The Role of Self-Regulation in Improving Corporate Social Performance: The Case of the Mining Industry

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Introduction

Over the last few years, key players in the Australian and international mining industry have been working to improve the social performance of the industry and raise its public standing. In this paper I give the background to these changes, describe the various forms of self-regulation now being utilised within the sector and assess the impact and effectiveness of these measures. The final section identifies the main challenges now confronting the industry and suggests some possible ways forward.

A. Background

Structure of the Industry

The global mining industry is relatively small in comparison to other sectors. In 2001, the combined capitalization of the top 150 mining companies was less than that of individual companies such as Microsoft, ExxonMobil and General Electric (MMSD 2002, p.58). The industry is, however, a very significant player in the economy of a number of countries and regions, including Australia, Canada, Latin America, Southern Africa and parts of Asia.

The 'top end' of the industry is highly concentrated and is becoming more so. There have been several mergers and takeovers in recent years, largely in response to "low commodity prices and poor returns among the big players" (MMSD 2002, p.61), with further concentration likely in the future. Currently there are about 30-40 multinational companies operating in the industry, including a handful of very large conglomerates, such as Alcoa, BHP Billiton, Rio Tinto and Anglo-American. Most of these larger companies have significant operations in Australia.

With the exception of the aluminum sector most of the bigger companies have diversified, rather than concentrating on a single type of resource. These 'top end' companies have good access to capital markets, are relatively well placed to ride-out downturns in particular sectors of the market, and see themselves as being in the industry for the long term. They dominate the national and international industry associations and several of them have been at the forefront of recent industry change initiatives.

The next level in the industry consists of national and regionally based companies. These organisations are usually diversified to some extent, but have a smaller capital base than their 'top end' counterparts and generally have a lower profile in the industry, although some, such as the Australia-based Normandy (recently taken over by the American company Newmont) have earned a reputation for innovative practices.

At the bottom of the hierarchy are the 'juniors', who are primarily involved in exploration and development activities. Juniors are often under-capitalised and have a high failure rate. Most of these companies see issues such as sustainable development and corporate social responsibility as of only marginal relevance, and often struggle to

comply with minimum regulatory standards. Junior miners in Australia have their own industry association, the Association of Mining and Exploration Companies (AMEC), which is increasingly at odds with the industry's peak body, the Minerals Council of Australia (MCA). Some in the junior sector have gone as far as to suggest that the 'real' agenda of the larger companies in promoting sustainable development objectives is to create barriers to entry for the smaller companies (see: 'Is One Voice Enough?' *Mining News*, 17/6/02).

Mining companies of all sizes have become more international in their activities in recent years, in response to factors such as the emergence of new development opportunities, falling ore grades in countries where the industry has traditionally operated, the desire by companies to diversify, and changes in the regulatory environment (MMSD 2002, p.61). As discussed below, this trend has presented a range of challenges (and opportunities) for those working to improve the corporate social performance of the sector.

The changing external environment of the industry

Over the last decade or so the mining industry has come under increasing pressure from diverse sources to improve its environmental and social performance. This section of the paper briefly describes how this changing external environment has impacted on the industry.

A particularly important development has been the growing influence of the non-government organisation (NGO) sector. Initially NGOs focused primarily on environmental issues, but a growing number are now pursuing a broader 'social justice' agenda in which issues such as human rights, labour standards and the socio-economic impacts of mining are to the fore. The NGO sector has proved adept at utilising global communication systems, such as the Internet, to mobilize supporters and disseminate information quickly. Through these and other means, the sector has been quite effective in applying pressure to governments, international agencies and financial institutions to impose higher standards on the mining industry.

General public opinion has been another important external driver of change within the industry. Highly publicised environmental mishaps – such as at Ok Tedi in PNG, Freeport in Irian Jaya, Marcopper in the Philippines and Baia Mare in Romania – have combined to weaken public trust in the industry and sully its reputation (MMSD, 2002: 17). In response, governments in a number of countries have become more closely involved in regulating the planning, operation and closure of mines. The focus to date of this regulatory activity has mainly been on minimizing the adverse environmental impacts of mining, but the social and community impacts of mining are also attracting increasing attention. As an indication of possible future trends, the South African Government, in consultation with the country's mining industry, is currently finalising a new Minerals and Petroleum Resources Bill and 'Socio-Economic Empowerment Charter' aimed at provide a framework for progressing black empowerment and promoting integrated socio-economic development for host communities.

In countries such as Australia and Canada, the legal recognition of indigenous land rights has also been an important external stimulus to change. In Australia, many of the most significant mineral deposits are located in areas where native title still operates. This has empowered indigenous groups in these areas to negotiate agreements that have the potential to deliver significant economic and social benefits to these communities (see Satchwell, 2002). For example, the Gulf Communities Agreement negotiated as part of the development of the Century Mine in North Queensland includes comprehensive provisions relating not only to financial compensation, but also: education, employment and training; development of local businesses; cultural and environmental protection; and, the transfer of pastoral properties. The impact of the native title process has extended well beyond the specific sites covered by agreements to impact on corporate practices and attitudes more generally. According to a recent review of the Australian minerals sector, prepared as part of the global Mining, Minerals and Sustainable Development (MMSD) project (see below), there has been a 'sea change' in mining industry attitudes since the 1998 amendments to the Native Title Act – 'from (at best) a good neighbour policy to one of recognizing the rights of indigenous community groups' (Ameef, 2002: p.62).

A further significant development impacting on the industry has been the growing reluctance of financial institutions to lend for mining-related projects that are seen as presenting significant social and/or environmental risks (Zemak 2002). At a corporate citizenship conference in London in 2001, a senior representative from Barclays Capital described capital as the 'lifeblood' of the mining industry, stating that 'projects which embrace positive socio-environment practices tend to exhibit a reduced risk profile and thus are more attractive to us as financiers' (see www.iied.org/mmsd/Bulletin 20/12/01). The World Bank is also currently reviewing its guidelines for funding projects in the oil, gas and mining sectors, with the clear intention of imposing more rigorous social and environmental requirements on new projects.

In addition to these industry–specific developments, the mining industry has become caught up in the more general drive to promote concepts of corporate social responsibility. This broader trend is manifested in:
- the growth in the size and influence of 'ethical investment funds'
- increasing pressure being applied to companies to report publicly on their environmental and social, as well as economic, performance[1]
- the explosive growth in the number of industry organisations and networks, and NGOs, that are focused on promoting corporate social responsibility/sustainable development principles

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[1] For example, the Association of British Insurers, which represents companies accounting for 96 per cent of the business of UK insurance companies, has recently issued 'disclosure guidelines on social responsibility' which 'take the form of disclosures which institutions would expect to see included in the annual report of listed companies'. The UK Government has also amended the pension trustees law to require trustees to report on the extent to which, they have taken social environmental and ethical decisions into account in their investment decisions. The Australian Financial Services Act has recently been amended to impose similar reporting requirements.

- a parallel growth in the number of voluntary standards, codes, certification schemes etc. being developed and promoted by industry bodies and NGOs and international agencies
- the increasingly active role being played by international institutions such as the United Nations, the OECD and the World Bank in promulgating and promoting guidelines for socially responsible practices for the corporate sector.

Reflecting these broader trends, mining companies:

> like other parts of the corporate world … are more routinely expected to perform to ever higher standards of behaviour, going well beyond achieving the best rate of return for shareholders. They are also increasingly being asked to be more transparent and subject to third-party audit or review (MMSD 2002:4).

The next section of the paper looks at the internal regulatory mechanisms and processes that have evolved in the mining industry in an endeavour to meet the challenges posed by this changing external environment.

B. Self-Regulation in the Mining Industry

Definitional Issues

For the purposes of the following discussion, the term *self-regulation* refers to the mechanisms used by mining companies, both individually and in conjunction with other companies and organisations, to raise and maintain standards of corporate conduct within the sector. The forms of self-regulation examined below are:

1. industry-level processes and structures, such as the Global Mining Initiative (GMI)
2. intra-firm mechanisms for regulating the social performance of individual business units and sites
3. third party regulation where companies voluntarily undertake to comply with standards defined and administered by non-industry bodies
4. inter-firm mechanisms such as contracts and service standards.

Industry-level Mechanisms

Traditionally, the mining industry did little, as an industry, to promote improved practices across the sector. This reflected the historical weakness of industry associations, particularly at the international level, the narrow focus on production-related issues, and the lack of perceived common interests amongst companies. More recently, however, key players in the industry have shown a greater willingness to take collective action to improve standards in the sector. This has been prompted by concern about the industry's public standing and the recognition by industry leaders that the public image of mining is shaped, to a considerable extent, by the actions of the worst performers in the industry.

At the international level, by far the most significant industry-level development has been the GMI. This initiative was launched in 1999, largely at the instigation of the nine major mining companies belonging to the World Business Council on Sustainable Development's (WBCSD) Mining and Minerals Working Group. A key priority of this group was to ensure that the mining industry was able to present a coherent and defensible position at the Rio +10 Earth Summit in Johannesburg in September 2002.

The GMI was initiated by the industry partly to counteract the strong criticisms that have been made of it by the NGO sector and to improve mining's standing in the eyes of governments and the public. However, it would be simplistic and misleading to see the GMI as just a public relations exercise. There is no doubt that industry leaders who initiated the process were genuinely committed to improving the performance, as well as the public perception, of the sector, and to engaging in a serious dialogue with the industry's critics. This is evidenced by the risks that the initiative's sponsors were prepared to take and the outcomes that have been achieved so far.

The three key outcomes to date from the GMI process have been:

- Establishment of a new international peak association, the International Council for Mining and Metals (ICMM) with a broad charter to promote a sustainable development agenda within the industry. A prominent and highly regarded American environmentalist, Jay Hair, has been appointed as the Council's Executive Director.

- Completion of the Mining Minerals and Sustainable Development (MMSD) project. This exercise, which was collectively funded by 28 mining companies and commissioned through the WBCSD, was managed independently by an NGO, the International Institute for Environment and Development. The recently released final Report of this Project, *Breaking New Ground,* (MMSD 2002) provides a frank and well documented assessment of the industry's strengths and failings and a comprehensive blueprint for its future reform.

- Organisation of a major conference in Toronto in May 2002 to continue the multi-stakeholder dialogue established through the MMSD project. This event was attended by 550 people, including CEOs/Chairmen of 20 major companies, and representatives from 74 NGOs, 25 Governments and several key international agencies.

At the conclusion of the Toronto Conference the ICMM issued a declaration outlining the actions that the Council would take to address the issues raised at the Conference and in the MMSD report. A key stated priority is to strengthen the ICMM's existing Sustainable Development Charter to provide a 'credible global sustainable development framework that provides the basis for ICMM members to demonstrate and verify improved performance in the achievement of their respective economic, environmental and social development goals' (ICMM 2002: p.5). The ICMM has also been resourced to perform a broader ongoing advisory and capacity building role for the industry.

The GMI process has been instrumental in getting industry leaders to commit publicly to advancing a sustainable development agenda. Now that these commitments have been made, it will be very difficult to resile from them: the NGO sector has made it clear that the performance of the industry will be closely monitored to see if it matches up to the words. The GMI and MMSD processes have also led to increased dialogue about sustainable development issues within and between companies, and between the industry, the NGO sector and international agencies.

The Australian Minerals Industry Code for Environmental Management

The developments that have occurred at the international level in the industry have been paralleled – and in some cases preceded – by a variety of industry initiatives at the national level. A good example of such an initiative is the Australian Minerals Industry Code for Environmental Management, which is administered by the Minerals Council of Australia.

The Code was first launched in 1996, in large part as a strategic move by the industry to persuade government that the industry was capable of improving its own performance without further regulatory intervention being required. Signatories to the Code commit to: application of the Code wherever the signatory operates; progressive implementation of seven broad principles[2]; production of an annual public environment report; completion of an annual code implementation survey to assess progress against implementation of Code principles; and verification of the survey results, by an accredited auditor, at least once every three years. An External Environmental Advisory Group, which includes indigenous representatives and prominent environmentalists, has also been established to provide a degree of external oversight and input to the Code.

Currently, 43 companies are signatories to the Code, representing about 90 per cent of Australia's minerals production. A number of major companies are applying the Code to their operations worldwide, although others have signed-up only for their Australian and/or Pacific operations. The MCA has indicated that several companies (none of which were MCA members) have been de-listed from the Code for non-compliance with reporting requirements. Since January 1 2002, adherence to the Code has been made a requirement of MCA membership, which leaves open the possibility that non-complying companies could in the future be expelled from the Council.

As its title suggests, the Code is concerned primarily with environmental management and related social issues. However, the MCA is currently embarking on a process to develop a broader Sustainable Development Code incorporating principles covering social performance and economic development. It is envisaged that, after a settling-in

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[2] These are: accepting environmental responsibility for all of our actions; strengthening our relationships with the community; integrating environmental management into the way we work; minimizing the environmental impacts of our activities; encouraging responsible production and use of our products; continually improving our environmental performance; and, communicating our environmental performance.

period, compliance with these principles would also be made a condition of MCA membership.

It is probably still too early to determine whether – and to what extent - companies have improved their practices as a consequence of becoming code signatories (Greene, 2002: p.12). The broad language in which the Code's principles are couched makes it difficult to set a benchmark against which to measure year-to-year changes in performance (Rae and Rouse 2001:10). Even if measurable improvements in performance could be documented, it would be very hard to determine whether this was attributable to the influence of the Code or to some other set of factors. However, impressionistic data suggest that the Code is performing a number of useful functions:

- It requires the signatories to publicly commit to upholding key environmental values and, in doing so, adds to the pressure on companies to prove to sceptical external critics that they are not simply engaged in a 'greenwash' exercise.
- It provides a mechanism for facilitating communication between companies about what constitutes good practice in environmental management.
- It strengthens the influence of change agents within companies, who are able to use Code commitments to advocate internally for higher environmental standards.
- The requirement for regular public reporting has arguably helped to increase transparency in the industry (Greene, 2002: p.12). In this context, the proposed requirement for independent verification of code implementation surveys, which is likely to take effect next year, will create an added level of external scrutiny.

The main limitation of the Code, as pointed out by the Australian MMSD report, is that:

> The vast majority of smaller and medium size companies are not signatories and no mechanism exists – beyond example and exhortation – to bring those smaller companies up to the standards defined by the Code (Ameef, 2002: p.44).

The MCA has indicated that it is actively considering how to encourage more small and medium enterprises (SMEs) to embrace the Code, including by showcasing the achievements of SME signatories to demonstrate that Code obligations can be met cost-effectively by smaller operations (advice from MCA, 16 September 2002). Nonetheless many SMEs remain suspicious of the MCA and consider that they have little to gain from signing-up to the Code.

Intra-firm mechanisms

In their recent book, Braithwaite and Drahos have highlighted the important role which intra-firm regulation has played in raising and maintaining standards within the pharmaceutical industry (2000, p. 383). Internal self-regulation performs a similar function in the mining industry, particularly in the larger and more progressive companies.

Effectively implementing change at the operational level of the industry has been – and continues to be – a major challenge for companies. Some of the larger companies have historically functioned as relatively loose confederations in which individual business units and sites have operated with a considerable amount of autonomy. The ability of central management to control what is happening at individual sites is constrained by factors such as the number of sites which have to be monitored, the different circumstances under which they operate, the distance between them and, often, their sheer remoteness. In addition, operational personnel who have day-to-day responsibility for 'digging and delivering' frequently have different priorities, and are often subject to different imperatives than the managers who are driving organisational change agendas from Head Office.

In the last few years, the leading mining companies have responded to these challenges by making a concerted effort to improve their internal governance systems, so that practices 'on the ground' align more closely with higher level values expressed in corporate policy publications and public statements. In taking this approach, companies have recognized that efforts to raise the public standing of the sector and gain the trust of NGOs are unlikely to be successful unless there is greater consistency between what companies and their leaders say in public documents and forums and what actually happens at the operational level.

The internal governance systems being developed by companies to promote sustainability objectives typically contain the following elements:

1. A set of formal policy documents, usually including a Code of Corporate Conduct and a set of policies addressing Health, Safety, Environment and Community (HSEC) issues. In some cases, companies have adopted omnibus sustainable development policies that incorporate all of these elements in the one document.
2. Designated organisational units and specialist positions responsible for helping to drive change in these areas and for providing support to operations.
3. A process for assessing social and environmental, as well as economic and technical, risks when approving new projects.
4. An auditing regime for monitoring site level compliance with corporate policies.
5. Regular public reporting on corporate performance in the HSEC area. Increasingly, these reports are being issued for individual mine sites as well as for the organisation as a whole.
6. External advisory/consultative mechanisms at the corporate level, and sometimes also at individual sites.
7. Internal awards schemes for recognizing good practice by sites and individuals.

Table 1(below) provides a summary of the internal regulatory system that has evolved in one large mining company, BHP Billiton (BHPB). (See Harvey 2002 for a similar overview of the Rio Tinto framework).

Table 1
Overview of BHP Billiton's Internal Regulatory System

Policy Framework

- BHPB Charter
- HSEC Standards, Procedures & Guidelines
- BHPB Guide to Business Conduct
- Specific HSEC performance targets published in BHPB's annual sustainability report

Governance Structure

- Overall governance provided by the HSEC Committee, which is a sub-committee of the BHPB Board; committee includes external personnel.
- Global Ethics Panel (including two external representatives) monitors ethical and business conduct issues
- "Toll-gate" system for approving new projects requires assessment of HSEC risks
- HSEC policy direction provided by the HSEC Forum comprising senior functional personnel from across the company
- Operations supported by functional personnel who provide specialist advice
- Line managers responsible for ensuring compliance with HSEC policy and standards
- Some sites have set up local external advisory committees

Monitoring and Review Processes

- HSEC risks routinely assessed as part of the approval process for new projects
- 3 yearly site-level audits to check compliance with HSEC management standards and verify performance
- Annual self-assessments and management reviews at each business level to ensure compliance
- Increasing use being made of external auditors

Reporting
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- Annual public HSEC Report issued for BHPB as a whole and some business units
- BHPB is committed to public HSEC performance reporting from 2002 onwards for each site.

Incentive Structures

- Annual HSEC Awards

Some companies now set specific 'sustainability' performance targets for sites, and some are now writing these standards and targets into the contracts of individual managers. As a general rule, however, companies appear to have been more vigorous in enforcing health and safety policies and procedures than the community component of HSEC policies (with the environmental component falling somewhere in between). Part of the explanation for this is that companies have been working at improving their health and safety performance for longer; hence the internal control systems have reached a higher level of maturity. Other relevant considerations are that: (1) a site's health and safety performance can now be readily measured and compared; and (2) the legal and reputational consequences of mismanagement are clear to everyone.

A significant recent development has been the move by some companies to utilise external organisations to perform auditing and verification functions. For example, the North Queensland Conservation Foundation was commissioned by BHPB's Cannington Mine to undertake an independent environmental audit of that operation. Similarly, Newmont Australia uses the Australian Institute of Corporate Citizenship to audit site level compliance with the company's community relations policy. Current indications are that such practices are likely to become more widespread in the future within the industry, particularly given the increased emphasis being placed on external verification. (See the discussion on 'third party schemes', below.)

The regulatory role of internal reformers

A much less formal, but nonetheless important, internal regulatory role is played by company staff who are personally committed to the values embodied in concepts such as corporate social responsibility and sustainable development. These individuals act - sometimes very effectively - as critics and change agents within their own organisations. They are generally well connected with external networks and tend to have broader professional loyalties, rather than just being corporately focused (see Braithwaite 1984, for similar observations about pharmaceutical industry executives). Internal reformers frequently occupy organisational roles relating to environmental management, community liaison, sustainable development, and the like, but there are some who occupy more mainstream, production-focused positions. Individuals in the latter group can be particularly influential because they are more likely to have 'operational credibility' in the eyes of their peers.

The influence of internal reformers would appear to be on the rise in the industry as a whole, albeit more so in some companies than others. Companies are employing a growing number of environmental and community relations specialists to help them manage an increasingly complex external environment. This, in turn, has drawn new professional groups into the industry and begun to change traditional power structures within firms and the industry more generally. Internal reformers have also been able to buttress their positions and influence by drawing on the public statements of company leaders and the formal commitments made by their organisations to various codes and standards.

How effective are intra-firm regulatory mechanisms?

The role and efficacy of intra-firm regulatory mechanisms within the mining industry has not yet been systematically investigated. In part, this is because these internal systems are relatively new and still evolving. Also, for logistical and other reasons it has not been easy for academic researchers to obtain first-hand information about site-level practices and processes in the industry, or about how individual companies handle breaches of internal rules and policies. Nonetheless, some tentative conclusions can be drawn on the basis of impressionistic data.

First, it is evident that some companies have made considerably more progress than others in developing and implementing internal control systems. Second, the internal controls that have been developed appear to have had more impact on the selection and design of new projects than the operation of existing ones. This is hardly surprising, given that existing projects are often locked-in to established ways of operating because of technological and organisational constraints. Third, companies appear to be making more headway in reducing disparities in performance across sites than in driving continuous improvement throughout the company. Again, this is hardly surprising, given the much greater challenges involved in embedding new practices and ways of thinking into organisations.

Third Party regulatory schemes

Another way in which companies in the mining industry have self-regulated is by voluntarily 'signing-up' to various codes, standards and certification schemes administered by organisations independent of the mining industry, such as UN agencies, standards associations and other NGOs. (For a recent comprehensive overview see Green 2002). The number of such schemes is increasing rapidly, as is the number of companies that are signatories and the number of schemes to which individual companies are parties.

The motivation for companies to participate in these schemes varies. In a few cases, certification has become a condition of doing business: for example, some mines supply materials to manufacturers who require their suppliers to be ISO-certified. Sometimes a particular scheme is adopted because it is seen as providing a useful management tool[3]. More typically, however, mining companies sign-up to these schemes because of the reputational benefit to be derived from participating. Even where companies see little inherent advantage in joining a scheme, they may still choose to participate in order to avoid the public criticism which non-participation can attract. The pressure on companies

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[3] The most influential schemes in the environmental area have been the International Organisation for Standards ISO 14001 environmental management system standard, and EMAS, the European environmental management certification system. Relatively few mining operations have attained formal ISO 14001 certification, purportedly because of the expense that this involves, but a considerable number have modeled their own internal control systems on ISO14001 and EMAS and/or utilise the services of auditing organisations that employ variants of these standards.

to join 'just one more' scheme is considerable, with NGOs and other groups appearing to operate on the basis of "lock them in and then hold them to it later".

Most of the third party schemes in which mining companies currently participate are open to the corporate sector in general, but there has been a recent trend towards the development of industry-specific schemes. The most significant of these is the International Cyanide Management Code, which was launched earlier this year. This Code was developed under the direction of a multi-stakeholder Steering Committee formed under the auspices of the United Nations Environment Program (UNEP) and the International Council on Metals and the Environment. Mining companies that adopt the Code must have all of their operations that use cyanide to recover gold audited by an independent third party. Those operations that meet the Code requirements can then be certified. Audit reports will be made public to inform stakeholders of the status of cyanide management practices at the certified operation.

Two other recent certification initiatives have been the Kimberley Process and the WWF Mining Certification Evaluation Project.

The Kimberley Process is a certification scheme currently being developed by a UK-based NGO, Global Witness, for the diamond mining industry. It is envisaged that the final process will require that diamonds traded internationally come with documentation proving their origin and legitimacy. The scheme is designed to discourage consumers from purchasing conflict or "blood" diamonds. These are estimated to make up about three per cent of the annual global diamond trade and are reputed to have paid for weapons and equipment that prolong bloody uprisings in places such as Sierra Leone.

The WWF certification trial, which potentially has a much broader application, is being conducted in conjunction with Placer Dome Asia Pacific, BHP Billiton's Cannington Mine and Western Mining Corporation. The object of the trial is to determine whether independent certification of on-ground social and environmental performance can be applied to the mining sector more generally (Rae and Rouse, 2001). Regardless of whether the WWF scheme proves to be practical, the fact that some prominent mining companies have agreed to participate in the trial is indicative of a major shift in thinking within the industry.

Mining companies, along with the rest of the corporate sector, are also coming under increasing pressure from multiple directions to commit to industry-wide standards and codes that address broader issues of corporate social responsibility and accountability. Some of the schemes that are already in place, or are being developed, are listed in Table 2, below. Most of the larger mining companies have already signed up to several of these schemes and other companies can be expected to follow suit in the reasonably near future.

Table 2
General Voluntary Initiatives Potentially Applicable
To the Mining Industry

Administered by national governments

- Voluntary Principles on Security and Human Rights for companies in the extractive and energy sectors (UK and US Governments)

Administered by international agencies

- OECD Guidelines for Multinational Enterprises
- OECD Principles for Corporate Governance
- United Nations Universal Declaration of Human Rights (UNDHR)
- United Nations High Commissioner for Human Rights (UNHCHR) proposed draft human rights code of conduct for companies.
- UN Global Compact

Administered by NGOs

- ISO Proposed Standards for Corporate Social Responsibility
- Social Accountability International (SA 8000)
- Institute of Social and Ethical Accountability (AccountAbility) AA1000
- Amnesty International's Business Principles
- Global Reporting Initiative

Impact and effectiveness of third party codes

There is considerable debate in the literature about the pros and cons of voluntary initiatives generally and the merits of particular schemes (see Higgins 2002 for a comprehensive review). The standard complaint from critics is that most of the schemes lack effectiveness because: (a) the companies that sign up are normally the better performers to begin with; (b) there are few consequences for those companies which do not participate in the schemes; (c) the schemes often lack specificity and independent verification processes, which makes it relatively easy for signatories to evade the spirit, if not the letter, of the document; and (d) there are no effective sanctions for those companies which sign and then fail to comply with requirements.

These criticisms are valid up to a point. Some voluntary initiatives, such as the UN Global Compact, are almost purely exhortative and currently have no effective monitoring or compliance mechanisms attached to them. It also appears that most of the mining companies that have formally indicated their support for the UDHR do not yet

have rigorous systems in place to ensure that each principle is upheld across all their various operations. However, focusing solely on the shortcomings of specific schemes understates the contribution that these mechanisms can make to promoting change within the industry.

First, as is the case with the other regulatory mechanisms discussed in this paper, third party schemes should not be viewed in isolation, but seen as part of a much wider web of control and influence. In this broader context, codes and standards have assisted internal change agents and external organisations to leverage greater transparency and improved performance in participating companies. Also, once a scheme becomes an industry-standard, this provides a good lever for NGOs to use to apply pressure to non-participating companies.

Second, those who dismiss voluntary schemes as toothless underestimate the extent to which companies value the reputational benefits which they can derive from being able to show that they have complied with a code or standard. In any event, some 'voluntary' schemes, such as the ISO standards, in fact have considerable force, as Braithwaite and Drahos have shown (2000: pp. 279-283). For example, DuPont as part of its product stewardship strategy now looks favourably on minerals suppliers that are a signatory to the AMI Code for Environmental Management (advice from MCA, 16/9/02). Also, some ethical investor funds now use adherence to various Codes as a screen for determining which companies to recommend for investment.

Third, the issue is not whether any particular scheme is or is not effective, but rather, the sum effect of all of these schemes. Companies complain, with some justification, about being subject to a myriad of overlapping and conflicting schemes, and the substantial cost entailed in meeting compliance and reporting requirements. However, while the schemes differ in detail, they generally emphasise similar underlying principles. This has an important reinforcing effect – the sheer weight of the message makes it difficult to ignore.

Finally, by raising the bar for what is considered to be acceptable practice, voluntary schemes have the potential to influence the development of future regulatory standards. For example, the European Commission has recently indicated that it intends to adopt the Kimberley Process certification scheme for 'conflict diamonds' by prohibiting the import of diamonds that are not certified. (Source: Press Release issued by the European Commission, 8 August 2002.) Similarly, the Canadian Government is currently working to have enacted, prior to January 1 2003, legislation and supporting regulations to prohibit the export and import of rough diamonds that are not accompanied by a Kimberley Process Certificate to and from a nation participating in the Kimberley Process (Shinya, 2002: 3-4). If the WWF Certification Trial proves successful, it may well have a similar effect over the longer term.

Firm to Firm Regulation

Another important – but often overlooked - form of industry self-regulation are the mechanisms that firms use to control the behaviour of each other, such as contracts and service agreements. These mechanisms are likely to assume greater significance in the future, with the increased emphasis being placed on supply chain obligations and concepts such as product stewardship.

In the mining sector, where extensive use is made of contractors, it is now standard practice amongst the larger companies to require contractors to comply with corporate standards when providing services to the purchaser. For example, BHPB's HSEC management standards specify that the selection criteria for contractors should include consideration of the contractor's HSEC management system and performance record. The standards further state that:

> Contracts shall include obligations that require contractors to implement work programmes consistent with these Standards where applicable. Consequences of non-compliance shall be stipulated. (BHP Billiton, 2001, p.14)

The BHPB standards also specify that where the company has no operational responsibilities but has an equity stake, 'these Standards should be made available to the operator, so that comparable HSEC management standards can be applied'. No research has yet been undertaken on how strictly these requirements are enforced in practice, but the fact that the framework is in place is an important start.

In the future, it seems likely that mining companies themselves will have stricter environmental, and perhaps social, management standards imposed on them by their customers. Ford Motor Company, for example, now mandates that its suppliers have full ISO 14001 certification (see also the reference to DuPont, above). If the WWF certification trial shows that this type of regulatory mechanism is practical for the industry more generally, it is possible to envisage a situation where key customers (such as utility companies, vehicle producers and white goods manufacturers) could consider making certification a condition of entering into a supply contract with a mining company and/or mineral producer.

Self-Regulation in the Mining Industry: Summary

In summary, the last several years have seen:

- a major effort by leading companies in the mining industry to engage in dialogue with their critics
- the formation of a re-vamped international peak association to promote a sustainable development agenda within the industry
- the creation of a voluntary environmental management code for the Australian industry (now in the process of being expanded to address sustainable development issues more generally)

- the adoption by leading mining companies of relatively comprehensive corporate governance frameworks, aimed at improving environmental and social practices within their own organisations
- the growing influence of individuals and groups within the industry who are personally committed to advancing social and environmental objectives
- a marked increase in the number and scope of third party codes, standards and certification schemes and in the number of mining companies signing up to these schemes
- a trend towards increased involvement by NGOs in industry and firm-level governance processes, including the use by some companies of NGOs to provide external verification
- some increase in the willingness of companies to use contractual mechanisms to regulate social, environmental and labour practices of contractor and supplier firms
- indications that, in the future, mining companies themselves may have more requirements placed on them by their major customers.

In short, given where the mining industry was a few years ago, substantial progress has been made towards building a comprehensive set of self-regulatory mechanisms for the sector. It is difficult at this stage to assess how much difference all of this has made to corporate practices 'on the ground', but the indications are that a good foundation is being laid – at least in the pacesetter companies - for delivering longer terms improvements in the overall corporate social performance of the sector.

As outlined in the previous section, these developments obviously have not occurred in isolation. The industry has moved in this direction in large part because of increasing pressure and scrutiny from a range of external bodies such as governments, NGOs, international agencies, financial institutions, native title claimants and the media. However, it would be understating what has been achieved by the industry to explain its actions purely in reactive terms. The GMI and MMSD would not have happened without considerable leadership being provided from within the industry. It is also apparent that the pacesetter companies in the sector are committed to achieving a real change in how they do business, rather than just to assuaging their external critics.

The more important issues to be addressed are not whether industry leaders are serious about improving the corporate social performance of the sector, but the extent to which they are capable of: (a) carrying the rest of the industry along with them; and (b) embedding new ways of operating into their own organisations. These issues form the focus of the next section of the paper.

C. Self-Regulation in the Mining Industry: Challenges

Under-performers and non-players

As described above, the move to greater self-regulation in the mining industry has been led by a relatively small number of pacesetter companies. These companies are serious about improving their social performance, have invested considerable time and resources into changing their internal processes and practices, and have played a lead role in driving industry-wide initiatives. Through a combination of advocacy and example setting, they have been successful in persuading a range of other companies to also participate in processes such as the GMI and MMSD and improve their own practices. However, not everyone in the industry has been won over and u*nder-performers* and *non-players* remain a significant problem.

Under-performers are those companies which have formally signed-on to industry initiatives such as the Australian Minerals Industry Code for Environmental Management and the GMI, but in practical terms are doing little to advance the values that underpin these schemes. They have relatively poorly developed internal governance structures for managing social and environmental issues, and their senior managements are pre-occupied with pursuing narrowly defined production and profitability objectives. *Non-players* are those companies that, to date, have not participated in any of the change processes now under way in the industry. In Australia, the non-players are principally the juniors involved in exploration and development. On the international scene the label also applies to some of the larger, nationally based, companies operating in countries such as China, India and the former Soviet Union.

Under-performers and non-players are a problem for the rest of the industry because their actions have the potential to adversely impact on the public standing of the sector as a whole (as highly publicised events such as the Baia Mare cyanide spill illustrate). Under-performers pose a particular threat because they have *formally* adopted industry codes and standards – hence, their non-compliance has the potential to cast doubt on the legitimacy and value of industry-administered schemes more generally.

Industry bodies such as the MCA or ICMM have the ability to expel or suspend under-performing members, but there would have to be sustained and flagrant breaches of organisational standards before this would be likely to occur. (In any event, most companies would withdraw voluntarily from the organisation in question before this situation arose.) By definition, the threat of expulsion does not apply to non-players. Even if a company was suspended or expelled, this would be unlikely to serve as a significant deterrent, as the ability of that company to carry on business would not be seriously affected.

Although there are few formal sanctions available, there are a range of other, less direct, strategies that the industry could use to promote improved practices amongst the under-performers and non-players. These include:

- An industry-funded advisory service could be established to assist smaller companies to handle complex environmental and social issues when they arise.

- Larger companies could consider seconding experienced personnel to assist individual SMEs to develop appropriate policies and procedures.

- These companies could also make it a condition of partnering with junior companies that the latter comply with minimum social and environmental performance standards set down in industry codes.

- The industry could work with national and international agencies and NGOs to extend the scope and coverage of certification schemes so that there is an added incentive for poorly performing companies to improve their practices.

Another possible strategy would be for the industry to support the development of a 'dual track' regulatory system, such as has been proposed for the area of occupational health and safety (Gunningham and Johnstone 1999). In this system, companies would be given the option of: (a) participating in – and being audited against - approved voluntary schemes administered by industry associations or third parties; or (b) staying outside of these schemes and being subjected to vigorous direct regulation by the responsible State agencies. Such an arrangement, *if* it could be made to work, would provide a good incentive for companies to participate in 'voluntary' schemes, and would possibly also facilitate the more cost effective use of regulatory resources. There are, however, a number of practical obstacles that would need to be overcome before this type of system could be implemented.

Weak Regulatory Systems

A second, and related, challenge for the mining industry is to find ways of ensuring that companies behave appropriately when operating in countries where formal and informal regulatory systems are comparatively weak and there is less external monitoring of corporate behaviour.

Mining operations in Australia and other developed economies are now subject to a reasonably high level of scrutiny by government regulatory agencies, courts, NGOs and other institutions of civil society such as the media. Individuals and groups who are adversely affected by mining activities also have access to various avenues of redress, such as legal action, political protest, media campaigns, and so on. In the less developed economies, by contrast, governments have frequently lacked the capacity to effectively regulate industry practices, and have been reluctant to take actions that might discourage foreign investment. Civil society structures and institutions have also generally been weaker in these countries. This has provided opportunities and incentives for some companies to engage in practices that would not be acceptable in other parts of the world.

In some cases, governments in developing countries have not simply been ineffective regulators, but have been actively complicit in supporting poor practices by mining

companies. For example, there is considerable evidence that some national governments in Africa, Asia and South America have been involved in forcefully evicting indigenous landowners from land that is to be mined, tolerating – or even encouraging - human rights abuses by security forces charged with protecting mining operations, and diverting the wealth generated by mining into non-sustainable economic activities which do not benefit local communities (see MMSD 2002, generally).

As pointed out by the Chairman of Rio Tinto, Sir Robert Wilson, in a speech to the GMI Conference held recently in Toronto, there are limits to what a mining company can and should be expected to do when operating in developing countries. Difficult issues include:

> the extent to which a company can recognise indigenous land rights if these are not recognised by host governments, and the extent to which a company can preclude a development on environmental grounds if the host government is determined that the economic and social development prize is too important to forego (Wilson 2002).

Nonetheless, as Sir Robert also acknowledged, there can be no justification for companies disregarding the human rights of employees or local communities, or for engaging in – or tolerating - environmental and social practices that would not be considered acceptable in the more developed world.

The larger companies in the industry can make an important contribution to promoting improved corporate practices in less developed economies by: (a) articulating clear policies about the basis on which they will do business in these countries; (b) ensuring that they have appropriate governance controls in place for promoting site level compliance with the policies that have been articulated; and (c) applying the same standards to project partners and local contractors and suppliers. Some companies have already made substantial progress in this direction, as discussed above, but there is scope for others to do considerably more.

There are also opportunities for industry organisations and large companies to work with individual companies and sectors to improve their understanding of – and response to – social, political and economic issues in developing countries. A potentially important initiative along these lines was the announcement at the GMI Conference in May by the Executive Vice-President, International Finance Corporation and Managing Director, World Bank Group, that the International Finance Corporation intends to establish a 'sustainable mining facility', funded by donors and industry to:

> build capacity among those of clients who are junior and medium-sized mining firms and who do not have the skills and experience necessary to manage the increasingly complex social, environmental and economic impact of mining operations in emerging markets (Woicke 2002: 9).

Relatedly, there is an important role for international agencies and Western Governments to play in building the capacity of governments in less developed countries to undertake effective regulation of the mining sector.

Another worthwhile measure would be for the industry to adopt some form of complaints mechanism, along the lines of the Mining Ombudsman concept developed by Oxfam Community Aid Abroad (2001). This would provide a forum in which individuals and communities in developing countries who claim to have been negatively affected by the activities of mining companies could have their claims tested and resolved by an independent person. While further work is required on the detail of the proposed scheme, the general idea of creating an independent complaints mechanism appears to have merit – notwithstanding the scepticism expressed by sections of the industry. (The MCA, for its part, has indicated that it supports a complaints facilitation mechanism associated with a code, rather than the Oxfam CAA model which it sees as not being linked to any framework of established principles.)

Implementing Change at the site level

As discussed, the leading companies in the industry have made considerable progress in developing internal control systems for promoting improved social and environmental practices; but even for these companies, effective implementation at site level remains a major challenge. Complicating factors include the following:

- Anecdotal evidence suggests that line managers continue to receive conflicting messages from companies about what is really important – senior management may talk about the need to advance sustainable development objectives, but the day-to-day emphasis is usually still very much on lifting production and reducing costs.

- Established organisational structures often are not conducive to supporting the integrated decision-making processes required to advance sustainable development policy objectives.

- Many industry personnel, especially at site level, are yet to be convinced that there is a strong business case for investing time and resources in addressing corporate social responsibility and sustainable development issues.

- There are not yet good processes in place for measuring corporate social performance at the site level, which makes it difficult to monitor and control that performance internally or report on it externally.

- The knowledge base about how to implement concepts such as corporate social responsibility and sustainable development, especially at the local level, is still poorly developed.

- Many corporate personnel do not possess the necessary skills and experience to deal effectively with complex social issues (Gilmour, 2002; Ameef, 2002: p.46).

There is not the space here to discuss in any detail how companies are – or should be – addressing these challenges. In broad terms, however, a sustained and coherent organisational change strategy is required for the industry to be successful in embedding

new practices and ways of thinking at the operational level. Amongst other things, this will entail developing new decision-making processes and reporting frameworks; re-aligning incentive and reward systems; providing operational personnel with new analytical tools and skills; building up a knowledge base about 'what works'; devising new indicators and metrics; and most importantly, providing ongoing, top-down, reinforcement to company personnel of the importance of focusing on sustainability issues. Some companies are making substantial progress in this regard, but maintaining the momentum over the longer term may prove difficult for some players in the industry, particularly if cost pressures intensify, or senior management is distracted by other issues.

D. Conclusion

As detailed in the above discussion, the mining sector has taken some significant steps in recent years at both the company and industry level to improve its corporate social performance. This has involved the development of a variety of self-regulatory mechanisms at the industry, firm and inter-firm levels. There are still some substantial gaps and weaknesses in this framework, but the general trend is towards tighter and more comprehensive internal controls. In addition, the performance of the industry is now subject to increasingly close scrutiny from a range of other influential players, such as national governments, the NGO sector, international agencies and financial institutions.

The cumulative effect of these various developments has been to ensure that returning to the old ways of doing business is no longer an option for the mining sector. The issue is no longer the direction of change, but the pace at which it occurs and the extent to which it will be driven internally or externally. The paper has shown that self-regulatory mechanisms have played an important role in getting the industry to where it is at now. It remains to be seen what further changes can be delivered through these mechanisms, but whatever happens they will continue to be an integral and necessary part of the overall 'web of control' in which the industry now operates.

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