

The effectiveness of industry-based codes in serving public interest: the case of the International Council on Mining and Metals

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Companies in the mining industry have lately faced extensive criticism for their operational practices and their impact on the environment. Additionally, many of their operations in poorer developing countries have had a deleterious effect on indigenous peoples and raised issues of human rights abuses. The mining industry has responded to these concerns by initiating various reform measures, including a cooperative, industry-based initiative that would provide a framework for establishing standards of conduct for member companies. This article briefly describes these initiatives. In particular, it discusses a major industry initiative, the Sustainable Development Framework, created under the aegis of the International Council on Mining and Metals. Next, the article offers an analytical framework within which to evaluate the relative effectiveness of industry-based principles or codes of conduct. Finally, it analyzes the Council's Sustainable Development Framework and its adequacy in terms of what the industry group aims to accomplish, and further actions that might be needed to address unresolved issues in order to engender public trust and confidence in the industry's actions and assertions in meeting societal expectations.

Key words: transparency, accountability, compliance verification, independent external monitoring, extractive industries, mining and minerals, industry or group-based codes of conduct, International Council on Mining and Metals, ICMM, principles or codes of conduct.

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Introduction: mining industry operations in a hostile public environment

The mining industry has long been the subject of extensive public criticism for the harmful impact of its operations on the planet's physical environment and also for the long-term deleterious impact on many aspects of people's quality of life. Societal attitudes toward mining have always been somewhat ambivalent. Modern economic growth and rising living standards would not have been possible without the minerals and fossil fuels provided by the industry. It is also an unavoidable fact of life that mining activity leaves a large and often irretrievable footprint on the environment in ways that are increasingly unacceptable to society in general, and the impacted communities in particular. This condition has been further aggravated with the increasing demand for minerals and fossil fuels from the growing economies of countries like China and India.

To some extent, public antagonism toward the mining industry has risen from greater awareness of environmental issues, e.g. global warming, sustainable development and environmental degradation. The mining industry is viewed by many as economically too powerful. In addition, it is alleged that the industry has used its economic leverage to gain political influence and to thwart meaningful reforms of its *modus operandi*.¹ There are also other issues of concern, which relate especially to the poorer developing countries in remote parts of the world. They include human rights abuses through the use of excessive police and military forces,² harm to local communities and indigenous populations,³ forced labour and involuntary servitude,⁴ and bribery and corruption,⁵ to name a few.

¹ See, for example, Bream and Reed 2005; Salinero 2005; Steeman 2004; Chakrabarty 2005; Oxfam America 2005; and Treadgold 2005.

² See, for example, *The Economist* 2002; and Tam and Lifsher 2003.

³ See, for example, *The Economist* 2005; Abrash 2001; and Kapelus 2002.

⁴ See, for example, Collingsworth 2002; and *Oil & Gas Journal* 2000.

⁵ See, for example, Cockburn 2003; Simpson 2005; and Matlack, Smith and Edmondson 2004.

The mining industry – and its leadership – has been cognizant of the rising public hostility and has undertaken a variety of initiatives to respond to public criticism. Major mining companies have initiated specific principles or codes of conduct, which outline their commitment to operating in an environmentally friendly manner.⁶ Companies have been publishing sustainability reports to provide greater transparency about their activities pertaining to environmental protection and sustainability.⁷ They have been cooperating with private and public lending agencies to create uniform standards for project evaluation and reporting (Treanor 2003; Balls 2004). And, finally, they have been responding to the concerns of NGOs through dialogue and consultations in dealing with these issues.⁸

The jury is still out as to the impact of various initiatives undertaken by the mining industry. However, one thing is certain. All industries and large companies – especially transnational corporations (TNCs) – must respond to societal concerns if they wish to maintain their social franchise, i.e. their license to do business in a politically and socially harmonious environment. Therefore, the activities of the mining industry must be evaluated in terms of meeting an acceptable level of societal expectations with regard to changes in the industry's practices, meaningful transparency in public disclosure, and the steps taken by the industry to engender public trust through independent external verification of the industry's claims.

I. Scope of the article

The primary focus of this article is on a specific initiative undertaken by the mining industry, the Sustainable Development Framework (SDF). It was created under the aegis of the

⁶ For examples of specific corporate codes and environmental policies, see Newmont Mining's Environmental Policy (www.newmont.com); Rio Tinto's Environmental Policy (www.riotinto.com); and Shell's Environmental Minimum Standards (www.shell.com).

⁷ Examples of sustainability reports are "Alcoa 2004 Sustainability Report" (www.alcoa.com), "BP Sustainability Report 2004" (www.bp.com), and "Freeport 2001 Economic, Social and Environmental Report: Working towards Sustainable Development" (www.fcx.com).

⁸ See, for example, Connor 2004; Forsyth 1999; and Hamann 2003.

International Council on Mining and Metals (ICMM), an organization established by some of the largest mining companies in the world.⁹ My rationale for focusing on the ICMM initiative is threefold:

- ICMM's SDF is a major cooperative effort undertaken by the mining industry and includes most of the largest companies in the industry. It has the personal involvement of top management at these companies. The sponsoring companies have committed enough financial resources to ensure that ICMM would not be hindered from accomplishing its mission for lack of funding.
- In the process of developing this initiative, the mining industry actively undertook a systematic, extensive and highly visible process of involving diverse groups of public interest organizations representing various constituencies impacted by the mining industry. ICMM also commissioned numerous studies by experts to generate meaningful information on the issues affecting the industry from the perspective of its critics.
- The success of this initiative would be a major step forward in demonstrating the viability of industry-based codes where similar efforts in other industries have had limited success. Furthermore, to the extent that the process of creating and implementing this initiative identifies other areas of concern, it would serve as a laboratory for trying out new approaches towards narrowing the gap between societal expectations and company-industry performance.

The first section of the article is devoted to a detailed description of the mining industry's response to the public criticism of its operational practices. It includes a description of the ICMM's SDF, its consultative process and its principles and how they are to be operationalized. I also analyze the measures by which ICMM's code process intends to evaluate and monitor the performance of individual members and of the entire group.

⁹ For a detailed history of the development of the ICMM project, see the ICMM Web Site at www.ICMM.com.

This article is not limited to a case study of ICMM's SDF, however. The SDF belongs to a genre of codes that are group-based, i.e. they are developed jointly by a group of companies or organizations that share common characteristics or face similar external challenges and where it is felt that the combined efforts of the group are likely to be more effective in responding to external challenges than individual companies and institutions acting alone.

I create an analytical framework within which to evaluate the relative effectiveness of industry or group-based voluntary codes of conduct. This framework delineates the necessary preconditions that must be met if an industry or group-based code of conduct is to fulfill its intended objectives. I also draw comparisons with other industry-based codes to gain a better understanding of their dynamics and the lessons that could be usefully applied to the mining industry. Finally, I analyze the ICMM's SDF as to its adequacy in terms of what the industry group aims to accomplish. This includes an examination of the SDF with regard to its governance structure, operational policies, baseline standards and benchmarks, performance evaluation, accountability, and measures of transparency and public disclosure.

II. Institutional pressures for reforms in the mining industry

In addition to general public criticism and NGO hostility, mining companies have also been pressured for reform by some of the world's major public and private lending institutions to improve their performance in the area enumerated in the previous section. The most notable of these are The Extractive Industry Review, The Extractive Industry Transparency Initiative and The Equator Principles.

The Extractive Industries Review (EIR) – a project launched by the World Bank Group in 2001 – is intended to assess the World Bank's involvement in the extractive industries and its role in poverty alleviation through sustainable development. The EIR Final Report released in December 2004

provides industry analysis by civil society, governments and industry representatives, and recommendations for the World Bank's future role in the industry.¹⁰ The Extractive Industries Transparency Initiative (EITI) was announced by the United Kingdom's Prime Minister Tony Blair at the World Summit on Sustainable Development in Johannesburg in September 2002. The EITI process advocates a multi-stakeholder approach to increase transparency over payments by companies to governments and government-linked entities, as well as transparency over revenues by those host country governments.¹¹ The Equator Principles, launched in October 2002, is a voluntary set of guidelines developed and agreed to by some of the world's largest private financial institutions.¹² The Equator Principles are based on the policies and guidelines of the World Bank and International Finance Corporation. Although all these initiatives emanate from different sources and address different issues, their ultimate goal has been to pressure all or different segments of the mining industry to modify their conduct in ways that is protective of the environment and respects the rights of the communities that are adversely impacted by their operations.

III. The mining industry's response

There has been growing recognition on the part of mining companies that the *status quo* has become untenable. In response, companies in the mining industry have vastly expanded their communication and public information effort through the publication of corporate sustainability reports.¹³

¹⁰ For details, see www.eireview.org.

¹¹ For details, see www.eitransparency.org.

¹² The founding signatories of the Equator Principles are: ABN AMRO Bank, Banco Bradesco, Banco do Brasil, Banco Itaú, Banco Itaú BBA, Bank of America, Barclays plc, BBVA, Calyon, CIBC, Citigroup Inc., Credit Suisse Group, Dexia Group, Dresdner Bank, EKF, HSBC Group, HVB Group, ING Group, JPMorgan Chase, KBC, Manulife, MCC, Mizuho Corporate Bank, Rabobank Group, Royal Bank of Canada, Scotiabank, Standard Chartered Bank, The Royal Bank of Scotland, Unibanco, WestLB AG, Westpac Banking Corporation. For details, see www.equator-principles.com.

¹³ See Annandale, Morrison-Saunders and Bouma 2004; Kolk 2003 and 1999; Peck and Sinding 2003; and Marshall and Brown 2003.

Furthermore, to gain credence with the various stakeholders of the industry, companies in the industry have created individual or group-based guiding principles or codes of conduct outlining the industry's commitments to changes in its operating practices.¹⁴

A more comprehensive and far-reaching effort in this direction has been the SDF.¹⁵ This initiative is the primary vehicle through which the mining industry has channeled most of its resources to demonstrate its commitment to meeting societal expectations. The intent of the SDF is to create a uniform set of principles that individual companies would adapt to their own situations either by following the SDF as it currently stands, or by creating their own codes of conduct to respond to their specific concerns within the SDF. Therefore, the success or failure of this initiative would likely have a significant impact as to whether this effort would be emulated by other industries, and whether or not it would engender enough public trust and credibility to merit long-term commitment on the part of the industry.

IV. Antecedents to the ICMM's SDF: the MMSD project

In the late 1990s, rising public concern over environmental and social harm attributed to the mining industry induced top executives of the leading mining companies to launch a new effort. Called the "Global Mining Initiative" (GMI),¹⁶ it led to the creation of the Mining, Minerals and Sustainable Development (MMSD) project. From its very inception, the

¹⁴ See, for example, the Kimberley Process. Launched in May 2000, it combines efforts of governments, the international diamond industry and civil society representatives to stem the flow of conflict diamonds (see www.kimberleyprocess.com). For examples of other group-based codes in the mining and materials industries, see Montreal Protocol, Responsible Care, UNEP Gold Industry Voluntary Code Initiative, and UN Strategic Approach to International Chemicals Management. See also Paton 2000; Howard, Nash and Ehrenfeld 1999; and Tapper 1997.

¹⁵ See details at the ICMM Web Site (www.icmm.com).

¹⁶ For details on the Global Mining Initiative, see www.icmm.com/gmi.php.

GMI effort was spearheaded by three of the world's largest mining companies, namely Rio Tinto, Western Mining Corporation and Phelps Dodge Corporation.¹⁷ Start-up funds of approximately \$4 million were provided by 28 companies, each one contributing at least \$150,000. By the time the project's initial report was completed, its cost had escalated to over \$7 million.¹⁸

Launched in July 1999, MMSD was conceived as a wide-ranging research and consultation project. Its objective was to examine and understand the conditions that would "maximize the contribution of the mining and mineral sector to sustainable development at the global, national, regional and local levels" (Walker and Howard, 2003, p. xi). The report recognized that prior efforts by the industry to accomplish similar goals had not succeeded because of critical bottlenecks such as "lack of trust among companies, governments and civil society, and the absence of necessary skills, resources, and institutional capacity" (ibid.).

In one sense, the MMSD project was a model of deliberate planning, inclusive participation by all major stakeholders, open dialogue, transparency in external communications and public disclosure.¹⁹ Although it was funded by the mining industry, it was organized as an independent collaborative effort and managed by three organizations, Environmental Resources Management (ERM), International Institute for Environment and Development (IIED) and World Business Council for Sustainable Development (WBCSD).²⁰ According to project

¹⁷ The CEOs of the three companies, Sir Robert Wilson, Hugh Morgan and Douglas Yearley, played a leadership role in creating the project.

¹⁸ For details on MMSD's governance and organization structure see <http://www.iied.org/mmsd/governance.html>.

¹⁹ For details see the "Stakeholder Engagement" page of the MMSD project at http://www.iied.org/mmsd/activities/global_information_dialogue.html. For NGO engagement in Mining Initiatives see Hamann 2003.

²⁰ *Environmental Resources Management (ERM)* is one of the world's leading providers of environmental and sustainability services. It has over 100 offices in 35 countries and employs more than 2,300 staff. ERM delivers solutions for leading business and government clients, assisting them to manage their environmental, social and related risks. ERM's mining clients include Rio Tinto PLC, Anglo American, Newmont, and BHP Billiton.

documents, it involved over 5,000 participants from various stakeholder groups from all over the world. MMSD's initial report was an attempt to provide in-depth analysis of societal issues faced by the extractive industry and offer recommendations for improving corporate performance compatible with sustainable development.²¹

MMSD's report identified six major issues that would guide the industry's efforts towards the creation of a viable set of *voluntary principles*. These were: (a) that voluntary approaches alone are not sufficient when there was compelling social priority but no business case to justify the additional expenditure required; (b) lack of critical integration in the industry would be an obstacle, which could only be overcome through greater collaboration within the industry; (c) local issues should be solved locally as local endowments and priorities differ; (d) best practices should be defined by decentralized and iterative process, not by a fixed set of parameters that could be "read out of a manual"; (e) collective action must include companies of all sizes in order to produce positive results; and (f) existing organizations should be encouraged to continue facilitating collective action (Walker and Howard 2003, pp. 4-5).

The pioneering work undertaken by MMSD led to two initiatives. The first one was the creation of a set of voluntary principles by the International Council on Mining Metals

The International Institute for Environment and Development (IIED) is an independent, non-profit research institute working in the field of sustainable development. IIED aims to provide expertise and leadership in researching and achieving sustainable development at local, national, regional, and global levels. In alliance with others, it seeks to help shape a future that ends global poverty and delivers and sustains efficient and equitable management of the world's natural resources.

The World Business Council for Sustainable Development is a coalition of 160 international companies united by shared commitment to sustainable development via the three pillars of economic growth, ecological balance and social progress. The members are drawn from more than 30 countries and 20 major industrial sectors. It also benefits from a Global Network of 35 national and regional business councils and partner organizations involving some 1,000 business leaders globally.

²¹ For details on MMSD's Working Papers see <http://www.iied.org/mmsd/wp/index.html>

(ICMM) in May 2003 that would guide the conduct of companies in the mining industry along the guidelines set by MMSD's initial report (*ibid.*, p. 6). The second initiative was the creation of a partnership with the World Wildlife Foundation of Australia and several Asia-Pacific mining companies to create a pilot certification programme (*ibid.*). This activity has not yet come to fruition, and in any case, is not part of this article, which focuses only on the activities of ICMM and the creation of voluntary principles.

V. Public reaction to the MMSD report

The critics of the industry were not impressed. They argued that the process was stage-managed to stretch over a long period of time so as to avoid the necessity of substantive action by way of changing mining practices.²² The industry was also accused of selecting many NGOs that were friendly to its perspective and who may otherwise be relatively uninformed about the environmental sustainability issues pertaining to the industry.²³ Critics considered the consultative process to be so biased that it led to a boycott by a large number of mining-related environmental and human rights non-government organizations (Corpuz and Kennedy 2001).

Many critics view the MMSD initiative as primarily a media campaign to “educate” the public. As evidence, they point to a statement by Sir Robert Wilson, Executive Chairperson of Rio Tinto, saying: “Despite the efforts of companies and industry associations, the mining, metals, and minerals industry has fallen into increasing public disfavor. It is seen, at best, as a necessary evil. It has become accepted thinking that the industry is incompatible with sustainable development” (*ibid.*). MMSD is seen as a public relations offensive to bridge the “gulf between the industry’s self-perception and how it is seen by others” (*ibid.*). In terms of substance, MMSD was criticized for not being adequately consultative and participative, and for its failure to respond to the real issues of environment, sustainability and the rights of indigenous peoples, among others. To wit:

²² See, for example, Raja 2002 and Nostromo Research 2002.

²³ See JATAM 2005 and Baue 2002.

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- No process is independent that relies on \$5 million or more from the very companies whose activities it is trying to analyze. This is the ultimate case of co-optation for those trying to tackle the industry meaningfully.
 - No analysis is participatory that tries to encompass issues created by the mining industry – and as defined by the mining industry – without considering the case of many of the world’s most mine-impacted communities.
 - The space for indigenous participation on various levels of the multimillion-dollar bureaucracy created by the IIED has been tokenistic at best and ignorant and insulting at worst (ibid.).

In a statement signed by NGO representatives from different parts of the world, the group challenged the integrity of the process and credibility of its sponsors. “Mining will continue to be a part of the global economy for the foreseeable future. We may be willing to work with the mining industry to reduce the damage that mining does to communities and the environment. But the where, when, and how of mining should be decided by those most affected” (Project Underground 2005). Accordingly, the industry’s efforts at consultative process were criticized as a thinly disguised attempt to ratify the industry view of sustainability. Consequently, “we reject the Global Mining Initiative’s efforts in the lead up to Rio +10, and also the process known as Mining, Minerals and Sustainable Development, which aim to co-opt the very notion of sustainability” (ibid.).

In another broadside against the mining industry, the MMSD initiative was criticized for allegedly promoting dialogue and sustainability, “as long as mining companies get to continue their destructive practices” (Friends of the Earth 2002). Friends of the Earth, a major international environmental NGO, was one of the several groups that formally rejected the MMSD report as lacking in substance and deficient in process. “One of the other big problems is that MMSD has not talked to enough people in developing countries in the southern hemisphere where some of the worst problems exist” (Jones 2002).

VI. ICMM's structure and modus operandi

ICMM was created in May 2001, through the transformation of another industry organization, the International Council on Metals and the Environment (ICME), a global, multi-metal representative organization, which agreed to broaden the group's mandate and transform itself into the ICMM. ICMM is governed by its members, which currently include six major companies and three commodity and regional trade and industry associations.²⁴ These include, among others, Anglo American, Rio Tinto, BHP Billiton, Alcoa, Noranda, Sumitomo, Mitsubishi, Nippon, Newmont Mining, Freeport McMoRan, and Placer Dome. The trade associations are a group of intra-country industry groups and national and multinational organizations.

The governance structure is entirely controlled by the mining industry. The first Chairperson of the ICMM Council was Douglas Yearley, the retired Chairperson and Chief Executive Officer (CEO) of Phelps Dodge Corporation. He was succeeded by Rio Tinto's CEO, Sir Robert Wilson, who in turn was replaced by the former Executive Chairperson of Noranda, Inc, David Kerr. The current ICMM Council Chairperson is Wayne Murdy, CEO of Newmont Mining Corporation.²⁵ As currently constituted, ICMM has no governance level input from non-industry groups. ICMM's Executive Committee is exclusively comprised of the CEOs of eight corporate members of the Council.²⁶ The Association members are represented by the Association's Coordination Group.

²⁴ See appendix for details.

²⁵ For details on ICMM's Governance and Organizational Structure, visit ICMM's website (www.icmm.com).

²⁶ The eight members of the Executive Committee are: A. J. (Tony) Trahar, Chief Executive Officer, Anglo American plc.; Bobby Godsell, Chief Executive Officer, AngloGold Ashanti; Charles (Chip) Goodyear, Chief Executive Officer, BHP Billiton; Wayne Murdy, President & Chief Executive Officer, Newmont Mining Corporation; Kazuo Oki, President and Representative Director, Nippon Mining and Metals; Andrew Michelmore, Chief Executive Officer, WMC Limited; and Leigh Clifford, Chief Executive, Rio Tinto plc.

ICMM's 2004 report reaffirms the notion of an industry-controlled organization. It states: "ICMM is a CEO-led organization comprising many of the world's leading mining and metals companies as well as regional, national, and commodity associations" (ICMM 2004, p. i.). It later also says: "ICMM members believe that by acting collectively they can best ensure their continued access to land, capital and markets, as well as build trust and respect amongst key stakeholders." The report claims that member companies have been working toward advancing the sustainable development agenda for almost ten years and that members are committed to improving their sustainable development performance and to producing responsibly the mineral and metal resources society needs.

The report further states: "Clear targets and accountability are essential to improve performance and build trust. Our sustainable development principles give us a context to achieve this. They were adopted in May 2003 and our corporate members have committed to report on their performance against them. Our work programme is designed to put our principles into practice" (ibid p. i.).

VII. ICMM's core principles and their amplifications

During the first two years of its existence (May 2001 – May 2003), ICMM initiated a wide variety of programmes and activities that focused on setting standards for the industry's performance, creating international policy and collaborative networks, and catalyzing change for sector-wide action. In May 2003, ICMM announced the result of this effort in the form of "Sustainable Development Framework" that would henceforth guide the actions of the mining industry. The SDF outlined ten principles against which ICMM's members would measure their sustainable development performance (table 1).

ICMM has further amplified the ten principles into 46 explanatory statements. These are designed to add meaning to the more generalized aspirations that constitute the main

principles (an illustration of the amplifications of some principles is provided in table 2).²⁷

Table 1. The ICMM SDF: main principles

Corporate Governance

Principle 1: Implement and maintain ethical business practices and sound systems of corporate governance.

Corporate Decision-Making

Principle 2: Integrate sustainable development considerations within the corporate decision-making process.

Human Rights

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

Risk Management

Principle 4: Implement risk management strategies based on valid data and sound science.

Health and Safety

Principle 5: Seek continual improvement of our health and safety performance.

Environment

Principle 6: Seek continual improvement of our environmental performance.

Biodiversity

Principle 7: Contribute to conservation of biodiversity and integrated approaches to land use planning.

Material Stewardship

Principle 8: Facilitate and encourage responsible product design, use, re-use, recycling and disposal of our products.

Community Development

Principle 9: Contribute to the social, economic and institutional development of the communities in which we operate.

Independent Verification

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

Source: International Council on Mining and Metals, www.icmm.com.

²⁷ For the complete list of amplifications of the ICMM SD Framework principles, see www.icmm.com.

Table 2. Explanatory statements of two ICMM principles

Corporate Governance	Develop and implement company statements of ethical business principles, and practices that management is committed to enforcing.
Principle 1: Implement and maintain ethical business practices and sound systems of corporate governance.	Implement policies and practices that seek to prevent bribery and corruption. Comply with or exceed the requirements of host-country laws and regulations. Work with governments, industry and other stakeholders to achieve appropriate and effective public policy, laws, regulations and procedures that facilitate the mining, minerals and metals sector's contribution to sustainable development within national sustainable development strategies.
Corporate Decision-Making	Integrate sustainable development principles into company policies and practices.
Principle 2: Integrate sustainable development considerations within the corporate decision-making process.	Plan, design, operate and close operations in a manner that enhances sustainable development. Implement good practice and innovate to improve social, environmental and economic performance while enhancing shareholder value. Encourage customers, business partners and suppliers of goods and services to adopt principles and practices that are comparable to our own. Provide sustainable development training to ensure adequate competency at all levels among our own employees and those of contractors. Support public policies and practices that foster open and competitive markets.

Source: International Council on Mining and Metals, www.icmm.com.

VIII. Current status of ICMM activities and reported progress

ICMM's 2004 report provides details of various activities undertaken by the industry and its member companies, how they relate to various principles, and the industry's agenda for the year 2005, as follows:

- “1. Sustainable Development Framework (Principles: All)
Key achievements and activities in 2004: Development of the Mining and Metals Sector Supplement to the GRI 2002 Guidelines followed, in early 2005, by a commitment to report in accordance with GRI framework, launch of the good practice website and translation of ICMM Principles into four languages.
Goals for 2005: Developing a verification element for the framework
2. Environmental Stewardship (Principles: 6, 7)
Key achievements and activities in 2004 – Initiatives to improve members' environmental performance: Continued IUCN-ICMM Dialogue, publication of case studies on mining and biodiversity conservation, fulfillment of the pledge not to explore or mine in World Heritage sites, a survey of financial assurance practices for mine closure and agreement to develop a tailings management reference guide.
Goals for 2005: Publication of good practice guidance on mining and biodiversity conservation, online reference guide of good practices in tailings management, approaches to integrated land-use planning, discussion paper on biodiversity offsets and advocacy paper on financial assurance.
3. Socio-Economic Development (Principles: 3, 9)
Key achievements and activities in 2004 – Increasing our understanding of how mining contributes to social and economic development: Launch of resource endowment study, indigenous peoples' issues review and tools for local community development.

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- Goals for 2005: Outputs of resource endowment study, publication of case study examples to enhance the socio-economic development of host communities and dissemination of community development tools.
4. Health and Safety (Principles: 5)
Key achievements and activities in 2004 – Improved health and safety performance through: Indicators of health and safety performance, scoping of a database of safety statistics for benchmarking of members’ operations, agreement with the Chinese Government and our partners on a programme to improve mine safety in China, work with UNEP on awareness and preparedness for emergencies at local level, or APELL.
Goals for 2005: A report on a harmonized approach for setting and reviewing workplace exposure limits, launch of health and safety database and publication of case studies on APELL in mining.
 5. Materials Stewardship (Principles: 4, 8)
Key achievements and activities in 2004: Steps towards a policy framework on material stewardship, the “Apeldoorn Declaration” agreeing on the need for a metals specific method for assessing ecotoxicity impacts and input to PrepCom2 for the UN’s Strategic Approach to International Chemicals Management (SAICM)
Goals for 2005: Guidance document on materials stewardship, eco-efficiency tools and case studies, publication on metals recycling and continued involvement in SAICM.
 6. Science-Based Regulations (Principles: 4)
Key achievements and activities in 2004 – Recognizing that sustainable development policies need to be based on valid data and sound science, ICMM participated in various policy forums throughout 2004: Europe’s draft new chemicals policy (REACH), Metals Environmental Risk Assessment Guidance, Human Health Risk Assessment Guidance and IFC policies and performance standards.
Goals for 2005: Continued participation in policy debates and developing technical input based on sound science with various partners, such as the Ecotoxicity Technical Advisory Panel.

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7. Participation in International Forums (Principles: 1, 4, 7, 9, 10)
Key achievements and activities in 2004 – Bringing our members’ perspective to: The World Bank’s Extractive Industries Review, the Extractive Industries Transparency Initiative, World Conservation Forum and Global Dialogue of Governments
Goals for 2005: Continued participation in these and other forums to ensure ICMM’s mission and position are broadly understood.
 8. Collaborative Approach
Key achievements and activities in 2004: Worked collaboratively with 34 organizations, participation in 27 international events, maintaining two websites, three newsletters and 13 FYI e-letters.
Goals for 2005: Stronger partnerships and continued collaborations, increased attendance in international forums, improvements to our websites, four newsletters and ongoing communication with our members.
 9. Membership and Governance
Key achievements and activities in 2004: A new corporate member, Lonmin, joined in October, a strategic meeting in May, ICMM annual meeting in October and forum for CEOs.
Goals for 2005: Continue to work strategically with our members to meet ICMM’s objectives and continue to uphold high standards of transparency in how we work.” (ICMM 2004)

IX. Analytical framework: voluntary codes of conduct

A. Proliferation of voluntary codes of conduct

The past two decades witnessed an enormous growth on the part of individual companies and industry groups to create some type of statement of principles or conduct that would establish the sponsoring organization’s *bona fides* as a socially responsible company or industry. Available data, although not comprehensive, suggests that these codes have become *de*

rigueur among corporations and industry groups all over the world. Almost 60% of the corporations, among the *Fortune 500* corporations, and a smaller number of the 500 largest international corporations have corporate codes of conduct (Webley and Le Jeune 2004). Even a cursory examination of the websites of major corporations and industry groups would provide ample evidence to the reader of the pervasiveness of this phenomenon.

Unfortunately, the widespread creation of codes by corporations and industry groups has not gone beyond the rhetoric stage.²⁸ Sponsoring organizations, in general, have failed to take adequate steps to implement their codes and to make their efforts transparent. Nor do business organizations as yet view them as a means of building public trust. Business organizations cite a variety of difficulties in creating industry or sector-wide operating principles or standards of conduct. It is argued that business rationale against creating and implementing meaningful standards of conduct in such areas as pollution, sustainability and human rights, is not tenable on economic and socio-political grounds. This situation makes it necessary, and at the same time quite difficult, that there be maximum participation by industry members.

The inevitable result of this state of affairs has been that these principles or codes of conduct are treated with disdain and largely dismissed by both the knowledgeable and the influential opinion leaders among various stakeholder groups, the news media and even the public-at-large. Instead of gaining public trust and credibility for their efforts, the sponsoring organizations suffer from adverse public relations effects and potential damage to their institutional reputation.²⁹

Industry groups are an integral part of the economic landscape in most market-based economies. There is a large body of academic and professional literature tracing their

²⁸ See Kaptein 2004.

²⁹ See Sethi 2003a, 2003b and 2002; Sethi and Sama 1998; Jenkins 2005.

historical evolution and growth. Governments all over the world have created legal and regulatory frameworks to promote collective and cooperative efforts as the part of business entities while ensuring that these efforts do not lead to collusion and anti-competitive behaviour.³⁰

B. Traditional industry-based codes of conduct

The economic case for voluntary cooperation among business enterprises is clear and compelling. Business organizations develop voluntary arrangements to standardize technical and quality standards for products, procedures, contracts, and other arrangements that create economies of scale, reduce transaction costs, provide rules of fair competition among companies and engender confidence among customers. Cooperative efforts also play an important role under conditions of imperfect markets (so-called “market failures”)³¹ that provide companies with above normal profits (so-called “economic rents”). Companies may also cooperate among themselves to advance their economic interests in the political arena in creating laws and regulations that enhance their vital interests. They may also benefit when their collective action contributes to lax regulatory regimes on the part of the governments, called non-market failures or regulatory failures.³²

A third dimension of the benefit of industry coalitions is to protect companies from paying the cost of negative externalities.³³ Examples of such externalities may be air pollution, untreated wastewater, etc. and the impact of these negative externalities on the individuals and communities involved. Typically these negative externalities are handled by

³⁰ See, for example, Boadway 1997; Barnett, Mischke and Ocasio 2000; Gupta, Hofstetter and Buss 1997.

³¹ See Harris and Carmen 1983; Wolf 1979; Spulber 2002.

³² Harris and Carmen 1983; Wolf 1979; Garner 1996. Also see Boadway 1997; Barnett, Mischke and Ocasio 2000; Clark 1998.

³³ See Sethi 1979; Jenkins, Maguire and Morgan 2004; Murty and Russell 2005; Bhat and Bhatta 2004; Thomassin and Cloutier 2004; Alfaro and Rodriguez-Clare 2004; Herve 1990; Dybvig and Spatt 1983; Nason 1989; Quiggin and Chambers 1998.

local or regional authorities at lower costs by generating economies of scale. However, to the extent that individual companies or industries may avoid paying their fair share, the additional cost burden falls on the community. Industry groups can mobilize greater resources through collective action and thereby minimize their cost burden for such externalities since the benefits of collective action are apparent to all members. The cost burden for the community, however, is quite diffused. Impacted individuals and communities are dispersed and less able to organize in order to protect their vital interests.

Voluntary business groupings, however, must contend with two problems, namely the free rider problem and the problem of adverse selection, whose magnitude and severity would adversely impact their collective operation. Free rider problems accrue from a situation in which some type of pressure and coercion is necessary to ensure that member organizations, which benefit from the collective effort, also share the cost of maintaining such effort in proportion to the benefits derived by them.³⁴ Adverse selection occurs when companies joining the group are likely to exploit the benefits accruing from their participation in the group without any consideration of the harm that their actions might cause other members of the group.³⁵ There are, however, some fundamental differences between the conventional form of industry-based organizations and their principles or codes of conduct, and the CSR related principles or codes of conduct. These distinctions have the potential to limit the scope of cooperation among companies and exacerbating the problems associated with industry-based groups.

C. CSR-related industry or group-based codes of conduct

Voluntary principles or codes of conduct, dealing with societal issues, share a similar intellectual heritage and economic rationale with other more general principles mentioned above.

³⁴ Andreoni and McGuire 1993; Conlon and Pecorino 2002.

³⁵ Crocker and Snow 1992; Inderst 2005; Fabel and Lehmann 2000; Wilson 1980.

Generally described under the rubric of principles or codes of corporate social responsibility (CSR), they are established by industry or group-based organizations that protect and advance the groups' shared interests. These groups also create principles to which all members should aspire and establish standards and procedures, which would guide the conduct of group members.

The business case or the economic justification for CSR-related principles or codes of conduct is infinitely more complex than that for the conventional business-groups and their codes of conduct. In direct contrast to the conventional principles or codes, CSR-related codes call for the industry or group members to assume voluntarily the costs of some of the industry's negative externalities.

For purposes of this article, the term "code of conduct" has been used in a broader, more generic sense. It includes all types of initiatives launched by individual companies and industries. These initiatives may be variously called guiding principles, ethical principles, codes of ethics or codes of conduct. The objective of these principles and codes may include the demonstration of a company's philosophy, ethical or value-based principles; the description of a company's or industry's activities and modus operandi which have been of concern to various segments of the community; and an expression of commitment as to how a company would modify its operations or management practices to address these issues. And, finally, these principles or codes may describe the business entity's perspective as a responsible corporate citizen.

A widening gap between societal expectations and corporate performance creates a legitimacy gap, which is worsened by lack of credibility for corporate actions and pronouncements on the part of influential stakeholders (Sethi 2003b). Therefore, corporations and industry groups must take necessary actions to bridge this gap or risk greater public scrutiny and regulation of the industry's activities and performance. Industry-based groups, however, face some major challenges in transforming this need "to do something" into actionable

strategies. The difficulties faced by these groups arise from conflicts among member companies within the industry, and hostility and a lack of trust in the industry's external socio-political environment. Specifically:

- Many companies are philosophically opposed to creating voluntary codes that they view as a give-in to the industry's critics and a coerced response to meeting extra-legal demands imposed by the industry's critics.
- There is the inherent difficulty of finding common ground among member companies who otherwise compete vigorously against each other.
- Another set of difficulties emanates from individual companies' operational constraints, financial concerns and, above all, corporate culture and management orientation toward responding to social and environmental challenges.³⁶
- The long-term benefits of industry-wide cooperative effort, nevertheless, carry short-term costs that must be compensated through improved productivity, which takes time and requires structural and organizational changes that are not always easy to accomplish. Otherwise, they would reduce short-term corporate earnings and adversely impact the company's stock price.
- The prevailing nature of competitive markets, shareholder expectations, incentives of the financial middleperson and management reward system (i.e. agency costs) overwhelmingly emphasize the short-term character of earnings.³⁷ There is a strong incentive to underestimate long term risks since a recognition of these risks would lower the expected earnings of a company when compared with its competitors who choose to ignore them. This situation is further aggravated by the lack of adequate research and reliable data in quantifying long term risk given the short-term oriented nature of incentives (Sethi 2005).

³⁶ See Herrmann 2004; Sethi 1994; Sethi and Williams 2000.

³⁷ See Eisenhardt 1989; Jensen and Meckling 1976; Moh'd, Perry and Rimbey 1995; Cho 1992; Wright, Mukherji and Kroll 2001; Wright and Mukherji 1999; Bruhl 2003; Van Marrewijk 2003; Williamson 1985.

D. Necessary elements of group-based CSR-related codes of conduct

The above discussion is not intended to suggest that CSR-related industry-wide codes are unlikely to be viable under any set of circumstances. Instead, it is suggested that industry-wide codes can serve an important industry goal, i.e. narrowing the gap between societal expectation and industry performance in a manner that is economically efficient, technologically feasible and minimizes the need for additional governmental regulations in an environment of public trust in corporate actions and assertions of corporate performance.

Industry-based CSR codes serve an important business and social purpose. From the business viewpoint, such codes provide industry members with a voluntary and more flexible approach to addressing some societal concerns about how an industry operates. It creates a mechanism whereby an industry may develop solutions that are focused, take cognizance of the industry's special needs and public concerns and are economically efficient. They engender public trust through a "reputation effect" while avoiding being tainted for the actions by other companies.

From the public's perspective, voluntary codes also serve an important purpose. They avoid the need of further governmental regulation with the prospect of imposing onerous regulatory conditions. They also allow the moderate elements among the affected groups to seek reasonable solutions to the issues involved.

An industry-based code of conduct is in the nature of a "private law" or a "promise voluntarily made" whereby an institution makes a public commitment to certain standards of conduct. The nature of "voluntariness", and, by implication, the flexibility afforded to companies, depends on the basic premise that the sponsoring organizations and their critics share a common interest in improving the underlying conditions of the affected groups and regions, and that it is in the interest of

all parties to resolve the underlying issues within the realistic constraints of the available financial resources and competitive conditions.³⁸

The “private law” character of voluntary codes of conduct gives the sponsoring organization a large measure of discretionary action. It also imposes a heavy burden to create independent systems of performance evaluation, monitoring and verification, and public disclosure. This is a proactive stance and perhaps the best of all possible worlds. It provides scope for experimentation and building consensus, and facilitates the enactment of public law. The success of this system, however, depends on the industry’s ability to create and sustain a high level of public credibility. The private law character of the code does not reduce the obligations of the companies or industries – it increases their burden to ensure that its skeptical critics and the public-at-large believe in the industry’s responses and performance claims.

E. Current approaches to creating industry-based CSR-related codes

Industry-based code initiatives fall along a spectrum where one end of the spectrum comprises of codes, which are broad principles or statements of good intent. They lack specificity in terms of performance expectations and thus require low-level commitment on the part of the member companies. The second end of the spectrum consists of codes with greater specificity. They require independent external monitoring of company compliance against well-defined, objective, quantifiable and outcome-oriented measures of performance.

An overwhelmingly large number of current industry-based CSR-related codes fall in this category of broad principles, or lean heavily towards them. Industry groups feel that, to be successful, an industry-wide or group-based approach must include the largest possible number of companies in the collective effort. The consensus approach is intended to create

³⁸ Sethi 2003b; Melrose 2004.

solutions that are amenable to most members and thus facilitate industry-wide effort in brining about desired changes.

It may seem counter-intuitive, but this approach yields exactly the opposite result from the one publicly claimed by the codes' sponsors. Industry-wide CSR-related codes that depend on voluntary compliance and rarely incorporate enforcement measures, greatly suffer from the problems of free rider and adverse selection. The need to keep the largest number of companies in the group pushes performance standards to the lowest common denominator, if at all. Companies with the weakest records can force standards down to what they are willing to live with. This situation suits the poorly performing and recalcitrant companies, i.e. adverse selection, that stand to gain from enhanced public approval – at no or little cost to themselves – as a result of the time and resources expended by the best-performing companies. At the same time, the best-performing companies suffer from the taint caused by the actions of recalcitrant companies.

A more serious, albeit negative, outcome of this approach lies in its successive loss of credibility with the industry's external stakeholders. Most current industry-based codes, which fall in the category of "principles", suffer from a low level of customer (societal) satisfaction. Most industry groups offering codes make similar claims as to performance and yet are unable and unwilling to satisfy customers (society) with credible performance measures. The codes generate little value to either the companies or society. The phenomena is generally described in the economic literature as a problem of asymmetric information and is best illustrated by the example of selling used cars, as discussed by the Nobel laureate economist George Akerlof.³⁹ Just as in the case of used cars (pejoratively called "lemons"), industry-groups find it difficult to persuade their external and even internal stakeholders that they are telling the truth with regard to their code elements and performance standards. As in the case of used cars, each seller knows the

³⁹ See Akerlof 1970; Johnson and Waldman 2003; Levin 2001; Kim 1985; Boyan 1982.

quality of his/her offerings. Since the products are not similar, the customer must have sufficient and believable information about the claims made by each seller. The sellers, however, are unwilling or unable to provide verifiable or trustworthy information. At the same time, each seller immediately matches the claims of every other seller. Since the buyer has no means to compare the truthfulness of competing claims, he/she treats each seller's information as equally false and thereby debases the quality claims of all sellers.

This situation creates disincentives for the companies that are willing to offer greater compliance of a code's broader principles because they cannot get improved believability from the public. It is, therefore, not surprising that most industry-based codes and their performance claims are disbelieved by the public. At the same time, the enhanced reputation effect arising from the efforts of the forward looking companies would be shared equally by the recalcitrant companies in the same group who would benefit at the formers' expense. Conversely, any public reprobation of the recalcitrant companies would also taint the reputation of the forward-looking companies because they belong to the same group.

Another perverse outcome of this approach is that it may lead a code effort to be captured by the companies with the least amount of commitment to code compliance. This situation is akin to the capture theory of regulation where the regulators are co-opted by the regulates and thus lose their legitimacy as regulators.⁴⁰ This also leads to a situation wherein the better performing companies remain quiet or, worse still, opt-out of the system and thus allow the members with worse compliance intentions to set the de facto industry standard and thereby make the public repudiation of the code effort a self-fulfilling prophecy.

An examination of a wide variety of industry-based codes indicates that certain pre-condition must be met for those codes to become viable.

⁴⁰ Posner 1974; Quirk 1981; Thompson 2003; Fields 1998; Becker 1986.

In the early stages of the evaluation of a social issue – e.g. environmental protection, sustainable development and human rights abuses – a small group of forward looking companies and their leaders must be willing to take the lead in changing the industry direction. The small size of the group minimizes the free rider problem since all participants have *a priori* agreed to adapt certain standards of conduct. It also eliminates the adverse selection issue since membership-by-invitation-only precludes the companies with the worst reputations from joining the group.

The founding group has first mover's advantages, creating standards that are (a) substantial and yet cost effective, and (b) meaningful to gain credence with the industry's critics and the public-at-large. The small size of the group allows for greater opportunities for intensive dialogue with the NGO community and creates more open and inclusive governance systems. The group size can be gradually expanded as other companies see the benefits of joining the group and also find the cost effort manageable.

A code must cover issues demanded by the public and not merely those preferred by industry. Performance verification must be done through mechanisms accepted by the public and not merely those considered convenient by the sponsoring group. A code effort succeeds only when its sponsors have demonstrated the sincerity of their commitments in a manner that is substantial, verifiable and engenders public trust. And last but not least, the industry's leadership must demonstrate a philosophical commitment to the common good, whereby industry leaders become active participants in shaping the public agenda and not merely defending entrenched industry interests.

X. ICMM's SDF: analysis and evaluation

ICMM's efforts and achievements, epitomizing the activities of the mining industry and its member companies, are analyzed at two levels. I first examine the broad framework and intellectual underpinnings of group-based codes of conduct,

their strengths and shortcomings, and how these issues have been addressed by the ICMM's SDF in its governance structure, operational procedures, performance evaluation and transparency. These concerns are endemic to all group-based codes of conduct and must be addressed as an integral part of creating and managing the organism. The second part of the evaluation focuses on the performance of the SDF against the organization's self-proclaimed objectives, time frame, achievement targets, accountability and transparency.

A. Governance structure

The starting point for our analysis is the governance structure adopted by ICMM. The MMSD report had called for a new governance structure that would foster industry involvement but would not be dominated by it. ICMM's governance structure, however, has failed to meet even the minimal standards outlined in the MMSD report. The board structure is totally controlled and led by the leadership of the major mining companies that comprise the core support of ICMM. As presently constituted, ICMM is an industry-directed and industry-controlled organization. There is no formal process to incorporate external, non-industry based input in the governance structure.

ICMM's current governance structure is closer to that of industry-based trade associations, which are formed to protect industry members' interests in their traditional business activities. As such, it runs counter to the governance formats that are increasingly being adopted by other industry groups in natural resources, manufacturing and internationally oriented industry-trade associations, which seek to involve non-industry stakeholders at the governance and consultative levels.⁴¹

The strength of this structure lies in the fact that all deliberations of the group are protected from outside scrutiny.

⁴¹ For examples of industry-based CSR-related codes of conduct involving NGOs and other external stakeholders, see Fair Labour Organizations (www.fairlabour.org), The Forest Stewardship Council (www.fscus.org) and Rainforest Alliance (www.rainforest-alliance.org).

The group disseminates only information that it considers appropriate for public consumption. The group may have been formed to address societal concerns; but the fact remains that its governance structure and *modus operandi* cause it to formulate those issues solely from the industry's perspective and, to the extent external views are considered, they are addressed through the industry's prism and viewpoint.

ICMM's governance structure enables the group to control the problems of free rider and adverse selection by establishing criteria for participation that would presumably exclude those who did not wish to subscribe to the group's principles and standards of conduct. However, it also imposes a heavy burden of proof on the group to demonstrate industry compliance with this SDF.

An analysis of ICMM's activities, described in the next section, suggests that ICMM has to date failed to deliver on any of its goals as outlined in the MMSD report and incorporated in the ICMM's SDF. Moreover, a review of the ICMM's 2004 report, which describes the organization's progress through 2004 and outlines its goals for 2005, is equally disappointing. The main conclusion that one draws from the report is that it would be unrealistic to expect any meaningful and measurable progress from ICMM in meeting its goals in the foreseeable future.

B. Principles and operating procedure

A careful reading of the principles (table 1) suggests that they are primarily inspirational in character, with heavy emphasis on "intent" and call for "commitment" on the part of member companies to improve their performance along indicated dimensions. In this sense, they are similar to scores of other such codes that emphasize "aspirational content" and "good intent" but fall short on delivering specific actions and desired outcomes. As such, they could have been written by any knowledgeable expert, or a good public relations person, in a relatively short period of time. There is little evidence to suggest that these principles benefited in any meaningful manner from

the \$7 million MMSD effort in intensive group participation and publication of voluminous reports.

A major flaw of these principles lies in their lack of specificity. For example, the first principle states its goal to “implement and maintain ethical business practices and sound systems of corporate governance”. However, there is no discussion of what constitutes “ethical business practices”, or “sound systems of corporate governance”. While we may all agree with the spirit of these principles, we may be far apart as to their transformation in actual business practices. As discussed earlier, the system of corporate governance as outlined in the MMSD report and incorporated in the ICMM structure fails to meet the spirit of these principles.

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

Principle 10 calls for effective and transparent engagement with stakeholders, including “independently verified reporting arrangements”. However, the ICMM does not provide information as to how company performance would be

independently verified and results reported to the public. Equally important, the ICMM does not suggest any approaches as to what the industry would do in the event that a member company's verification procedures lack independence. Nor does it indicate what the industry might do in the event that a member company declines to make public its findings with regard to its compliance with the ICMM Framework. When viewed in the context of the analytical framework presented earlier in this article, it becomes apparent that the ICMM's process of code formulation, and issues covered in the code and rules of governance fall within the purview of what I consider to be drawbacks of group-based code formulation. The overwhelming dominance of industry interests has been pervasive in every aspect of ICMM's deliberations.

It should be noted here that a number of similar efforts in other industries have suffered similar disappointments in terms of gaining public credibility.⁴² Code formulation, when there are no prior established standards, must be largely independent (but not hostile) to an industry's interests in order to have realistic inputs from other segments of society that are adversely impacted by an industry's current practices.

Given the ICMM's governing structure, control of the organization by some of the largest mining companies in the industry, and the personal involvement of the top management of these companies, one would expect that the industry would move aggressively to instigate changes in the industry's practices and have a more proactive response to society's concerns, which the industry itself has acknowledged. Instead, this state of affairs has yielded quite the opposite results. It would seem that the industry leaders have retarded, if not completely stalled, the reform progress through their control of the organization. This situation recalls similar results where industry-based trade associations succeed in capturing and co-opting relevant regulatory agencies and moving them away from regulation to the role of protectors of the industry.⁴³

⁴² O'Rourke 2003; Kapstein 2001.

⁴³ See footnote 39.

The next step in the ICMC's effort was to amplify the ten principles into 46 explanatory statements so as to give these principles further meaning and substance (table 2). Unfortunately, these explanatory statements also suffer from the same flaws as the principles they are intended to clarify. The amplificatory standards are quite broad and non-specific. They are also quite vague – which would allow significant variations from the core values of the SDF and still qualify a company as meeting code standards. Rather than alleviating the problem of overly generalized principles, the amplifications have further exacerbated the problem by overly simplistic explanations. Neither the principles nor their amplifications provide any standards with regard to the following:

- What is the “absolute minimum” and is it stated in a manner that is quantitatively defined and objectively measured? Is there anything that the industry asks its member companies to do or refrain from doing which leaves no wiggle room? Are there any issues and standards that are considered to be of “zero tolerance” and where less than full compliance is not an option?
- Why is it that no amplification indicators call for “outcome-oriented” standards of performance? Why can there not be minimum quantitative standards with regard to toxic waste, waste water treatment, disposal of mine waste, to name a few?
- How does the industry define fair remuneration and working conditions? What if the local government's minimum wages and working conditions are considered grossly inadequate and widely violated? What if the companies themselves have played an important role in encouraging local governments to keep these wages deliberately low and impose working conditions that border on involuntary servitude? And where does the notion of “living wage” fit in this equation?

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- How does the industry plan to protect the property rights and cultural heritage of indigenous peoples under conditions in which local tribes are unable to protect their interests in the face of overwhelming economic power of the mining companies? Quite often, these groups consider their land as sacred land that cannot be sold or bartered. It has also been known that mining companies, often acting in concert with host country governments, forcibly acquire tribal land by paying nominal amounts of money as compensation.

It is important that these and similar concerns are adequately addressed before an industry-based framework can provide guidance to member companies that would be viable and credible to the industry's external constituencies. What is being suggested here is that any such framework must explicitly recognize the need for outcome-oriented standards and establish different levels of tolerance – from zero to good faith effort – towards achieving these goals.

The ICMM's initial report had indicated that it was essential to have "clear targets and accountability". The ICMM's implementation procedures currently envisaged fails to recognize the inherent flaws in industry-based codes, which were discussed in the previous section.

The ICMM's current guidelines indicate that independent monitoring and public reporting are to be voluntary and at the discretion of individual companies. The SDF has no provision as to how the industry will monitor member companies' compliance with principles and how it would persuade recalcitrant members to improve their compliance. Unfortunately, given its current governance structure, it is unlikely that the ICMM would be able to address such questions. We are left with the conclusion that the SDF as currently formulated is like a placebo wrapped in an authentic-looking package. Its acceptance, and claims of performance, would depend not on facts but on our perception of facts as presented by the ICMM and its member companies.

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

The ICMM's initial report had recognized that most individual mining companies operating in different parts of the world would be facing different types of environmental and sociological challenges, both as to scope and intensity, and would require different and, quite often, highly situation-specific approaches to meeting these challenges. This suggests that, although individual companies would use different approaches, the end result of their efforts must be to meet the objectives of the ICMM's principles and their amplifications.

However, a review of member companies' most recently published sustainability reports further points to the large gap that currently exists between the ICMM's principles and standards and their implementation by the member companies. None of the reports provide a link to the company's activities and how they relate to the implementation of the ICMM's principles and amplifications. Nor do these reports provide any information as to how, when and to what extent those companies would integrate the SDF in their operations, independently monitor their compliance and make their findings public.⁴⁴

XL. Recommendations and guidelines for the future

The aforementioned discussion and analysis leads one to conclude that the ICMM's SDF, and its operationalization as currently envisaged, falls short of meeting the minimum level

⁴⁴ These comments are based on my analysis of the most recent sustainability reports from the following ICMM member companies: Rio Tinto, BHP Billiton, Umicore, Placer Dome, Newmont, Alcoa, Anglo American, Lonmin Plc., and Freeport McMoRan Copper & Gold. Inc.

of commitment that must be met if the industry is to gain public acceptance and credibility. However, this need not be the case for the future. Through the ICMM, the extractive industry has recognized the problems that it must confront. It has also established general guidelines to address those issues. Now, the companies that helped to establish those guidelines must be willing to take the next and more difficult step, i.e. to put the ICMM SDF into real operational form, company-by-company and site-by-site.

The SDF offers one of the most significant opportunities to demonstrate the effectiveness of an industry-based framework for sustainable development. It has far-reaching consequences for the industry's economic and financial health. It can also help in making real progress in protecting the environment and making the planet a more livable habitat. Its potential success has the ingredients of making significant progress in addressing other problems of global magnitude, i.e. oppressive regimes, widespread corruption, the waste of national resources, ethnic violence, forced labour and a plundering of mineral wealth.

However, the voluntary nature of the SDF means that members of the ICMM must press forward and transform the current general and essentially aspirational character into a functionally specific SDF. This would include general standards that are universally applicable and country-site specific standards applicable to individual locations and countries. Without such an amplification of the SDF, the efforts of the ICMM and its members will not only be unproductive, but also will further hurt the reputation of the industry.

To conclude: for the ICMM to be the voice of the mining industry, and in particular its member companies which are amongst the largest and most successful mining companies in the world, it must take steps towards a more meaningful implementation of the SDF:

- Establish clear-cut standards of conduct that would be the most attainable and best possible standards at the current

state of technology and societal expectations. Furthermore, these standards should not be limited to environmental issues, but must encompass, among others, issues of bribery and corruption, human rights abuses, rights of indigenous people, and transparency in its dealings with local governments and especially the army and police in a host country. A starting point in this direction would be the “Voluntary Principles on Security and Human Rights”, jointly promulgated by the governments of the United States and the United Kingdom on 19 December 2000.⁴⁵

- Establish “minimum” standards of conduct in the above-mentioned areas that would be considered inviolate under any conditions and make member companies pledge never to violate them.
- Review the current policies and practices of member companies to ensure their total compliance with the inviolate minimum standards of conduct.
- Require member companies to develop their own codes of conduct. They would comply with the broad principles enumerated in the SDF but would also take cognizance of unique conditions prevalent in different countries of mining operations.
- Establish criteria for creating standards for performance evaluation and independent external monitoring systems for compliance verification. Any monitoring system must be an integral part of code compliance on a regular basis.
- Ensure maximum transparency in public disclosure of member companies’ performance with its code compliance.

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⁴⁵ See United States Department of State Web Site for Voluntary Principles on Security and Human Rights (<http://www.state.gov/g/drl/rls/2931.htm>).

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Appendix. ICMM members and associated members

List of industry members

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

List of associated members

Chamber of Mines of South Africa Prospectors and Developers Association of Canada	Consejo Minero de Chile A.G.
International Lead Zinc Research Organization	International Wrought Copper Council
Camara Minera de Mexico	Nickel Institute
Sociedad Nacional de Minería (SONAM)	Instituto Brasileiro de Mineracao
Japan Mining Industry Association	International Aluminium Institute
World Coal Institute	International Copper Association (ICA)
Internacional Zinc Association	Sociedad Nacional de Minería y Petróleo
Mining Industries Associations of Southern Africa	Eurometaux
Federation of Indian Mineral Industries	Minerals Council of Australia
Euromines	The Cobalt Development Institute
Nickel Producers Environmental Research Association (NIPERA)	Indonesian Mining Association

Source: International Council on Mining and Metals, www.icmm.com.

