

**December 2011**

**Submission to UN Working Group on the issue of human rights and transnational corporations and other business enterprises:**

***Overview of ICMM's activities relating to Human Rights***

**1. Introduction**

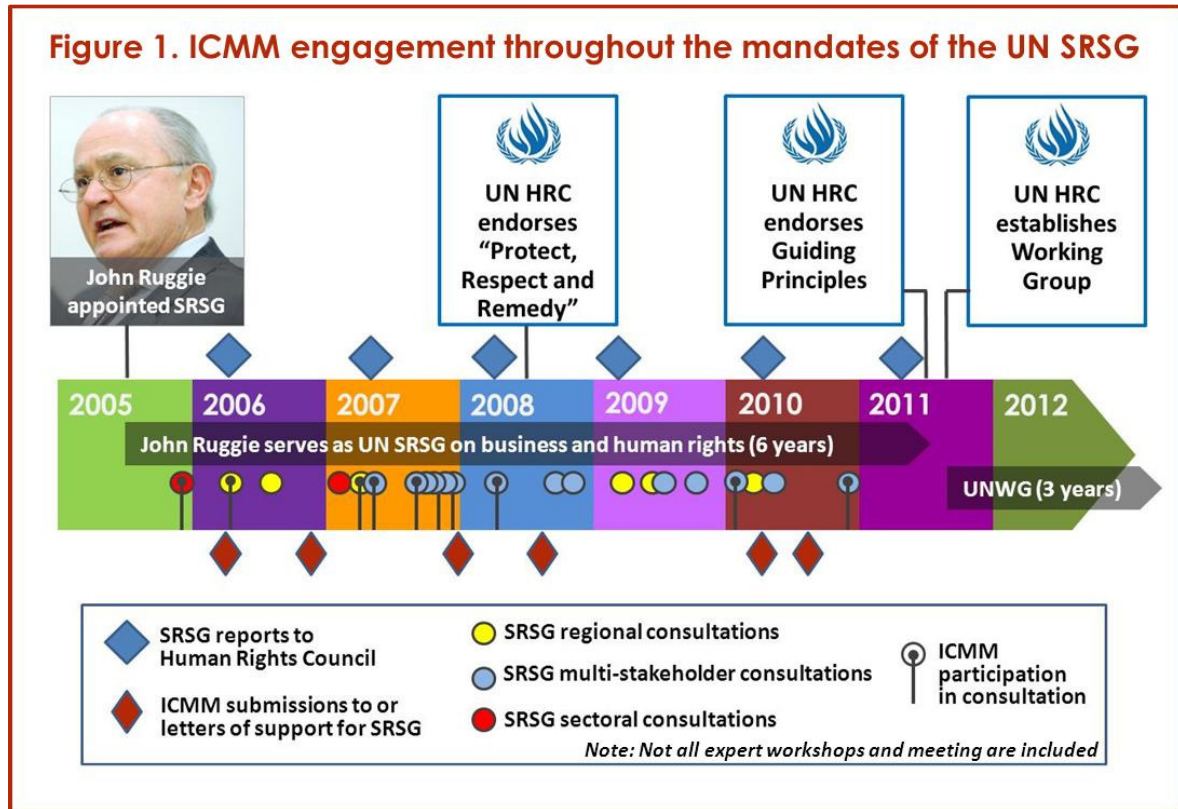
ICMM congratulates the five members of the **UN Working Group on the issue of human rights and transnational corporations and other business enterprises** on their recent appointment. We acknowledge and recognise the importance of your mandate to take forward and build upon the work led by John Ruggie over the past six years in his capacity as UN Special Representative to the Secretary General. ICMM has been strongly supportive of the work that led to the establishment of the "Protect, Respect and Remedy" Framework in 2008, and the publication of the Guiding Principles on Business and Human Rights in 2011, to support effective implementation of that framework. The extent of our engagement throughout the mandate of the SRSG is summarised in Figure 1.

ICMM is a CEO-led collaborative of 21 of the largest mining, minerals and metals companies in the world. Our companies employ some 800,000 people at over 800 sites in 62 countries on every continent. In addition we serve to link 32 mining and commodity associations through which we have reach to another 1,500 companies in the sector. All ICMM member companies acknowledge and are committed to delivering on the corporate responsibility to respect human rights, and related aspects addressed within the UN Guiding Principles.

ICMM recognises that the mandate for the Working Group set out by the Human Rights Council is both critically important and ambitious in scope (as outlined in Annex 1). We support the Human Rights Council's decision to establish a Forum on business and human rights under the guidance of the Working Group. We recognise the value of the Forum as a space to discuss trends and challenges in implementing the Guiding Principles and for promoting dialogue and cooperation on issues linked to business and human rights, including challenges faced in particular sectors or operating environments. ICMM would welcome an opportunity to participate in the Forum on matters of relevance to human rights and the mining and metals sector.

We appreciate the opportunity to provide input to the key thematic priorities and activities of the Working Group. However, at this early stage in your deliberations, we are not recommending specific areas of focus. Instead, we are taking this opportunity to signal our willingness in principle to engage with the Working Group on priorities of common interest, and of direct relevance to the mining and metals sector. We are also using this opportunity to summarise ICMM's activities relating to human rights as background for Working Group members.

**Figure 1. ICMM engagement throughout the mandates of the UN SRSG**



## 2. ICMM’s work on Human Rights

ICMM’s work on human rights builds upon the commitments of corporate members to respect human rights, cultures, customs and values in dealings with employees and others who are affected by their activities. ICMM members are cognisant of the sector-specific human rights challenges associated with mining, and are committed to developing and implementing supporting guidance to address such challenges.

During the past six years, ICMM’s activities in the area of human rights may be summarised within the following four categories:

- Engagement with the UNSRSG throughout the course of his mandates;
- Development of a series of sector specific guides under the umbrella of “human rights in the mining and metals sector”;
- Development of guidance on **Indigenous Peoples and Mining** and on-going engagement on issues relating to mining and Indigenous peoples; and
- Engagement with a range of stakeholders on human rights related matters and in a range of fora, in particular the Voluntary Principles on Security and human Rights (VPSHR).

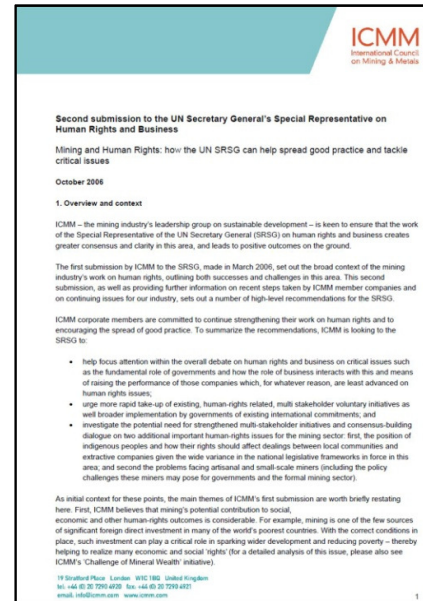
All these activities have been directed by and collaboratively developed with an ICMM Human Rights Working Group, comprising representatives of ICMM’s members.

## Engagement with the UN SRSG throughout his Mandates

As outlined in Figure 1, ICMM engaged substantively with John Ruggie during the course of his two mandates from the Human Rights Council. Our engagement included: the following three submissions prior to the release of the “Protect, Respect and Remedy” Framework:

- A 29-page submission signalling that clarity and consensus on legitimate human rights responsibilities for companies could accelerate progress (March 2006);
- A 33-page submission on ‘Mining and Human Rights’, and how the UN SRSG can help spread good practice and tackle critical issues (October 2006); and
- A 17-page submission signalling ICMM’s support for the development of additional practical measures to strengthen business & human rights outcomes (November 2007).

In addition, ICMM submitted a brief submission to the SRSG in January 2011 in response to the consultation draft on the UN Guiding Principles. We also submitted statements of support to the SRSG following the release of the “Protect, Respect and Remedy” framework and the UN Guiding Principles.



Throughout the course of the SRSG’s two mandates ICMM participated in seven multi-stakeholder consultations, two regional consultations and one sectoral consultation. We either presented or engaged in panel discussions at several of these meetings. In addition, we have had numerous informal interactions with the SRSG and his team throughout the course of his mandate.

Further information on ICMM’s engagement with the SRSG and related submissions are available at: <http://www.icmm.com/page/225/business-and-human-rights>

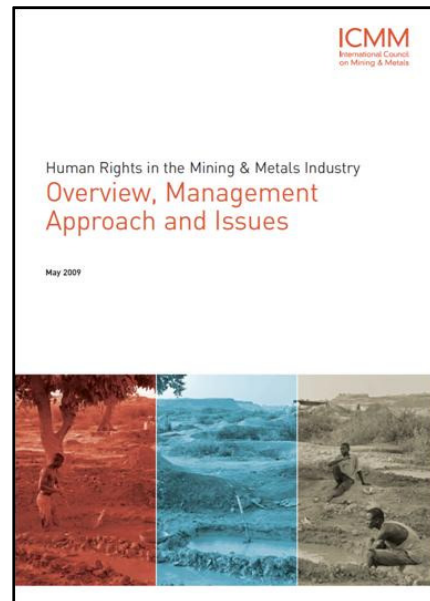
## Development of Sector-specific Guidance on Mining and Human Rights

In 2008, ICMM planned a series of three publications under the title of **Human Rights in the Mining and Metals Sector** to help deliver on our commitment to help advance industry good practice on human rights. The first of these was a document on **Overview, Management Approach and Issues**, which was published in May 2009. Our overall objective was to provide an overview of the main challenges and dilemmas that companies in the mining and metals sector are often faced with.

More specifically we reviewed management approaches that member companies have applied to dealing with human rights challenges. The main audience for the guidance is ICMM’s members and other interested companies in the mining industry.

The publication aims to:

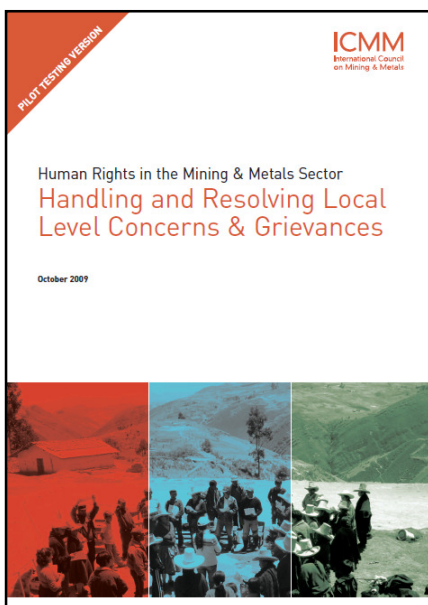
- Outline the various elements of the SD Framework relating to human rights (in addition to a core set of 10 Principles, the Framework also comprises a number of ICMM Position Statements and detailed reporting and assurance requirements<sup>1</sup>);
- Highlight key pressure points of relevance to business and human rights, as well as some relevant external tools and initiatives; and
- Briefly document approaches to dealing with human rights issues adopted by a number of ICMM members in order to facilitate the spread of good practice.



This document is available to download at:

<http://www.icmm.com/page/14809/human-rights-in-the-mining-and-metals-industry-overview-management-approach-and-issues>

In October 2009, ICMM published the second document in the series on **Handling and Resolving Local Level Concerns & Grievances**. This sets out how mining and metals companies can develop robust, credible and trusted procedures that provide local communities with a means of raising concerns relating to the company's operations, and dealing with these in ways that are considered to be fair, by both the community and the company.



The guidance acknowledges that for any large-scale project with potentially significant impacts, some local concerns are inevitable. These concerns can be expressed in the form of a complaint, either formally or informally, and can encompass relatively minor concerns as well as more entrenched or serious issues (that may be described as grievances). In all such cases, the guidance advocates the importance of having a credible local mechanism in place for systematically handling and resolving any complaints that might arise. The guidance also acknowledges that well designed mechanisms to address complaints are likely to bring significant benefits to communities and companies.

The document is available to download at:

<http://www.icmm.com/page/15816/human-rights-in-the-mining-metals-sector-handling-and-resolving-local-level-concerns-grievances>

A pilot-testing programme was initiated in late 2010, where 8 ICMM members are implementing the guidance at an operational site. Experience to date suggests that the guidance is unlikely to be revised, but will be enriched by capturing the lessons learned from the pilot-testing companies. The pilot programme is scheduled to end in 2012.

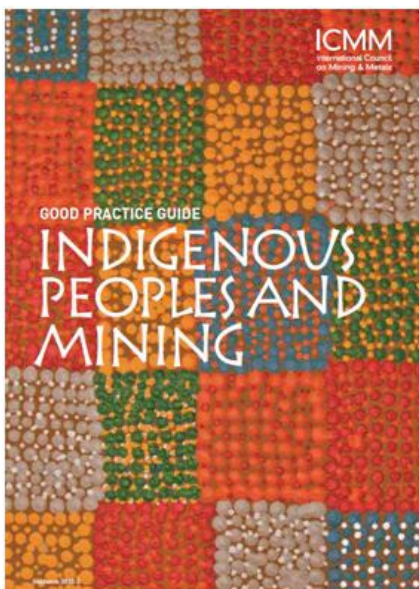
Work is currently underway on the third guidance document, which is scheduled for release in Q1 2012. This will focus on **Ensuring Human Rights are Effectively Addressed in Corporate Due Diligence Processes**, and will be made available through the ICMM website.

### **Engagement on Indigenous Peoples Issues and Mining**

In 2005 and 2008, two roundtables on Mining and Indigenous Peoples Issues were convened under the ICMM-IUCN Dialogue on Mining and Biodiversity. Reports of both roundtables are available at: <http://www.icmm.com/page/208/indigenous-peoples>

In May 2008, the ICMM Council of CEO's approved a **Position Statement on Mining and Indigenous Peoples** (available at <http://www.icmm.com/page/208/indigenous-peoples>), having fully considered stakeholder feedback on an earlier draft version. The position statement stressed the need for constructive relationships between the mining and metals industry and Indigenous Peoples based on respect, meaningful engagement and mutual benefit, with particular regard for the specific and historical situation of Indigenous Peoples.

The position statement includes a number of 'recognition statements', which: acknowledge the historical disadvantage of Indigenous Peoples and the potentially significant impacts that mining



can have on Indigenous Peoples (both positive and negative); the special connection between Indigenous Peoples and land and their environment; the interests of Indigenous Peoples in relation to mining and metals projects; the importance of broad community support for successful mining and metals projects; and the importance of governments and the legal context in determining the interactions between Indigenous Peoples and mining companies.

The position statement also includes a progressive series of nine linked commitments which ICMM member companies must adhere to. The position statement also included a commitment to develop guidance in support of implementation, which led to the development of the **Indigenous Peoples and Mining Good Practice Guide** in November 2010.

The Good Practice Guide (the 'Guide') was prepared to support ICMM members in implementing the underlying vision and the specific commitments set out in the position statement. It was designed to assist mining and metals companies navigate the cultural, social, economic and political complexities associated with developing, operating and closing projects on or near Indigenous lands, or which otherwise impact on Indigenous communities. It highlights good practice principles, discusses the challenges in applying these principles at the operational level, and provides real-world examples of how mining projects have addressed these challenges. The Guide benefitted greatly from expert oversight by a 5-person Indigenous Peoples Advisory Group comprised of experts from Canada, Brazil, Papua New Guinea, Kenya and Australia.

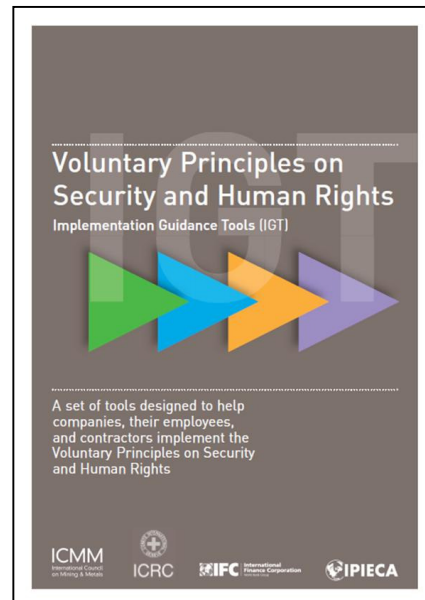


Although the primary audience for the Guide is ICMM member companies, it has relevance to other companies within the sector, as well as to related industries such as oil and gas. It should also be a useful resource for Indigenous Peoples' Groups, governments, civil society organisations and consultants that engage with the sector. The document is available to download from: <http://www.icmm.com/library/indigenouspeoplesguide>

### **Engaging with a Range of Stakeholders, Initiatives and Events**

In addition to the above, ICMM engages with a broad range of stakeholders (such as British Institute for International Comparative Law, Fund for Peace, Global Witness, Institute of Human Rights and Business, International Finance Corporation, Oxfam, etc.) on a variety of human rights related matters. We also participate in various sector-specific and cross-sectoral events and discussion fora on business and human rights. In particular, we have been an observer to the Voluntary Principles on Security and Human Rights (VPSHR) since 2006.

In September 2011, ICMM – in collaboration with ICRC, IFC and IPIECA – co-published a set of **Implementation Guidance Tools** designed to help companies implement the VPSHR. The Implementation Guidance Tools are particularly aimed at those companies operating in areas of conflict and weak governance. The document has been informed by the rich experiences of companies, governments and NGOs, who have been applying the VPs in-country since their launch in 2000 and have contributed to the IGT's development.



Aimed at project level staff responsible for corporate security and human rights commitments, the Implementation Guidance Tools contains four interactive modules and real-world scenarios to help companies engage stakeholders and assess the risks and impacts of their security operations. It is designed to be readily integrated into existing due diligence and project management procedures.

The document is available to download at: <http://www.icmm.com/library/voluntary-principles-on-security-and-human-rights>

### **3. Conclusion**

Given the history of ICMM's involvement with the UN SRSG and our on-going activities and mutual focus on the area of business and human rights, we would welcome an opportunity to engage with the Working Group on priorities of common interest, and of direct relevance to the mining and metals sector. We believe that collaborative approaches represent the best way to effect change, by ensuring the participation of all those with a shared responsibility for achieving progress. In the case of ICMM and its members, the work summarized above reflects the depth of ICMM and its member's commitment to sustaining progress in the area of business and human rights.

ICMM is mindful that the mandate of the Working Group builds upon the six years of work that John Ruggie led in his capacity as SRSO. Some of the attributes that underpinned the success of his work included: a capacity to listen and openness to ideas and input from disparate sources; a strong commitment to multi-stakeholder engagement at all stages; a commitment to balance the perspectives and interests of all parties; and an explicit recognition of the central role of States in promoting and protecting human rights, which underpins the 'Protect, Respect and Remedy's' dynamic system of preventative and remedial measures. ICMM encourages the Working Group to consider applying these same attributes during the course of its mandate.

Finally, we also would like to extend our sincerest best wishes to the Working Group as it seeks to establish key thematic priorities and activities, and throughout the conduct of its work. We are willing to discuss how best to pursue possible avenues of engagement with the UN Working Group at your convenience.

For ICMM, the key points of contact will be as follows:

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## **Annex 1. Mandate of the UN Working Group on the issue of human rights and transnational corporations and other business enterprises**

The Human Rights Council have requested the Working Group:

- To promote the effective and comprehensive dissemination and implementation of the Guiding Principles on Business and Human Rights: Implementing the United Nations “Protect, Respect and Remedy” Framework
- To identify, exchange and promote good practices and lessons learned on the implementation of the Guiding Principles and to assess and make recommendations thereon and, in that context, to seek and receive information from all relevant sources, including Governments, transnational corporations and other business enterprises, national human rights institutions, civil society and rights-holders
- To provide support for efforts to promote capacity-building and the use of the Guiding Principles, as well as, upon request, to provide advice and recommendations regarding the development of domestic legislation and policies relating to business and human rights
- To conduct country visits and to respond promptly to invitations from States
- To continue to explore options and make recommendations at the national, regional and international levels for enhancing access to effective remedies available to those whose human rights are affected by corporate activities, including those in conflict areas
- To integrate a gender perspective throughout the work of the mandate and to give special attention to persons living in vulnerable situations, in particular children
- To work in close cooperation and coordination with other relevant special procedures of the Human Rights Council, relevant United Nations and other international bodies, the treaty bodies and regional human rights organizations
- To develop a regular dialogue and discuss possible areas of cooperation with Governments and all relevant actors, including relevant United Nations bodies, specialized agencies, funds and programmes, in particular the Office of the United Nations High Commissioner for Human Rights, the Global Compact, the International Labour Organization, the World Bank and its International Finance Corporation, the United Nations Development Programme and the International Organization for Migration, as well as transnational corporations and other business enterprises, national human rights institutions, representatives of indigenous peoples, civil society organizations and other regional and subregional international organizations
- To guide the work of the Forum on Business and Human Rights
- To report annually to the Human Rights Council and the General Assembly