

Submission of the **International Council on Mining & Metals (ICMM)** to the **Senate Committee on the Judiciary** hearing before the **Subcommittee on Human Rights and the Law** on **Extracting Natural Resources: Corporate Responsibility and the Rule of Law**, Wednesday 9/24/2008, 10.45am, Room 216, Senate Hart Office

Chaired by: **Senator R. Durbin**

“There is no single silver bullet solution to the institutional misalignments in the business and human rights domain. Instead, all social actors – States, businesses and civil society – must learn to do many things differently.”

John Ruggie

Protect, Respect and Remedy: A Framework for Business and Human Rights, 2008

Context

The **‘Protect, Respect and Remedy’** framework of John Ruggie¹ provides the clearest and most widely accepted articulation of the distinct yet complementary roles of governments and business with respect to human rights. It comprises: the State duty to protect against human rights abuses by third parties, including business; the corporate responsibility to respect human rights; and the need for better access to more effective remedies.

The corporate responsibility to respect human rights, however, is particularly challenging in weak governance zones, where governments cannot or will not assume their roles in protecting human rights, as well as other related aspects of public duties or service provision. Such zones are often characterized by weak public institutions, an absence of the rule of law and a prevalence of corrupt practices. They may also be host to civil conflicts, where potentially serious violations of human rights may occur.

Unilateral action on the part of a company (or companies collectively) is likely to have limited success in resolving the challenges of weak governance zones, where governments must play the primary role in fulfilling their obligations to serve and protect their citizens. However, there is also a potentially important role for collaborative action – between governments, companies and civil society organizations. The **Voluntary Principles on Security and Human Rights** (VPs) represent one such initiative.

Origins of the VPs and participation of ICMM and its members

The VPs were initially developed through a process of dialogue between the Governments of the United Kingdom and the United States, extractive and energy sector companies, and NGOs with a common interest in human rights and corporate social responsibility. This was catalysed by the experience of a number of major companies who found themselves accused of complicity in human rights abuses committed by State security forces. The VPs were, thus, an attempt to

¹ Report of Special Representative of the UN Secretary-General on the issue of human rights and transnational corporations and other business enterprises (SRSG), John Ruggie, to the 8th Session of the Human Rights Council. **Protect, Respect and Remedy: A framework for Business and Human Rights**. April 2008

establish a greater consensus about what the boundaries of corporate responsibility were in this highly sensitive area and to engage the home governments of the leading companies into dialogue about the issues.

Launched in early 2000, the VPs establish a framework for managing the relationship between extractive industry companies and security providers (government and private) so as to ensure respect for human rights and fundamental freedoms. Eight years after they were launched, the VPs remain the only initiative/guidance with cross-sectoral backing and commitments in place in the complex area of security and human rights.

The VPs provide guidance on the attributes of effective risk assessments, and the interactions between companies and public or private security providers. Eighteen oil, gas and mining companies are participants in the VPs, including six ICMM member companies, i.e. Anglo American, AngloGold Ashanti, BHP Billiton, Freeport McMoRan, Newmont Mining and Rio Tinto. Some ICMM member companies have been participants from the outset and contributed to the development of the principles.

In 2006, ICMM was granted observer status to the VPs: the International Committee of the Red Cross (ICRC) and the International Petroleum Industry Environmental Conservation Association (IPIECA) were afforded similar status. In developing the ICMM Sustainable Development Principles², the VPs were one of a number of standards or guidelines considered, and many of the core concepts (if not the specific requirements) are embodied in ICMM Principle 3³.

Challenges and achievements

The VPs have not been without their critics and have had to resolve a number of governance challenges. A long-standing disagreement over participation criteria was resolved in May 2007, although the criteria for host government participation subsequently became contentious - an issue that is the subject of ongoing resolution efforts. This has prompted a somewhat broader reflection on the roles and responsibilities of participating governments and future models of participation in the VPs, i.e. broadening the initiative to embrace new participants or deepening the engagement of existing participants, or both. There have also been differences of opinion over the reporting criteria that should apply to participants, as well as an absence of guidance on implementation for non-participating companies in particular.

Yet such differences of opinions are perhaps inevitable with any voluntary multi-stakeholder initiative in a potentially highly charged area of policy, and the benefits of the VPs greatly outweigh any of the residual challenges. Benefits include:

- The VPs have provided a comprehensive framework for corporate action in the complex area of security and human rights. They depart from the conventional notions of security, which deals with securing the safety and well-being of personnel and assets, to recognize that poorly controlled or trained conventional security provision can, in and of itself, present risks to the well-being of communities.
- The VPs remain the only initiative and source of guidance in the complex area of security and human rights with cross-sectoral backing and commitment, and have provided an important forum for the exchange of ideas and good practice and sharing of dilemmas since their inception.
- The challenge posed by the absence of a credible source of guidance on implementation is recognised, and a scoping exercise for a practical guidance document was initiated in May 2008 (with financial support from the International Finance Corporation). Assuming broad

² <http://www.icmm.com/our-work/sustainable-development-framework/10-principles>

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

support for the development of an implementation guidance tool, the hope is that this can be advanced to play an important role in helping to overcome practical implementation challenges (e.g. in areas such as the conduct of risk assessments).

- The participation of home-country and host-country governments is seen as central to the longer-term success of the VPs, and provides much-needed support to companies and civil society in effectively implementing the VPs in weak governance zones in particular.

In addition to these broader benefits which accrue to all participants, and ultimately to the intended beneficiaries (i.e. the communities in the vicinity of the operations of extractive companies), a number of ICMM members have undertaken specific initiatives in support of the VPs. These include:

- One mining company has developed a manual and training seminar at the corporate level to support its implementation of the VPs, and has integrated reporting on compliance with the Principles into the group's main assurance process. A business unit in South Africa has funded the development of a human rights training course for the national police force, with 1000 officers expected to receive training in 2008.
- The personnel of another ICMM member in Indonesia undergo regular training on the VPs, as part of an ongoing human rights training programme. The company is also taking steps to promote their broader implementation in-country and has organised a series of meetings with government officials and local business partners on the subject.
- Another ICMM member has developed and successfully piloted a human rights training guide, and distributed it to all operations. This guide is reinforced by training to ensure that security personnel and contractors, worldwide, understand the context and importance of human rights in their responsibilities. In four countries where the VPs are considered critical, over 95% of employees and contractors have undertaken human rights training.
- One company has developed a Human Rights Self-assessment Toolkit to assist sites in appraising their potential exposure to human rights issues. The toolkit is aligned with the company's corporate risk management approach, which ensures that human rights issues are readily identifiable and comparable, together with the company's social, environmental and financial risks. In addition, the company has developed a toolkit to assist operations in implementing the VPs. Twenty-seven of the company sites have security forces operating, of which 18 have undertaken human rights training.
- Another ICMM member company, which was one of the tri-partite group responsible for drafting the VPs, was able to put them to immediate use, by cross-referencing and drawing heavily on them in the production of its own group-wide Human Rights guidance. Compliance with this company guidance is mandatory for all business units, and is formally monitored each year in the same way as longer-established requirements in the legal and financial fields.
- Following its admission to the VPs, one ICMM member company undertook a global security review of its operations and is putting in place integrated management structures, training programs, and reporting processes in line with its undertakings as a participant to the roundtable process.

Conclusion

While challenges remain and are progressively being resolved, the VPs are one of the few examples of collaborative action between governments, companies and civil society that are attempting to respond to the 'institutional misalignments' alluded to in the quotation from John Ruggie at the beginning of this submission. ICMM would greatly welcome any support that the Sub-committee on Human Rights and the Law of the Senate Committee on the Judiciary can bring to bear in pursuit of ensuring the long-term success of the VPs.