.

Having a large operation in a troubled region that is seeking independence, where the professionalism of government security forces remains in question, makes for an uncertain future. However, the company has taken positive steps in protecting human rights. Other mining operations in similar situations would benefit from examining the human rights issues that this company and its neighbors faced and the steps taken to address those issues.

(ii) India

Uktal Alumina, (35% Alcan, 20% Indal, 45% Norsk Hydro) was developing a bauxite deposit in the Indian State of Orissa. Villagers from Maikanch in the Raigada district, 302 miles from Bhubaneswar demonstrated that the project would necessitate the relocation of thousands of families (300 people from this village, one of 24 affected) and cause environmental damage. On December 16, 2000, “nearly 200 protestors, armed with bows and arrows, first attacked those supporting the project...and then ransacked their houses ... On being informed by company officials, police rushed to the scene and opened fire on the irate agitators. Two persons died on the spot and another died in hospital. About 40 persons, of whom 18 were police personnel, were injured in the incident. ‘We were forced to open fire because the agitators attacked police personnel and damaged a police jeep,’ a police official said.”¹⁴¹ The police claimed they had fired “after tear gas, lathicharge and firing in the air failed to disperse the tribals who attacked a police team with guns, bows and arrows and stones.”¹⁴² The exact number of casualties were unknown because “the tribals led by an NGO ‘Agramee’ did not allow a medical team to enter Maikanch.”¹⁴³ Human rights groups and environmental protection NGOs were “extending support to tribals agitating for a long time against the location of the plant.”¹⁴⁴ There were allegations of police brutality against a tribal woman, and that the tribals were provoked.¹⁴⁵

The leader of the Orissa’s Communist Party of India-Marxist wrote that tribal people are reported to be unaware of the need to register their land rights, and complained that Indian and foreign corporations want to develop the bauxite deposits

¹⁴¹ India Abroad News Service, December 20, 2000.

¹⁴² Press Trust of India, December 17, 2000.

¹⁴³ *ibid.*

¹⁴⁴ Express India, December 29, 2000.

¹⁴⁵ *ibid.*

“irrespective of the social” cost and the “entire State machinery has capitulated to their wishes.”¹⁴⁶

Demonstrators being killed while protesting does not appear to have been a violation of human rights or suppression of labor demands, but was attributed to the activities of NGOs (characterized as a powerful lobby/industry without any corresponding responsibilities) who do not want natural resources to be developed and who claimed the projects would affect the tribals and their well being.¹⁴⁷ The demonstrations got out of control and became a law and order problem. The outcome is that these projects are not being developed and the tribal people continue to live in penury.

The Government of Orissa ordered a judicial inquiry into the incident. The terms of reference for the inquiry included “the sequence of events leading to the police firing, the police action and role of different groups and organisations in the incident.”¹⁴⁸ Subsequently, there was a “raging debate” as to who best understands the development needs in the State.¹⁴⁹

(iii) Colombia

Sixty percent of all unionists killed in the world today are Colombian. During the first two-and-a-half months of 2001, in Colombia 27 trade unionists were either killed or disappeared. Two leaders of the mineworkers union were reported shot dead in March 2001, after leaving negotiations with Drummond Coal Company.¹⁵⁰

As mentioned above [section 2 a) i)], when 3,800 workers in a Colombian labor union went on strike against Exxon’s El Cerrejon surface coal mine at Guajira in northern Columbia, Colombia’s President brought in the army to occupy the mine and end the strike in May 1990.

In Colombia there is a strong link between the security forces and anti-union activities that are directly or indirectly linked to mining operations. Concerns about the issues of human rights abuses by security forces around mining and energy

¹⁴⁶ Patnaik, Ali Kishore, Profits over people, Frontline, January 19, 2001.

¹⁴⁷ Personal communication, R. K. Sharma, Secretary General, Federation of Indian Mineral Industries, August 31, 2001.

¹⁴⁸ The Observer of Business & Politics, Observer India, January 10, 2001

¹⁴⁹ The Hindustan Times, December 22, 2000.

¹⁵⁰ Kovalik, Dan, Colombia: A Case of Genocide Against Unionists, A Special Report prepared for the National Labor Committee, March 2001: “The story of these two trade unionists was similar to others we heard about in Colombia. On the night of March 12, 2001, Valmore Locarno, the president of a mineworkers union in the department of Cesar, and Victor Oracita, the union’s vice-president, were finishing up negotiations with Drummond Coal Company, a US-based company, over a long-standing labor dispute. Mr. Locarno asked Drummond management if they could stay overnight at the worksite because he and Mr. Oracita had been receiving death threats. Drummond denied this request just as the Colombian government had denied their previous requests for protection. Messrs. Locarno and Oracita then proceeded to be taken away in a Drummond-owned bus. En route to their homes, the bus was stopped by armed paramilitaries. The paramilitaries proceeded to forcibly remove Messrs. Locarno and Oracita from the bus. They murdered Mr. Locarno on the spot and took Mr. Oracita away. The remains of Mr. Oracita were found the next day.”

companies' operations overseas, specifically including Colombia, led to the Voluntary Principles on security and human rights discussed below.

c) Role and responsibilities of others

i) Evolution of NGOs' and corporations' traditional roles from advocate/adversary to collaborator/partner

There is a diminished deference to transnational corporations which has heightened their exposure and risk. NGOs have defined the issues, and the corporate interest solely to the pure bottom line was challenged. One of the roles of NGOs is getting their views heard which gives them political influence.

In the past the traditional relationship between NGOs was one of critic/adversary. 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. Corporations applaud good efforts and their natural thinking is about rewards for success and good behavior. 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 sellout, and that only violent revolution will change the world."¹⁵¹

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, UK and Canadian companies find it easier to engage with NGOs, whereas US 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 US 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-

¹⁵¹ Embracing the Enemy is Good Business, Time Magazine, August 13, 2001.

binding. 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. 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 issues and developing corporate policy and practices. This will be interesting to human rights NGOs that specialize in this type of activity, and implies identifying the 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 universities and stakeholders to identify strengths and weaknesses and then ask for help.

Brazilian mining companies are aware of government's limited budget and capacity to provide health and education services to the local communities where they have operations¹⁵². There is an awareness that it is good for business to increase the quality of life of people in these communities and reduce the conflict and differences between those who work for the mine and others. Local people can be integrated into the operation as third-party contractors and have the capacity to be productive if provided training and have adequate basic health and education. Companies understand that improving local capacity is a mechanism to make the community self sustainable economically and socially. The mining companies' main goal is to improve the quality of life by improving incomes. They work with a wide range of NGOs. The services are provided in partnership with the local government to make clear they do not want to de-capitalize it. One mining company uses NGOs that specialize in work with indigenous communities to

¹⁵² This section is based on a personal communication, October 2001.

build capacity. It recognizes that it has to be pragmatic and establishes contracts with NGOs that include targets and performance indicators.

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 issue 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. There is a view that 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 US-UK Voluntary Principles, and the UN Global Compact.

(1) Trend to protect people's rights by developing cooperation between companies, NGOs, indigenous people, labor and government, etc.

A major concern is the removal and relocation of indigenous people, for example, phosphate mining on Nauru left over eighty percent of the island uninhabitable. Some countries, such as Colombia, acknowledge that indigenous peoples should be engaged in prior consultations about whether resources should be developed, but there are concerns that this should be more than a courtesy. Only in industrial nations with indigenous populations (Australia, Canada, Norway and the US) can it be asserted that indigenous people enjoy an effective right to prior consultations about natural resource developments on their traditional lands.

Three illustrations of points of conflict with indigenous people are found in the Amazon regions of Brazil, Venezuela, Ecuador, and Peru. In Brazil, the Instituto Sociambiental (ISA) struggles to keep the Brazilian government from taking more Indian land for mining and other uses, while Brazilian Indians complain that the rainforest is increasingly threatened by mining companies.^{153,154} The intrusion into Yanomami lands led to thousands of deaths, and after the area was declared off limits, thousands of gold miners still entered the area leading to the deaths of more Yanomami in 1998.¹⁵⁵ Yanomami Indians had also been killed in 1993 by Brazilian *garimpeiros* (gold miners) "invading the Yanomami reservation and crossing into

¹⁵³ Amazon chief says big firms threaten forests, Reuters, June 21, 2001.

¹⁵⁴ Organizations active to protect indigenous peoples' rights in the Amazon include *inter alia* CIR (Conselho Indigena de Roraima, Brazil), CIDOB (Confederacion Indigena del Oriente, Chaco y Amazonia Boliviana), and CONIVE (National Indian Council of Venezuela); see the Amazon Alliance for Indigenous and Traditional Peoples of the Amazon Basin, <http://www.amazonalliance.org>.

¹⁵⁵ Comissão pro Yanomami Update No, 101, February 1999.

Yanamami territory in Venezuela.”¹⁵⁶ Violence, intimidation and corruption prevented any effective legal action by the Macuxi Indians in 1998. Gold miners were reported to have physically intimidated the Indians in this area, especially in times of high gold prices. The situation is reported to be calmer with the current lower gold price.¹⁵⁷ The Indigenous Confederation of Ecuador (CONAIE) has major political influence. The 1998 Ecuador Constitution established collective rights of indigenous people and made provision for consultation about developments of non-renewable resources, (although it remains to be seen if these are effective rights).¹⁵⁸ Similar provisions were incorporated into the constitutions of Bolivia, Colombia, Peru and Venezuela. Problems with mining were also reported in Amazonian Peru.¹⁵⁹

Historically, colonial powers mostly took land and resources from indigenous peoples for mining and other developments without providing benefits. Mining companies are negotiating agreements with indigenous peoples that recognize their rights, some under current legislation and others independently.¹⁶⁰

One fundamental concern of indigenous peoples is the right to resources. Resources are vested in the State in most national constitutions. However, ILO conventions say that indigenous peoples have rights to benefit from natural resources, and they have the right to make decisions on the development of natural resources. In most States the government has that right and also has the right to decide on the distribution of benefits flowing from any development. Basic land and resource issues are the most pressing, causing concern to some that recognizing indigenous peoples’ human rights would require the return of all the land and resources ever taken from indigenous people. Others believe that the issues could be resolved on a case by case basis between the State and its indigenous peoples.¹⁶¹ In Australia, legislation provides for negotiations between indigenous peoples and mining companies over land rights at the exploration and development stages.¹⁶²

The Bougainville case in Papua New Guinea illustrates the extent of conflict that can result from the non-recognition by national

¹⁵⁶ *Human Rights Watch World Report 1994, Events of 1993*. New York: Human Rights Watch, 1994. The report continues “Following the killings, the federal police arrested two men, and twenty-three garimpeiros were indicted on charges of genocide... Violence against Brazil’s indigenous community has long been met with impunity. In 1992, it was estimated that twenty-four Indians were murdered, with none of those cases resulting in the punishment of the aggressors.”

¹⁵⁷ Personal communication, Dr. José Mendo de Souza, Executive Secretary, IBRAM, Brazilian Institute of Mining, October 2001.

¹⁵⁸ Malo, Gabriela, *Environment-Ecuador: Indigenous Communities Seek More Reserves*, Inter Press Service, February 12, 1999.

¹⁵⁹ Indigenous people and their relationship to land, Human Rights of Indigenous Peoples, UN Commission on Human Rights, E/CN.4/Sun.2/1999/18.

¹⁶⁰ *Mining and Indigenous Peoples: Case Studies*, International Council on Metals and the Environment, 1999.

¹⁶¹ Indigenous people and their relationship to land, Human Rights of Indigenous Peoples, UN Commission on Human Rights, E/CN.4/Sun.2/1999/18.

¹⁶² Native Title Act, 1993; Native Title Amendment Act, 1998.

governments and by mining companies of indigenous people's rights to resources and the benefits of developments. This principle was not respected according to the beliefs of most Bougainvilleans, and was part of a clash of cultures around the Panguna mine.¹⁶³ 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.^{164,165}

In British Columbia there are more than 160 recognized First Nations negotiating Settlement Lands. Since there are only 20 mines, each indigenous group could not have a mine on its Settlement Land from which it could receive revenue, even if the Settlement Lands included the entire Province (although they are thought to be actually around 5% of the Province).¹⁶⁶ The mining industry's economic performance during the past 10 years in British Columbia was such that it produced \$10 billion in revenues to the three levels of government, but overall the companies made zero profit. Some have suggested that the First Nations consider other models of revenue, and negotiate revenue-sharing arrangements (using only the existing tax revenue paid by the companies) with the three levels of government (Federal, Provincial and Municipal), covering a wider geographic area than their Settlement Lands. Then the First Nations could negotiate separately other socio-economic issues such as training, supplies, joint-venture arrangements with the operating companies. There are suggestions that adopting arrangements other than joint-ownership would allow the First Nations to capture revenue, i.e. by revenue sharing rather than through direct ownership and administration. The First Nations could allow the Crown to administer tenements, health and safety and taxes, and avoid incurring the additional administration costs. Such a model for British Columbia might not apply in other places where land tracts are larger and there are fewer indigenous groups.

In Australia in 1997, Hammersley Iron Pty Ltd negotiated a land use agreement with the Gumala Aboriginal Corporation in connection with the Yandicoogina iron ore mine in Western Australia. It included financial, cultural and social benefits and in an attempt to improve relations with the community allowing for local indigenous peoples' employment and developing business opportunities with training programs and joint ventures.¹⁶⁷ Also in Australia, in an approach to develop local community support for exploration and

¹⁶³ Taylor, Peter, *The Case Of Papua New Guinea*, MMSD Armed Conflict And Natural Resources Workshop, London, July 2001

¹⁶⁴ Tonks, Graeme P. & Dowling, Peter J., *Bougainville Copper: A Case Analysis in International Management*, Working Paper, 1998

¹⁶⁵ *Bougainville: The Peace Process and Beyond*, History of the Bougainville Conflict, Joint Standing Committee on Foreign Affairs, Defense and Trade, Parliament of Australia, 1999.

¹⁶⁶ McKnight, Bruce, *British Columbia and Aboriginal Land Claims*, BC & Yukon Chamber of Mines, December 2000.

¹⁶⁷ Burnup, Chris, *Sharing the benefits: lessons in regard to mining and native title*, in *Human Rights, Corporate Responsibility*, Ed. Rees, Stuart, and Wright, Shelly, Pluto Press Australia Ltd, 2000

mining developments, following a board-approved policy, Pasmenco Limited worked to develop “mutual understanding and respect...with indigenous communities and organizations, educating Pasmenco personnel in an awareness of indigenous culture and values.”^{168,169} The company sees the support of a wide cross-section of society as a “social license” to operate that “ complements the business license to operate in a very real way.”¹⁷⁰

Land claims by native Alaskans against the US were settled in 1971 with a land grant and cash payment. In 1982, Cominco Limited and the Northwest Alaska Native Association (NANA) agreed on the joint development of the Red Dog zinc/lead/silver deposit following a dispute involving a block of land that included the Red Dog deposit that was selected by NANA as part of the land claim settlement. The agreement provided for a lease arrangement to develop the mine and for employment and lifestyle protection for people in the region. Cominco financed, constructed and operates the mine. NANA received an initial cash payment and annual lump sums until production when it received 4.5 percent net smelter return. After the capital is repaid, NANA receives twenty-five percent net proceeds, increasing by five percent every five years until NANA and Cominco receive equal profit shares. All jobs at the mine have a first preference for qualified natives in the NANA region with a program in place to hire, train and promote NANA shareholders. By 1998, fifty-nine percent of the workers and contractors employed by Cominco Alaska were NANA shareholders. The mine has ore reserves for more than forty years production.¹⁷¹ Some 6,600 people live in the NANA region

Another critical issue is the right to preserve and protect indigenous peoples’ culture and language against the influence of people from outside their community, either from their own country or from abroad. In some communities indigenous people consider nationals from outside the local community to be worse influences than foreigners. The UN Commission on Human Rights recognizes that indigenous people have at least four unique circumstances: (a) their relationship with their lands, territories and resources, (b) the social, cultural, spiritual, economic and political dimensions and responsibilities of this relationship, (c) the significant collective dimension of this relationship, and (d) the crucial intergenerational aspect of the relationship to their identity, survival and cultural viability.¹⁷² It attributes the gradual deterioration of indigenous societies to the lack of recognition of these relationships and of other

¹⁶⁸ Indigenous Affairs Policy, Pasmenco Limited, 1995.

¹⁶⁹ Burnup, op cit.

¹⁷⁰ Burnup, op cit.

¹⁷¹ Shared Values, Common Goal, Exceptional Results, The Red Dog Story, Northwest Alaska Native Association and Cominco Ltd.

¹⁷² *ibid.*

basic human rights.

(2) Corporations desire for NGOs to engage and take some responsibility

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. As mentioned above, mining companies in Brazil have established relationships with NGOs which are funded to increase capacity. They also fund partnerships with government agencies and foundations. With the change in the NGO/corporate relationship, companies are in effect saying: put your money where your mouth is! NGOs have to cooperate with corporations. 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) NGOs and Government Capacity for Monitoring

Monitoring has to work in the reality of cooperation between the three parties, the company, government, and NGOs. There is an ongoing need for consultation. Adequate independent monitoring and verification of corporate compliance requires training and education especially to build government capacity. Often the NGOs also need training and capacity building.

ii) Host government challenges

As mentioned earlier in this report, host government challenges include the impact of globalization and trade; a new criticism of national sovereignty; the balance of power between nation states and non-state entities; the privatization of functions formerly the exclusive domain of governments; deregulation to attract investment; competition between countries to attract mineral exploration and development. Government policies tend to respond to public concern. The current fast moving public expectations challenges government capacity to be responsive. There is a risk that corporate philanthropy will de-capacitize the State as it relies on corporate programs and abdicates its responsibility. It is important that when a company gets involved with local services it builds local capacity rather than replacing it.

(1) Institutional frameworks

When there are existing or new laws there is a need for institutions to disseminate information about the law and enforce its requirements in a benevolent rather than violent way. There is an emerging trend to devolve power to a provincial or regional level which requires an

appropriate institutional framework to administer laws in a clear and uniform manner.

Often the institutions lack adequate staffing or training to perform their tasks. In new legal frameworks this puts stress on the system to adequately disperse power between the federal, provincial, regional, and village administrations.

The absence of strong institutional frameworks makes it confusing for mining companies to get required permits and licenses.

(2) Regulatory frameworks

Regulatory frameworks are required to implement a country's laws and manage local development initiatives and relations with investors and communities. Often governments lack capacity in their institutions and suffer a shortage of adequately trained people to provide clear and uniform enforcement at the field level.

In a decentralized structure the legal and regulatory frameworks are linked at the various levels of government. They have to be structured so that power may be devolved from the central government to the provincial and village levels. There are problems if the systems are not transparent. For example, in Indonesia when the country was run by an integrated military industrial government that dealt with business, if the mines had a problem, they complained to the government who sent in the army.

It is not possible to operate a mining operation to the same standard as in the home country without knowledgeable regulators and inspectors to ensure that the standards and conditions are being met. This is an essential condition in developed countries such as Canada, Australia and the US. There is always the problem that inspectors may be paid to ignore infractions, although this is generally harder to do in developed countries.

Some developing countries have well-established legal and regulatory frameworks and a vigilant press that monitors and reports any problems. For example, in India there are well-defined mining laws and labor laws to protect the labor force engaged in the mining activities and provide workers with medical and other facilities. Indian Labor and Trade Unions defend labor interests and engage with government to frame labor policies. However, despite generally good attention to working conditions, enforcement at small-scale, remote operations may be deficient. Operating mines in India are required to keep records of all employees and are not allowed to employ children below the age of 18 years.¹⁷³ Women are not permitted to work underground or between 7:00 p.m. and 6:00 a.m. Workforce wages and salaries are adjusted every six months according to the average consumer price index. Contract labor is also regulated

¹⁷³ Mines Act, 1952.

and subject to government inspection. The large imports of asbestos caused by a ban on mining any of the large reserves in India is cited as an example of the attention to health and safety in the mining industry.¹⁷⁴ There is no evidence of India relaxing regulatory requirements in the global competition to attract foreign investment.¹⁷⁵

(3) Treaty and voluntary code influence on local legislation and regulations

Along with the growing acceptance of human rights business responsibility attention has been drawn to some legal issues. Questions raised include:

- Why is international law relevant?
- To what extent are there legal responsibilities in current law?
- What are future trends?

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. For over two hundred years, international law has held individuals responsible for certain human rights violations.¹⁷⁶ For example, international treaties specify responsibility for genocide, some types of terrorism, slavery, and for some types of pollution. More recently, private parties have been found to be so intertwined with government or government activities that international legislation is applicable.

There is an argument against legislation that holds corporations accountable for human rights violations and/or complicity in human rights abuses. The argument is that voluntary initiatives and self regulation are more effective and more achievable – legislation is difficult to enforce in some countries where the regulatory role is often left to weak institutions at the national level in jurisdictions that may also have inadequate local laws.

However, a mining company's home country legislation could 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. Of course, the mining company's home country legislation

¹⁷⁴ "The asbestos mining has been restricted in the country because it was felt that 0.5 fibre/cc years exposure would lead to health problems of the workers despite the fact that research in this field has established that if occupational exposure to asbestos is in range of 25 fibers/cc years and below it would not lead to any clinical manifestation of asbestosis" personal communication, R. K. Sharma, Secretary General, Federation of Indian Mineral Industries, August 31, 2001.

¹⁷⁵ "Though the mining industry in India has been opened up for foreign investors most of the mining companies are currently in the exploration and prospecting stages. Moreover these companies are going to be fully mechanised mines and therefore the question of 'powerful overseas mining lobby bullies them into rolling back regulations and restrictions' does not arise." Sharma, op cit.

¹⁷⁶ Steinhardt, Ralph G. "Litigating Corporate Responsibility." Paper presented at the Global Dimensions Seminar, Corporate Responsibility and Human Rights, United Nations, New York, June 1 2001.
<http://www.globaldimensions.net/articles/cr/steinhardt.html>

may not be the most strict that it has to follow when it also operates in another country with more stringent legislation. These issues 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.

As mentioned above, the scope of existing international law provides a direct obligation on states to take appropriate steps to protect human rights. There is a trend to create obligations for companies to take positive steps to protect human rights in the countries where they operate. Voluntary codes of conduct attempt to define acceptable corporate practices in the area of human rights; for example, there is a draft of UN guidelines for corporate conduct developed by the Commission for Human Rights.¹⁷⁷ Such voluntary codes of conduct will be consulted by courts hearing cases of alleged human rights violations 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 trend for International Law obligations to be covered by home country legislation. The problem lies with some host governments, their regulations and judicial systems.

(4) Consequences for non-compliance

In the debate over legal requirement vs. voluntary principles and codes of conduct, there are some who do not see how anything that is purely voluntary will work due to the nature of business. The company can build good relationships with the community and then there may be personnel changes resulting in a change in ideas. They believe there is a need for a legally binding system and for national legislation.

Another view is that voluntary principles have merit because they may be more powerful than weak government regulations and if the company buys into the value system, it can be more motivated to comply. A legal system presupposes good governance that depends upon the capacity in the institutions of the host country. In many countries there is a need for capacity building in such areas as

¹⁷⁷ drafted by the UN Working Group on the Working Methods and Activities of Transnational Corporations, a sub-group of the UN Sub-Commission on the Promotion and Protection of Human Rights. For more details see below in section 3 c) iv) *United Nations and NGOs input on human rights issues*.

strengthening the judiciary, enhancing its independence, and/or eliminating corrupt practices.

Some NGOs are reluctant to trust the mining industry to police itself effectively and have concerns that self-regulation is a mechanism to give an appearance of regulation, and a way to avoid government legislative and regulatory action.¹⁷⁸

Violations of human rights demand an appropriate focus depending on the level of abuse:¹⁷⁹

- Direct causes: workplace rights, racial/sexual discrimination; freedom of expression, security forces using excessive force to protect property
- Some forms of activity such as mining displace people and degrade the environment; issues of self determination, forces of self determination; the entry of a corporation can be complex. The government has security forces or the company hires security companies and has direct involvement
- Indirectly: the corporation uses its economic power to locate development planning investments that require the stifling of free expression or criticism (while a mining company cannot change the location of mineral deposits, it can consider the implication of operating in countries where there are human rights abuses).
- Corporation facilitates violations, or benefits from them, such as when the Colombian army protects its property.
- Partnership/collaboration: have government in another state, US company in a project overseas, regardless of the consequences, collision with host state, corporation benefits from inaction.
- Direct collusion when State officials and company officials are one and the same, e.g., in Asia/Pacific countries.
- Non-intervention, companies are often not interested in intervening to protest to a government about its treatment of individuals outside of any operations.
- Nonsense to say the presence of a corporation involves no responsibilities and does not change the local culture. Its very presence, by being there, is not neutral. Corporate intervention with governments on issues about investment and tax issues is considered acceptable, but many corporations consider intervention to effect change on behalf of social and political issues (such as human rights) unacceptable.
- Need for legal test of accountability: did the company know in advance and did the project benefit? or some other tests such as:

¹⁷⁸ Sullivan and Frankethal, op cit.

¹⁷⁹ Developed from discussions with Professor Christine Chinkin, International Law, London School of Economics, 2001.

Did the company only have a presence? Was there complicity? Did it aid/abet? Use the test from domestic laws. Discuss the test of international crimes.

Some companies want to distinguish civil and political rights from other human rights. But as discussed at the beginning of this paper, there is no distinction between civil/political/economic/social/cultural rights and they need to be recognized as indivisible. The market place cannot separate civil/political rights from economic/social/cultural rights.

Workplace rights are characterized as freedom of association, participation, and expression and the denial of worker rights eventually leads to slavery. There may be an individual violation rather than systematic abuses. If there are violations of civil/political rights in addition to economic/social/cultural rights, priority has to be given to them

Legal accountability under home country legislation would be a move away from the traditional international accountability under host country legislation. This would lead to international legal standards. One precedent for this is legislation that OECD countries are introducing with respect to bribery and corruption on behalf of their corporations operating abroad.¹⁸⁰ Corporations in some countries have accepted the right to receive diplomatic protection from their home country legislation against expropriation and nationalization, protection against impediments to remittances and repatriation of capital, the right that property can be resold, and damage to property from civil unrest.¹⁸¹

There is an interpretation that the Universal Declaration of Human Rights is applicable to corporations since it proclaims that “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.¹⁸² There are duties and obligations that go along with the rights. As mentioned above, a business group has developed guidelines for corporations not just to avoid abuses but to take positive action.¹⁸³ Just as it is normal for corporate intervention on trade and tax issues, corporate intervention can lead to improved human rights conditions.

Voluntary codes are considered by some to be a backward step, since these public statements of policy raise expectations, but non-binding

¹⁸⁰ in line with the recently-agreed OECD convention on bribery and corruption.

¹⁸¹ in the form of generic foreign investment protection agreements negotiated between home and host countries of investing corporations, including provisions for arbitration of disputes.

¹⁸² Frankental and House, op cit.

¹⁸³ Checklist for corporations/enterprises interested in investing strategic efforts in human rights issues, Confederation of Norwegian Business and Industry (NHO), 1998.

guidelines lower standards and such aspirations can be used as an excuse to rationalize.

The Universal Declaration of Human Rights is generally accepted as having the force of customary international law, the European Convention for the Protection of Human Rights and Fundamental Freedoms as well as ratified covenants, conventions and treaties are binding in law, while other declarations, resolutions and understandings on human rights form part of the wider body of soft law. The existence of a code of conduct can be used to justify a lack of action – not a need to take local action. Interest groups from outside are concerned about issues of non-accountability which are raised and indirectly linked to state responsibility.

(5) Equitable distributions of economic benefits

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 is a competing set of priorities for government to decide between the mining community, the local community, indigenous people, or to support poorer people in other parts of the country.

However, some governments are making changes in the way mining royalties are distributed and even how decisions about mining projects are decided. For example, the recent revision of the Thai constitution incorporated a provision that the government should involve people from the community in the area of a new project in the decision-making process.¹⁸⁴ Before a mining license is issued the local district council gives an opinion whether it agrees with the proposed mining project. The constitution also provides that mining royalties will be shared fifty percent to the central government, thirty percent to the District Council and twenty percent to the Province. There is some concern in the Thai administration about the lack of local technical capacity that the central government is addressing by looking for mechanisms to strengthen technical and decision-making capacity at the district and provincial levels.

Similar problems need to be addressed in Indonesia which is moving to a decentralized system of government with authority devolved from the federal government to the province and village level; mechanisms to deal with problems in a credible way are not yet established.

¹⁸⁴ Based on a discussion with Deputy Director-General, Department of Mineral Resources, Thailand, August 2001.

iii) *Legal Instruments and Decision Making Processes*¹⁸⁵

There is a trend to move from activism and pressuring corporations to litigation which is the preferred mechanism to resolve US domestic disputes. Companies that do not subscribe to voluntary codes or principles or those that violate these codes do not face direct penalties although there are some risks (discussed above). There is potential for litigation in four aspects of corporate responsibility for violations of human rights and complicity in human rights abuses:

- 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. Self-regulation is a mechanism to avoid regulations and consequent liability for complicity in human rights abuses.
- Home country legislation, such as in the US uses human rights issues as foreign policy considerations to control corporate activities in countries such as Burma, Libya and Cuba (and in South Africa under the 1986 Anti-apartheid Act). However, such home county legislation may conflict with the legislation in other countries where the corporation does business. For example, it is a violation of Canadian law for a Canadian company that does business in the US to follow US government legislation or directives against operating in Cuba.
- Emerging international regulations and soft law instruments concerning human rights: OECD principles; UN Global Compact; UNHRC draft code of conduct for corporations; International financial institutions requirements
- 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. The market works well with litigation. There is a need to establish standards against which to judge human rights records in court. Certainly, the US court system is not cost free! 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.

There is a trend to use the US courts with suits under special statutes in California and New York that permit legal action in the case of abuse of human rights. Currently there are several actions pending in California Supreme Court on the following issues:

¹⁸⁵ Based on remarks on the use of the courts to enforce human rights norms by corporations, by Professor Ralph Steinhardt, Arthur Selwyn Research Professor of Law, The George Washington University Law School

- A deceptive practices action claim on human rights where a public statement by the company that made a commitment to human rights was misleading– the case was dismissed on procedural grounds, and the issue was not tested – this case did not involve international law. The issue would have been in the area of unfair business practices.
- A move to cancel a corporate charter for abuse of public trust.
- The power of the SEC to issue 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 US Judiciary Act, 1789 established a federal court system which had jurisdiction for “all causes where an alien sues for a tort only in violation of the law of nations or a treaty of the United States.”^{186,187} 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 US judicial system is being used to enforce corporate accountability globally.

There has been a series of actions under the US Alien Tort Claims Act, 1789, (Section 1350) which offers a mechanism to test the legal standard of norms.¹⁸⁸ In 1980 it was used as a vehicle for human rights cases. The

¹⁸⁶ The Judiciary Act of 1789, Sec.9.

¹⁸⁷ A tort is a private wrong done against an individual arising independent of contract and unauthorized by law.

¹⁸⁸ The U.S. Second Circuit Court of Appeal included the following in a September 2000 decision: “The Alien Tort Claims Act was adopted in 1789 as part of the original Judiciary Act. In its original form, it made no assertion about legal rights; it simply asserted that ‘[t]he district courts shall have original jurisdiction of any civil action by an alien for a tort only, committed in violation of the law of nations or a treaty of the United States.’ 28 U.S.C. § 1350. For almost two centuries, the statute lay relatively dormant, supporting jurisdiction in only a handful of cases. See, e.g., *Filartiga v. Pena-Irala*, 630 F.2d 876, 887 & n. 21 (2d Cir.1980) (identifying only two previous cases that had relied upon the ATCA for jurisdiction). As the result of increasing international concern with human rights issues, however, litigants have recently begun to seek redress more frequently under the ATCA. See, e.g., *Abebe-Jira v. Negewo*, 72 F.3d 844 (11th Cir.1996) (alleging torture of Ethiopian prisoners); *Kadic v. Karadzic*, 70 F.3d 232 (2d Cir.1995) (alleging torture, rape, and other abuses orchestrated by Serbian military leader); *In re Estate of Ferdinand Marcos*, 25 F.3d 1467 (9th Cir.1994) (alleging torture and other abuses by former President of Philippines); *Tel-Oren v. Libyan Arab Republic*, 726 F.2d 774 (D.C.Cir.1984) (alleging claims against Libya based on armed attack upon civilian bus in Israel); *Filartiga*, 630 F.2d 876 (alleging torture by Paraguayan officials); *Xuncax v. Gramajo*, 886 F.Supp. 162 (D.Mass.1995) (alleging abuses by Guatemalan military forces).

These suits produced several important decisions interpreting the meaning and scope of the 1789 Act. For example, in [*Filartiga v. Pena-Irala*], this court held that deliberate torture perpetrated under the color of official authority violates universally accepted norms of international human rights law, and that such a violation of international law constitutes a violation of the domestic law of the United States, giving rise to a claim under the ATCA whenever the perpetrator is properly served within the borders of the United States. More recently, we held in [*Kadic v. Karadzic*], that the ATCA reaches the conduct of private parties provided that their conduct is undertaken under the color of state authority or violates a norm of international law that is recognized as extending to the conduct of private parties.

In passing the Torture Victim Prevention Act [TVPA], Congress expressly ratified our holding in *Filartiga* that the United States courts have jurisdiction over suits by aliens alleging torture under color of law of a foreign nation, and carried it significantly further. While the 1789 Act expressed itself in terms of a grant of jurisdiction to the district courts, the 1991 Act (a) makes clear that it creates liability under U.S. law where under ‘color of law, of any foreign nation’ an individual is subject to torture or ‘extra judicial killing,’ and (b) extends its remedy not only to aliens but to any ‘individual,’ thus covering citizens of the United States as well. [] The TVPA thus recognizes explicitly what was perhaps implicit in the Act of 1789-- that the law of nations is incorporated into the law of the United States and that a violation of the international law of human rights is (at least with regard to torture) ipso facto a violation of U.S. domestic law. []

jurisdiction was confirmed and expanded in the 1991 Torture Victim Prevention Act, 28 U.S.C. §1350 App. There are two qualifying factors where international responsibility occurs:

- (1) 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.
- (2) Activities which, by virtue of the relationship between the private actor and the State, can trigger constitutional responsibilities.

Current cases are pending to test this mechanism and the reach of the law.

- 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 UK or Dutch court and the US was an inconvenient venue for the case. The appeal allowed the case to proceed since there were US interests involved. The US Supreme Court declined to review the case.
- Unocal is part of a joint venture in Burma where the army cleared the way for the project with cheap labor, forcefully relocating villages, torture, rape, and forced labor. 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

Whatever may have been the case prior to passage of the TVPA, we believe plaintiffs make a strong argument in contending that the present law, in addition to merely permitting U.S. District Courts to entertain suits alleging violation of the law of nations, expresses a policy favoring receptivity by our courts to such suits. Two changes of statutory wording seem to indicate such an intention. First is the change from addressing the courts' 'jurisdiction' to addressing substantive rights; second is the change from the ATCA's description of the claim as one for 'tort ... committed in violation of the law of nations ...' to the new Act's assertion of the substantive right to damages under U.S. law. This evolution of statutory language seems to represent a more direct recognition that the interests of the United States are involved in the eradication of torture committed under color of law in foreign nations. ...

One of the difficulties that confront victims of torture under color of a nation's law is the enormous difficulty of bringing suits to vindicate such abuses. Most likely, the victims cannot sue in the place where the torture occurred. Indeed, in many instances, the victim would be endangered merely by returning to that place. It is not easy to bring such suits in the courts of another nation. Courts are often inhospitable. Such suits are generally time consuming, burdensome, and difficult to administer. In addition, because they assert outrageous conduct on the part of another nation, such suits may embarrass the government of the nation in whose courts they are brought. Finally, because characteristically neither the plaintiffs nor the defendants are ostensibly either protected or governed by the domestic law of the forum nation, courts often regard such suits as 'not our business.'

The new formulations of the Torture Victim Protection Act convey the message that torture committed under color of law of a foreign nation in violation of international law is 'our business,' as such conduct not only violates the standards of international law but also as a consequence violates our domestic law. In the legislative history of the TVPA, Congress noted that universal condemnation of human rights abuses 'provide[s] scant comfort' to the numerous victims of gross violations if they are without a forum to remedy the wrong. [] This passage supports plaintiffs' contention that in passing the Torture Victim Prevention Act, Congress has expressed a policy of U.S. law favoring the adjudication of such suits in U.S. courts. If in cases of torture in violation of international law our courts exercise their jurisdiction conferred by the 1789 Act only for as long as it takes to dismiss the case for forum non conveniens, we will have done little to enforce the standards of the law of nations.

This is not to suggest that the TVPA has nullified, or even significantly diminished, the doctrine of forum non conveniens. The statute has, however, communicated a policy that such suits should not be facilely dismissed on the assumption that the ostensibly foreign controversy is not our business. The TVPA in our view expresses a policy favoring our courts' exercise of the jurisdiction conferred by the ATCA in cases of torture unless the defendant has fully met the burden of showing that the [] factors 'tilt [] strongly in favor of trial in the foreign forum.' [] "

[see: <http://cyber.law.harvard.edu/torts3y/readings/update-a-02.html>]

facts against Unocal were insufficient to connect it to the acts. This raised the questions of what facts are needed.

- Chevron is 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. In May 1999, the case was filed in US District Court in San Francisco.
- Exxon-Mobil is 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 US Federal District Court in June 2001. It claims 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 claims that Exxon-Mobil provided barracks where the military tortured detainees, and lent heavy equipment that was used to dig mass graves.

Objection to legal actions:

- The entire corporate responsibility lobby impinges upon corporate responsibility for the bottom line.
- There are now long distance dangers of liability
- It puts US corporations at a disadvantage
- Greater human rights obligation on those companies that are adapting. Those companies not adapting can operate more freely.
- Human rights activists say they are protective and unambitious.
- Corporate human rights is not good business, activists surrender high ground. If it is not good for the bottom line, then what?
- If there is no connection to the US in the cases, they become unilateral actions. There are criticisms that this is US legal imperialism.¹⁸⁹
- The cases are political, with a lack of judicial standards, but they have been accepted by the legal system
- A corporation may be held to be an agent of the State, if it is more than half owned by the government. If human rights are abused a case could go forward.
- The Law of Nations is not law, it is manipulable; if the US has not adopted the Treaty, there is the issue of double standards; it is too vague; custom requires near universal practice; abuses of free speech or freedom of association are not instantly applicable; there is no assurance a judgement can be enforced.

¹⁸⁹ Glaberson, William, U.S. Courts Become Arbiters of Global Rights and Wrongs, The New York Times, June 21, 2001.

Corporate responsibility is said to be analogous to the development of best practices to accommodate the interests of merchants for a mercantile law in the 1700s.

(1) Treaties & Codes

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.¹⁹⁰

(2) Local legislation

Governments have the primary responsibility to respect, ensure respect for, and promote internationally recognized human rights that were discussed earlier in this report. The responsibility for legislation rests with the host country. However, when the international framework and local laws are weak the host country needs to be committed to the rule of law, whereas the state may be unable or unwilling to take action and may have weak capacities to enforce legislation and may have corrupt systems.

(3) Host country *versus* home country liabilities

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 UDHR 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. Only a few years ago, human rights issues 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.

¹⁹⁰ 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 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, et al.

There is a trend for countries to extend the reach of their domestic law for war crimes: e.g., Spain and Pinochet in the UK, but it has not yet been extended to corporate responsibility. Legal actions in the US, UK, 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.

'Foreign direct liability' is the corollary to foreign direct investment and part of the globalization process.¹⁹¹ 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 issues as the litigation is seen as infringing on national sovereignty in the host country. The cases raise issues of governance in the host country where the courts may be corrupt and biased. The threat of liability could motivate business change.

iv) United Nations and NGOs input on human rights issues

The United Nations Commission for Human Rights is the primary multilateral organization with direct responsibility for human rights. As mentioned above, the UN Working Group on the Working Methods and Activities of Transnational Corporations, (a sub-group of the UN Sub-Commission on the Promotion and Protection of Human Rights), prepared the 'Draft Universal Human Rights Guidelines for Companies'.¹⁹² The United Nations invited corporations to adopt The

¹⁹¹ Ward, Halena, *Governing Multinationals: The Role of Foreign Direct Liability*, Briefing Paper No. 18, Royal Institute of International Affairs, February 2001.

¹⁹² The following background to the 'Draft Universal Guidelines for Companies' (being renamed 'fundamental principles') was extracted from a report by Dr. David Weissbrodt, Fredrikson and Byron Professor of Law, University of Minnesota, for meeting of the Working Group on the Working Methods and Activities of Transnational Corporations in 2001: "There is increasing concern about large businesses that operate beyond the reach of any one State. Many of these large corporations, commonly referred to as transnational corporations (TNCs), may already be subject to some international norms, but they are often able to use their great political and economic power to evade national legal limits. Industry groups, trade unions, NGOs, intergovernmental organizations (IGOs), and others have begun to respond to this issue. One response has been the creation of codes of conduct for adoption by TNCs themselves, trade unions, industry groups, and others. Codes of conduct generally delineate the principles a TNC or other business entity should follow in regard to such issues as worker's rights, consumer and environmental protection, security arrangements and other human rights concerns... recommended the adoption of new international legislation and the creation of effective international institutions to regulate the activities of TNCs and banks....At the first meeting in 1999, the Working Group ... asked .. to prepare a draft code of conduct for TNCs. ...at this year's meeting, the Working Group considered ... the impact of TNC's activities on the enjoyment of economic, social, and cultural rights... the responsibilities and procedures for implementation and compliance on human rights guidelines for TNCs... the draft guidelines....[and] technical comments on the draft guidelines. The discussion...focused around several key issues...

1. Binding or Voluntary? ... whether the draft guidelines should be implemented as a voluntary set of guidelines, or if the Working Group should pursue a binding set of guidelines. From the beginning, there was a high degree of consensus that the Working Group should pursue a binding set of guidelines. Several arguments were raised in favour of binding guidelines. First, purely voluntary guidelines may only reproduce the efforts of many other groups that have already created and implemented avenues to encourage businesses to adopt voluntary guidelines. Second, ... there was an urgent need for practical methods of enforcing human rights standards against TNCs and that voluntary guidelines do not contain any methods of enforcement. Third, States are sometimes too weak or too focused on attracting international investment so that the State cannot or will not stand up to TNCs. International standards could be used to encourage governments to stand up to TNCs. ...[C]oncerns...First, transnational corporate responsibility standards should not diminish the responsibilities and obligations of States to protect human rights. States still carry the primary obligation to enforce laws within their respective

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 recommends responsible behavior 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 labor. Eighty percent of the 80-100 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.”¹⁹³ 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 labor is reported in countries as widespread as Ghana,

boundaries and States should not be able to abrogate these obligations or depend on enforcement from an outside body. Second, ... it may take many years to produce a treaty relating to TNCs and other businesses ... [there is] a desperate need to hold TNCs accountable as soon as possible rather than waiting for years to develop a treaty. Third, ... a binding instrument could only represent a watered-down version of the necessary standards... the Working Group concluded that eventually the Guidelines should be binding as “soft law,” or as an authoritative interpretation of existing treaties and other international legal obligations. One expert noted that in light of the need for speed, a set of soft law guidelines would have a clear advantage. The soft law method would result in an immediate standard and methods of implementation, while still not foreclosing the option of developing a treaty at a later time. Soft law standards may be adopted at any one of the many different levels within the U.N., although they are ordinarily considered more authoritative if they are adopted by higher organs such as the General Assembly. The Draft Guidelines could be adopted and promulgated: (1) by the Working Group; (2) by the Sub-Commission; (3) by the Commission on Human Rights; (4) by the Economic and Social Council; and/or (5) by the General Assembly.

2. All Businesses or only TNCs? ... whether the guidelines should apply only to TNCs or to all companies. While some ... indicated that TNCs are the source of the most serious problems, the great majority of the participants seemed to agree that the guidelines should apply to all companies. Participants were concerned about the difficulty of defining “transnational companies.” They noted that TNCs would be more likely to comply with standards that apply to all companies. Transnational corporations might also be capable of avoiding compliance with narrow standards applicable only to TNCs by transforming themselves into a group of national companies. Several participants in the Working Group session, however, argued that national companies should be regulated by the State in which it is located and the role of the State should not be reduced through U.N. adopted guidelines. The purpose of the Working Group, those same people argued, was to examine the activities of TNCs that are currently functioning beyond the borders of any one national framework and create an international framework to hold these actors accountable. They argued that the inclusion of other businesses went beyond the mandate to “identify and examine the effects of the working methods and activities of transnational corporations . . .” A middle ground considered that the guidelines should be written with binding standards that apply to TNCs and other companies. Accordingly, the guidelines should recognize the responsibilities of larger and more influential companies to use their greater influence to promote human rights in their respective communities. The Draft Guidelines before the Working Group at its third meeting incorporated this third suggestion; the Guidelines applied to all businesses, but TNCs were given unique responsibilities when their size and power enabled them to evade national responsibilities and to do other things smaller companies may be unable to do.

3. Continued Mandate Because the Working Group did not come to a full consensus on many of the above and other issues, and because there is still much need for more discussion on implementation, the Working Group’s mandate was renewed for another three years. ... The mandate’s renewed tasks include: (1) examining, receiving, and gathering information on the effects of the working methods and activities of TNCs on the enjoyment of economic, social, and cultural rights and the right to development; (2) compiling a list of various existing regional and international agreements on investment, trade, and services, in relation to the activities of TNCs, and their impact on human rights, and an analysis of their compatibility with various international human rights instruments; (3) requesting the secretariat to prepare each year a list of countries and TNCs, indicating, in U.S. dollars, their gross national product and financial turnover; and (4) considering the scope of the obligation of States to regulate the activities of TNCs, where their activities have or are likely to have a significant impact on the enjoyment of economic, social, and cultural rights and the right to development, as well as civil and political rights of all persons within their jurisdiction. ... the Working Group should develop standards that focus on TNCs but also cover other companies.”

¹⁹³ Small-scale mining on the increase in developing countries, health and safety risks imperil miners, women and children, ILO, May 17, 1999.

Guinea, Niger, Peru, Tanzania and Philippines.¹⁹⁴ ILO is convening a workshop to address working conditions for cutting and polishing gemstones with all the major countries in this industry (Belgium, US, Israel, South Africa, India, Sri Lanka and Thailand). Child labor will be one aspect considered. The Indian government is reported to have specified gem cutting and polishing as one of the worst forms of child labor, 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 address the problems.

UNICEF promotes and protects children's rights on the basis of the *Convention on the Rights of the Child*, and addresses 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.^{195,196,197} UNICEF has collaborated with the private sector for over fifty years and developed specific guidelines and a manual for working with the business community which are used to screen acceptable partners.¹⁹⁸ 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 issues 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 issues are not a high priority for funding and have limited staffing available to address them.

¹⁹⁴ *ibid.*

¹⁹⁵ *Report of the Panel of Experts on the Illegal Exploitation of Natural Resources and Other Forms of Wealth of the Democratic Republic of the Congo*, S/2001/357, Security Council, United Nations, 12 April 2001.

¹⁹⁶ *Children and Armed Conflict, Report of the Secretary-General*, S/2001/852, Security Council, United Nations, 7 September 2001.

¹⁹⁷ General Assembly, United Nations. *Situation of Human Rights in Myanmar, Note by the Secretary-General*, Fifty-sixth session, Item 131 (c) of the provisional agenda, 20 August 2001.

¹⁹⁸ UNICEF Guidelines and Manual for Working with the Business Community, Identifying the Best Allies, Developing the Best Alliances, 2001.

NGOs have a major role in human rights issues, including, Amnesty International, Human Rights Watch and others directly concerned with monitoring human rights, and those concerned with issues 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 labor in Viet Nam.¹⁹⁹

v) *Corporations' community relations role and interactions with local communities*

Mining corporations need to take an active community relations role and interact with local communities to explain their projects and their social/political/economic impact in order to obtain a 'social' license to operate.

(1) Sri Lanka

The proposed phosphate project at Eppawela, Sri Lanka, is a recent case of a project where the investors did not get the support of the local community. It has been put on hold since the people in the area do not support it. However, many technical experts consider it to be a good project for the country with significant benefits to the community, but the project sponsor did not adequately explain the project's benefits and how the company would properly handle the environmental issues. The draft agreement provided that the company "conform to applicable environmental protection laws and regulations."²⁰⁰ The facts were distorted by groups opposed to the project. This project had been negotiated between IMC and the government for more than ten years. Previously Freeport McMoRan were the equity partners. Freeport had initiated negotiations, which were initially carried out by Freeport Indonesia, but the parties found it difficult to negotiate with Freeport Indonesia and the parent company realized the problems, and then negotiated directly. Some observers suggested there was a possible parallel here between the Grasberg experience and the initial problems in Sri Lanka.

The area of the proposed mining is characterized as "a place of pristine beauty and significance which supports a thriving 2000-year old civilization."²⁰¹ In 1997 and 1998 there were demonstrations against the project by tens of thousands of local residents.²⁰² The destruction to be caused by the mining operation was said to go "beyond the dislocation which will be suffered by these people if they are driven from their homes, fields, schools, and temples by American bulldozers. ... the destruction of this region's ancient and complex civilization, and of its fragile ecosystem, would be permanent."²⁰³ The project was taken to court by six land owners in a

¹⁹⁹ From Housework to Gold Mining, Child Labour in Rural Vietnam, Save the Children (UK), May 1997.

²⁰⁰ Mineral Investment Agreement between the Government of the Democratic Socialist Republic of Sri Lanka and (THE PROJECT COMPANY) and Lanka Phosphates, Ltd., draft, December 6, 1996.

²⁰¹ Walters, Johnathan S, The Eppawala Phosphate Scheme: A Lose-Lose Proposition, Report to Tomen Corporation, December 1999,

²⁰² Culture and Environment of Eppawala, www.people.edu/~walterjs/culture.html

²⁰³ *ibid.*

fundamental rights case claiming “that they were in danger of losing their lands and livelihood as a result of this government-sanctioned project.”²⁰⁴ They also claimed that “the project was being entered into in a manner that circumvented the environmental laws of the country.” The court found “that the petitioners had established an imminent infringement of their fundamental rights” and a deliberate attempt by the parties to bypass Sri Lanka law. It ordered the government not to sign any agreement until a “comprehensive exploration and study had been carried out” and emphasized “the importance of the “precautionary principle”” where there is potential “serious or irreversible” environmental damage according to the Rio Declarations.²⁰⁵

A suggestion was made that the “demonstrations [against the project] should be viewed with caution as it is apparent that opportunistic politicians ... along with the NGOs” have “deliberately misinformed” the public,²⁰⁶ motivated by foreign NGOs wanting to block any developing country activities. The demonstrators invoked objections to Freeport McMoRan which had not been involved with the project for several years. Concerns were expressed about damage to nearby important sites such as Sri Maha Bodhiya, actually situated thirty kilometers from the deposit. There was a view that the real complaint should have been that the deposit which could provide benefits to the country, although identified in 1971, has remained undeveloped for more than 30 years.²⁰⁷

This case illustrates how important it is to ensure the community is involved from the start, and that the project sponsor provides adequate information that demonstrates the advantages of the project including any spin off benefits and deals fully with the environmental questions.

(2) Peru

There are other examples where the adversarial relationship persists. In Peru, Manhattan Minerals is developing a mineral prospect at Tambogrande. The claim made was that assertions by the company about the proposed project’s impact are not substantiated by any assessment or materials provided by the company. A further claim was that there is no public information on the project’s impact nor any adequate environmental baseline data. It was claimed that the company could produce more documents, and that the local community has not been given enough data to make a decision. There is opposition to the project from the community; Robert Moran, an environmental consultant, who went down to assess the situation for the Mineral Policy Center and others, met

²⁰⁴ S.C. judgment vindicates Eppawala objectors, *The Island* politics, June 11, 2000.

²⁰⁵ *ibid.*

²⁰⁶ Wijayarathne, Kamila, Eppawala phosphate deposits in relation to the development of the country, University of Sri Jayawardhanapura, 2000.

²⁰⁷ *ibid.*

representatives of local NGOs and the company asking for more public information to gain a better understanding of the project. Then he talked to local people. He concluded that there are inadequate baseline data, and in his view the government/company should ask for community consent only when they have been put in a position to make a fully-informed decision.²⁰⁸

Another view of the situation points out that Tambogrande is located downstream of an irrigation scheme developed in 1960s with a large World Bank loan.²⁰⁹ There has been limited agricultural productivity for several reasons including a lack of maintenance of the system by the government since it was built. An initial conflict between mining and agriculture began during the 1970s and 1980s when BRGM and Minera Peru were jointly working to develop the Tambo Grande copper/zinc/gold/silver deposit. Later, during the time of the Shining Path terrorist activities, BRGM withdrew from the project.

Tambogrande, is a town of 16,000, within the larger municipal district of San Lorenzo containing about 70,000 people. The agricultural area is upstream of the town and potential mining area. During the late 1990s Manhattan Minerals negotiated the right to earn BRGM's interest in the Tambogrande deposit. A Presidential decree was issued stating mining could proceed in the National interest which upset the agricultural community that had been ignored by the government.

While Manhattan had not provided much information on its project, it made the mistake of trying to organize the local population into a dialog about relocating to make way for a mine, before the EIA (environmental impact assessment) was completed or the company negotiated on environmental impact. Documentation presented in response to requests from NGOs was preliminary, and by its nature deficient.

From the company's point of view it has not done anything substantially invasive. It obtained permission to drill, paid compensation to the landowners, and hired temporary workers from the town at relatively good wages. This caused economic and social tensions from the distribution of benefits and put up the cost of farm labor. The poor seasonal workers from town were no longer available to work for lower wages for farmers in the region who had depended on them for the past thirty years to harvest the mangos. Similarly; the processing and packaging plants also relied on them for seasonal work converting surplus lemons into lemon oil.

Many in the town are interested in the potential economic benefits of the project. Whereas much of the agricultural community is against

²⁰⁸ Moran, Robert E., *An Alternative Look at a Proposed Mine In Tambogrande, Peru*, Report commissioned by: Oxfam America, Washington DC, USA; Mineral Policy Center, Washington DC, USA; Environmental Mining Council of British Columbia, Vancouver, Canada, August 2001.

²⁰⁹ Personal communication, August 2001.

mining, it is the small farmers who feel particularly threatened. However, there are some willing to engage who want to wait and listen, and who are interested in the opportunity to get some investment into their community.

An increase in the cost of farm labor will impact medium and large producers. A large influx of money into the local economy may cause inflation, as in the area of Yannoccha where many people not working for the mine cannot afford to buy meat.

Aware of other tensions, and concerns, the company plans a social-economic study of the district, and will then make a further analysis on how the mine will impact the local economy and what could be done to mitigate the impact. This will be part of the EIA.

(3) Difficulties for junior mineral exploration companies²¹⁰

This section will expand on the difficulties in which junior exploration companies find themselves. It should be recalled that during the 1990s the major mining companies made almost no discoveries of mineral deposits, principally acquiring dormant deposits from three decades earlier, and subsequently those discovered by junior exploration companies. One problem today is that there is currently no market for a junior exploration company to approach when it makes a mineral deposit discovery unless it is large scale, fitting the “world class” category desired by the major companies. This means that potentially highly profitable mines that could make significant contributions to local communities and national economies remain undeveloped or are extremely costly to finance (e.g. Yamana’s high grade small-scale underground silver mine in Argentina). With industry consolidation, as major mining companies have become larger, the number of mines they are now operating is becoming smaller or staying about the same. Some major mining companies have less than a dozen mines, but all are of the “world class” (very large and very long life operations.).

Worldwide there are of the order of 250 mining companies with operations producing income above US\$50 million per year and about 2,000 smaller producers with incomes under US\$50 million per year (these figures exclude industrial minerals and coal mining companies). There are about 3,200 junior exploration companies worldwide of which some 1,600 are active at any time due to financing constraints. Junior exploration companies were spending about Cdn\$200 million annually in 1991-1992 that rose to about Cdn\$1.6 billion in 1996-1997, and then declined to about Cdn\$200 million (the current level). Major mining companies had a similar spending pattern which increased from US\$2.0 billion to US\$3.4 billion, and then decreased to around US\$1 billion per year.

Increasingly in recent years, the major company expenditures are

²¹⁰ Developed from discussions with Gerald Harper, past-President, Prospectors and Developers Association of Canada; President, Gamma International, August 2001.

mostly on project development and advanced exploration projects with the focus on extending the life of existing operations.

The first problem with exploration at the grass roots level is that it is unrealistic to expect junior company prospectors to make social baseline studies without losing their competitive edge. They would not want to draw attention to their activities until the claims or concession is issued. After the company has received an exploration license, it typically has three years or so to prove a mineral deposit. Governments have written their laws to encourage exploration and they want and require the company to spend its funds on exploration and then deliver the results to the government. It is important to note that socio-political studies may not be approved expenditures under the terms of the lease or permit.

Junior exploration companies raise money with the objective of making their share price go up – this requires good news, i.e., positive results from prospecting that then enables them to raise funds for further field work. A junior exploration company will generally raise enough money to fund a field program of about \$500,000 in Latin America or about \$250,000 in Canada, and in that range elsewhere in the world. Clearly they do not have the available funding to spend \$50,000 on a socio-political study which represents 10% of the exploration budget – if they did, the investors would question the value. They would be inclined to place their money in exploration projects where all the funds went into exploration, or elsewhere in other non-mining speculative ventures.

As things are today, there is a need for other sources of funding for social-political studies for junior companies. Alternatively there needs to be an acceptance that the requirement for a junior company to undertake these studies could only be triggered when the project evolves from the exploration stage to an advanced exploration stage. Otherwise some other mechanism to fund the discovery of mineral deposits may be required. Certainly, the junior mining sector requires more attention as these companies generate many allegations of abuses.

(4) Cambodia

In 1992, during the peace keeping activities of the United Nations Transitional Authority in Cambodia (UNTAC), local Khmer police were shot at while following up reports of unofficial gold mining. The human rights violations included local police casualties and some civilians. When questioned, none of the Cambodians could remember where the shooting took place! Later information verified the presence of 1,200 Vietnamese gold miners, probably illegal and armed, producing about 10,000 chi per month [1 chi = 3.75g] in Ratanakiri Province.²¹¹ UNTAC did not pursue this border incident

²¹¹Vietnamese Gold Mining Operations in Ratanakiri, UNTAC memorandum, 14 January 1993 stated: "It was reported ... by Electoral and CIVPOL from O Ya Dav district that 1500 Vietnamese were running a gold mining operation in the district, and

which included human rights violations, illegal activities, foreign personnel in the country, extortion, tax issues, prostitution and danger to the local communities.

(5) Viet Nam

BRGM had an exploration concession in Viet Nam on which it found illicit gold mine operations with a State company as BRGM's partner. During exploration, BRGM found illicit miners and then the government arranged for the army to clear the area. BRGM negotiated a joint venture for an Indian company (Hindustan Zinc Limited) to proceed with exploration. The current status is uncertain.²¹²

(6) Kosovo

The Trepca zinc/lead mining complex in Kosovo was a major employer before the recent war, driving an estimated eighty percent of the Kosovar economy. There were around 10,000 mining and metal workers formerly employed at Trepca out of work because of the war. The complex included eight low-grade underground mines, three concentrators, zinc refinery, lead smelter and fertilizer plant.²¹³ Various groups claimed ownership of the resources. There were major environmental problems at the complex with health and safety problems to resolve. For example, the lead smelter had not been treating its waste and fumes before they were discharged into the environment causing an adverse impact on the health of the local

that the local police chief told them that the Khmer Rouge had threatened to attack, if the gold mining didn't stop. So we assembled a team, and set out to assess the situation. ... CIVPOL Chief Supt H. S. Pannu, officers, UNMO Team Commander, Colonel Yan, Civil Administration Provincial Deputy Director Kamran Khosrowshahi and Financial Controller John Williams, two CIVPOL officers, four Uruguay military, and three interpreters. We were joined in O Ya Dav by CIVPOL officer K.S. Bijumon who knew the location of the mines.

We travelled East on rte 16 for 16 km past O Ya Dav on route 16, then turned south for another 38 km to Pum Dur, a village of about 250 minority people. Another 4 km after beyond the village was a full scale, but rather primitive gold mining operation. There were shops, brothels, and make-shift housing spread across the hillside. Miners work in teams of 6 or 7, and dig connecting vertical shafts 2 meters wide, ranging in depth from 10 meters at the base of the hill, to 25 meters at the top. One or two miners work in the shaft, chipping away at the rock and placing it in buckets lowered to them on a rope. Two other miners break up the ore, and transport it to a crushing area. Here the last two members of the team grind the ore into a fine powder, and wash it with water to separate the heavier gold and metal particles from dirt and rocks. Gold has a low melting point, and when heated to a temperature of 500 - 600 degrees, the gold will melt, and it will separate from the other metals. The purity of the gold leaving the camp is about 80%, and must be further refined in Ban Lung to produce 24 carat gold.

A six man team will produce on average, 1 to 3 chi per day, depending on the richness of the ore. One tonne of gold ore (1,000 kg) can yield up to 30 chi of gold. Khmer businessmen from Ban Lund go to the mines, and pay up between \$30.00 and \$35.00 per chi (3.75gr) of gold. Team members share the gold equally - each receiving on average, 7 chi of gold per month.

Miners have been digging in this area since 1988. The mine that we visited was only a few weeks old, and was occupied by about 400 workers. The site was said to be of medium size, with a much larger one being a few km down the road, that we were not able to visit, due to pending darkness. In addition, the miners said that there were many small mines being operated in the area. So the reported figure of 1500 miners seems reasonable. Of these, 80% or 1200 were said to be Vietnamese, and the other 300 Khmer.

When we arrived at the mine, the situation was calm. The miners were self-confident, unafraid of outsiders, and seemed capable of defending themselves. Most miners were in their 20's or early 30's and believed to be armed. The Chief of O Ya Dav district reportedly collects mining fees, but when asked about this, he denied the allegation. Three local policemen were killed at the mining site in April 1992, for allegedly trying to extort money from the miners. Local [Khmer] police still visit the mine on a regular basis, but the purpose of these visits is not known."

²¹² Personal communication.

²¹³ letter to the United Nations Under-Secretary-General of Peace Keeping Operations, March 9, 2000.

community.

(7) Indonesia

As mentioned in this report, there is no doubt that there are issues of human rights abuses and indigenous peoples rights claims in Indonesia. Although they are frequently criticized, Newmont, BHP, INCO, Rio Tinto, and Freeport are said by some mining experts to be operating well-run mines.²¹⁴ Some NGOs focus on the major mining corporations and say little about the extensive illegal gold mining that involves the uncontrolled use of mercury to recover the gold (not used by the large operations) – a serious health hazard. There are rich Javanese business interests in the background behind these activities. Thousands of illegal miners are occupying gold deposits. Aurora Gold regularly opened its pit to illegal miners under an agreement with local officials in 1999, and may have to abandon its \$146 million investment in the Mount Muro concession.²¹⁵ NGOs have accused Aurora Gold of human rights abuses.

The Indonesian Mining Advocacy Network (Jaringan Advokasi Tambang — JATAM) position is “cease all new mining activities in Indonesia and to urge the government to revoke all mining licenses/permits given to all mining companies.”²¹⁶

Illegal coal mining is taking place on a major scale with a fleet of 200 trucks and 16 excavators operating. There are estimates that the illegal operations annually remove four million tonnes of the total 22 million tonnes coal in South Kalimantan. These operations are supported by “provincial and military officials as well as local businessmen.”²¹⁷ It was reported that the South Kalimantan Governor is convinced that “masterminds...just use local people as a shield to safeguard their illegal businesses” and suggested that a simplified procedure was required that provides mining permits for local people.²¹⁸

There were also reports of illegal mining and export of beach sands to Singapore for construction involving dredges. This illegal mining had been operating for a long time.²¹⁹ It is understood that a bilateral aid project is funding a study of the environmental impact of illegal mining in Sulawesi.

(8) Peru

Social investment programs are being funded by mining companies providing trust funds to foundations in partnerships with governments, NGOs and community organizations. The

²¹⁴ Private communication, June 2001.

²¹⁵ McBeth, John, Indonesian Mining Bleak Prospects, *Far East Economic Review*, December 16, 1999.

²¹⁶ Indonesian Mining Advocacy Network, Mineral Policy Institute, http://www.mpi.org.au/indon/eng_indon_profile.html

²¹⁷ *ibid.*

²¹⁸ Masterminds of illegal mining to be heavily penalized, *MiningIndo.com*, May 25, 2001.

²¹⁹ San Company belonging to Habbie's family under investigation, *Sijori Pos*, February 11, 2000.

Yannacoccha Association receives funding, management expertise and technical support from the Yannacoccha mining company and delivers community welfare programs (school meals, emergency shelter, tree and plant nurseries, sawmills and bridge construction) in partnership with Ade Four, ITDG, Care International, the Peruvian department of health and community association leaders.²²⁰

(9) Colombia

In Colombia, the Foundation of San Isidro was set up by the Cerro Matoso nickel mining company and has extended its activities to administer donor agency grants to enhance social development in the region.²²¹

(10) Bolivia²²²

The events that took place in the mining districts of Amayapampa, Llallagua and Capasirca in the province of Bustillos in the northern part of the department of Potosí Department, started as a management/labor dispute including control over gold mining license areas between an aggressive local management and radical traditional local miners. It escalated into hostage-taking, workers seizing the operations, and a violent confrontation with the police and military in December 1996 in which nine people were killed and 32 wounded.

The Bolivian Government invited the Inter-American Commission on Human Rights (IACHR), Organization of American States (OAS), to investigate the events at Capasirca and Amayapampa. The IACHR 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 labor 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. The IACHR mandate was to investigate the human rights situation in the events of December 19-22, 1996 to determine whether the state had an international responsibility for them. It did not have authority to determine criminal or individual liability and lacked the resources or capacity to do so. The international liability of a state in issues relating to human rights do not require intent or negligence. IACHR noted that as in other areas of law, such as tort liability, the mere existence of harm

²²⁰ Warhurst, *op cit.*

²²¹ Warhurst, *op cit.*

²²² Extracted from: "Report on the Events at Amayapampa, Llallagua, and Capasirca : Northern Part of the Department of Potosí , Bolivia, December 1996." Washington, DC: Organization of American States, Inter-American Commission on Human Rights, 1997.

may give rise to liability. Also the state's liability may arise from acts of subalterns and from the conduct of individuals not institutionally linked to the state.

Although once a thriving mining region, depressed metal prices (mostly tin) and inefficient, traditional mining methods led to a severe reduction in the level of mining activity, and the region becoming one of the most economically-depressed areas of Bolivia. In the past, tin mining had funded area highways, hospitals and an airport. The miners' unions were leaders of the 1962 revolution and the opposition to the dictatorship of the 1980s.

The importance of mine production, concentration of workers and difficult working conditions led to strong trade unions and the high level of labor and social unrest in the province in recent decades. Security forces intervened to repress miners resulting in massacres in 1942, 1949, 1965 and 1967.

The recent conflict dates to 1996, when Da Capo Resources, a Canadian company, bought two old gold mines, Amayapampa (worked in pre-Incan times) and Capasirca, from the local owners, and subsequently became part of Vista Gold Corporation. The new owners came into conflict with the mine workers, particularly at the Capasirca mine where conflicts and debts remained from the previous owners. The new management's desire to change from the traditional work practices in which the Mixed Trade Union of Mine Workers of Capasirca (especially its Secretary General) had a leading role in organizing gold production and extraction. The conflict to introduce new production methods to replace traditional approaches was aggravated by ideology and poverty in the region.

The Capasirca mine workers went on strike on April 10, 1996. An inspector from the Ministry of Labor who declared the strike illegal said he was assaulted by miners. He had reported on violations of health and safety regulations concerning machinery and work tools; dangerous rock conditions causing unsafe workplaces, a poorly installed and dangerous electrical system and deteriorated winches and cables; inadequate pumps used by specific miners; and the need for modern drilling machines to replace obsolete equipment.

On May 13, 1996, the company agreed to pay workers up to seventy-five percent of their wages for the days on strike, retain the current work system but improve the technology under new working conditions and guarantee job security. The union agreed to help the company improve the operations. On June 29, 1996, the union petitioned for fifty percent wage increases, better conditions and claimed that the company had breached the agreement. Company representatives and union leaders met in La Paz to discuss the grievances (August 12, 1996). The meeting started badly when the miners complained they had been insulted by the mine manager (Mr. David O'Connor). The same day the mine manager requested

military troops and the national police force in the conflict area. The Company withdrew its people from the area leaving the mine in the hands of the miners and the unions. On September 18, 1996, the miners took the mine engineer hostage (he was released on the intervention of a local priest) as pressure for the mine manager to come to the area. The company filed criminal charges against those responsible for the loss of management and the resignation of the company's staff.

At a September 21, 1996, meeting attended by the company and miners, the miners aired their grievances, and the company said that because of poor productivity and financial conditions they would close the mine, make an evaluation as to what to do and then decide. While the mine was still under the control of the miners, the company complained that they were producing gold and keeping it.

A column of about 130 police attempted on November 14, 1996 to detain the Secretary General of the Capascirca 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 then initiated a meeting November 20, 1996 in Potoší between the parties in an attempt to mediate the dispute. The Da Capo company representatives failed to attend the next scheduled December 4, 1996. The Comité Civico of Llalagua refused to attend the rescheduled meeting, December 11, 1996, but it took place in Potoší, December 17, 1996. The negotiations collapsed when the company was told 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. Mine workers and peasants demanded that the engineers, technical staff and twenty-five police guarding the mine leave. There were agreements between management and workers without any major labor disputes until then. The mine was seized with only a few broken windows.

After the collapse of negotiations and the seizure of the Amayapampa mine, government authorities decided to employ public forces to restore order in the area, remove the mine workers and restore the mine to its owners. Police were moved into the area. The next day, December 19, 1996, the peasants and miners met in Amayapampa with mine leaders and human rights representatives. A communiqué rejected any return of foreign investors to Amayapampa as it would "be a violation of national sovereignty and the dignity of the workers, peasants, and local residents of the area or the region...". At the end of the meeting, dynamite explosions signaled a warning that police were approaching with armed forces.

There was a conflict between the army and police forces and the peasants and miner who had illegally occupied the mines of Amayapampa and Capasirca. There was an opportunity when the tragedy could have been avoided. The labor leaders realizing the unequal forces, and to prevent bloodshed, asked for a cease-fire and an end to hostilities. In response to a request for an hour to arrange the peaceful entry of the police and military forces, General Arriaza, Commander General of the National Police Force, agreed to fifteen minutes, and then half an hour. The general gave the order to advance towards the mining camp before that time expired. "...the army used tear gas, rubber bullets, weapons shooting blanks, and firearms, while the peasants and the miners defended themselves with stones and dynamite fragments [but] did not use firearms." Four people were killed, including a minor (15 years old), a peasant shot in the back, and one from head trauma. One of the dead had tried to seek a peaceful solution. IACHR recommended "an exhaustive investigation."

On December 20, 1996, police and the army heading to evacuate the wounded, remove corpses etc. were ambushed and a colonel was killed by a shot to the head (not from one of his colleagues). A civilian physician was seriously wounded and four police officers wounded. The Braun regiment attempted to enter Llallangua where the townspeople formed a human barrier, 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, apparently from close range, put on a stretcher that broke and was replaced. She was bleeding for four hours and later died without proper medical attention. IACHR said an investigation was in order.

The IACHR concluded "that the deaths of nine civilians due to direct actions of military and police agents of the state in Amayapampa, Llallangua and Capasirca between December 19-21, 1996 are imputable to the Bolivian state as a juridical person."

It was "not convinced that there was a strictly proportional use of force by police and military forces in all cases." The mechanisms for negotiation were not used to their full potential. The forces did not have the necessary training and discipline. The international responsibility of the state may not exist if it investigates the events, punishes those found responsible, and makes reparations. IACHR found that there was inadequate investigation into the incidents, no persons responsible sanctioned, and adequate compensation not paid to the victims or next-of-kin. The ballistics testing was insufficient, autopsies not performed (required by law). IACHR recommended

that the government 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. The rules regarding the use of force need to be reviewed. Compensation was recommended for the relatives of the deceased and the wounded.

IACHR also recommended supervising the enforcement of labor and tax legislation under which the mining companies operate at Amayapampa and Capasirca. Although it did not investigate any violations, there was a perception among the work force that the payments merit examination. It also recommended the government guarantee the effective operation of mechanisms to resolve collective labor disputes.

A 1999 report on human rights noted that the Bolivian Attorney General has yet to complete a long-promised report on the deaths in the Amayapampa confrontations in December 1996.²²³

vi) How to develop new types of partnerships with local and international groups to advance how corporations deal with human rights issues

In zones of conflict where mining companies have human rights questions, there are opportunities for developing new types of partnerships with NGOs that have experience, and are already dealing with the issues, and understand the factors at work. The NGOs could help by providing the mining company with information about human rights issues and suggest strategic options. Then the NGOs could act in a partnership role by participating in implementation of these strategies.

Conceptually, this seems to be an opportunity, but until now there are very few case histories. The US-UK accord found that several human rights NGOs are willing to engage, (including Amnesty International, Human Rights Watch and International Alert, and Lawyers Committee for Human Rights). There are other human rights NGOs that currently are unwilling to develop partnerships, and prefer to remain in the role of critic/adversary, such as OXFAM²²⁴ and many Church groups including the Inter Church Committee for Latin America KAIROS. Other groups seek to demonize mining companies, for example referring to Newmont Corporation as "Newmonster" in their publications.²²⁵

²²³ "Bolivia Human Rights Practices, Country Report, 1999." US Department of State, 2000.

²²⁴ OXFAM is a self-appointed mining Ombudsman that sends its people to review problems at mining operations and produced an annual report with its 'findings'. While the concept of a mining Ombudsman has a lot of merit, it would be more credible if it were modeled on The World Bank Group's Office of the Compliance Advisor/Ombudsman (CAO) that oversees IFC's and MIGA's social and economic performance and sends its staff and/or independent experts/specialists to investigate incidents.

²²⁵ Newmonster, Report on the Newmont Corporation, Project Underground, 2001: This report alleges that because of the mining company's activities in five regions: Peru, Indonesia, California, Nevada and the Philippines, indigenous people's rights are adversely affected and their cultures threatened.

Agreements between mining companies, government and civil society are suggested as a framework to find answers to such challenges as:²²⁶

- Social and political risk management
- Resolution of local disputes
- Developing new skills
- More effective communication between parties
- International standards, voluntary codes of practices
- Building trust, confidence and cooperation
- Consultation processes.
- Allocating roles and responsibilities

In one country a “social value” prize is awarded annually to companies that exhibit social excellence in the areas of relations with the community, respect for the environment, quality of working conditions, and consumer respect.²²⁷ The review panel includes journalists, government representatives, NGOs and companies. This is an approach that could be generally adopted to advance how corporations deal with human rights issues.

vii) Development of standard measurement template or framework as a collaborative effort

The development of standard measurement frameworks or templates is a collaborative effort. As mentioned above, there are no established benchmarks and some companies are working to define benchmarks and measurement templates. This will evolve as a collaborative effort between the company, NGOs and independent experts. There is an ongoing need for consultation and to develop adequate monitoring and verification of corporate compliance to human rights. Management systems have to be developed to ensure that any allegation of human rights abuse is investigated and human rights issues are monitored and verified independently.

d) Trends and Emerging Issues

Trends and emerging issues relate to the points identified at the start of this report (see Page 5 *et seq*) and the role and responsibility of mining companies for human rights. The five areas of conflict led to the questions of what was the role of corporations, existing guidelines and initiatives- points of pressure, US-UK convening power of government;

The hierarchy progresses from

- Voluntary initiatives
- Engaging in dialog,
- Existing guidelines,
- Codes of conduct,
- Regulatory requirements.

²²⁶ Warhurst, op cit.

²²⁷ Prêmio Valor Social, Valor Econômico, July 2001.

Of continuing relevance are monitoring and reporting practices and obtaining information, i.e., intelligence gathering and assessment. Then there is the continuing evolution of voluntary principles and codes of conduct such as the UN Global Compact and the US-UK Voluntary Principles. The key to effective implementation of laws relies on an effective, functional, non-corrupt, transparent regulatory and legal framework. There are more country-entrenched rights such as the Canadian charter of rights and new codes of practice proposed. NGOs are being challenged to widen their roles and engage with or enter into partnerships with corporations. Host and home governments continue to face challenges to ensure that there are adequate legal instruments to support the decision-making processes. There is a challenge for mining companies not just to consider but to implement development rights and take positive action to restore public trust in their decision-making processes.

i) Human rights and development

Human rights principles and legal norms are advocated as a coherent framework to eliminate poverty and allow poor and socially-isolated people achieve sustainable improvements in their quality of life.²²⁸ A human rights approach to governance was suggested in 1986 as a way to help people in poverty at the grass roots level in developing countries. This approach emphasizes participation and the respect of the individual and offers a tool that can be used to clarify how people can be empowered to share in the benefits of economic development.

The minerals industry is concerned about security for its assets and personnel, and obviously it is important how the industry negotiates with the local population and government. Development programs can be used as an incentive to promote respect for human rights and to overcome abuses caused by negative conditions. Human rights can be integrated into peace-keeping and peace-making with a humanitarian assistance element. Good governance projects may be designed to encourage governments to restructure institutions, laws, regulations and policies to promote good governance, the rule of law and a respect for human rights.

Corporations may be partners within a human rights framework in their investments and operations. The first point is that they should respect human rights in the conduct of their own activities both internally and externally. Corporations can also use their influence to promote a human rights approach by advocating an independent judiciary, the rule of law, good governance, freedom of speech, protection of the rights of vulnerable people such as children, women and indigenous peoples, and encouraging the training of police and government security forces to respect human rights.

A human rights approach to development and poverty elimination includes a focus on the needs identified by poor people and encourages

²²⁸ Häusermann, Julia, *A Human Rights Approach to Development*, A Discussion Paper Commissioned by The Department for International Development, of the UK Government, Rights and Humanity, London, 1998.

their participation at all stages. This is an effective and essential approach to progress. In the case of corporate projects the human rights approach provides guidelines that gives these projects greater legitimacy.

Human rights methodologies do not translate easily across NGOs –some contribute while others are part of the problem. There are not yet accepted assessment indicators to measure human rights compliance in a development context. One approach suggested is to measure compliance against obligations. Managing a corporation to adopt a human rights approach therefore includes both a consideration of how management treats its staff and how it conducts its operations to ensure equitable human development.

An example of 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.²²⁹

Countries rich in mineral resources have performed worse 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.”²³⁰ “Wars in Angola, Liberia, the Democratic Republic of Congo, and Sierra Leone arise from the struggle for control of .. resources. Likewise various conflicts in Asia and Latin America are fueled by the profit in trade in illegal commodities”²³¹

The need for strong institutional frameworks that protect property rights, collect taxes and provide public services to facilitate economic growth in other sectors through a transparent management of the country’s natural resources remain a challenge and there is a role for mining corporations to exert whatever influence they have for positive results. It is also suggested that the international community had a responsibility to prevent the criminalization of the primary commodity trade by screening access to legitimate channels of international trade.²³² In Cambodia during 1992, UNTAC found that the Khmer Rouge and other factions were using revenue from mineral and other resources for the personal enrichment of their leaders and to fund political activities while these revenues were bypassing legitimate channels.²³³

²²⁹ Hodges, Tony, *Angola From Afro-Stalinism to Petro-Diamond Capitalism*, The Fridtjof Nansen Institute and The International African Institute, James Currey & Indiana University Press, 2001.

²³⁰ *ibid.*

²³¹ de Soysa, Indra, *The Resource Curse: Are Civil Wars Driven by Rapacity or Paucity*, in *Greed and Grievance*, Ed Berdal Mats and Malone, David M., International Development Research Center, Lynne Reiner Publishers, Inc., 2000.

²³² *ibid.*

²³³ UNTAC internal memoranda.

ii) Widening or deepening and refining the US/UK Principles

The US/UK governments will continue to jointly convene meetings on the Voluntary Principles' initiative. New participants will be limited to governments and companies in the extractive and energy sector, and international civil society. There will be consensus from the existing group for new participants. There are a lot of expectations and now there is a need to show demonstrable progress and evidence of good faith as the companies incorporate security into their operating principles.

Some companies have already taken the guidelines on private security forces and put them into their contracts. They are taking steps to integrate the Principles into operation at their business units. In December 2001, the current participants plan to discuss progress in integrating and implementing the Principles.

The onus of responsibility rests solely on the corporation. Although limited responsibility has been taken by the NGO community, the opportunity for dialogue with NGOs is important. If the principles are to be effective, the host country governments and civil society need to be full partners to ensure accountability.

These principles do not stand-alone, but are seen as a starting point. Now there is an opportunity to set standards and raise them. It is too early to judge how effective these principles will be because the companies are still at different stages of making them operational by reviewing and revising their internal policies and procedures where necessary to be in accordance with the principles at the country level. There will be progressive implementation now that these companies have committed to support the Principles. The Principles will only be a success if they are perceived to be useful by the business community and people interested in human rights. The Principles are global generic, not country specific. Companies are taking country specific actions, for example, in Colombia, Nigeria and Indonesia they are taking the initiative to facilitate the process by which the Principles take specific country effect through meetings between companies, local government people and others to discuss security and human rights.

To build trust and confidence that will lead to a consensus on other issues requires a continuing willingness of the companies and NGOs to continue the dialogue on security and human rights. Companies could informally invite NGOs to advise on risk assessment generically or on a country specific basis. Another possibility is for companies to explore formulae for involving NGOs in programs to train security forces on human rights issues.

After implementation, the next logical step is to expand the scope of security issues, broaden the scope of the Voluntary Principles, discuss implementation and define measurement standards, and bring other companies and governments into the process. The parties involved hope to gather a critical mass to lay the basis for fully global principles – this

concept seems to be on track. In late March 2001, there was an agreement to invite other companies and governments to join (probably at the next planned meeting in December 2001) and expand the Principles to a global process. Currently, Canada, Australia, France, Italy, the Netherlands and Norway are interested and the process needs to include southern governments such as Brazil, Chile, South Africa, Malaysia that are home to other oil, energy and mining companies with global operations.

Some see the need for global legal standards binding on companies and they consider voluntary principles a way station. The problem with voluntary principles is that they are not fully endorsed by all companies and are not legally binding. There are no enforcement or inspection mechanisms. Currently there are very few legal mechanisms for non-compliance, and there is seen to be the need for new legislation in a move from soft to hard law. This would not be an obstacle to improve on business responsibility performance. NGOs see global legal standards as a logical end point. However, corporations and governments do not see it that way, and many corporations do not want it.

iii) Convening authority and diplomatic capacity of major countries to bring parties and issues to the table to engage in dialogue

The US/UK principles illustrate the importance of the convening authority of governments to bring parties together to seek a solution to issues of concern. When governments have a will to address the issues they have, they can bring the parties together around a table to engage in a dialogue, and they can provide support for potential solutions through their diplomatic capacity.

iv) Governments need to look at standards and good practice

Governments of industrial countries are naturally concerned about the reputation of their major corporations operating abroad. Any citizens of these countries, rightly or wrongly, expect their government to take action to prevent or correct human rights abuses by these corporations. However, home governments are understandably reluctant to enact extra-territorial legislation, which would require them to monitor and prosecute human rights abuses by corporations overseas.

Hence, governments are motivated to seek voluntary initiatives by their multi-national corporations to assure a high level of respect for human rights in all their activities abroad.

iv) Implications for legislation, including mining law and regulations

What is the end point? People are insisting on enforcement and compliance of good practices. In terms of non-binding voluntary principles and codes practice in this global world require more transparency. NGOs are determined that this is the beginning of the process which gives them an incentive to remain engaged and scrutinize corporate performance. Currently initiatives such as the Global Compact are inclusive, but in the in next 3-5 years they will become

company specific. More interactions such as Round Table discussions in the extractive sector are developing real action in non-binding principles and codes at the sectoral level. Although these agreements are difficult to initiate, the dialogue continues, and we can expect to have enforcement standards within ten years.

v) What do the principles mean for mining companies and their operations

These are high level guidelines that provide reference points that mining corporations can use to develop appropriate strategies to assure that human rights are respected when they implement plans and programs for site and personnel security. These principles provide a basis for discussion with stakeholders, including communities and NGOs, about issues of concern and options for improvement.

vii) Developments to measure human rights performance

Developments continue to develop benchmarks and standards to measure human rights performance which are not simple as these cannot be categorized in a simple quantitative approach. Some standards have been developed in the apparel and sports shoe industries. However, the conditions in a factory are considered by the experts easier to assess and measure than those in and around mining operations.

(1) Internal mining company procedures for monitoring and implementation;

One mining company that has a specific policy on human rights, has appointed a Human Rights Compliance Officer at corporate headquarters, and on-site officers at all operating business units.^{234,235} Reports of possible human rights violations may be sent to the company by telephone, e-mail or fax for investigation. The compliance officer reports annually to a Public Policy Committee of the Board. Every year all the staff employees, Security Department and community development employees are required to sign a declaration whether they have seen or participated in any human actions that “deprived the human rights of any person” and agree to report any action “that could be construed as a violation of human rights”. The company has retained an outside expert to help define benchmarks and monitoring procedures.

Another mining company with an employees policy has prepared guidelines for its managers on implementing human rights policy.^{236,237} Questions, included in a checklist, ask if operations have developed written codes of conduct incorporating the principles stated in the guidelines which should be translated into the local language and effectively communicated to employees. It states that operations should establish a complaints procedure. The company’s

²³⁴ Social, Employment and Human Rights Policy, Freeport-McMoRan Copper & Gold Inc., February 1999.

²³⁵ Human Rights Policy and Implementation, Freeport-McMoRan Copper & Gold Inc., 2001.

²³⁶ The Way We Work, Rio Tinto plc.

²³⁷ Guidance for managers on implementing the human rights policy in *The way we work*, Rio Tinto plc, April 2001.

management reporting system will include annual questions on human rights for managing directors to complete; operations are expected to include information on “recent or emerging human rights issues” in six-monthly reports and explain implementation in updates of the Five Year Community Plans; and the company will publicly report on its corporate social and environmental performance. It will eventually seek external indicators and verification of its performance in the area of human rights.

An Australian mining company formally recognized fundamental human rights in its integrated health, safety, environment and community policy, stating support for the UN Universal Declaration on Human Rights and recognizing the importance of political, civil, cultural, social and economic rights.²³⁸ This company is drafting and testing an audit protocol and developing guidelines to clarify its standards.

(2) Reporting mechanisms to ensure meeting policy standards.

Mining companies are developing mechanisms to ensure that their business units meet policy standards. The appointment of a Human Rights Compliance Office reporting at the Board Level and provision of adequate staff to provide monitoring and training is a good internal reporting mechanism. The use of formal contracts as in the Statoil example is a supportive mechanism to meet policy standards.

Continuous communications with communities and local NGOs is another mechanism to maintain information flow in support of achieving policy objectives.

viii) Pariah (or failing) States – are there jurisdictions where responsible companies cannot operate?

Examining issues of human rights inevitably draws attention to pariah (or failing) states, such as Burma (Myanmar) and Sudan which are human rights abusers.²³⁹ States with bad governments raise questions for mining companies such as whether they should do business in these countries where their presence can be interpreted as complicity with, implied endorsement of, and as support for a repressive regime. Some ask whether withdrawing operations will help human rights by showing concern, or hurt people by causing economic hardship. The underlying principle is that “foreign business should not be complicit in the repression of the population or contribute to propping up the repressive regime” where the “political system of a state sustains or perpetrates severe human rights violations.”²⁴⁰ It is believed that corporate responsibility does not end with questions about how the state spends its revenue, but also includes issues of good governance. There are

²³⁸ Brochure, BHP.

²³⁹ 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.

²⁴⁰ Jungt, Margaret, Deciding Whether to do Business in States with Bad Governments, The Confederation of Danish Industries et al, 2001

democratically-elected and other types of internationally-recognized states, but there are a lot of undemocratic regimes that some say should not be recognized.

While many believe that doing business in countries with bad governments does not always weaken human rights, it is suggested that there are some situations where “blanket prohibitions are necessary” including those where sanctions of a unilateral, regional or multinational (i.e. United Nations) nature are in force.²⁴¹ Also it is suggested that the prohibition applies where there is a clear expression of 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.^{242,243,244} Furthermore, clearly companies should not operate where there is a definite record of human rights violations such as “Germany under the Nazi regime, Cambodia under the Khmer Rouge, or Rwanda in 1994.”²⁴⁵ Some consider there are gradations of “acceptability” in the case of other states and their human rights records and apply different standards for different regimes in conflict or war zones and states with bad governments or repressive regimes, e.g. Sudan, Afghanistan, Democratic Republic of the Congo, Colombia, Indonesia and China. One approach to handle the broad and difficult set of issues involved is summarized in a flowchart illustrating a recommended decision-making process that could be adopted when dealing with bad governments, as shown in Figure 1.

When considering difficult countries, mining companies can generally be exposed to two different conditions. The more common situation is one where there were not 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. Indonesia, Nigeria and Colombia are countries that are often categorized as a messy

²⁴¹ *ibid.*

²⁴² as mentioned previously, in October 1995 Aung San Suu Kyi, the Nobel Peace Prize winner, said that it was too early for foreign investors to put their money into Burma, and “In the long run, it will be the businessmen themselves who will be hurt by investing at the wrong time.”

²⁴³ “Canada marks anniversary of last democratic elections in Burma”, News release, May 27, 1999 (5:45 p.m. EDT) No. 121, Canada Department of International Affairs and Trade http://webapps.dfait-maeci.gc.ca/minpub/Publication.asp?FileSpec=/Min_Pub_Docs/100347.htm

²⁴⁴ “ILO’S decision to activate measures against Burma”, John Battle, UK Minister of State at the Foreign Office, News Release, November 17, 2000; “Human rights - a priority of Britain’s foreign policy” Robin Cook, Foreign Secretary, 28 March, 2001.

²⁴⁵ Jungt, *op cit.*

situation where corporate operations are affected but where there are common minimum standards established for company behavior, as discussed earlier in this report.

A different situation is faced by the mining company that does not have any involvement in a failing or difficult state yet there are potential investments that are attractive. The company believing that it will be commercially successful, 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 US. Clearly, if the country is unstable or there are gray areas, the company needs to set up minimum standards of behavior. 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, the regimes are 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 Congo, 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.

Burma

Burma is considered important in the wide international debate on the politics of adopting constructive engagement or economic sanctions.²⁴⁶ Burma has been ruled by military and quasi-military regimes since 1962 during which time the economy deteriorated while the military failed to establish effective, broad-based political institutions. However, all political factions, including the military, agree that the country should

²⁴⁶ Bray, John. "Burma: Companies, NGOs and the New Diplomacy. Briefing Paper New Series 24 (Draft October 2001)." London: Royal Institute of International Affairs, 2001.

return to a form of democratic rule, but they disagree on when and how. Although the National League for Democracy (NLD) led by Aung San Sui Kyi won a landslide national election victory in 1990, the military regime, which now lacks popular support or political legitimacy, refused to cede power. A major role in the debate is played by non-state interests, not only by NGOs but also by companies.

A loose coalition of advocacy groups has put pressure on Western governments to impose sanctions on Burma, and on companies to withdraw from the country. Petroleum companies in particular have been accused of collaborating with an illegitimate regime. But such campaigns raise further questions: what role should advocacy groups play in foreign policy-making? And what are the real responsibilities of international companies in controversial countries?²⁴⁷

The international community disagrees on how to deal with the situation in Burma. Aung San Suu Kwei supported the call for economic and political sanctions. In 1997, the United States imposed sanctions on new investment in Burma. The Canadian government asked its business community not to enter into new investments until the situation improves. The European Union and the United Kingdom have suspended aid and imposed an embargo on arms exports or visits by regime leaders and their families. In contrast, Japan and Australia have pursued engagement with the regime, and other countries in the region have sought engagement by admitting Burma as a member of ASEAN in 1997. Advocacy groups have not received widespread public support in Japan or Malaysia. Such groups are gaining more attention in France where there is strong government support for its oil company, while the UK government informed Premier Oil in April 2000 that it would prefer the company to withdraw from Burma. As mentioned above, Unocal faces major legal challenges in the US where there is a strong Burma campaign movement. International development agencies and NGOs are in a similar debate about engagement to that involving corporations. Some UN agencies run small assistance programs from their offices in Rangoon. Very few aid and technical assistance agencies work in Burma compared with the extensive activities in other countries in the region.

The most critical issues are revenue allocation (the government needs the money, but spends much of it on military equipment), human rights abuses by security forces (discussed above in this report in the section on the US-UK Voluntary Principles) and the indirect implication of the use of forced labor described below. Observers consider that neither engagement nor confrontation have worked and view the military leaders as more concerned about their survival than the condition of the population. 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?”²⁴⁸ There is a critical need to establish institutional capacity, administrative and technical skills to revive the country’s economy.

²⁴⁷ *ibid.*

²⁴⁸ *ibid.*

There have been several UN reports on the situation of human rights in Burma since it appointed a Special Rapporteur.²⁴⁹ In 2001, a resolution adopted by consensus by the UN Commission on Human Rights deplored “the deterioration of human rights situation ... in Myanmar, including extrajudicial, summary or arbitrary executions, enforced disappearances, rape, torture, inhuman treatment, mass arrests, forced labour, forced relocation and denial of freedom of assembly, association, expression and movement.”²⁵⁰ A World Bank economic and social assessment of Burma contained an estimate that twenty-five percent of children between the ages of 10 and 14 were working.²⁵¹

An ILO commission of enquiry found “abundant evidence ... showing the pervasive use of forced labour imposed on the civilian population throughout Myanmar by the authorities and military for portering, the construction, maintenance and servicing of military camps, other work in support of the military, work on agriculture, logging and other production projects undertaken by the military, sometimes for the profit of private individuals, the construction and maintenance of roads, railways and bridges and other infrastructure work and a range of other tasks.”²⁵² Recent reports of interviews with Burmese villagers submitted to the ILO suggest that forced labor continues²⁵³ and there are reports of some 1,850 political prisoners in jail although about 100 were recently released.²⁵⁴

The Special Rapporteur recently observed that political transition is increasingly necessary to deal more effectively and jointly with serious structural problems — poverty, malnutrition, a poor education and health system, decayed infrastructure, drugs and HIV/AIDS — and “a disquieting human rights situation”.²⁵⁵ He detected some positive movement in the area of civil and political rights and believes the trend is likely to continue, although, he was aware, that on the serious questions of human rights abuses described in his 2001 report, the problems remain. The Special Rapporteur defined the main challenge for all sides in Burma is to find ways to contribute to the restoration of optimum human conditions for all people, which he emphasized lies through the path of respect for human rights, human security and humanitarian

²⁴⁹ 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”.

²⁵⁰ Situations of human rights in Myanmar, Agenda Item 9, Fifty-fifth session, Commission on Human Rights, United Nations, Economic and Social Council, E/CN.4/2001.L.20, April 12, 2001.

²⁵¹ Myanmar: An Economic and Social Assessment, Draft, August 1999.

²⁵² Forced labor in Myanmar (Burma), Report of the Commission of Inquiry appointed under article 26 of the Constitution of the International Labour Organization to examine the observance by Myanmar of the Forced Labour Convention, 1930 (No. 29), Geneva, July 1998.

²⁵³ Forced Labour Persists in Burma, In The News, EarthRights, June 12, 2001.

²⁵⁴ Myanmar, Ethnic minorities: Targets of Repression, Amnesty International, June 2001.

²⁵⁵ General Assembly, United Nations. *Situation of Human Rights in Myanmar*, Note by the Secretary-General, Fifty-sixth session, Item 131 (c) of the provisional agenda, 20 August 2001.

principles. Instead of polarization, partisanship and the demonization of the adversary, he contended that weight must be given to a shared ground and a mutually beneficial dialogue, conducive to genuine reconciliation. He recognized that government, political parties and ethnic groups may not share common views on everything, but perhaps common goals in a few fundamental areas could be (and probably are being) identified.

The Special Rapporteur suggested that it would help if the international community would 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". He is making a second visit to Burma in 2001 during October, to address the situation of human rights in the country. According to the UN, "Myanmar has been taking steps in the past few months towards an important dialogue both inside and outside of the country in the search for peace and national reconciliation"²⁵⁶.

Two very different mining situations are included in this section of the report that raise various issues. The jade mining operations illustrate the confluence of appalling environmental conditions, human rights abuses, jade and heroin smuggling. The introduction of modern techniques and higher standards is clearly needed, and the case could be made that foreign investment could be a way to achieve them. There are other bad cases that can be found elsewhere in the region in countries that are not quite pariah states (similar to the indiscriminate use of mercury to recover river gold in Burma).

By contrast, the copper mine is a modern operation with ISO 14001 certification for environmental management and protection that is voluntarily cleaning up environmental damage caused by an earlier, unrelated, operator. The company describes economic and social benefits to the community from the project and reports that its worker health and safety conditions, human rights record, and environmental management are independently verified on an annual basis.

Jade mining

A documentary film showed jade mining is the nexus of numerous human rights abuses. At a large open pit mine in northern Burma more than 10,000 workers have dug to a depth of several hundred feet. They dig, carry, move and load the finest quality jade by hand. No outsiders are allowed into the mine area that was the scene of a civil war until a peace agreement with the central government. For three decades the jade from the mines in the area was used to finance the war. The mine has no basic equipment such as jackhammers, water pumps or conveyor

²⁵⁶ Press release, United Nations, New York, 5 October 2001

belts. Since the cease-fire it is reported there has been no help from the army to bring in any heavy machinery to the mines, since the local people still want independence.²⁵⁷

Kechin tribes also mine jade by underwater mining in which miners dive for the jade stones. In the open pit operations, workers light dynamite fuses with cigarettes. In underground mines, mineral from veins of jadeite deposits is pried by hand and then baskets of ore are manually winched up the shaft. In some mines, jade located 30 m underground is heated with small fires to crack the rocks. Workers load the rocks onto a small trolley that is winched to the surface. The workers in these mines are using mining methods that were considered primitive 100 years ago. In one example, most of the work is done by hand using a shaft 30-50 feet deep whereas it would be easier to work the deposit as an open pit using bulldozers. The workers have no safety equipment.

The main mine attracts people from all over the country. On average they make 50 daily trips up and down the mine for \$1 per day wages — with one third spent for water and food. Mining is done during the three-month dry season and the mine floods in the rainy season. Other workers pay an entry fee to areas where the waste is dumped, and then hand sort the waste for jade. There are often conflicts. Miners have to pay a tax on the mine value of production. Although one piece of imperial jade could be worth \$40-50,000, most of the workers only find enough mineral to survive. However, the attraction is the lure of potential riches.

The workers are infected by the urge to gamble at night. Workers lose their money at the gambling table and HIV/AIDS is endemic. An economic boom lasts until the jade runs out. After the cease-fire, mines have been worked more openly, but there are few other opportunities for work and \$1/day cannot be earned in the villages.

The film documentary claimed that jade mining is essentially a gambling business run by the Chinese. Jade is secreted out of the country by smugglers making a 12-day journey to the border — smuggling is punishable by death. The smugglers use a boat to avoid the frequent road-blocks, then travel by elephant. After the elephants, they use mules, passing through an area controlled by the Shan who also collect taxes. It is estimated that 90% of the jade is smuggled out of Burma via Thailand or China. The documentary described a jade syndicate on the Thai side at the border town where jade is a legal commodity. Across the border, the price of jade is ten times that paid in Burma. Fake jade is also used to smuggle heroin along the same route. In Hong Kong the jade is sold for up to \$100,000 per piece. Heroin and amphetamines use the same route.

A subsequent report mentioned that the Burmese government has taken control of most of the mining operations in areas that used to smuggle

²⁵⁷ The section on jade mining is based on the documentary film *Jade: The stone of heaven*, Georg P Müller 1997, TomTom Film Productions.

jade and gems. With lower taxes smugglers find trading with Rangoon more profitable than with Yunnan.²⁵⁸

When the government secured the Yawa mining area in July 1998, the lists of human rights abuses throughout the region included “extra judicial killings in the villages of Patawk, Tae Ta Lee Kee and Yebone; torture by beating; looting and extortion in the villages of Tagu, Pawat Hltee Po Wah and Myo Hown; burning and destruction of a Talinetat villager’s house.”²⁵⁹ In 2000, the largest drug trafficking organization in Southeast Asia started gold and silver mining with the help of Chinese experts in a reported attempt to diversify out of the drug business.²⁶⁰ It is reported that mining is illegal across from Muang border in West Thailand and allegations are made in the press that “it is necessary to pay protection fees to Burmese soldiers. All large projects in Burma need approval from the State Peace and Development Council first, and under-the-table money must be paid for the signing of any contracts.”²⁶¹ However, Ivanhoe Mines asserts that any suggestion that it paid bribes to participate in the Monywa project (discussed below) would be false and defamatory.

It is impossible for any foreign joint-venture not to be linked to the Burmese military – the government’s main holding companies are part of the military government, (the minister in charge of the mines ministry is Brig. Gen. Ohn Myint). About 45% of the Burmese national budget is spent on defense. And where do the royalty payments go? The Ministry of Mines is a large government administrative department that needs funds to operate. Several countries have companies active in different parts of the Burmese economy but not many with investments in the mineral sector.

Copper Mining

The Monywa copper mine is operated by Myanmar Ivanhoe Copper Co. Ltd. (MICCL), a Yangon-based company owned 50% by the Canadian company Ivanhoe Mines (with the other 50% held by the Burmese state Mining Enterprise No. 1). Construction of the project was financed using a US\$90 million project loan facility provided by Marubeni UK plc and Nissho Iwai Europe plc, a syndicate of Japanese trading houses. MICCL developed and operates a copper mine and solvent extraction-electrowinning process that produces sheets of cathode copper (99.99%-pure copper).

Ivanhoe has published a “statement of values and responsibilities” (see [Attachment E](#)) that includes support for the United Nations Declaration of Human Rights. The company says that its investment “is either misunderstood, or deliberately misrepresented by people promoting

²⁵⁸ Lintner, Bertil, *Far East Economic Rev*, Aug 22, 97

²⁵⁹ Newsletter, Karen National Union, 27 Aug 1998.

²⁶⁰ Wa ‘seeking alternative to drug trade’, *Bangkok Post*, June 6, 2000.

²⁶¹ *Bangkok Post* 1 Feb 2001.

various agendas of social and political advocacy.”²⁶² It explained that “no profits from the ... venture are paid to the Myanmar government ... until the US\$90 million cost of building the first phase of the project has been repaid ... not expected before 2005”, and “The government currently is receiving a 2% royalty in copper sales... An additional 2% royalty...is being deferred.”²⁶³ Gross copper sales revenues in 2000 were US\$44.8 million on which a two percent royalty represents a payment of US\$896,000.²⁶⁴

In its Position Statement and Fact File, the company emphasized that the delay or cancellation of the project’s second stage would deny jobs to thousands of Burmese, while noting that the Canadian government has asked the business community to “refrain from entering into further investment agreements or commercial ventures ... until improvements are evident.”^{265,266} The company’s view is that the second stage development of Letpadaung has always been part of the Monywa project since its inception and does not consider it to be a new commercial venture. It is important to note that Ivanhoe’s investment in Burma was not in contravention of any Canadian government sanctions. While there are extensive reports of forced labor being used elsewhere in Burma, there is no evidence or allegations that involuntary labor was used by the company. 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.”²⁶⁷ Nevertheless in 2001, the company raised US\$16 million, and lender interest in financing the phase two development of the Monywa project was reported.

The company provides a portion of revenues from its mine “to help pay for specific health care and education services to communities in the vicinity of the mine.” The company has clearly stated that it does not hold a political brief nor does it participate in political causes. The company president referred to the difficulties that Indonesia was facing following the fall of the Suharto government with violence erupting in East Timor and Aceh, riots in Jakarta, and ethnic Chinese residents subject to violent attacks. The Philippines was suffering from extensive terrorism. He commented on the similarities between Burma and Indonesia where there are multi-ethnic environments with ancient, often religious-based, differences, hatred and terrorism exist. In this context

²⁶² Kunz, Daniel, Statement, <http://www.ivanhoe-mines.com/s/MyanmarCopperProject.asp>, 2001

²⁶³ Monywa Fact file, Ivanhoe Mines, 2001

²⁶⁴ Annual Report 2000, Ivanhoe Mines Ltd.

²⁶⁵ Position Statement & Fact File, Ivanhoe Mines, 2001

²⁶⁶ “Canada announces further actions on Burma”, News release, August 7, 1997 No. 130, Canada Department of International Affairs and Trade http://webapps.dfait-maeci.gc.ca/minpub/Publication.asp?FileSpec=/Min_Pub_Docs/101465.htm

²⁶⁷ “Management Information Circular Regarding Proposed Acquisition of All the Issued and Outstanding Shares of ABM Mining Limited.” Vancouver: Ivanhoe Mines Ltd., 2000.

he 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.”²⁶⁸ He was reported to have commented “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.”²⁶⁹ 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 suggest that the “repressive government in Burma had been threatening the security, 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.”²⁷⁰

The ILO has asked corporations to “review... the relations that they may have with [Burma] and take appropriate actions to ensure that [Burma] cannot take advantage of such relations to perpetuate or extend the system of forced labour.” Canadian and International labor 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.”²⁷¹ The Canadian government sent a letter to Canadian business associations bringing the June 2000 ILO resolution to their attention.²⁷²

In response to this and other charges, 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”²⁷³ It denied using infrastructure mentioned by the labor groups, and emphasized that “Ivanhoe’s withdrawal from Myanmar would not bring about .. changes in government ... but would punish 5,000 vulnerable people in the Monywa area.” A later review by the company suggests a greater impact and that the planned second phase of the project could benefit up to 12,000 people.²⁷⁴

ix) World Bank; extractive sector review

The extractive sector accounts for 2.5 % of IFC loans but generates fifty percent of the complaints that are made to the IFC/World Bank

²⁶⁸ Canadian Company Defends Self, *Junta, The Irrawaddy*, Vol 8. No. 10, October 2000.

²⁶⁹ Kunz, Daniel, Canadian Press news agency interview, quoted in *The Irrawaddy*, Vol. 8. No. 10, October 2000.

²⁷⁰ Zaw, Aung, Human Security in Burma, *The Irrawaddy*, Vol. 8. No. 10, October 2000.

²⁷¹ Ivanhoe must withdraw from Burma, Canadian Labour Congress and the International Federation of Chemical, Energy, Mine and General Workers’ Unions, ICEM, June 14, 2001.

²⁷² see March 27, 2001 update at Retail Council of Canada’s, website <http://www.retailcouncil.org/govrelations/federal/update010327.asp>

²⁷³ Kunz, Daniel, Ivanhoe Mines Sets the Record Straight on its Investment in Myanmar Copper Project, News Release, June 15, 2001.

²⁷⁴ Personal communication.

Ombudsman. The World Bank is dealing more with issues of corporate responsibility since it receives complaints about IFC mining projects' impact on environment, health and communities. In Brazil and Peru there are problems with the use of mercury in artisanal mining. There was also a problem with a spill of mercury being transported from the Yannacocca mine which most likely would not have happened if procedures adopted in North America had been followed.²⁷⁵ Some guidelines on project developments were developed by the World Commission on Dams, which could be considered by the mining industry where the issues it faces are analogous.²⁷⁶

The World Bank is carrying out a revision of its Operational Directive on Indigenous Peoples (OD 4.20), as part of a Bank-wide process and effort for better compliance with, its policies. Its independent evaluation units are reviewing the performance of past and present projects in oil, gas, and mining.²⁷⁷

In July 2001, Dr. Emil Salim of Indonesia was appointed to head a consultative review of the role of the World Bank Group and the key issues in the extractive industries (oil, gas and mining sectors). This review is intended to include a wide range of consultation with stakeholders, including government, business and industry, NGOs and civil society representatives. It aims to develop 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.

x) Concluding remarks

Abuse of human rights in its broadest sense (covering political, economic, social, cultural and other facets of human existence) is the major external, non-technical problem facing the minerals industry today.

Over the past few years, the proliferation of international organizations, national bodies and NGOs as well as the extension of domestic claims to worldwide jurisdiction has resulted in bringing the problem of human rights abuse into closer focus. Attempts have now been made to define human rights in a legal or quasi-legal context. At the same time, mining companies, mindful as ever of the bottom line, have noticed that their operations may run more securely, smoothly and profitably if heed is taken of the conditions, needs and rights of the host countries and, in particular, of the communities local to the sites of their mining operations. Another consideration is whether a company already operating in a host country should withdraw, selling or abandoning its investment, if conditions deteriorate and human rights abuses increase,

²⁷⁵ "An Investigation into the Mercury Spill of June 2, 2000 in the Vicinity of San Juan, Choropampa, and Magdalena, Peru. Report of the Independent Commission." 57: Office of Compliance Advisor/Ombudsman of the International Finance Corporation and Multilateral Guarantee Agency, 2000.

²⁷⁶ *Dams and Development: A New Framework for Decision Making. A Report of the World Commission on Dams.* London: Earthscan Publications Ltd, 2000.

²⁷⁷ Operation Evaluation Department – IBRD/IDA (OED); Operation Evaluation Group – IFC (OEG)

or whether there are countries whose human rights records are so deplorable that no company should embark on operations there.

Human rights is about not abusing people working for the corporation, not abusing contractors, not employing contractors who use slavery, child workers, and not abusing the rights of the local community. There is general consensus about what a company should NOT do. The challenge is determining what it should do.

Since economic, social and cultural rights within and outside the corporation are considered by many to be as important as civil and political rights, it is not useful for a company to consider particular rights in isolation. This suggests that when discussing human rights and the company's behavior it is necessary to take a holistic approach and the implication of supporting human rights is that a company will have to engage in measures and behavior for involvement beyond the labor and environmental issues that mining companies normally deal with in the course of their operations. Mining companies consider that most environmental issues are manageable as technical problems, but when environmental concerns are raised as a human rights issue they do not want to engage in discussions other than of a strictly technical nature. The typical mining company view that the protection of human rights should be the role of government and that the mining company should not be involved as human rights issues are outside the range of their expertise is no longer an adequate defense.

Oil and gas companies tend to be more concerned with national issues because oil is a national issue and tends to be a larger factor in national economies than mining. Whereas mining companies traditionally focus their attention on their mineral exploration and development operations and the areas around them, there are national implications and a national role that has been less widely discussed. Mining companies that have good human rights policies have tended to focus only on that small corner of the country where they operate, and not on national or regional issues. A major consideration for the future is the breadth of implications of what a mining company will have to do and its role in the national picture.

Examples of abuse include sometimes appalling working conditions, the employment of children (although usually not direct employees of the mining companies), excessive military intervention to quell disturbances and protests resulting from failure to adequately consult and benefit the local community, disruption or destruction of local livelihoods, pollution, contractual monies due to the host country often being used to bolster an undesirable regime with no benefit accruing to the national economy or local communities.

A number of cases were examined to see what rights issues were involved. The good news evident from this is that the perception of human rights issues has been broadened to include social, economic, cultural rights in addition to civil and political rights. The danger is that

the breadth of issues may become unmanageable.

Some of the conflicting accounts of allegations of abuses were deliberately included in this report to 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.

The case studies represent different national governance conditions: strong military dictatorships, failing countries with weak, poor or abusive governments, and some democracies. Some countries have effective, strong legal and regulatory frameworks, while in others these are weak.

Taking a broad perspective, this work identified a variety of government views. Some governments care less about human rights of their vulnerable populations than do foreign corporations operating in those countries. Some corporations are worried that their legal license to operate may be cancelled by governments embarrassed when corporations push them too hard. In some countries, the government wants to maximize the government share of mineral income and is not as concerned about local communities being consulted. In other countries, the government does want to see multi-million dollar payments to local and indigenous communities for land rights.

The Freeport case shows how a corporation can react positively to strong social, political and financial pressures. There are mines located in some parts of the world where people will always be in danger. The pre-eminent challenge is to ensure that the company's people are safe. Since the company may have no control over the security forces, it is essential to make sure it has in place adequate positive programs and safeguards to avoid human rights abuses. Corporate codes of conduct should provide for both specificity and accountability for security and human rights.

Looking at all the examples we cannot isolate a uniquely human rights case, although there are clearly cases of human rights abuses of vulnerable people and people at risk. Rights may be the driver or they may be used as a façade; but they are not the only factor at work. Human rights unlike all other issues have no generally accepted metrics, they are not quantifiable and remain highly subjective. My right to enjoy privacy conflicts with your right to demonstrate. Corporations have a major problem with the issue because rights are easy to assert, but can be difficult to substantiate. It appears incumbent on every mining company to ensure that its business units operate with a clear set of principles from a human rights policy that explains what the company expects. Time alone will tell if the Voluntary Principles will work, and everything depends on how the companies behave, reactively and proactively.

Who speaks for the local community? Many, perhaps most, communities in developing countries lack an effective voice that expresses the consensus on the communities' needs, concerns and interests. Perhaps the corporations need to accept the challenge of helping to build

community capacity to reach consensual decisions and to articulate their vision of the future. Yet this is a delicate task, one that few employees of mining companies would be capable of doing. Still, there are examples where this has occurred.

Some countries, such as Indonesia, have accepted the Universal Declaration of Human Rights, but the governments do not accept everything that the NGOs want. This sort of divergence makes things complicated. Certain concepts supported by corporations such as transparency and the sanctity of legal contracts are characterized as Northern and Western concepts which are being imposed on the South and East. Yet to date, it cannot be said that human rights are being pushed by business.

Devolution in some countries (e.g., Indonesia, Russia, South Africa) has created problems because of limited capacities to manage and administer programs at the regional and local level. In strong central regimes, established power interests had nurtured a skilled and subtle system of bribery that is now replaced by dozens of crude pressure points (with no basic rules of how much things will cost). While local levels of government may have greater authority as a result of devolution, especially concerning economic, social and cultural rights, their lack of governance capacity vitiates their ability to secure those rights in the interest of the local people whom they represent.

NGOs can be as manipulative as governments, multilateral agencies and corporations. As the issues were more closely examined, the more complex they seemed, and the less pristine the parties appeared. It is unreasonable to expect simple conclusions, given the inherent complexity of the issues. Looking at a variety of real cases confirmed that the difficulty lies in the very complexity of the issues. At times, local communities may be manipulated by companies and governments; but NGOs and multilateral agencies will manipulate them at other times; and local communities are learning how to manipulate as well.

Although some NGOs believe that voluntary initiatives will not work, another conclusion is that mining corporations need to develop some effective consensus on their range of responsibilities with respect to human rights issues. This may lead to the expression of a set of norms or standards that would apply globally, but that would need to be interpreted to fit the specific circumstances in any country. How can the industry move forward to develop credible and effective standards? Clearly, the credibility of such a set of standards would require negotiation between the industry and leading human rights NGOs. It may be helpful to include other international institutions such as the United Nations Commission for Human Rights. UNCHR, although the development with a large group of participants will take much longer as illustrated by the relative speed with which the US-UK Voluntary Principles on security and human rights were defined compared with the UNCHR code of conduct for corporations. However, companies do

not need to wait for the adoption of the UNCHR code of conduct and could use the draft as a guide in developing their own codes of conduct.

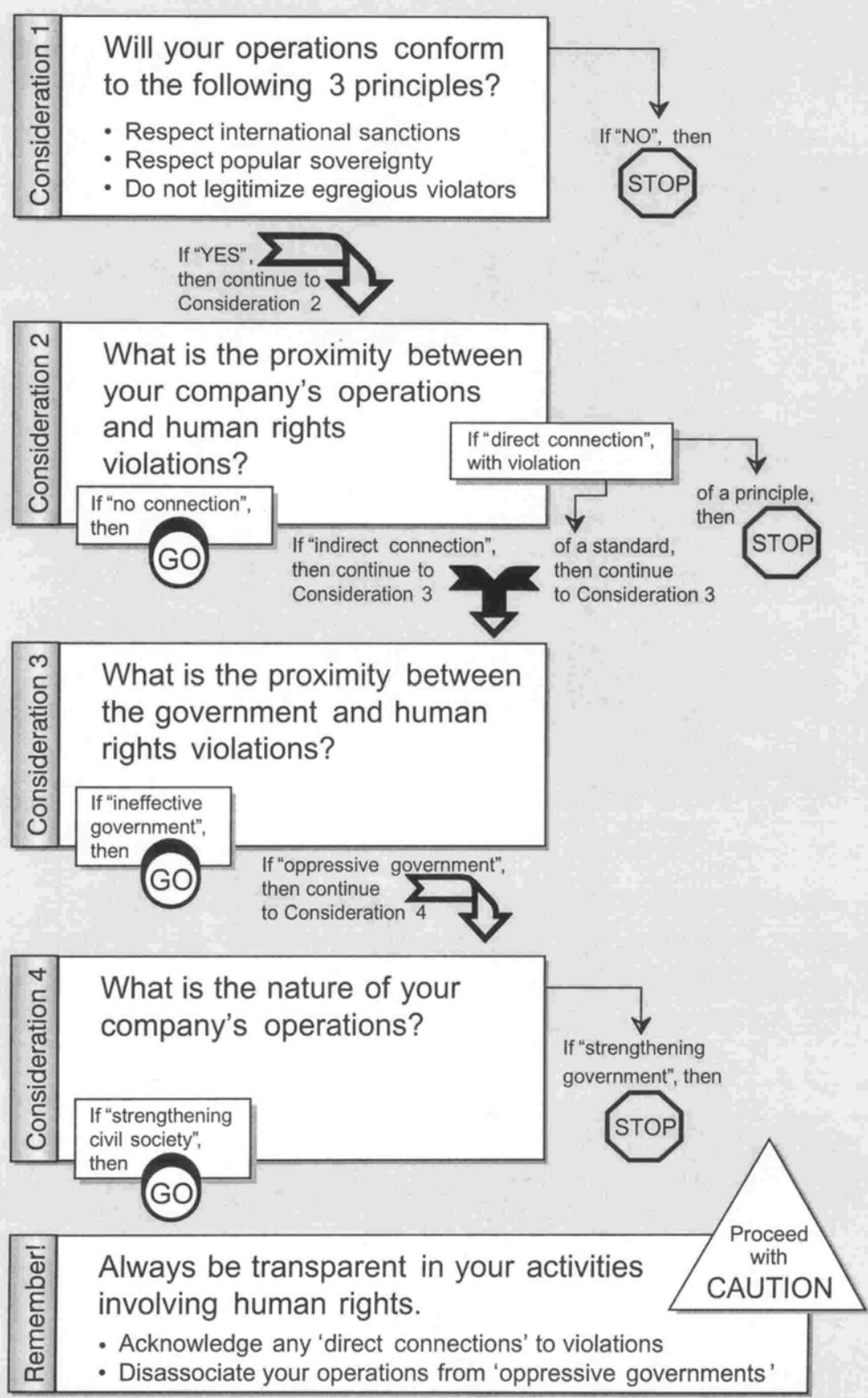
There may also be a role either for NGOs or for some home country governments to monitor and report on the performance of those companies' efforts to protect people, vulnerable groups and indigenous populations at risk in jurisdictions where human rights are a matter of concern.

The difficulty lies, in a sphere where firm and detailed definition is almost impossible to achieve, in framing an acceptable template with which corporations could modify and crystallize their policies and against which their performance could be independently monitored. This also raises a question: whether such a template should be enshrined in legislation or should it be voluntarily operated by the corporations themselves, even if it were agreed to make them subject to outside monitoring. If legislated, this raises another series of questions about acceptability, enforcement *et al.* If not legislated, it is already clear that most NGOs are opposed to anything less than full-scale legislation.

Faltering steps are being taken by a number of mining companies to involve the local community from the earliest stages of a company's operation: explanation, training (to attain skills necessary for employment), provision of schools and other facilities seen as desirable, and an internal reporting system for any instances of abuse. Some companies are offering training to their own security forces and local military units in how to deal with security problems without indulging in human rights abuses. A few companies are providing statements of compliance with human rights guidelines with their annual reports.

This short assignment has only scratched the surface of a fast evolving and critical set of issues concerning human rights and the minerals industry. These issues are so complex and important to both the minerals industry and society that they merit an assessment of potential long-range strategies to develop meaningful and attainable methodologies to satisfy the demands of all segments of society and the interests of the broad range of stakeholders.

Figure 1. Decision-Making Process When Dealing With Bad Governments*



*Source: Jungk, Margaret. "Deciding Whether to Do Business in States with Bad Governments, Supplementary Guide." Confederation of Danish Industries; Danish Centre for Human Rights; Industrialization Fund for Developing Countries, 2001.

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5 Interviews, Persons Met and Contacted

- US State Department:** Democracy Human Rights & Labor; Bennett Freeman, Former Deputy Assistant Secretary of State; Maria Pica, Senior Advisor
- British Embassy:** Washington, Hans J. H. Verolme, Environmental Policy Analyst
- Canadian Department of Foreign Affairs and International Trade:** Shawna Christianson, Policy Advisor
- Canadian Embassy:** Washington, Arif Lalani, Counsellor (Political)
- Chile Ministry of Mines:** Tomas Astorga, Advisor, Chairman Expert Group on Minerals Explorations and Development, Asia Pacific Economic Council
- Thailand Department of Mineral Resources:** Deputy Director-General
- Business for Social Responsibility:** Aron Cramer; Jim Rader, Senior Program Manager
- Prince of Wales Business Leaders Group:** Ms. Francis House, Director Operational Policy; Harriet Fletcher, Manager Operational Policy; Lucy Amis, Human Rights Researcher; Aidan Davy, Director Corporate Services
- Amnesty International:** Peter Frankental, Salil Tripathi, Campaign Coordinator Economic Relations and Human Rights; Donna Jean Guest, Researcher Southeast Asia; Morton Winston, Business and Economic Relations Group
- Human Rights Watch:** Arvind Ganesan, Corporate Human Rights representative
- The Fund for Peace:** Kathy Austin; Deborah Timmons; Lauryn Beer, Director The Human Rights and Business Roundtable
- Lawyers Committee for Human Rights:** Ms. Elisa Massimino, Director DC; Justine Nolan
- International Alert:** Nick Killick, Business & Conflict Programme Officer; Damian Lilly, Security and Peacebuilding Programme Manager
- Council on Economic Priorities:** Christopher Myer
- Social Accountability International:** Eileen Kohl Kaufman, Executive Director
- International Committee of the Red Cross:** Urs Boegli, Head of Regional Delegation for North America; Frank Sieverts, Assistant to Head of Delegation
- International Federation of Chemical, Energy, Mine and General Workers' Union:** Kenneth S. Zim, North American Regional Coordinator
- BP-Amoco:** Liz Reicherts, Government Affairs, DC
- Chevron:** Norman Zeiser: Cedric Lavington
- Shell Oil:** Alan Detheridge; David Sexton, Manager USA Group Investor Relations
- Texaco:** Phil Rivers, Washington DC
- Oxydental Petroleum:** Ian M. Davis, Vice President International Affairs
- Dr. David Weissbrodt:** University of Minnesota
- Dr. Christine Chinkin:** Professor of International Law, London School of Economics
- Dr. Alyson Warhurst:** University of Warwick,
- Dr. Tuncel M. Yegulalp:** Professor of Mining, Columbia University
- Center for Innovation in Management, SFU Business, Simon Fraser University:** Ann Svendsen, Executive Director; Dr. Robert Boutilier, Research and Management
- The International Institute for Strategic Studies:** Dr. Mats Berdal, Director of Studies.

The Royal Institute of International Affairs: Halina Ward, Senior Research Fellow

Mining Journal: Richard Morgan

Control Risks Group: John Bray, Policy Director

Mineral Policy Institute: Stephen D’Esposito

The World Bank Group: Katherine McFail: Rachel Kyte, Peter van der Veen, Janet Epps

Global Witness: Alex Yearsley, Rosie Sharpe

Dr. Ashok Gurung: Ford Foundation

Transparency International: Miguel Schloss

Oxfam in Australia: Jeff Atkinson

Rights and Humanity: Julia Häusermann, President

Justiça Global (Global Justice Center – Rio de Janeiro): James Louis Cavallaro, Director

Anglo America plc: Edward Bickman, Executive Vice President, External Affairs

Billiton International Services Limited: Eddie Routledge, HSE Manager

Bougainville Copper Limited: Peter Taylor, Managing Director

Cominco Ltd: Doug Horswell, Vice President Environment and Corporate Affairs

Companhia Vale do Rio Doce: Maurício José Lima Reis, General Manager Environment

Drummond Coal: Bruce Wendham

Freeport McMoRan Copper & Gold Inc.: Judge Gabrielle MacDonald, Special Counsel to the Chairman; Dr. David Lowry, Vice President Social & Community Affairs, Human Rights Compliance Officer; Daniel D. Dreiling, Vice President Security, Safety and Administration

P.T. Freeport Indonesia: Dr. Joseph I. Molyneaux, Vice President Security

Newmont Mining Corporation: Gary McDonald, Director Social Development

Placer Dome Inc: Jim Cooney, General Manager, Global Issues

Teck Corporation: Richard Mundie, Vice President, Commercial

Rio Tinto plc: Daniel Litvin, External Affairs (now consultant)

Timothy Laughlin, consultant to Newmont Corporation;

Doug Fraser, consultant

Dr. Jack Garnett, consultant

Gerald Harper: President, Gamma International, (past-President, Prospectors and Developers Association of Canada)

David Harries, consultant

Ian E. Marshall, consultant

Ian Thomson, consultant

National Mining Association: Moya Phelleps, Vice President, International Trade

Instituto Brasileiro de Mineração (IBRAM): Dr. José Mendo Mizael de Souza, Executive Secretary

BC Yukon Chamber of Mines: Bruce McKnight, Executive Director,

Steve Thompson,

Correspondents: The Times, Andrew Drummond, Asia Correspondent; Steve Davis; Dominic Faulder; Asia Works, Jeanne Hallacy; Far East Economic Review, Bertil Lintner; Irrawaddy, Zaw Gyi, editor

ILO: Norman Jennings

UNCTAD: Ollie Östensson

UN/ESCAP: Nanda Krairiksh, Chief Human Resources Development Section, Social Development Division; Huub van Wees, Economic Affairs Officer; Dulip Jayawardena

UNICEF: Silvia Danailov, Humanitarian Policy and Advocacy, Office of Emergency Programmes; Sudamini Siegrist, Division of Evaluation, Policy and Planning

UNDP: Casper Sonesson, Policy Advisor, Business Partnership Unit, Bureau for Resources and Strategic Partners

plus others who prefer to remain anonymous

DECLARATION AND CONVENTIONS

The 1948 *Universal Declaration of Human Rights* was followed by two major Covenants adopted in 1966, the *International Covenant on Civil and Political Rights* plus two optional protocols, and the *International Covenant on Economic, Social and Cultural Rights*. Copies of the Declaration and Covenants are included at the end of this attachment.

The *Convention on the Elimination of All Forms of Racial Discrimination* was adopted in 1965, the *Convention on the Elimination of All Forms of Discrimination against Women* in 1979, the *Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment* in 1984, and *Convention on the Rights of the Child* adopted in 1989. The *Vienna Declaration and Programme of Action* was adopted by the World Conference on Human Rights in 1993 reaffirmed the rights and responsibilities of individuals and groups to promote and protect universally recognized human rights and fundamental freedoms. Other declarations, such as the *Declaration on the Right to Development*, were proclaimed by the United Nations. Among the many Conventions of The International Labour Organization were definitions of such rights as those against forced labor,^{278,279} concerning freedom of association and protecting the right to organize,^{280,281,282} health and safety rights,^{283,284} indigenous and tribal peoples rights.^{285,286}

Human rights were formally accepted by various regional organizations. The *European Convention on Human Rights*²⁸⁷ was expanded and modified by eleven Protocols²⁸⁸ (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*. A Commissioner of Human Rights was established by The Council of Europe 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*

²⁷⁸ Forced Labour Convention, C29, International Labor Organization, 1930.

²⁷⁹ Abolition of Forced Labour Convention, C105, International Labour Organization, 1957.

²⁸⁰ Freedom of Association and Protection of the Right to Organize Convention, C87, International Labour Organization, 1948.

²⁸¹ Right to Organise and Collective Bargaining Convention, C98, International Labour Organization, 1949.

²⁸² Workers' Representatives Convention, C135, International Labour Organization, 1971,

²⁸³ Occupational Safety and Health Convention, C155, International Labour Organization 1981

²⁸⁴ Safety and Health in Mines Convention, C176, International Labour Organization, 1995.

²⁸⁵ Indigenous and Tribal Populations Convention, C107, International Labour Organization, 1957.

²⁸⁶ Indigenous and Tribal Populations Convention, C169, International Labour Organization, 1989 (copy included at the end of this attachment).

²⁸⁷ Convention for the Protection of Human Rights and Fundamental Freedoms, ETS No. 005, 19__ , amended by Protocol no. 11, 1994.

²⁸⁸ 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.

*Declaration on the Rights and Duties of Man*²⁸⁹ was adopted in 1948; the *American Convention of Human Rights* came into force in 1978.²⁹⁰ 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* was followed by *Resolution No. 49/19P on 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*²⁹¹ to “promote political, social and legal reforms for ensuring human rights in the countries of the region.”

Some countries have specific human rights statutes.²⁹² The term “human rights” implies that all people have them.²⁹³ Secular ethicists discuss rights in the context of freedom and the common good²⁹⁴ concerned with protecting human integrity, freedom and equality.²⁹⁵

²⁸⁹ American Declaration on the Rights and Duties of Man, Organization of American States Resolution XXX, Ninth International Convention of American States, 1948.

²⁹⁰ American Convention on Human Rights, Organization of American States, Treaty Series No. 36, 1144, 1978.

²⁹¹ Asian Human Rights Charter, Asian Human Rights Commission, 1995.

²⁹² e.g., Canadian Human Rights Act, 1976-77.

²⁹³ Vincent, R.J., *Human Rights and International Relations*, Royal Institute of International Affairs, Cambridge University Press, 1986.

²⁹⁴ Cooney, James P., *An Examination and Clarification of Christian Ethical Perspectives and Principles and their Actual or Potential Relationship to Corporations*, MTS thesis, Vancouver School of Theology, 2000.

²⁹⁵ Eide, Krause and Rosas, Eds, Economic, Social and Cultural Rights. A Textbook, Martinus Nijhoff Publishers, 1995, p24

DECLARATIONS AND COVENTIONS

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

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.

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.

(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.

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.

International Covenant on Economic, Social and Cultural Rights, G.A. res. 2200A (XXI),

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U.N. Document. A/6316 (1966), 993 U.N.T.S. 3, entered into force Jan. 3, 1976.

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.

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.

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;

(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.

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 therefrom, from States Parties to the present Covenant which are also members of these specialized agencies in so far as these reports, or parts therefrom, 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 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.

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 1 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.

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.

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;
 - (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 1 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.

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.

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.

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.

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.

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.
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.

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;

(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 1 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:

(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, 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 I 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.

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.

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.
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;
 - (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.

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 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;
- (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.
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 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 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.

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:

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. Where Companies operating in the same region have common concerns, they should consider collectively raising those concerns with the host and home governments.
- In their consultations with host governments, Companies should take all appropriate measures to promote observance of applicable international law enforcement principles,

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

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

Responses to Human Rights Abuses

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

INTERACTIONS BETWEEN COMPANIES AND PRIVATE SECURITY

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

- Private security should observe the policies of the contracting Company regarding ethical conduct and human rights; the law and professional standards of the country in which they operate; emerging best practices developed by industry, civil society, and governments; and promote the observance of international humanitarian law.
- Private security should maintain high levels of technical and professional proficiency, particularly with regard to the local use of force and firearms.
- Private security should act in a lawful manner. They should exercise restraint and caution in a manner consistent with applicable international guidelines regarding the local use of force, including the U.N. Principles on the Use of Force and Firearms by Law Enforcement Officials and the U.N. Code of Conduct for Law Enforcement Officials, as well as with emerging best practices developed by Companies, civil society, and governments.
- Private security should have policies regarding appropriate conduct and the local use of force (e.g., rules of engagement). Practice under these policies should be capable of being monitored by Companies or, where appropriate, by independent third parties. Such monitoring should encompass detailed investigations into allegations of abusive or unlawful acts; the availability of disciplinary measures sufficient to prevent and deter; and procedures for reporting allegations to relevant local law enforcement authorities when appropriate.
- All allegations of human rights abuses by private security should be recorded. Credible allegations should be properly investigated. In those cases where allegations against private security providers are forwarded to the relevant law enforcement authorities, Companies should actively monitor the status of investigations and press for their proper resolution.
- Consistent with their function, private security should provide only preventative and defensive services and should not engage in activities exclusively the responsibility of state military or law enforcement authorities. Companies should designate services, technology and equipment capable of offensive and defensive purposes as being for defensive use only.
- Private security should (a) not employ individuals credibly implicated in human rights abuses to provide security services; (b) use force only when strictly necessary and to an extent proportional to the threat; and (c) not violate the rights of individuals while exercising the right to exercise freedom of association and peaceful assembly, to engage in collective bargaining, or other related rights of Company employees as recognized by the Universal Declaration of Human Rights and the ILO Declaration on Fundamental Principles and Rights at Work.
- In cases where physical force is used, private security should properly investigate and report the incident to the Company. Private security should refer the matter to local authorities and/or take disciplinary action where appropriate. Where force is used, medical aid should be provided to injured persons, including to offenders.
- Private security should maintain the confidentiality of information obtained as a result of its position as security provider, except where to do so would jeopardize the principles contained herein.

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

- Where appropriate, Companies should include the principles outlined above as contractual provisions in agreements with private security providers and ensure that private security

personnel are adequately trained to respect the rights of employees and the local community. To the extent practicable, agreements between Companies and private security should require investigation of unlawful or abusive behavior and appropriate disciplinary action. Agreements should also permit termination of the relationship by Companies where there is credible evidence of unlawful or abusive behavior by private security personnel.

- Companies should consult and monitor private security providers to ensure they fulfil their obligation to provide security in a manner consistent with the principles outlined above. Where appropriate, Companies should seek to employ private security providers that are representative of the local population.
- 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.

RIO TINTO plc*The way we work*

Our statement of business practice

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The way we work

RIO TINTO IS A WORLD LEADER in finding, mining and processing the earth's mineral resources.

In order to deliver superior returns to our shareholders over many years, we take a long term and responsible approach to exploring for first class orebodies and to developing large, efficient operations capable of sustaining competitive advantage. In this way, we help to meet the global need for minerals and metals which contribute to essential improvements in well-being, as well as making a direct contribution to economic development and employment in those countries where we invest.

Wherever we operate, we work as closely as possible with our hosts, respecting laws and customs, minimising adverse impacts, and ensuring transfer of benefits and enhancement of opportunities. We believe that our competitiveness and future success depend not only on our employees and the quality and diversity of our assets but also on our record as good neighbours and partners around the world.

Accordingly, we set ourselves high environmental and community standards. Our commitment to health, safety and the enhancement of the skills and capabilities of our employees is second to none in mining. We seek to make lasting contributions to local communities and to be sensitive to their culture and way of life.

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This statement of business practice

THIS STATEMENT provides for management and staff throughout the Group a summary of the principal procedures in place to help ensure that we meet the high standards we set ourselves and, on pages 6 to 13, a compilation of the policies by which those standards are established.

Policies are adopted by the Board after wide consultation, including with interested parties from outside the company. Once adopted, they are communicated to our operating companies worldwide, together with any guidance and support on implementation which might be necessary. Operations are then required to devote the necessary effort at all management levels to give effect to these policies, and to report on their implementation.

The policies and practices in this document apply to all our subsidiary companies. In the case of associate companies, where we do not have operating responsibility, and contractors, we make a point of informing them of our policies,

actively encouraging them to adopt policies of their own consistent with ours, and offering practical advice wherever this is appropriate.

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Transparency

We are committed, both in principle and in practice, to the maximum level of transparency consistent with normal commercial confidentiality.

Under our dual listed companies structure, shareholders of Rio Tinto plc and Rio Tinto Limited take decisions on significant matters affecting them, including the appointment of directors, by poll through a joint electoral procedure. The results are announced to the stock exchanges and advertised in the media.

We prepare annual and half yearly reports and financial statements for our shareholders on all aspects of our business performance, in compliance with the appropriate regulations and undertakings in the various jurisdictions where Rio Tinto shares are listed. These reports are available to anyone else who requests them.

In several areas we go further. On health, safety and the environment, for example, we not only review in our annual report to shareholders major aspects of policy and practice, but we also publish a separate health, safety and environment report, extending the quality and quantity of the information we provide. The report deals with present performance in managing the key HSE issues and the work under way to achieve further improvements in the future. It is independently verified and then widely circulated within the Group. Copies are available to both shareholders and members of the public.

Corporate governance and accountability

We aim to conduct our affairs in a properly accountable manner, reflecting the interests not only of our shareholders but also of others who may be affected by our activities.

In the United Kingdom we comply with the Code of Best Practice of the Cadbury Committee Report on Financial Aspects of Corporate Governance. In Australia we support the initiative of the Australian Stock Exchange on disclosure of corporate governance practices.

The Boards of directors include significant representation by non executive directors who bring independent judgement and wide knowledge and experience to the Boards' deliberations.

There is a formal schedule of matters specifically reserved for the Boards' decision and a procedure exists for directors to obtain inde-

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pendent professional advice at the companies' expense in the furtherance of their duties as directors.

In line with normal corporate practice, Board committees undertake specific responsibilities delegated to them by the Boards of directors. The committees, all of which include strong representation by non executive directors, comprise the audit committee, the nominations committee, the remuneration committee, the committee on social and environmental accountability, and the general purposes committee. Their current terms of reference are reproduced on pages 14 to 16.

The constitution and operation of the remuneration committee (including the necessary independence of directors who are members of the committee) comply with the principles which are now incorporated in the London Stock Exchange Listing Rules and derived from the Code of Best Practice issued by the Study Group on Directors' Remuneration (The Greenbury Committee).

Dealings in publicly quoted securities are regulated by Rio Tinto's own rules which are at least as rigorous as the appropriate stock exchange requirements.

The review of the quality and effectiveness of our policies and practices relating to health, safety and the environment and social issues is the responsibility of the committee on social and environmental accountability. This committee is composed entirely of non executive directors. It can refer issues to an independent advisory group.

We subscribe to relevant charters, codes of practice and guidelines in addition to our own policies. For example, in the environmental field, we are committed to the International Chamber of Commerce Business Charter for Sustainable Development and the Environmental Charter of the International Council on Metals and the Environment. We are also signatories, on behalf of operations managed in Australia, to the Australian Minerals Industry Code for Environmental Management.

Accounting standards and internal financial control

We prepare financial statements for each financial period which give a true and fair view of our affairs as at the end of the financial period and of the profit or loss for that period. For this purpose appropriate accounting policies are used and applied consistently, reasonable and prudent judgements are made, and applicable

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accounting standards are followed.

Systems of internal financial control are in operation which are designed to provide reasonable but not absolute assurance regarding firstly, the safeguarding of assets against unauthorised use or disposition; and secondly, the maintenance of proper accounting records and the reliability of financial information used within the business or for publication.

The practices described above are designed to ensure that the standards which we set for ourselves and which are expected of us are met in all aspects of our business, in all locations, and at all times. Reviewed regularly, and updated as necessary, these processes aim to provide the required level of control, transparency and accountability, in line with worldwide best practice. The policies which set the standards underlying this approach are reproduced on the following pages.

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Health, safety and the environment

Rio Tinto recognises that excellence in managing health, safety and environmental responsibilities is essential to long term success. Through effective management practices the Group aims to ensure the health and safety of its employees, to minimise any adverse impacts its activities may have on the environment and to make a positive contribution to local community life.

To achieve these objectives the Rio Tinto Group will:

- build from a foundation of compliance with applicable HSE laws, regulations and voluntary commitments;
- seek continuing improvement through setting and reviewing targets, assessing and reporting HSE performance and using best available practices appropriate to the local situation;
- contribute to the development of sound legislation and regulations; and
- foster a better understanding of HSE issues pertinent to its activities.

Implementing the HSE policy

To implement the Rio Tinto HSE policy, all subsidiaries must meet the following minimum requirements:

- ensure that HSE matters are an integral part of long term strategy;
 - establish programmes and procedures to ensure proper and consistent implementation of their HSE policies;
 - assess in advance the potential HSE implications of exploration, development, expansion, acquisition, divestment, and closure activities and implement actions to minimise adverse social and environmental impacts;
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- provide for HSE related operating, reclamation, and closure costs in preparing investment proposals, annual plans, and accounts;
 - ensure efficient use of energy, water and other materials and pursue implementation of pollution prevention programmes;
 - conduct regular audits to evaluate compliance with HSE laws and company HSE policies;
 - evaluate HSE risks associated with their activities and products and take appropriate action to minimise potential risks;
 - prepare, test and maintain emergency procedures in co-operation with local emergency response authorities;
 - prepare and maintain a plan for the eventual closure of each operation including: management of social and environmental impacts, estimates of closure costs and financial provisions, and consultation and co-operation with local communities;
 - ensure that everyone in the company is aware of and integrates HSE considerations in their day-to-day activities;
 - encourage consultation, particularly with employees and local communities, listen and respond to concerns presented, and contribute to public education programmes on relevant HSE matters;
 - require all contractors to implement practices that are consistent with the company's HSE policy;
 - research processes, practices, and technologies that will lead to improved HSE performance; and
 - report regularly to their boards of directors, and through those boards to Rio Tinto, on progress in HSE performance and other significant matters relating to their company's HSE policy.

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Communities

Wherever the Group operates, good relations with its neighbours are fundamental to long term success. Knowing that each local community is different, the policy of Rio Tinto is that every operation shall strive to understand and interact constructively with its local communities and to assist their development in ways which apply the following principles:

- Mutual respect
- Active partnership
- Long term commitment

Mutual respect is essential to lasting, beneficial, interactive relationships between the Group's operations and local communities. This requires continuing and effective two way communications and realistic expectations on both sides.

Active partnership defines the way the Group works with local communities, as well as with regional and national governments and other affected parties, by seeking mutual commitment and reciprocity based on trust and openness so as to reach agreed objectives and shared involvement.

Long term commitment to local communities is sought, so that social and economic well being is safeguarded and, where possible, enhanced throughout the mine's life and beyond.

Recognising that environmental issues have an important impact on community perceptions, this policy will be pursued in parallel with the Group's health, safety and environmental policy.

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Human rights

The Rio Tinto Group's policy on human rights is based on its support for the United Nations Universal Declaration of Human Rights and respect for human rights provisions enshrined in the law of those countries where the Group operates, and rooted in the approach to local communities set out in its communities policy.

Rio Tinto supports and protects the dignity, well-being, and rights of those with whom it is directly involved: its employees and their families, and the local communities which are neighbours of its operations. The Group's employment and communities policies commit operations to making a positive contribution to their development through a relationship based on mutual respect. Infringements of their rights by others will be opposed, through dialogue and, where it will be helpful, in public.

Beyond this, the Group is guided by the values of the international community that human rights should be protected and promoted everywhere. Operations will look for opportunities to support positive efforts to promote broader understanding of these values, especially where they assist our local communities. But the Group has no mandate to act as a vehicle for global diplomacy, nor does it seek to intervene outside those specific areas where its operations are directly engaged.

The Group aims to develop ever greater understanding of human rights issues, and of their consequences for its operations. It seeks dialogue with representative bodies, with international and other non governmental organisations, and with others in the business community. The aim is a practical common effort to promote respect for human rights.

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Access to land

The growing world population needs minerals and metals for sustainable development. These must be produced responsibly, in ways which bring benefits to this and to succeeding generations. The Rio Tinto Group has a role to play in ensuring these future supplies of metals and minerals. To do this, Group operations need access to land: both for exploration and, in the case of those much smaller areas of land where exploration yields positive results, for mining.

For the Group, any decision to proceed with exploration depends on a thorough evaluation of both the economic potential and the relevant environmental and social factors. In the case of designated areas of high conservation or significant heritage value operations will be particularly rigorous in assessing these factors and will continue to monitor them at a high level so as to ensure that best practice is followed.

Group operations recognise that, in some parts of the world, there exist in addition to land rights enshrined in national law other claims to land such as those based on ancestral or indigenous title. In such cases operations seek to establish the fullest possible understanding of the issues involved including the ways in which the wishes of those communities claiming such rights are accommodated.

The Group policy is to ensure that the economic, technical, environmental and social factors are co-ordinated in an integrated process. In all cases, this involves full consultation with local people, public authorities and other interested parties, with the intention of securing the widest possible agreement and support for any activity proposed.

The Group fully accepts that the outcome of this process may result in authorisation not being given to explore or to mine, or that operations themselves will decide not to proceed in any given case.

The Group operates worldwide in more than 40 countries with widely differing economic, social, political and environmental

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conditions. Local circumstances may place particular demands on the way consideration is given whether to explore or mine. The approach, however, will always be based on best practice by world standards.

Many countries have an established legislative framework for land use and management, with effective consultative procedures which enable major interested groups, including the mining industry, to express their views. In these countries, the Group is committed to engagement in those processes and to full compliance with their outcomes.

In countries where these consultative procedures are less fully developed, operations will work with others to encourage and help governments to put the appropriate processes in place. In the meantime, they will act as if such procedures were in place, and will consult as widely as possible in the particular circumstances.

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Employees

The Group operates in a wide variety of locations in different parts of the world where different cultures, traditions, customs and employment conditions and practices may apply. Whilst remaining sensitive to these differences:

- employees, both potential and active, will be treated in a way which will be free of bias on the grounds of race, gender, religion, age, national origin or handicap status. The only exceptions to this are where, under applicable local laws and/or as a result of discussions with local communities on the basis of the Group's community relations policy, it is apparent that a particular effort should be made to employ people from those communities;
- employees will be provided with good and safe conditions of work;
- employees will be protected to the best of the company's ability against harassment in the work place;
- employees will be entitled to fair and just remuneration policies and practices;
- employees will have the right to choose whether or not they wish to be represented collectively;
- employees will be provided with opportunities for education, training and development consistent with the needs of the business.

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Business integrity

Honesty, integrity and fairness are essential to the way in which the Rio Tinto Group conducts its business. Accordingly, the Group builds from a foundation of compliance with the relevant laws and regulations of the countries in which it operates;

- the direct or indirect offer, payment, soliciting or acceptance of bribes is not permitted;
- conflicts of interest between employees and the company must be avoided;
- the Group supports the principles of free competition in the market in compliance with applicable competition laws; and
- Group operations are encouraged to introduce their own codes of business practice in order to maintain honesty, integrity and fairness in their business transactions.

Political involvement

Group operations may represent their views to government and other third parties on matters which affect their business interests and the interests of shareholders, employees and others involved in the business and operations. Group companies do not, however, participate in party politics and do not make payments to political parties.

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Board committee terms of reference

Audit committee

To review the accounting principles, policies and practices adopted in the preparation of public financial information, and to assure the Board that it complies with statutory, stock exchange and regulatory requirements.

To review with management the procedures relating to financial and capital expenditure controls, including internal audit plans and reports, and provide assurance to the Board with regard to public statements on financial control.

To examine and review with the auditors the scope and the results of their audit.

To recommend to the Board the auditors to be nominated for appointment.

To review the measures taken by the Company to ensure that pension fund assets are safeguarded.

At the request of the chairman of the Board, to advise on such matters as may be appropriate.

Nominations committee

To nominate candidates for the approval of the Board to fill vacancies on the Board and from time to time to consider and to make recommendations to the Board on its composition and balance.

In discharging its duties, to have regard to the public shareholding in Rio Tinto Limited when nominating candidates for the approval of the Board.

Remuneration committee

To determine the broad policy for executive remuneration and the entire individual remuneration packages for each of the executive directors and as appropriate other senior executives.

To consider and where thought fit to recommend the introduction, alteration or creation of additional forms of compensation for staff such as profit sharing or share acquisition schemes.

In order to assist the committee in consideration of the forego-

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ing, to commission studies into forms and levels of compensation in other organisations.

In carrying out its duties under these terms of reference:

- to have regard to the Code of Best Practice recommended by the study group chaired by Sir Richard Greenbury and the requirement of the Stock Exchange Listing Rules;
- to aim to give the executive directors every encouragement to enhance corporate performance and to ensure that the directors are fairly and responsibly rewarded for their individual contributions.

To report and account directly to the shareholders, on the Board's behalf, for decisions of the committee by way of a report in the annual report and accounts.

To consider whether the AGM should be invited to approve the policies set out in such report and to minute the conclusion.

To report to the directors all significant discussions and conclusions.

Committee on social and environmental accountability

In general, to review the effectiveness of management policies and procedures in delivering those standards set out in the Company's Statement of Business Practice which do not fall within the remit of other committees of the Board, and in particular those relating to health, safety and the environment and to social issues. The overall objective is to promote the development throughout the Rio Tinto Group of business practices consistent with the high standards expected of a responsibly managed company, and to develop the necessary clear accountability on these issues.

Specifically, to review the practices and processes in place to manage, in accordance with the standards set out in the Statement of Business Practice:

Health, safety and the physical environment, including the impact of company activities on the environment; the environmental risks associated with Group company activities, current and proposed; safety record and performance; significant technical, medical and related problems; and the legal and regulatory background.

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Social issues, including the interaction between Group activities and local communities, and the ways in which these activities contribute to social and economic development; the policies and practices followed in seeking access to land, embracing indigenous rights, native title and forms of consultation; and respect for human rights.

In respect of the above issues, the committee reviews the scope and results of reviews and audits which will include independent reviews on the application of the Group's environment policies in subsidiary companies.

The committee will consider any proposed changes to company policies or practice.

The committee receives regular reports on these issues from the head of health, safety and the environment and from other executive managers as appropriate.

The focus for the committee is on the quality, effectiveness and transparency of management processes. It can also look in detail at specific issues which might raise particular concerns.

The committee may refer issues to an independent advisory group.

The committee makes periodic reports to the Board on matters it has reviewed.

General purposes committee

To consider such matters as the chairman shall decide may conveniently or necessarily be dealt with between meetings of the Board.

The agenda and papers to be presented to the committee for consideration shall be circulated to all directors. Any director who is not a member of the committee may nevertheless attend any committee meeting.

The committee shall be fully empowered to act on behalf of the Board.

Minutes of meetings of the committee shall be circulated promptly to all directors of the Company.

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Rio Tinto plc
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Freeport-McMoRan Copper & Gold Inc. **Social, Employment and Human Rights Policy**

General

Freeport-McMoRan Copper & Gold Inc. (FCX) believes that, as a responsible corporate citizen, it is the duty of the company and its operating affiliates to foster positive social and employment relationships in every area where they operate, and FCX is committed to continuous improvement of those relationships. FCX is dedicated to ensuring that its operations are conducted in a manner that respects the Universal Declaration of Human Rights and 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 will work to be a partner in the social and economic development of the people in and around areas of operations.

Social Relationships and Development

To achieve these Policy 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 medical studies;
- Consult with local populations about important operational issues that will impact their communities;
- Work with the host country 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;
- Provide for periodic outside, independent audits of the social and human rights performance of the company.

Employment

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;
- Employ as many citizens of the host country as practicable and will, wherever practicable, employ people who are indigenous to the operational or exploration site;
- Provide training to citizens of the host country and especially to those indigenous to an 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 race, creed, gender or national origin. However, special efforts will be made to train and hire people indigenous to each operational or exploration area.

Human Rights

FCX, its affiliates and employees are dedicated to the promotion of the rule of law and protection of human rights at all operational sites. The company and its affiliates will adhere to the principles of the Universal Declaration of Human Rights and other applicable international standards of human rights and all laws of the host country wherever the company operates. 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 company operation with dignity and respect;
- Take appropriate action against any employee who violates the human rights of others;
- Report any credible accusation of a human rights violations to the appropriate government authorities and other agencies;
- Provide the company's full cooperation with any responsible human rights investigation and to 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 it operates by implementing programs and policies aimed at building positive relationships, and by setting a good example;
- Do all in its power to make certain its property and/or equipment is not used by any party in the violation of human rights.

Human Rights Reporting

Each operational site will have a Human Rights Compliance Officer and there will be a corporate Human Rights Compliance Officer. The Human Rights Compliance Officers will be responsible to receive all reports of possible human rights violations, to evaluate those reports and to forward them to appropriate government authorities and, where applicable, to non-governmental organizations. Each year staff employees, all security employees and all community development employees will be required to fill out and submit to the corporate Human Rights Compliance Officer a Human Rights Assurance Letter stating that they understand the company's Social 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 Human Rights Compliance Officer 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.

Freeport-McMoRan Copper & Gold Inc.

Human Rights Policy and Implementation

I. Policy

The Board of Directors of Freeport-McMoRan Copper & Gold Company Inc. (FCX) adopted a Social and Human Rights Policy at its meeting on 2 February 1999. As part of that policy, the management of FCX and its affiliates are required to support the human rights of all those who live and work around the sites of FCX or any FCX affiliate operations and to inform and educate all employees about human rights. Also, FCX and its affiliates are committed to establish a mechanism by which employees and others can report suspected human rights violations to Company management. The full text of the human rights portion of the FCX Social and Human Rights Policy follows.

General

Freeport-McMoRan Copper & Gold Inc. (FCX) believes that, as a responsible corporate citizen, it is the duty of the Company and its operating affiliates to foster positive social relationships in every area in which they operate, and FCX is committed to continuous improvement of those relationships. FCX is dedicated to ensuring that its operations are conducted in a manner respects the Universal Declaration of Human Rights and 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 will work to be a patient partner in the social and economic development of the people in and around all areas of operations.

Human Rights

FCX, its affiliates and its employees are dedicated to the promotion and protection of human rights. The company and its affiliates will adhere to the principles of the Universal Declaration of Human Rights and other applicable standards of human rights and all laws of the host country wherever the company operates. 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 company operation with dignity and respect;
- take appropriate action against any employee who violates the human rights of others;
- report any credible accusation of a human rights violations to the appropriate government authorities and other agencies;
- provide the company's full cooperation with any responsible human rights investigation, and to 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 it operates by implementing programs and policies aimed at building positive relationships and by setting a good example; and
- do all in its power to make certain its property and/or equipment is not used by any party in violation of human rights.

II. Policy Implementation

Human Rights Compliance Officer

The FCX Human Rights Compliance Officer will be located at the FCX corporate headquarters in New Orleans, Louisiana. The Compliance Officer will be assisted by on-site officers at all operational locations. The Compliance Officer and his assistants will receive by telephone, electronic mail, or fax all reports about possible human rights violations. The Compliance Officer and the on-site assistants will investigate all reports of possible violations, and the Compliance Officer will report to the Public Policy Committee of the Board of Directors at least annually on compliance with the Social and Human Rights Policy. Dr. David Lowry is the corporate Human Rights Compliance Officer; Dr. Daniel Ajamiseba is the Human Rights Compliance Officer in Irian Jaya (Papua).

Human Rights Declaration for Employees

Once each year all staff employees, all employees of the Security Department and all community development employees will be asked to sign the following declaration about human rights as part of the annual Assurance Letter process:

"I hereby declare that I have neither participated in nor witnessed any action which deprived the human rights of any person in or around any operations area of FCX or any FCX affiliate. I further agree during the coming year to report to the Company's Human Rights Compliance Officer any action I see taken

either by employees or others in or around the operations area of FCX or any FCX affiliate that could be construed as a violation of human rights.”

Human Rights-Definitions and Procedures

The Universal Declaration of Human Rights provides the standard definition of human rights. Although the Universal Declaration is intended to set a standard of human rights for governments, it also can give general guidance to companies and others that wish to establish a standard for decision making which respects both employees and the communities in which they work. Of the thirty articles in the Universal Declaration, several are of special importance for PT-FI's Social and Human Rights Policy:

Article 3: Everyone has the right to life, liberty, and security of person.

Article 5: No one shall be subjected to torture or to cruel, inhuman, or degrading treatment or punishment.

Article 9: No one shall be subjected to arbitrary arrest, detention, or exile.

Article 12: No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor attacks upon his honor and reputation. Everyone has the right to the protection of the law against such interference or attacks.

Employees are expected to respect these human rights principles, and if an employee sees any of these principles being disregarded it is the employee's obligation to report such disregard to the Human Rights Compliance Officer.

Employee and Contractor Guidance

There are several scenarios involving potential human rights problems of which employees should be aware. The most difficult involves property that may be construed as belonging to Freeport. This includes buildings, containers, aircraft, trucks, busses, light vehicles and other company equipment. Under certain proscribed conditions, Indonesian law permits the police and military to request the use of and/or commandeer such equipment in cases where they believe an emergency situation exists. Even when those conditions do not exist, there have been times when government officials have requested the use of company and contractor equipment and in some cases, equipment has been commandeered. If a request comes from Indonesian authorities to use Freeport equipment and there is time for management consideration of the request, you should ask the requesting party to contact the General Manager. If equipment in your control is commandeered and there is no opportunity to refer the matter to company management, you should surrender the vehicle to the officer, but you should not operate the equipment and you should immediately notify senior management that the equipment has been commandeered. You should fully identify the equipment commandeered, where and when the equipment was taken, by whom (if known) and for what purpose (if known).

If you see a Freeport employee, contractor or anyone else behaving in such a way that you suspect that he is violating someone's human rights, you should note the person's name (if known) and department (if a Freeport employee or contractor), the time and place in which the incident took place, the nature of the possible violation and any other information that would be helpful to the company and the authorities in investigating the incident. This should be reported immediately to the Human Rights Compliance Officer at the employee's work location. Generally, you should not try to intervene in the incident.

The conduct of our business is guided by our founding values, objectives and commitments. This Statement of Values and Responsibilities reflects, in part, the trusts, obligations and responsibilities that are intrinsic in the various permissions that we receive to operate in international jurisdictions. Such permissions are commonly subject to review and renewal, and so must be continually earned.

We believe that ultimately we are judged more by our actions, and by the consequences of those actions, than we are by our words.

We are prepared to be independently and impartially judged by our actions. Our initiatives are determined within a framework of fundamental and common-sense commitments to our employees, to our shareholders and to all those who have responsible interests in the conduct of our business.

- We endeavour to excel as an example of committed, ethical corporate citizenship to governments, international agencies, joint-venture partners, host communities, neighbours, employees and shareholders.
- We respect the dignity of each individual and the rights of all individuals to pursue their ambitions. We support the United Nations' Universal Declaration of Human Rights.
- We ensure that people on our project sites voluntarily work in safe and healthy conditions and receive fair remuneration. We do not employ children.
- We create opportunities, without discrimination, for individual improvement and advancement, and for the acquisition of knowledge, skills and experience.
- We believe that people have a right to clean air and water. We make responsible use of available resources, practice conservation, minimize the environmental intrusions of our business activities and rehabilitate decommissioned sites. We regularly review our compliance with national laws and international standards and make improvements that are identified. We are committed to best-practice environmental management, and to achieving formal certification to internationally recognized levels of performance in environmental, health and safety matters.
- We communicate openly, honestly and with sensitivity.
- We respect the diversity of multicultural states and communities, and involve them in the planning and implementation of our projects.
- We encourage the self-sufficiency of local businesses. We develop programs to share the economic benefits of our projects with local communities, and we work with community representatives to establish priorities and implement agreed upon measures.
- We believe that the realization of a broad, common good can be assisted by

²⁹⁶ http://www.ivanhoemines.com/i/pdf/Values-Resp_V3.pdf

enterprise that demonstrates its support for human rights and social justice, and that is encouraged to flourish in a free-market business environment.

- Conscientious, judicious enterprise can help to deliver more benefits to more people and, in the process, facilitate the desirable advancement of democratic imperatives.
- We acknowledge the sovereign rights of nations; however, we are not motivated by political considerations.

EXHIBIT I
Examples of human rights issues

Year	Country	Commodity	Project	Human rights issues
1990	Papua New Guinea	Copper/Gold	Bougainville	10,000-15,000 people killed: land rights, resource issues, share of revenue, independence movement
1994	Indonesia	Copper/Gold	Grassberg, West Papua	4 shot by rebel, many villagers killed by army: land rights, ownership, independence movement
2001	Colombia	Coal	Drummond Coal	Union leaders murdered
1990	Colombia	Coal	Exxon	Army used to crush strike
1997	Australia	Iron Ore	Yandicoogina mine	Indigenous peoples' land rights
1999	India	Bauxite	Alcan/Norsk Hydro	Police shot demonstrators (who may have been attacking them)
2001	Burma/Myanmar	Jade	Various mines	Use of forced labor for infrastructure, poor health & safety conditions
2001	Burma/Myanmar	Copper	Ivanhoe, Monywa	Use of forced labor for infrastructure; support of bad government
2001	Canada	Diamonds etc	Various	Disputes over native land claims
1996	Bolivia	Gold	Amayapampa etc.	Management/Labor dispute including control of mines; disputes between company/local people/workers; 10 people killed.
2001	D. R. Congo	Gold/Diamonds	Various	Forced Child labor
2001	China	Coal	Jiangsu province	Health & Safety conditions. 92 died in accident
2001	China	Tin	Guangxi province	200 died in mine flood
2001	China	Asbestos		Forced labor, health & safety conditions
1993	Tibet	Gold	Dardo/Darwa counties	Forced labor, poor working conditions
1993	Cambodia	Gold	Ratanakiri	Police/illegal miners shot
1999	Ghana	Gold	Grinding ore at home	Child labor, silicosis
1999	Guinea	Diamonds	dig trenches	Child labor
1999	Niger	salt, gypsum, gold	small scale mining	Child labor
1999	Peru	Gold	Underground mines	Child labor
1999	Tanzania	Gemstones	Underground mines	Child labor
1999	Philippines	Gold	small scale mining	Child labor
1993	Venezuela	Gold	Yanomami	Indigenous people, 16 killed by Brazilian garimpeiros
1998	Brazil	Gold	Yanomami	Indigenous people, thousands died

EXHIBIT II

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, Corporations and Morality, Prentice-Hall, Englewood Cliffs, NJ, 1998.