

ICMM PRELIMINARY COMMENTS ON THE DRAFT FRAMEWORK FOR RESPONSIBLE MINING

1. Overview

This document provides ICMM's preliminary comments on the draft Framework for Responsible Mining prepared by Marta Miranda, David Chambers and Catherine Coumans [unpublished]. While ICMM supports the intent of the draft framework, it is not clear how it fits with the outcome of the Extractive Industries Review, the Mining Minerals and Sustainable Development Project report, the ICMM's Sustainable Development Framework, which includes principles, public reporting, verification and dissemination of good practice, and the current Mine Site Certification Evaluation Project being conducted by WWF Australia and others. The practicality of the framework would be improved if industry, governments, financiers and other stakeholders were involved in the process given that *"further consensus building among stakeholders is necessary to develop a common and accepted approach to environmentally and socially responsible mining"*. Its recommendations largely target companies without addressing the responsibilities of governments, external development agencies and the voluntary sector.

2. Objectives and Approach

The objective of the report is "to serve as a catalyst for a multi-sector dialogue" [p1] which would lead to the adoption of a broadly accepted framework for responsible mining. The objective is admirable but it should be connected more explicitly to other sectoral initiatives, particularly the ICMM's adoption of sustainable development principles and the follow-on joint ICMM/GRI multi-stakeholder process to develop performance reporting indicators that are now mandatory for our corporate members.

We note that the draft framework is based on a literature review and "NGO and civil society" [p2] workshops. However in order to produce a consensus outcome that garners broad support, involvement from other key players, companies, financiers, governments, affected communities and materials users is necessary from an early stage. It would be beneficial and practical if the draft framework could be framed to avoid duplication with other completed or ongoing initiatives that share the same objective.

The report states that the "mining sector has only recently begun to address" [p1] environmental and social responsibility issues. However, there have been many related initiatives extending back for over a decade. There have been two major reviews at the international level: the Mining, Metals and Sustainable Development report and the World Bank's Extractive Industries Review; the ICMM has been pursuing a comprehensive work program for over three years and it was preceded by ten years of work by the ICME; NGOs like Oxfam Community Aid Abroad have been producing reviews of industry activity for five years and a Global Dialogue of Governments on Mining and Sustainable Development has been established.

At a national level, there has been substantial activity in many jurisdictions where mining is conducted, particularly in Canada, Australia and South Africa where sustainable development practices are well established. In Canada, the Mining Association of Canada has launched its Towards Sustainable Mining initiative (TSM). TSM, backed by comprehensive guiding principles, has established key performance indicators for critical performance areas like tailings management, has established a 14-member Community of Interest Advisory Panel and is developing a system for external verification of the industry's assessment of its performance. Last November, participation in TSM became a condition of membership in MAC. In Australia, the federal government agency Environment Australia produced a series of good practice guidance on social and environmental issues for mining in the late 1990s, the national Minerals Council has a mandatory SD reporting procedure known as Enduring Value and detailed environmental assessment guidelines for mining have been available from federal and provincial administrations for more than a decade. Also in Canada, the Prospectors and Developers Association of Canada, the world's largest organization representing the junior mining sector, has developed Environmental Excellence in Exploration (E3), a web-based best practices manual on mineral exploration.

In sum, the subject draft framework would benefit substantially from (i) drawing on and acknowledging these related initiatives, and (ii) incorporating multi-stakeholder participation.

3. Identification of Best Practices

The draft framework seeks to establish "best practices" [p7] based on "professional experience" [p7]. The method used was to choose the most popular practice, that is those "that are supported by several of the four sectors being analyzed" [p7]. It is very difficult to see how representative input has been obtained from each of the four groups in question- governments, companies, financiers and NGOs. There is no apparent input from mining company representatives in the identification of management practices. As the report states governments "have not developed a common approach to addressing the social and environmental impacts of mining" [p3] and that "capturing the position of governments on many issues...was outside the timeframe and resources" of the project [p3]. Thus, it is doubtful that the "best practices" identified would satisfy the stated criterion of cross-sectoral support.

A more effective approach would require using a set of explicitly stated evaluation criteria based on sustainable development principles, that is including social and environmental, as well as economic and technical and operational feasibility criteria. Proposed practices would then be assessed by a representative multi-stakeholder group using the nominated criteria.

4. Use of a "Principles Approach"

The draft framework cites a range of principles as the basis for the practices recommended.

Firstly, it is not evident how the principles have been used in the exercise of professional judgment described above. The report does not present any evidence of an assessment of the recommended practices against the principles.

Second, the principles are said to be based on "international agreements" particularly the "Rio Declaration" [p4]. While the principles do repeat some of the language used in the Rio declaration, there is a substantial amount of personal interpretation as well. For instance, according to the report, "the burden for proving that operations will not result in environmental damage lies with companies" [p4]. These words are not used in the Rio declaration, nor in other relevant international agreements. Further,

we consider it generally more appropriate for regulatory authorities to make decisions on whether or not particular practices are satisfactory from an environmental standpoint. Finally, some of the principles confuse concepts; e.g. the statements relating to "equity" state that mining should produce "fair distribution of costs and benefits" and make "some meaningful contribution to ...imbalances between rich and poor". There are at least two topics being discussed here, poverty alleviation and distributional justice. Both are legitimate policy objectives but they are not the same as equity. They also imply compensation to particular groups.

Thirdly, the use of international conventions as the basis for the recommended practices should specify their role within existing legal processes. International conventions are addressed to national governments that may or may not choose to ratify and incorporate them into law. These laws are then applied to companies if they choose to operate in the jurisdictions that have adopted them. Any implication that international conventions in their own right create legal obligations for companies is legally flawed. Such an implication could be readily drawn, for instance, in relation to ILO convention 169 which is said to be "binding" [p6]. While many well-managed companies do have regard to relevant international conventions in determining their operational practices, they do so at their discretion. It is not a legal obligation.

Finally, we note that the Oxfam Community Aid Abroad ombudsman's reports are cited as a reference. We have concerns with the objectivity and factual basis of the ombudsman's reports, as explained in Annex A.

5. Criteria in the Draft Framework

The thematic organization of the framework, given on page 7, is conceptually sound. However, some of the specific recommendations are inappropriate or would be ineffective in achieving their related goals. Two examples are discussed below.

Identification of environmental issues and consent powers

In relation to environmental protection, water management is mentioned but there is no reference to the many other potential environmental issues from mine operations. This seems to be inconsistent.

A further objective would be to ensure that mining is of benefit to affected communities, including mine workers. However, application of some of the suggested criteria could, in fact, lead to unwelcome outcomes. For example, in many jurisdictions the activities of small scale, artisanal miners are illegal, dangerous or poorly regulated, are associated with ineffective environmental and social impact management, and non-payment of taxes or royalties. While we recognize the employment and income generating benefits of artisanal mining, it is necessary to acknowledge the above challenges as well. Thus, it is not clear what respecting these miners' rights may mean in terms of overall community benefit and resolving these issues is clearly a role for governments, meaning that the proposed allocation of this responsibility to companies [p13] would not be appropriate.

Similarly, the view that "consent" rights should be given to indigenous peoples and affected communities would not necessarily ensure overall community benefit. This is because various people within a community are affected to differing degrees and distributional justice requires that they be compensated accordingly. Giving consent rights to one group- indigenous or "affected" people- would imply that they would receive the greater share of benefits and this would be divisive within broader communities. Such a right would also encourage disputation between communities and mine developers because the holders of consent powers would want to extract the maximum monetary compensation and this would be at the expense of the broader community. Further, there would be practical difficulties in defining "affected"

and possibly indigenous peoples. This suggestion is also inconsistent with the fundamental principle of international law of territorial sovereignty and a state's right to manage its own natural resources.

For all of the above reasons, there is need for a more nuanced policy which recognizes the special needs of affected peoples and general distributional justice but which also acknowledges the powers of governments as consent authorities. This reinforces the need for dialogue with industry and governments and for thoughtful consideration of very difficult, complex issues.

Defining No-Go Areas

We believe that problems would arise from the suggested method for identifying "no-go" areas for mining. The procedure is very prescriptive since mining is prohibited from a range of areas irrespective of other circumstances. This approach is not consistent with sustainable development principles which require a balancing of social, environmental and economic factors in decision-making. The implicit assumption in prohibiting all mining from IUCN Protected Area Categories I to IV is that the conservation values of such lands always outweigh potential socio-economic benefits, and that this applies to all types of mining, management regimes and host communities. An assumption of this sort should not be attempted for all the nations and communities affected by mining whether now or in the future.

There are also practical problems with consistent identification of category I-IV lands that are openly recognized by IUCN. Similar problems would occur in defining broadly defined areas like "sacred groves" or "other areas of cultural value" [p 8] to local communities. Finally, it is not self-evident that "multi-stakeholder" definition of other high value conservation areas would lead to scientifically or ecologically sound results.

Prescriptive Standards

Two examples are cited below to illustrate the problems of imposing a fixed set of management prescriptions at all locations globally. The first example is the suggested list of air quality emissions. It includes chemicals that are not common air-borne emissions from mine sites [lead and mercury] but excludes others, especially particulate matter [dust], which is almost universal.

The second example relates to tailings disposal. The potential problems associated with riverine and submarine tailings disposal are acknowledged. However, we disagree that there should be an automatic ban on these technologies in all circumstances. Rather, risk assessment and site-specific management solutions are needed. It is essential to take into account specific local conditions as what may be fully acceptable in one environment may be entirely inappropriate in another. Site specific analysis of alternative technologies, benefits and impacts of the project should be undertaken on a case by case basis for all projects which require tailings disposal. Government regulators should be obliged to publish such analyses and the reasons for the decisions made.

For the reasons outlined above prescription of a fixed set of management criteria for general application would not be effective. We believe the best approach is that local regulators should identify the criteria that are relevant to their circumstances and that this information should be available for public scrutiny and comment. An exception is where internationally recognized epidemiological studies (e.g. those supported by the WHO) show that a certain minimum standard is necessary to protect human health. In such cases, it would be appropriate to use WHO standards for certain pollutants, while allowing alternative standards (whether stricter or more lenient) in site-specific circumstances on the basis of a detailed risk assessment.

Subsidence and Back-Filling

Subsidence is a long-standing mine management issue and there are a number of well-established techniques to address it. The main approaches are a combination of good design of surface structures

and compensation for any damage. This is nearly always more cost effective than back-filling which would impose unnecessary costs for no societal benefits.

Back-filling of voids is not an appropriate general management goal in all circumstances. It often imposes higher than necessary costs with little societal benefit. The additional costs arise because of extra earth moving and sterilization of resources which could otherwise be accessed from deep pits or from extension of surface mines. A further disadvantage would be that large areas would remain disturbed for extended periods, basically until mining was completed. The goal should be to re-establish land to agree end-use land forms.

Financial Guarantees

We agree that it is essential for sufficient funds to be available for mine reclamation and acknowledge that there have been a significant number of unacceptable incidents in the past where mines have been abandoned without provision for reclamation. Notwithstanding this, we do not agree that a policy which is based on the most conservative of approaches is suitable. Again, it would impose unnecessary costs which are ultimately borne by society and it provides no incentives for companies to follow best practice. It also means that funds that could be used for other means, including rehabilitation and projects that could bring economic benefits, are locked away.

In the case of well-established companies that have long and respected track records in particular jurisdictions, we believe there is justification for use of corporate guarantees and similar non-monetary instruments. Such practices would have to be implemented with necessary scrutiny but they would provide real incentives to companies to demonstrate long-term responsible practices.

Role of Communities

A large number of responsibilities are suggested for communities in the draft framework and, while we agree that community support is essential for successful operations, we consider that some of the proposals are impractical or unsound.

The framework suggests that communities should be given the right to independently monitor and have "oversight" of the environmental performance of mines. We agree that auditing and monitoring should occur and be reported to regulators and the public. Given this, rather than focusing on giving communities an additional right to monitor, the challenge is how industry and other actors can help communities understand what is being monitored and audited. Monitoring and impact assessment require specialized technical skills and equipment meaning that it would not be appropriate for unqualified individuals to be given scientific responsibilities.

The framework suggests that communities should be given the power to consent to mine projects and be empowered to withdraw this consent at "each stage" of mine development. The general issue of community consent was discussed earlier and the same points apply to this recommendation. It is also necessary to comment on the suggestion that consent could be withdrawn at any stage. This would make it virtually impossible to finance any mine development because of the absence of necessary security and it would expose companies and society generally to extortionate claims from those local individuals who would stand to benefit financially. The most effective means of managing environmental performance and significant operational changes is to require government regulators to exercise these functions in a transparent and accountable manner.

The framework suggests that contracts should be made with "communities" and that communities should be facilitated to visit any mines they wish to see. We agree that appropriate legal agreements should be reached in regard to provision of local services and facilities but the actual contracts would have to be with a local government or some other legally recognizable body, such as a community corporation. We

also agree that it is important for community leaders to be informed about comparable mining operations but as currently expressed, the recommendation would impose excessive and unwarranted financial burdens on whoever was meeting the travel and other costs. Perhaps a more practical suggestion would be to facilitate community leaders visiting one or two comparable projects and to have free access to all parties on these visits.

Resettlement and Human Rights

The principles underlying the recommendations relating to conflict and use of security forces are worthy, but it would be more helpful to rely on the guidelines prepared by the US and UK governments which deal with this rather than attempting to devise new guidelines. Also, where conflict is a possibility rather than a reality it would be necessary to assess this risk and report on how it would be managed, but in practice little investment occurs in conflict zones so it should not be a mandatory requirement in all situations.

The need for involuntary resettlement is an issue that faces all forms of land and resource use, not just mining. It is a procedure used quite extensively by governments in the developed world, particularly for infrastructure and major project development. It is recognized that resettlement should occur by voluntary agreement whenever possible but this is not always possible and in such cases compensation to ensure that affected people are not worse off is the accepted practice. A ban on involuntary resettlement would make many forms of beneficial land use impossible and could expose society to extortionate compensation claims that would benefit few at the expense of the general community.

Governance and Transparency

We agree that dispute resolution mechanisms are desirable and that they must operate to the satisfaction of all parties involved. The suggested measure is that there would be "an independent mechanism" and this could be interpreted as a single international body. In our view, dispute resolution is best handled at the local level where cultural and logistical issues are more manageable, and we would suggest this modification to the current recommendation.

We also support transparency of payments to governments and ICMM members are committed to the Extractive Industries Transparency Initiative (EITI). In addition to this we feel that transparency is needed in government budgeting and disbursement of funds. An ICMM position statement explaining this is given in Annex B.

6 December 2004

Ms Ingrid Macdonald
Mining Ombudsman
Oxfam Community Aid Abroad
156 George Street
Fitzroy
Victoria 3065
Australia

Dear Ingrid,

Re: 2004 Mining Ombudsman's Report

This is a personal submission on the above report, which may not reflect ICMM's formal views.

My fundamental view is one of strong support for your basic objective, being to provide interested parties with a "fair and equitable" complaints resolution mechanism. This is important because where there is no clear place for people affected by large scale resource developments to air their concerns, community dissatisfaction, or even resentment and worse are likely. For reasons of accessibility and cultural awareness, I believe dispute resolution forums are most effective when they are locally based but if they do not exist at all then an international forum, like yours, can still be of value.

For any complaints review process to be credible and effective it needs to satisfy a number of tests. In its assessments it should be objective and reasonable; balanced and complete in its consideration of relevant materials; and factual and technically correct. I have used these criteria to organize my responses to the 2004 report and they are set out below.

Is the Ombudsman's report objective?

The report says in its introductory section that "Oxfam CAA is not opposed to mining" and acknowledges that mineral resource investments can stimulate economic development and alleviate poverty. It also acknowledges progress made at the Tintaya mine in Peru in the resolution of a number of difficult issues.

However, in my opinion, the general tone of the report is negative towards mining. The best illustration of this is that there is no overall information about the contribution of Australia's mining industry to economic or sustainable development. Nearly all of the examples cited are negative and while this might be a consequence of the report's purpose- examination of complaints- it does not present a fair picture of the industry's contribution to society.

Specific examples also illustrate this negative tone. The synopsis for chapter one says: "Australian mining operations are increasingly impacting on poor and vulnerable communities" and the synopsis for chapter three says: "Globally, the push towards a free-market system has resulted in increasing the impact of mining companies' activities on the world's poorest and most vulnerable people". In these statements there is no recognition that mineral resource investments can be a much needed spur to development in poor countries. The statements stand in stark contrast to actual experience on the ground, where jobs in the mining industry are highly sought-after because they are one of the few sources of secure, well-paid employment.

In fact, rather than Australian mining investment "increasingly impacting on the poor" the opposite is correct. Very little Australian or other international foreign investment goes to poor countries. In 2001, according to UNCTAD, total global inward investment was USD 6846 billion; of this 67% went to developed countries and 33% went to developing countries. Of particular note, only 0.6% went to the least developed or world's poorest countries where it is most needed. Mining is about the only sector where FDI into poor countries is meaningful but it is still a very small proportion of companies' overall investments.

The challenge is to improve countries' governance so that beneficial investment can occur. Rather than the problem being multinational companies exploiting poor countries, it is actually that they are ignoring them. To be credible the Ombudsman's report should recognize the true patterns of international investment and the problems associated with them.

Is the report factually correct?

I cannot speak about the details of all the projects cited but am aware of the factual circumstances of a number of the cases.

The report makes a number of references to the "right of people from communities" to give or withhold "free, prior, informed consent". While not actually stated, the strong implication is that this is a universal legal requirement which companies are ignoring. This is not the true legal position, which is that FPIC is a legal requirement in only a small number of jurisdictions and that it is normally restricted to land-owners or in some cases indigenous peoples. For an authoritative aid organization like Oxfam to advise people in developing countries that they have a universal right to FPIC does them a disservice because it is misleading. Further, such advice would inhibit attempts to establish trust and open communications between affected companies wishing to obey the law.

I recognize that the possible extension of FPIC rights is a contentious issue. There are two significant concerns relating to it. The first is why it should be applied only to the mining industry? If there is a case for FPIC, then it would equally apply to all major land uses, not only mining. The second is a lack of clear definition of terms and how it would operate. For example: Would it apply to all affected land-owners or to affected communities? Would wealthy land-owners have FPIC rights? Who would actually give consent to whom and would the consent be permanent or periodically reviewable? How would an equitable distribution of tax and other benefits be shared between local, regional and national interests under a FPIC system? Who would determine

what compensation would be reasonable to people with FPIC rights? Given that these and other relevant issues are unresolved it is difficult to determine whether FPIC rights would benefit affected communities because it is quite possible that they could benefit only a small number of landowners at the expense of the general community. Nevertheless, ICMM is examining the FPIC issue through a project on Indigenous Peoples and the MCEP, and is keen to work with partners to resolve it in a mutually satisfactory way.

On page nine the report mentions in at least two places "the mine at Gag Island" in Indonesia. These are references to BHP Billiton's exploration project at the same location. The Ombudsman's references are incorrect and misleading because there is no "mine" on the island. The report also fails to mention that the majority of the island's community is in favour of a mine being developed because of the jobs it would provide.

On page eight the report says: "The Placer Dome Company continues to deny responsibility for the environmental rehabilitation and compensation of local Filipino communities ...left with the appalling legacy of the Marcopper mine". There are a number of false or misleading aspects to this statement. Placer Dome Inc, the relevant company, is a Canadian corporation not an Australian one and as such it does not appear to fall within the scope of the Ombudsman's report, which is concerned with Australian companies. Placer Dome was a minority shareholder in Marcopper Mining Corporation which was a Filipina listed public company. Placer Dome did not have operational responsibility for the mine. Nevertheless, despite having no legal obligation to do so, a subsidiary of Placer Dome Inc did undertake emergency work to stop the flow of tailings from the dam, devised a long-term solution to prevent further leakage and then remediated the river. In addition, compensation was paid to those affected.

While it may be reasonable for the Ombudsman to argue that the remediation and compensation provided by Placer Dome were not sufficient, it is wrong to say that it denied responsibility and "walked away" from the problem. The clear implication is that the company did nothing in response to the emergency and this is not correct.

Is the report balanced and complete in its coverage?

The report gives prominence to the World Bank's Extractive Industries Review, stating that the "year's biggest disappointment" was the non-adoption of its "progressive recommendations". From the information provided by the Ombudsman most readers would be at a loss to understand why these recommendations were not adopted. The problem is that the Ombudsman only mentions the Emil Salim component of the EIR. There is no mention of the comprehensive reports prepared by the Bank's specialist evaluation departments, the Bank's ombudsman's report, nor the views of the Bank's borrower governments, all of which were very different to those in the Salim report. Any fair-minded reader would want to be aware of this range of views.

While it would be reasonable for the Ombudsman to argue in favour of one set of recommendations over another, the omission of any reference to other important aspects of the EIR, including alternative recommendations, significantly diminishes the credibility of the Ombudsman's report to the extent that it could be seen as being deliberately misleading.

In a similar vein, the report discusses various resource curse issues on page ten. It quotes a recommendation from Emil Salim's report relating to governance and human rights. On page twelve, under "The Solutions", it is suggested that mining companies "should" apply consistent human rights practices internationally. The clear impression from all of this is that companies are opposed to governance reforms and have inferior human rights practices in developing countries. But as ICMM's submission to the EIR demonstrates, this is not the case; the industry supported the priority given to both the need for governance reforms and a greater focus on human rights.

Overall, the partial and biased treatment of these issues in the Ombudsman's report means that it does not satisfy basic tests of reasonableness and fairness. This significantly diminishes its value.

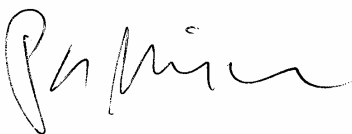
Conclusion

I would like to reiterate my view that the existence of proper dispute resolution mechanisms is in the interests of all parties involved in mineral resource developments. I have no doubt that large resource developments have the potential to be disruptive and thus require sensitive and careful planning and implementation, and must produce community benefits and attract community support to be successful. The Ombudsman's report could play a valuable role in facilitating communication and understanding of issues and problems but it will only do this if it meets basic tests of fairness and objectivity.

There is a real need to seek mutually satisfactory outcomes for all the interested parties. This will assist the world's poor whereas greater polarization will not.

I would be pleased to discuss any of these issues in the letter if this would be of assistance.

Yours sincerely

A handwritten signature in black ink, appearing to read "Paul Mitchell". The signature is fluid and cursive, with a large initial "P" and "M".

Paul Mitchell

c.c. Mr A Hewett, Oxfam Community Aid Abroad
Mr J Hobbs, Oxfam International

ICMM STATEMENT ON THE EXTRACTIVE INDUSTRIES TRANSPARENCY INITIATIVE

COLLECTIVE VOICE ON SUSTAINABLE DEVELOPMENT IN THE MINING AND METALS INDUSTRY

In a process initiated in 1999, the leading players in the mining and metals industry indicated their intention to respond to the legitimate concerns of stakeholders and have put sustainable development at the centre of their corporate strategies. Through the Global Mining Initiative (GMI) and the independent Mining, Minerals and Sustainable Development (MMSD) project, the industry signalled that it recognised the time had come for major changes in the ways it goes about its business, faces up to new challenges, listens and engages with a variety of partners, and turns analysis into action.

The International Council on Mining and Metals (ICMM) has been charged with taking forward the recommendations from the GMI/MMSD process and looking for practical ways to implement them through its own actions and working in partnership with others. ICMM has 15 corporate members and 27 commodity and national association members.

ICMM members have committed to seek continual improvement in their performance and contribution to sustainable development, while enhancing shareholder value. In striving to achieve this, through its Sustainable Development Framework, members have committed to make ethical business practice and sound governance a pervasive feature of company operations by, inter alia:

- implementing policies and practices that seek to prevent bribery and corruption; and
- working with governments, industry and other stakeholders to achieve appropriate and effective public policy, laws, regulations and procedures that facilitate the mining, minerals and metals sector's contribution to sustainable development within national sustainable development strategies.

Thus, ICMM members welcome the Extractive Industries Transparency Initiative promoted by the UK's Department for International Development (DFID) and are pleased to support its overall objective of greater transparency in payments made by companies and revenues received by governments for natural resource extraction. We are supportive of the Statement of Principles and Agreed Actions and our members are committed to working with host governments that wish to develop a framework to promote country-level payment and revenue disclosure and publication in the extractive industries. In the longer term, we believe that the approach developed under this process should be broadened to address transparency issues in other sectors.

Disclosure of payments made by companies to governments and receipts of payments from extractive companies is a necessary, but not a sufficient, condition to promote sound fiscal management to support sustainable development. A necessary next step is to look at policies and procedures to ensure that these revenues are disbursed appropriately and effectively. While recognising that mining companies have no

mandate to seek to dictate to governments how their expenditures are distributed between national and regional levels or between competing priorities, we hope that this initiative will lead to broader public debate on better governance and to further action to ensure that revenues from the extractive sector are put to sustainable uses in the host countries.

ICMM members are committed to contributing to the social, economic and institutional development of the communities in which we operate through working with the communities and relevant organisations in the implementation of community sustainable development plans. In partnership with the World Bank, we are currently exploring ways to ensure that we maximise the potential opportunities to contribute to this development.

Although mining companies contribute substantial non-statutory payments to the communities within which we operate – through provision of local infrastructure, schools, training, health care and other support, we believe the purpose of this initiative is to disclose only statutory payments made to governments at the national and regional level as a first step in ensuring the effective management of these revenues.

ICMM is working with the Global Reporting Initiative to develop reporting guidelines for the industry through a mining and metals supplement to the 2002 Sustainability Reporting Guidelines. Reporting payments to governments where national EITI processes are in place is likely to be a core indicator of ICMM's reporting framework.

IMPLEMENTATION OF PRINCIPLES AND REPORTING GUIDELINES

ICMM corporate members commit to reporting all payments made to government to the assigned "aggregating body" in those countries whose governments have committed to the EITI process. Reporting of company payments from any one mining company should be aggregated on a country-by-country basis so that the company concerned reports one aggregate revenue figure derived from all operations located there to the collator/verifier.

We support the intention to aggregate company payments across companies in each country so that just one figure for mining industry payments is reported by the "aggregating body". The disclosure of company payments should be made to an independent qualified third party collator/verifier who should be bound to retain the underlying details received from each mining company as confidential. Reporting should be in local currencies and should be completed within six months of the end of the host government's fiscal year.

A Level Playing Field

Given the multi-national operations of ICMM members, it is essential that there should be consistency of approach at the country level and a common reporting template in most, if not all, countries.

Where a country does initiate a disclosure process, we believe that the government should require all companies to disclose payments made to government. Steps should be taken to ensure that all companies operating in a particular tax jurisdiction are treated in a similar fashion. Smaller companies need to be

encouraged and provided with incentives to participate. Pressure on non-compliant or recalcitrant companies could be applied through a name and shame approach.

National Approaches and Beyond

ICMM members support the current focus of the initiative at the country level as a useful first step in improving transparency. In the longer term, as appropriate, we are willing to work with others to build on national initiatives to broaden the coverage and spread good governance.

Scope of Mining for the Purposes of Reporting

Company payments to be disclosed should be the tax payments (defined in the template) generated from the activities of mining, processing/concentrating ores, smelting, refining and to first stage fabrication in the signatory host country.

We support disclosure of payments in line with existing international standard accounting practices. We do not support restricting reporting boundaries to particular mineral ore extraction or to upstream activities only, especially where the operation may be an integrated producer. We understand that operations of metal companies that are primarily custom smelters and downstream fabricators are not included in the initiative.

Controlling Interests and Joint Ventures

ICMM members will disclose the relevant payments of their parent company and all majority-controlled subsidiaries. In the case of unincorporated contractual joint ventures the manager appointed under the JV agreement should be responsible for reporting all payments accounted for on behalf of the joint venture; joint venture participants will report their own relevant payments. This will mean that taxes such as payroll taxes and royalties will be reported on a 100% basis even though they are allocable to joint venture participants. The joint venture participants in turn will report only in respect of the taxes they directly pay in their capacity as JV participants.

Aggregating Body

ICMM continues to support the initial proposal that the World Bank Group and the International Monetary Fund should play the role of "honest broker" – as an independent collator and verifier of individual country data. The role of the collator/verifier is critical to the success of the initiative. It will need to provide the reporting companies and governments the assurance of dealing with the disclosed information in an appropriate confidential manner and it must provide the interested public with information that is understandable, trustworthy and timely.

Additionally, it has been recognised that capacity building will be critical to the success of the initiative. The World Bank Group/IMF could play an effective role in providing technical assistance to governments to implement this process.

In countries where a local organisation is chosen as the "aggregating body" or some other arrangement is made, the EITI process should provide criteria for selection of the "aggregating body" and guidelines for its operation.