

# A failed strategy of using voluntary codes of conduct by the global mining industry

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## Abstract

**Purpose** – This paper aims to focus on an analysis of industry-based voluntary codes of conduct in the international arena with special reference to the operations of the global mining industry.

**Design/methodology/approach** – The paper examines the working of the mining industry's voluntary code of conduct, i.e. International Council on Mining and Metals (ICMM) sustainable development framework. The paper develops an analytical framework, which sets forth some of the necessary preconditions that must be met for such a code to be credible and effective in meeting societal.

**Findings** – An in-depth analysis of the data produced by ICMM conclusively proved that the industry had substantially failed in meeting any of its objectives in terms of adequacy of principles, establishment and implementation of the framework, allocation of sufficient financial and human resources, and independent external monitoring for compliance verification. The result is that despite spending millions of dollars, industry has failed to gain any public credibility. Instead, industry's code effort is viewed with disdain as a largely public relations exercise.

**Originality/value** – The paper provides important lessons and specific guidelines that can help companies and industries in creating meaningful and effective codes of conduct. A failure to do so would exacerbate the problem of public distrust in the industry and would lead to greater restraints on the industry's modus operandi and opportunities for growth and profitability.

**Keywords** Extractive industries, Mining industry, Sustainable development

**Paper type** Case study

## Introduction

The current wave of globalization has brought about a radical transformation in geopolitical arrangements. It has shifted the locus of economic power and bargaining leverage between private economic institutions and national governments and regulatory authorities. National governments in developing countries have had to compete among themselves to attract and maintain multinational corporation (MNC) investments. They have been forced to make concessions to the MNCs in terms of tax and other “give aways” and thereby limit their ability to fashion domestic policies with better focus on national interest (Johnston and Yufan, 1995; Sethi, 2002). Governments of industrially advanced countries have been reluctant to exert political pressure because of domestic strategic and economic interests, and from a reluctance to interfere in the internal affairs of other sovereign nations. International organizations, e.g. the United Nations have also been less than effective because a majority of their member governments cannot agree among themselves to create internationally workable policies.

In the midst of all this stands the institution of transnational corporation, which has become an engine of change through its injection of capital, technology, organizational skills, and a competitive environment (Sethi, 2003a). They have exerted tremendous influence by creating a new equilibrium in economic power and political leverage. Unfortunately, they have been unwilling to react to these situations in a pro-active manner, one that would

provide a balanced arrangement between private economic interest and societal needs (Sethi, 2003a).

The situation with regard to the global mining companies is far worse. 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. Other issues of concern pertain to: human rights abuses through the use of excessive police and military forces (Treadgold, 2005), harm to the local communities and indigenous populations (Tam and Lifsher, 2003), forced labor and involuntary servitude (Abrash, 2001; Kapelus, 2002), and, bribery and corruption (Cockburn, 2003; Simpson, 2005; Matlack *et al.*, 2004), to name a few.

### Voluntary codes of conduct

A recognition of the extremely hostile socio-political environment has led the mining and other industries to create voluntary codes of conduct acting individually or collectively as region or industry-based groups (Paton, 2000; Howard *et al.*, 1999; Tapper, 1997; Sethi, 2003b, 1979). Voluntary codes of conduct represent a set of undertakings that their sponsors promise to implement with a view to addressing some of the real or perceived societal concerns associated with or emanating from the MNC conduct. Industry groups prefer this approach because it allows them to project and magnify their efforts at a minimum cost and changes in their modus operandi.

### 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, contracts, and other arrangements that create economies of scale, and reduce transaction costs (Sethi, 2006). Companies may also cooperate among themselves to advance their economic interests in the political arena (Harris and Carmen, 1983; Wolf, 1979; Clark, 1998). A third dimension of the benefit of industry coalitions is to protect companies from paying the cost of negative externalities (Murty and Russell, 2005; Alfaro and Rodriguez-Clare, 2004; Herve, 1990; Dybvig and Spatt, 1983). Examples of such externalities may be air pollution, untreated waste water, etc. Individual companies and industries mobilize their combined efforts to minimize their cost burden for such externalities by pushing them to the community.

Voluntary business groupings, however, must contend with two problems, i.e. free rider and adverse selection, whose magnitude and severity would adversely impact their collective operation. Free rider problem accrues from the situation where 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 (Andreoni and McGuire, 1993; Conlon and Pecorino, 2002). Adverse selection occurs where 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 (Inderst, 2005; Fabel and Lehmann, 2000; Wilson, 1980). The success and the longevity of the industry-based group depends on its ability to find a common ground wherein most members benefit in joining and adhering to the goals of the group and the methods employed in implementing them.

### Industry or group-based codes of conduct dealing with issues of corporate social responsibility and accountability

The business case or the economic justification for the corporate social responsibility (CSR) related principles or codes of conduct is infinitely more complex than those of the conventional business-groups. In direct contrast to the conventional principles or codes, CSR-related codes of conduct call for the industry or group members to voluntarily assume some of the costs associated with the industry's negative externalities.

Industry-based groups, also face 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 a lack of trust by external constituencies in the industry's external socio-political environment:

- Many companies are philosophically opposed to creating voluntary codes which they view as giving in to 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 (Sethi, 2006, 1994; Herrmann, 2004).
- The long-term benefits of industry-wide cooperative effort, nevertheless, carry short-term costs that must be compensated through improved productivity. This takes time and requires structural and organizational changes that are not always easy to accomplish.
- The prevailing nature of competitive markets, shareholder expectations, incentives of the financial middlemen, and management reward system, i.e. agency costs, overwhelmingly emphasize the short-term character of earnings (Eisenhardt, 1989; Cho, 1992; Van Marrewijk, 2003). There is strong incentive to underestimate long-term risks since recognition of these risks would lower the expected earnings of a company when compared with its competitors who choose to ignore them.

### Desirability of group-based CSR-related codes of conduct

Industry-based CSR codes of conduct, nevertheless, serve an important business and social purpose. From the business viewpoint, such a code provides industry members with mechanism to 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 "reputation effect" while avoiding being tainted for the actions other companies (Sethi, 2003a; Kapstein, 2001).

From 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 (O'Rourke, 2003).

### Conceptual framework for creating industry-based CSR-related codes of conduct

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 (Sethi, 2003b; Melrose, 2004).

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 on the organization 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.

## Current approaches in CSR-related industry codes of conduct

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, outcome-oriented measures of performance (Sethi, 2006).

An overwhelmingly large number of current industry-based CSR-related codes fall in this category of broad principles or lean heavily toward 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 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 code's 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. This situation admirably suits the poorly performing and recalcitrant companies, i.e. adverse selection, that stand to gain from enhanced public approval – at no cost to themselves – as a result of the time and resources expended by the best-performing companies. At the same time, the best-performing companies suffer from the taint caused by the actions of recalcitrant companies. 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 phenomenon 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 (Akerlof, 1970; Johnson and Waldman, 2003; Kim, 1985). 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 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 the code's broader principles because they cannot get improved believability from the public. Another perverse outcome of this approach is that it may lead the 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 (Thompson, 2003).

## Necessary re-conditions for creating and implementing a successful industry-based code of conduct

An analysis of a number of currently operating industry-based codes of conduct by the authors have led to a disappointing conclusion. To wit, most of the current codes in vogue, in the extractive, forestry and other resource-based industries, have not gone beyond the statement of "good intentions" stage. They have largely failed to engender public trust in the industry's conduct.

Based on our research and experience in conducting a variety of field studies, we have developed a set of necessary pre-conditions, which must be met if industry-based codes are to succeed in narrowing the performance-expectations gap between the industry and large segments of society (Sethi, 2003b; Sethi *et al.*, 2000). These standards can also serve as guideposts to determine the potential weaknesses in an industry-based code of conduct and to take corrective action before putting it in practice.

#### *Condition no. 1*

In the initial stages of code creation, the industry should not attempt to include all companies in the industry. Instead, the membership should be confined to a small group of forward-looking companies, and their leaders, who must be willing to take the lead in changing the industry direction. The small size of the group minimizes the free rider problem. It also eliminates the adverse selection issue since membership-by-invitation-only precludes the companies with worst reputation from joining the group (Sethi, 2003a).

The founding group has the first mover's advantage in creating standards that are substantial and yet cost effective, and meaningful to gain credence with the industry's critics and 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 (Sethi, 2003a).

#### *Condition no. 2*

The code must cover issues that are of concern to community and not merely those preferred by the industry. The broad principles must be amplified into objective, quantifiable, and outcome-oriented standards. These would allow for a uniformity in performance evaluation and compliance assurance (Sethi, 2003b).

#### *Condition no. 3*

At the industry level there should be a governance structure that:

- Allows for a balanced representation of various industry segments and thus minimizes the prospect of any industry segment do dominate decision-making in code implementation.
- Must have independent, external input to ensure that the performance monitoring is not controlled by the same group of people whose performance is being monitored at the company level. The external input in the governance structure does not have to be from the industry's critics, but from independent experts who have the respect and confidence of all parties involved.
- The fee structure to defray the cost of code implementation must allow for funding that would be sufficient to manage the operations, and will also take into account individual members' ability to pay. The fee should not be used to allocate decision-making power in the governance structure.

#### *Condition no. 4*

At the individual company level, code compliance must be integrated into the firm's normal decision-making structure and systems. It should also have the oversight for compliance assurance at the level of corporate general counsel, and preferably with a reporting obligation to a committee of the board of directors, e.g. audit committee, or public policy committee. In the final analysis, the top management of the company must be held accountable for ensuring the company's compliance with code standards.

#### *Condition no. 5*

Performance with code compliance on the part of individual companies and industry as a whole must be subjected to independent external monitoring and compliance verification. It is in this area that companies and industries offer the most resistance. It is argued that external monitoring would create an environment of distrust and policing. Companies also fear diluting their reputation with related negative consequences to their business and

financial operations. Unfortunately, mere assertions of compliance – in the absence of credible evidence – are unlikely to carry much weight with external constituencies.

#### **Condition no. 6**

The industry must be willing to make the findings of the independent external audit available to the public without prior censorship. This condition too has faced considerable resistance on the part of companies and industry groups. It is argued that release of such reports would expose those companies to further assaults by their critics, who would not have access to similar information from other companies whose performance may be far worse.

These authors have been responsible for conducting a number of independent external audits with guarantees of full disclosure. Our experience has effectively demonstrated that responsible social critics and the news media fully understand that no company is perfect, and there is always room for improvement. Full disclosure has inevitably leads to greater trust in the company's performance claims and thereby shifts the benefit of doubt in the company's favor.

#### **Mining industry's code of conduct – sustainable development framework (SD framework)**

There has been growing recognition on the part of the 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 (Annandale *et al.*, 2004; Kolk, 2003; Kolk and van Tulder, 2006). Furthermore, to gain credence with the industry's various stakeholders, individuals companies in the industry have created individual or group-based guiding principles or codes of conduct outlining industry's commitments toward changes in its operating practices (Paton, 2000; Howard *et al.*, 1999; Tapper, 1997)[1].

A more comprehensive and far-reaching effort in this direction has been the sustainable development framework (SD framework)[2]. The intent of the SD framework is to create a uniform set of principles, which individual companies would adapt to their own situation either by following the framework as currently redacted, or by creating their own codes of conduct to respond to their specific concerns within the framework. This initiative is the primary vehicle through which the mining industry has channeled most of its resources to demonstrate the industry's commitment toward meeting societal expectations.

SD framework was formally launched in May 2003 with considerable fanfare by the industry under the auspices of a global mining organization – International Council on Mining and Metals (ICMM). It was developed following an extensive and elaborate consultative effort by the industry, and involved a variety of experts, non-governmental organizations, specialized research and preparation of position papers in various technical and sociopolitical aspects of mining operations (Young, 2005).

At the same time, the initiative was subjected to intense criticism by some of the largest and influential non-governmental organizations in the area of environmental protection and sustainable development. These groups accused the industry with creating an organization that is completely controlled by the industry. The SD framework defined the issues from the perspective of the industry and offered solutions advocated by the industry. They also described the code as devoid of specificity, requirements for compliance and independent assurance of compliance verification (Baue, 2002; Miranda, 2004; Stutsel, n.d.).

The ICMM, created in May 2001, was designed to guide companies in extractive industries along the guidelines set by the initial MMSD report. ICMM members currently include 16 major companies and three commodity and regional trade and industry associations. These include, among others, Anglo American, Rio Tinto, BHP Billiton, Alcoa, Noranda, Sumitomo, Mitsubishi, Lonmin, Nippon, Newmont Mining, Freeport McMoRan, and Placer Dome. The trade associations are a group of intra-country industry groups and national and transnational organizations.

The first chairman of the ICMM Council was Mr Douglas Yearley, the retired chairman and CEO of Phelps Dodge Corporation. He was succeeded by Rio Tinto's CEO, Sir Robert Wilson, who in turn was replaced by former the executive chairman of Noranda, Inc., Mr David Kerr. The current ICMM Council chairman is Mr Wayne Murdy, CEO of Newmont Mining Corporation[3]. ICMM's Executive Committee is exclusively comprised of the CEOs of eight corporate members of the council[4]. The Association members are represented by the Association's Coordination Group.

SD framework outlines ten major principles of industry sustainable development performance and operations. These principles are further subdivided into 46 amplifications, aimed to provide specific explanations of the more general principles (Table I)[5].

## Analysis of SD framework along the specified pre-conditions

### Governance structure

The current governance structure is at variance with the condition no. 3 defined earlier. As presently constituted, the governance structure of the implementing SD framework is totally controlled by the mining industry. There is no formal process to incorporate external, non-industry based input in the governance structure and decision-making process.

In this sense, 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. It fails to meet the criteria of independence. It even falls below the standards 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[6].

ICMM's structure also fails condition no. 1. None of the current members of ICMM provide any information indicating their compliance with the guidelines imposed by ICMM's SD framework.

**Table I** ICMM sustainable development framework

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

### *Code principles and performance specifications*

SD framework's principles are in complete negation of condition no. 2 with regard to the relevance of the principles to the community concerns. These principles define the issues as viewed by the industry. Moreover, they are completely lacking in specificity, objectivity, standards of compliance and their relevance to the magnitude of the problems that currently exist. And lastly, they fail to provide any time-line in terms of the progress the industry expects to make in resolving these issues.

The ten principles are phrased in inspirational terms, with heavy emphasis on "intent" and call for "commitment" on the part of member companies to improve their performance along indicated dimensions. The amplificatory standards that were meant to provide detailed explanations for the general principles are quite broad and equally non-specific. Rather than alleviating the problem of overly generalized principles, the amplifications have further exacerbated the problem by overly simplistic explanations.

For example, the first principle states its goal to "implement and maintain ethical business practices and sound system of corporate governance." However, there is no discussion of what constitutes "ethical business practices," or "sound systems of corporate governance." 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 level of improvement? 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:

1. The capacity of a company to improve vs its actual performance.
2. Narrowing the gap between a company's performance and societal expectations.

Unfortunately, the principle is silent on this issue. The current approach provides a "safe harbor" for the companies who are lagging in meeting the minimal standards of performance simply because the "minimum level" has not been specified. Under these conditions, "continual improvement" is a meaningless standard and may end-up misleading the public as to a company's performance on this issue.

Principle 10 calls for effective and transparent engagement with stakeholders, including "independently verified reporting arrangements." However, ICMM does not provide any information as to how company performance would be independently verified and results reported to the public. Equally important, ICMM does not suggest any approaches as to what the industry would do in the event that a member company's verification procedures 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.

Finally, neither the principles nor their amplifications provide any standards that are:

- Clearly stated as "absolute minimum" in a manner that is quantitatively defined and objectively measured. Is there anything that the industry asks its member companies to do or refrain from doing which leaves no wiggle room? Are there any issues and standards, which are considered to be of "zero tolerance" and where less than full compliance is not an option?
- Why is it that no amplification indicators call for "outcome-oriented" standards of performance? Why cannot there 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? And where does the notion of "living wage" fit in this equation?

- How does the industry plan to protect the property rights and cultural heritage of indigenous peoples where the host country's governments, with or without the complicit acquiescence of the mining companies, are involved?
- Industry members have been variously and frequently accused of human rights abuses. And yet the SD framework is completely silent on this issue.

#### *Individual member companies compliance efforts*

The success of an industry or group-based voluntary code depends on the extent to which member companies comply with the code in their own operations. It follows, therefore, that the performance of the entire group would be adversely affected by the performance-compliance level of the group's weakest member.

Principle 10 of ICMM's SD framework and its amplifications calls for timely, accurate and relevant reporting of economic, social and environmental performance of the ICMM's member companies and their contribution to sustainable development. In our discussion of the pre-conditions to effective implementations of group-based voluntary codes of conduct, these authors argued that code compliance must be integrated into the firm's normal decision-making structure and systems. Furthermore, the organization must also have internal monitoring and compliance assurance systems to insure the accuracy and integrity of the company's sustainability reports.

In evaluating the performance of individual companies, these authors took a somewhat different approach, which would tilt the performance-evaluation measures in favor of the industry. Rather than looking at the weakest members of the group, we chose, for our analysis, the sustainability reports of four of the leading companies in the industry, whose CEOs hold leadership positions in ICMM. The companies included in our analysis are: Anglo-American, Newmont Mining, BHP Billiton, and Rio Tinto.

The overall picture revealed in these reports was quite disappointing. A very large part of the reports was pictorial and descriptive. It emphasized process rather than output, and provided information, which the companies would like the public to know rather than the information that public would want the companies to provide. Where data were provided, they were essentially descriptive facts and lacked relevant context. The reports did not have any comparative analysis or points of reference where individual company performance is measured against best practices, targets to be achieved, and short falls, if any. There was little information as to the company's actions where its operations had been previously criticized by external stakeholders.

Another glaring absence in the reports was a complete absence of systematic analysis of the companies' operations and their compliance with the ICMM's ten principles and their amplifications. It would be impossible for a person analyzing these reports, to state that company A has reached a certain percentage of compliance with individual principles and that its overall compliance with the ICMM principles has reached, e.g. 80 percent compared with 60 percent in the year before.

#### *Corporate accountability and performance verification*

ICMM's current guidelines indicate that independent monitoring and public reporting are to be voluntary and at the discretion of individual companies. Principle 10 calls for implementation of effective and transparent engagement, communication and independently verified reporting arrangements with all relevant stakeholders. ICMM's framework, however, has no provision as to how the industry will monitor member companies' compliance with principles and how it would persuade the recalcitrant members to improve their compliance. Early this year ICMM announced acceptance of Global Reporting Initiative framework for corporate performance reporting. While the reporting framework set up by GRI provides a mechanism to report performance – however defined – it does not provide any standards against which individual company performance could be measured or evaluated for adequacy. Nor does it set minimum standards in any area of mining industry's operations. A review of 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. Therefore, in the absence of standardized measures of performance, uniformity in reporting, and transparency, in full disclosure, the notion of voluntary codes of conduct is rendered almost worthless since it lacks any assurance of credibility and accuracy.

### Wither goes the future

ICMM's sustainable development framework offers one of the most significant opportunities to demonstrate the effectiveness of an industry-based framework for sustainable development. It has far-reaching consequences for the industry's economic and financial health. The voluntary nature of the framework means that members of the ICMM must press forward and transform the current general and essentially aspirational character into a functionally specific Framework along the lines indicated in our discussion of "pre-conditions" and also the evaluation of the industry's current efforts through ICMM's sustainable development framework.

For ICMM to be the voice of the mining industry, and that of the major companies in the industry, it must take steps toward a more meaningful implementation of the sustainable development framework:

- 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, the 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 the host country.
- Establish a "minimum" standards of conduct in the above-mentioned areas which would be considered inviolate under any conditions and the member companies would 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. These codes would comply with the broad principles enumerated in the SD framework, but would also take cognizance unique conditions prevalent in different countries with regard to 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.

### Notes

1. See for example, The Kimberley Process, launched in May 2000, it combines efforts of government, international diamond industry and civil society representatives to stem the flow of conflict diamonds ([www.kimberleyprocess.com](http://www.kimberleyprocess.com)). For examples of other group-based codes in the mining and materials industries, please see Montreal Protocol, Responsible Care, UNEP Gold Industry Voluntary Code Initiative, and UN Strategic Approach to International Chemicals Management.
2. See details at ICMM website ([www.icmm.com](http://www.icmm.com)).
3. For details on ICMM's Governance and Organizational Structure, visit ICMM's website ([www.icmm.com](http://www.icmm.com)).
4. The eight members of the Executive Committee are: Mr A.J. (Tony) Trahar, Chief Executive Officer, Anglo American plc; Mr Bobby Godsell, Chief Executive Officer, AngloGold Ashanti; Mr Charles (Chip) Goodyear, Chief Executive Officer, BHP Billiton; Mr Wayne Murdy, President and Chief Executive Officer, Newmont Mining Corporation; Mr Kazuo Oki, President and Representative

Director, Nippon Mining and Metals; Mr Andrew Michelmore, Chief Executive Officer, WMC Limited; and Mr Leigh Clifford, Chief Executive, Rio Tinto plc.

5. Complete list of amplification statements has not been provided here due to the space constraints. These are available at ICMM's website ([www.icmm.com](http://www.icmm.com)).
6. For examples of industry-based CSR-related codes of conduct involving NGOs and other external stakeholders, please see Fair Labor Organizations ([www.fairlabour.org](http://www.fairlabour.org)), The Forest Stewardship Council ([www.fscus.org](http://www.fscus.org)), and Rainforest Alliance ([www.rainforest-alliance.org](http://www.rainforest-alliance.org)).

## References

Abrash, A. (2001), "The Amungme, Kamoro and Freeport: how indigenous Papuans have resisted the world's largest gold and copper mine", *Cultural Survival Quarterly*, Vol. 25 No. 1, pp. 38-43.

Akerlof, G.A. (1970), "The market for 'lemons': quality uncertainty and the market mechanism", *Quarterly Journal of Economics*, Vol. 84, pp. 488-500.

Alfaro, L. and Rodriguez-Clare, A. (2004), "Multinationals and linkages: an empirical investigation", *Economia*, Vol. 4 No. 2, pp. 113-56.

AllAfrica.com (2002), "Sustainable development is good business practice", September 5, available at: [AllAfrica.com](http://AllAfrica.com)

Andreoni, J. and McGuire, M.C. (1993), "Identifying the free riders: a simple algorithm for determining who will contribute to a public good", *Journal of Public Economics*, Vol. 51 No. 3, pp. 447-55.

Annandale, D., Morrison-Saunders, A. and Bouma, G. (2004), "The impact of voluntary environmental protection instruments on company environmental performance", *Business Strategy and the Environment*, Vol. 13, pp. 1-12.

Baue, W. (2002), "Mining industry reports on its problems, but remains vague on solutions", *Social Funds*, May 8, available at: [www.socialfunds.com/news/save.cgi?sfArticleId=837](http://www.socialfunds.com/news/save.cgi?sfArticleId=837) (accessed April 12, 2005).

Cho, S. (1992), "Agency costs, management stockholding, and research and development expenditures", *Seoul Journal of Economics*, Vol. 5 No. 2, pp. 127-52.

Clark, J. (1998), "Fairness in public good provision: an investigation of preferences for equality and proportionality", *Canadian Journal of Economics*, Vol. 31 No. 3, pp. 708-29.

Cockburn, P. (2003), "As much of Georgia falls apart, corruption stands firm", *The Independent*, Online edition, November 24, available at: <http://news.independent.co.uk/europe/article79730.ece> (accessed December 22, 2004).

Conlon, J.R. and Pecorino, P. (2002), "Policy reform and the free-rider problem", *Public Choice*, Vol. 120 Nos 1/2, pp. 123-42.

Dybvig, P.H. and Spatt, C.S. (1983), "Adoption externalities as public goods", *Journal of Public Economics*, Vol. 20 No. 2, pp. 231-347.

Eisenhardt, K.M. (1989), "Agency theory: an assessment and review", *The Academy of Management Review*, Vol. 14 No. 1, pp. 57-74.

Fabel, O. and Lehmann, E.E. (2000), "Adverse selection and the economic limits of market substitution: an application to commerce and traditional trade in used cars", *Diskussionbeiträge Series I*, No. 301, February 21, <http://ssrn.com/abstract=213088> (accessed March 4, 2005).

Harris, R.G. and Carmen, J.M. (1983), "Public regulation of market activity: institutional typologies of market failures", *Journal of Macromarketing*, Part I, Spring, pp. 49-58.

Herrmann, K.K. (2004), "Corporate social responsibility and sustainable development: the European Union initiative as a case study", *Indiana Journal of Global Legal Studies*, Vol. 11 No. 2, pp. 204-16.

Herve, M. (1990), "Uniform externalities: two axioms for fair allocation", *Journal of Public Economics*, Vol. 423 No. 3, pp. 305-27.

Howard, J., Nash, J. and Ehrenfeld, J. (1999), "Industry codes as agents of change: responsible care adoption by US chemical companies", *Business Strategy and the Environment*, Vol. 8 No. 5, pp. 281-95.

- Inderst, R. (2005), "Matching markets with adverse selection", *Journal of Economic Theory*, Vol. 121 No. 2, pp. 145-66.
- Johnson, J.P. and Waldman, M. (2003), "Leasing, lemons, and buybacks", *The Rand Journal of Economics*, Vol. 34 No. 2, pp. 247-63.
- Johnston, M. and Yufan, H. (1995), "China's surge of corruption", *Journal of Democracy*, Vol. 6 No. 4, pp. 80-94.
- Kapelus, P. (2002), "Mining, corporate social responsibility and the 'community': the case of Rio Tinto, Richard Bay minerals and the Mbonambi", *Journal of Business Ethics*, Vol. 39 No. 3, pp. 275-96.
- Kapstein, E.B. (2001), "The corporate ethics crusade", *Foreign Affairs*, Vol. 80 No. 5, pp. 105-20.
- Kim, J.-C. (1985), "The market for 'lemons' reconsidered: a model of the used car market with asymmetric information", *The American Economic Review*, Vol. 75 No. 4, pp. 836-43.
- Kolk, A. (2003), "Trends in sustainability reporting by the Fortune Global 250", *Business Strategy and the Environment*, Vol. 12 No. 5, pp. 279-91.
- Kolk, A. and van Tulder, R. (2006), "Setting new global rules? TNCs and codes of conduct", Transnational Corporations (United Nations Conference on Trade and Development), forthcoming.
- Matlack, C., Smith, G. and Edmondson, G. (2004), "Cracking down on corporate bribery", *Business Week*, Issue 3911, December 6, p. 30.
- Melrose, R. (2004), "Big business is usually seen as being interested only in making money: but more and more companies are realizing that it pays to put something back into the community", *The Guardian*, March 22, p. 2.
- Miranda, M. (2004), *Comments on Mining Certification Evaluation Project (MCEP)*, World Resources Institute, Washington, DC, January 23.
- Murty, S. and Russell, R.R. (2005), "Externality policy reform: a general equilibrium analysis", *Journal of Public Economic Theory*, Vol. 7 No. 1, pp. 117-50.
- O'Rourke, D. (2003), "Outsourcing regulation: analyzing nongovernmental systems of labor standards and monitoring", *Policy Studies Journal*, Vol. 31 No. 1, pp. 1-30.
- Paton, B. (2000), "Voluntary environmental initiatives and sustainable industry", *Business Strategy and the Environment*, Vol. 9 No. 5, pp. 328-38.
- Sethi, S.P. (1979), "A conceptual framework for environment analysis of social issues and evaluation of corporate response patterns", *Academy of Management Review*, Vol. 4 No. 1, pp. 63-74.
- Sethi, S.P. (1994), *Multinational Corporations and the Impact of Public Advocacy on Corporate Strategy: Nestle and the Infant Formula Controversy*, Kluwer Academic Publishers, Boston, MA.
- Sethi, S.P. (2002), "Corporate codes of conduct and the success of globalization", *Ethics & International Affairs*, Vol. 16 No. 1, pp. 89-106.
- Sethi, S.P. (2003a), "Globalization and the good corporation: a need for proactive co-existence", *Journal of Business Ethics*, Vol. 43 Nos 1/2, pp. 21-31.
- Sethi, S.P. (2003b), *Setting Global Standards: Guidelines for Creating Codes of Conduct in Multinational Corporations*, John Wiley & Sons, Hoboken, NJ.
- Sethi, S.P. (2006), "Effectiveness of industry-based codes in serving public interest – the case of international council on mining and metals (ICMM)", paper presented at the Transnational Corporations (United Nations Conference on Trade and Development).
- Sethi, S.P., Weidenbaum, M.L. and McCleary, P.F. (2000), "A case study of independent monitoring of US overseas production: Mattel independent monitoring council for global manufacturing principles (MIMCO) – audit report 1999", *Global Focus*, Vol. 12 No. 1, pp. 137-52.
- Simpson, G.R. (2005), "Multinational companies unite to fight bribery", *The Wall Street Journal*, Eastern edition, January 27, p. A2.
- Stutsel, M. (n.d.), "From rhetoric to relevance – The Australian minerals industry sustainable development code", The Australian Chamber of Mines, available at: <http://chamberofmines.org.za/CurrentIssues/2003/./SusDevRep.pdf> (accessed September 15, 2005).

Tam, P.-W. and Lifsher, M. (2003), "Change of venue: Columbian killings land US company in American court – mining concern faces suit over right-wing attack: new life for a 1789 Act – shootings on a lonely road", *The Wall Street Journal*, Eastern edition, October 6, p. A1.

Tapper, R. (1997), "Voluntary agreements for environmental performance improvement: perspectives on the chemical industry's responsible care programme", *Business Strategy and the Environment*, Vol. 6 No. 1, pp. 287-92.

Thompson, D.R. (2003), "The no-punch-back theory of regulation", *Journal of Financial Planning*, Vol. 16 No. 12, pp. 22-4.

Treadgold, T. (2005), "Stop worrying and love uranium", *The Courier Mail*, June 3, p. 39.

Van Marrewijk, M. (2003), "Concepts and definitions of CSR and corporate sustainability: between agency and communion", *Journal of Business Ethics*, Vol. 44 Nos 2/3, pp. 95-105.

Wilson, C. (1980), "The nature of equilibrium in markets with adverse selection", *Bell Journal of Economics*, Vol. 11, pp. 108-30.

Wolf, C. Jr (1979), "A theory of non-market failure: framework for implementation analysis", *The Journal of Law and Economics*, Vol. 22 No. 1, pp. 107-39.

Young, S.T. (2005), "Leading environmental change: the case of the global mining industry", *Review of Business*, Vol. 26 No. 1, pp. 34-8.

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