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**A Descriptive Case Study of the Human Rights Due-Diligence Process of a Mining and Exploration Multinational Corporation**

**by**

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**Abstract**

The success of the contemporary human rights movement is such that the rights they espouse are increasingly relevant to multinational corporations (MNCs), who, commensurate with their influence within the current world order, potentially impact upon all such rights for a wide variety of stakeholders. A recent focus of this contentious field within the global public domain, has been the adoption by the United Nations Human Rights Council, of a framework that confers upon corporations a responsibility to respect human rights by undertaking due-diligence: processes by which a company becomes aware of, and manages its human rights impacts. Despite increasing interest in this area, little research exists regarding how MNCs respond to human rights issues. Therefore, through adopting the research strategy of a descriptive case study, this work examines the human rights due-diligence process of a mining and exploration MNC. A novel finding of this research is that the MNC under examination arguably demonstrates a corporate responsibility to respect human rights, and in doing so, addresses several issues associated with this emerging practice. However, the results also suggest that some human rights issues facing MNCs are likely to persist irrespective of resources devoted to their due-diligence processes, such as those reflective of wider challenges to the foundations of the human rights movement itself. This work concludes by arguing that a possible solution to these problems lies in proactive efforts on the part of MNCs to engage their stakeholders within the public domain, and mediate acceptable solutions to these problems.

# Contents

**1.0 Introduction**

*"Human rights and fundamental freedoms are the birthright of all human beings; their protection and promotion is the first responsibility of Governments"*

(Vienna Declaration and Program of Action, 1993)

More than 65 years after the end of the Second World War, the success of the contemporary human rights movement is such that the rights they espouse comprise an indelible part of the legal, political and moral landscape of society. As a testament to the movement's ongoing success in promoting human rights norms, human rights is becoming an increasingly prominent issue for business, and a focus of recent interest in this area has been the activities of the United Nations (UN) Special Representative of the Secretary General (SRSG) on human rights and business, Dr John Ruggie. The SRSG has achieved relative success in establishing a degree of consensus upon a framework that clarifies the previously contentious issue of corporate human rights responsibilities. Of particular relevance to this work, the SRSG has claimed that a corporate responsibility to respect human rights requires due-diligence: processes whereby companies become aware of, and address the human rights harm they cause (Ruggie, 2010:18).

Despite an increasing interest in this area, there exists a paucity of research on how corporations, and multinational corporations[1] (MNCs) in particular, respond to human rights issues (Hamann, et al, 2009:153), and no case studies exist that examine a corporation's attempt to acquit the responsibilities espoused by the SRSG. In response to this shortcoming, the objective of this research is to support the efforts of other MNCs seeking to respect human rights, by adopting the research strategy of a descriptive case study to describe the human rights due-diligence process of a mining and exploration (M&E) MNC. Given the absence of similar research, it is hoped that such a description offers utility to other MNCs in its own right. However, this research also examines how this MNC addresses a series of issues identified as particular to the emerging practice of corporate human rights due-diligence, and as well as those particular issues revealed by the case study itself.

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[1] This work adopts the definition of MNCs provided by Stephens, (2002:47) as any firm which (in whole or in part) owns, controls and manages income generating assets in more than one country.

In focussing on issues that are particular to corporate human rights due-diligence processes, this research avoids detailed discussion of how MNCs may impact on human rights, or how specific human rights issues they face might be managed, as even within this developing field such reviews exist elsewhere.[2] Similarly, this research has avoided examination of these processes from a perspective that might otherwise examine how any desirable corporate behaviour is fostered within an organisation: such guidance is ubiquitous within corporate management literature, and to adopt such an approach would yield little utility to other MNCs.

In support of the research approach adopted, the following Chapter introduces the contemporary human rights movement, outlining its global influence in promoting a set of rights that it claims are universal, and provides an overview of how such rights are protected in domestic and international law. As is demonstrated in this research, contentions surrounding the movement introduced in Chapter Two persist in the dilemmas faced by the MNC under examination. This Chapter also introduces the ascent of the economic, and by extension, political power of MNCs as a result of globalisation, and concerns that their human rights impacts are beyond the reach of international and domestic laws. The Chapter then examines the development of a new global polity, and the resulting development of a 'soft' and 'hard' human rights governance mechanisms that seek to control MNCs, which have influenced the MNC under examination here. As a significant expression of this polity, the work of the SRSG is introduced, and in particular the UN Framework, which presents a guide for MNCs seeking to acquit a corporate responsibility to respect human rights within this highly contentious field.

Having established the wider human rights and business context, Chapter Three provides a general overview of the M&E industry, within which the MNC under examination operates, and establishes the industry's significance to the field of business and human rights. The Chapter then attempts to examine the practice of human rights due-diligence within the industry, and importantly, outlines a number of issues which appear to be emerging from such processes, as it is possible that how the MNC under examination in this research addresses these, will be of interest to other organisations.

Chapter Four outlines the research strategy and methods used to describe the human rights due-diligence process of the MNC under examination, discussing significant concerns related

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[2] See *'Human Rights Translated: A Business Reference Guide'* (OHCHR, 2010).

to the approaches adopted, and how these are managed within this research. The results are subsequently presented in Chapter Five, and following a brief outline of the MNC examined, its human rights due-diligence process is described. The results also reveal issues that are particular to its this process.

Chapter Six discusses the novelty and external validity of this research, both in terms of the description provided, and in particular, insights offered to other MNCs seeking to address those emergent issues associated with the human rights due-diligence processes. A significant finding of this work is the possibility that MNCs seeking to conduct human rights due-diligence are likely to face persistent human rights dilemmas, and the discussion explores a possible solution to these problems.

**2.0 Human Rights and Multinational Corporations**

This Chapter presents the basis and influence of the contemporary human rights movement on international law, politics and the legislative structures of individual States. To provide an understanding of contemporary conflicts associated with human rights, the principal challenges to claims made by the movement, that such rights are universally valid are introduced. The Chapter then examines the rise in power and influence of MNCs, and perceptions that as a result of globalisation, these actors are able to avoid State-based regulatory regimes that might seek to control them. As a result of such concerns, the emergence of a new 'global polity', and the attendant development of new forms of governance pertaining to MNCs is discussed, and the Chapter concludes with an overview of the current United Nations (UN) initiative concerning human rights and business.

**2.1 The Contemporary Human Rights Movement and the Charges of Cultural Relativism and Cultural Imperialism**

Human rights are regarded as fundamental or basic to the individual, or group of individuals who assert them. These rights are seen as inherent to our status as human beings, and regarded as in need of protection from arbitrary interference (Foster, 2008:4).

Steiner et al, (2007:59) claimed that human rights may be conceptualised as a movement, with its contemporary origins born out of the Second World War. As a result of its successes, human rights norms now deeply inform the rhetoric, practice and theory of international law and politics, as well as the internal constitutional structures of a large number of States (*ibid*.). The contemporary human rights movement's aspirations to universal validity are rooted in a body of international law, the substantive core of which consists of the Universal Declaration of Human Rights (UDHR, 1948), and its supporting covenants: the International Covenant on Civil and Political Rights (ICCPR, 1966); and, the International Covenant on Economic, Social and Cultural Rights (ICESCR, 1966) (Steiner et al, 2007:60). Together these documents comprise of the International Bill of Human Rights (IBHR). In general terms, each Covenant respectively addresses 'first' and 'second generation' rights contained within the UDHR, although this distinction is not always clear (Foster, 2008:9). 'First generation' rights include such rights as the right to: freedom from torture and slavery; freedom of the person; freedom from discrimination; a fair trial; a private life; freedom of

thought; freedom of conscience; freedom of religion; freedom of speech; and freedom of assembly and association. Such rights usually involve the individual claiming a *freedom from* interference with that right, thus imposing a negative duty on the State not to violate that right. Alternatively, 'second generation rights' include an individual's *right to* food, shelter and housing, education and employment. Such rights are said to be consistent with every persons basic needs in that society, thus attracting the positive duty of the State to provide the necessary conditions so that individuals can enjoy such rights (Foster, 2008:10).[3]

However, Steiner et al, (2007:*v*) claimed that perhaps as a result of its success, recent decades have witnessed challenges to the human rights movement, and in particular its aspirations to universality (2007:139). Whelan et al, (2009:370) claimed that these challenges could be investigated from both concrete and abstract perspectives. With respect to the former, and indicative of something approaching universality, is the adoption of the UDHR in 1948 by the UN General Assembly with a count of 48 votes to none, and 8 abstentions (Morsink, 1999:12 Cited by Whelan et al, 2009:370). However, as highlighted by Whelan et al, beyond acceptance of the non-binding principles contained within the UDHR, the extent of universal consensus between States diminishes:

'...*at least 25% of the world's population currently live under state regimes that have not ratified one of the two major 'binding' human rights covenants.*' (2009:370).

Whelan et al (2009:370) claimed that a similar pattern emerges when considering an abstract level of analysis. This may be illustrated by examining those concerns of cultural relativism and cultural imperialism, that Glendon (2001, cited by Steiner et al, 2007:140) describes as the principal charges against the universality aspirations of the movement. The cultural relativism argument claims that certain provisions in the IBHR are inappropriate and inapplicable to certain circumstances. Foster (2008:5) noted that as many rights derive from the idea of individual liberty, they are not always accepted by those of a utilitarian viewpoint. This viewpoint believes that the main purpose of the State is to protect the State as a whole,

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[3] Foster (2008:10) made the distinction between 'first' and 'second generation' rights as that between 'civil liberties' and 'human rights' respectively. He observed that the phrase 'human rights', as used in this research, may also be used in a generic sense to include *all* rights that are regarded as fundamental, and thus includes 'first', 'second' and even 'third generation' rights such as the right to self determination and the right to enjoy the environment.

and considers the protection of individual liberty at its expense, as dangerous and divisive (*ibid*.). Thus, for many societies, rights otherwise described as universal, inalienable and fundamental, are regarded as inferior, or contrary, to the fundamental aims of that society.

Prior to the end of the Cold War such debates were often framed between Communist and Western Democratic worlds, however, Steiner et al, (2008:518) argued that cultural relativism debates now take place within a North-South (or East-West) framework between developed and less-developed countries, or in a religious (West-Islam) framework. However, viewing this debate within these geo-political delineations is simplistic, and belies the conflict between States within these 'blocs', and within the societies of individual States, on the validity and relative importance of various rights. To illustrate, the UK has regularly been found in contravention of a variety of 'first generation' rights contained within the European Convention and Human Rights Act 1998, associated with freedom of expression, peaceful assembly, arrest and detention, and life. Each of these cases aroused intense political, constitutional and legal debate within the UK, framed by the importance of human rights, and the need for the State to limit such rights for the national good (Foster, 2008:26).

Glendon (2001, cited by Steiner et al, 2007:140) claimed cultural relativists often charge the human rights movement with claims of cultural imperialism. Steiner et al, (2007:518) claimed that these voices often cite a traditional 'Western' urge, expressed for example in political ideology (liberalism) and in religious faith (Christianity), to view its own beliefs as universal, and therefore justified in their attempts to universalise them. Glendon (2001, cited by Steiner et al, 2007:140) argued that the imperialist charge is often based on two facts: (1) That many people living in non-Western nations or under colonial rule were not represented in the United Nations in 1948; and, (2) The UDHRs 'Western' philosophical, legal and political heritage. In reference to the former, Glendon argued that acceptance of the UDHR has been reinforced by endorsements from most of the nations not present at its creation (2001, cited by Steiner et al, 2007:142). In consideration of Glendon's second point, Steiner et al, (2008:512) claimed that it is widely acknowledged that the language associated with the contemporary human rights movement, stems primarily from a Western heritage as described by Smith (2010:5) and Whelan et al (2009:369). However, as highlighted by Whelan et al (2009:369) and Sen (1997), there is considerable debate as to whether the rights manifest in these traditions are based on exclusively Western ideals. Whelan et al, also indirectly undermines the imperialist charge, by demonstrating that any imperialist aspiration is not grounded within a Western philosophical consensus. To illustrate, they described

considerable historical and contemporary contention within the Western philosophical canon with respect to rights extolled by the contemporary human rights movement (2009:371).

## 2.2 Human Rights Governance in International and Domestic Law

As explained by Foster (2008:12), international law is traditionally concerned with relationships between member States, and within this canon the self-determination right of States is a fundamental principle. As a result, States retain the primacy for human rights governance, with the domestic legal system of each determining how these rights are recognised, protected and enforced within their jurisdiction.

As human rights are typically concerned with the relationship between the State and its citizenry, the self-determination right of States ensures that the governance of human rights under international law gives rise to a number of diplomatic, legal and moral dilemmas. As Foster (2008:15) observes, these dilemmas are typically illustrated by conflict pertaining to governance mechanisms of international treaties. Therefore, while treaty obligations assumed by States may require them to develop national legislation designed to give effect to treaty obligations, cultural relativist concerns of States are accommodated within international law through: (1) Reservations made by States when ratifying particular treaties; (2) Provisions contained within treaties allowing States to derogate from its obligations in time of war or other emergency; and, (3) The latitude allowed to each State in how they may achieve the basic aims of a treaty (Steiner et al, 2007:1388).

As a result, international methods of enforcement generally fall short of the domestic judicial methods of States (Stephens, 2002:47). To illustrate, the governance mechanisms of the ICCPR and the ICESCR are characterised by the self monitoring and self regulation efforts of member States. However, while authors such as Stephens (2002:47) highlight the failure of international law to employ effective judicial enforcement, Foster argued that these international governance mechanisms should not be dismissed solely on these grounds, on the basis that they fulfil the aims of international recognition, respect, promotion and protection of human rights (2008:17).

## 2.3 Globalisation, Multinational Corporations and Human Rights

Globalisation is envisaged as the expansion of global markets of capital operating through transnational networks of production, finance, and communication (Shelton, 2002). Both Ruggie (2004:511) and Stephens (2002:82) claim globalisation has been facilitated by the implementation of international governance regimes such as those associated with intellectual property rights, or trade dispute resolution through the World Trade Organisation (WTO). To illustrate its rapid expansion, the outward stock of foreign direct investment worldwide increased from US$112.3 billion in 1967 to US$10,671.9 billion in 2005 (Dunning and Lundan, 2008:24, cited by Whelan et al, 2009:368). Within this context, many commentators describe the increasing power of MNCs, facilitated by an expansion of their legal rights as a result of multilateral trade agreements, bilateral investment pacts, and domestic trade liberalisation (Ruggie, 2006:5 and 2004:510).

As networks associated with globalisation are said to avoid the domestic legal systems of States, and international law traditionally focused on inter-State relationships, many commentators claim globalisation has undermined the traditional capabilities of the State, including their capacity to determine how human rights are protected within their jurisdiction (Clapham, 2006:4). Authors such as Korbin (2009:349), McCorquodale (2009:385) and Deva (2004:327) have highlighted problems with respect to the willingness or capacity of States to regulate MNC activity. Steiner et al, (2007:1388) summarised these problems as: (1) States are often loathe to take measures necessary to ensure compliance by MNCs, especially, but not only in relation to labour matters; (2) Such measures are costly and perceived to be beyond the resource capabilities of developing countries; (3) In the context of increasing global mobility of capital, competition among potential host countries discourages initiatives that may push up labour costs and make one country less attractive than one with lower regulatory standards (the so called 'race to the bottom'); (4) The transnational complexity of manufacturing and related arrangements in an era of globalisation makes it increasingly difficult to identify who is responsible for what activities and where; and, (5) Especially in the labour area, difficult issues arise about minimal acceptable standards from one country to another.

To illustrate the significance of MNCs within the current world order, Joseph (2004:1) reported that 51 of the top 100 'economies' were corporations, and that the top 200 MNCs had a combined revenue greater than the combined GDPs of all States, except those of the top

ten countries.  Thus as explained by Steiner et al (2007:1387), Wiessbrodt (2005:113), Jones (2004:1), and Stephens (2002:46), the economic and consequently de facto political power exercised by MNCs, ensures that these actors influence the human rights of a wide range of stakeholders.  Nor are these impacts considered exclusively negative: it is widely recognised that MNC activities can and do facilitate increased realisation of human rights world-wide.  In developing countries in particular, the foreign direct investment of MNC's:

'...*constitute*[s] *powerful forces capable of generating economic growth, reducing poverty, and increasing demand for the rule of law, thereby contributing to the realization of a broad spectrum of human rights...*' (Ruggie, 2008:3).

MNCs can and do however perpetrate human rights abuse.  As explained by Steiner et al, (2007:1388), poor safety standards can threaten human rights relating to the health and life of workers and local communities.  MNC operations can cause extensive environmental damage, potentially impacting on several rights including health, life, minorities and self determination.  Irresponsible marketing practices can threaten the rights of consumers.  MNCs can also pervert political processes within States through exercising their influence, thus undermining democratic rights (Jones 2004:2-3).  Where MNCs operate in States experiencing significant civil unrest and/or poor human rights records, their presence may provide economic support and moral sanction to oppressive governments (Steiner et al, 2007:1388).  In these settings MNCs have also been accused of colluding with military or para-military forces in perpetrating egregious human rights abuses including torture, killings, genocide, war crimes and crimes against humanity (Jones 2004:3).

## 2.4 The Global Public Domain Devoted to Human Rights and Business

As a result of globalisation, Ruggie introduced the term 'governance gaps' to describe the perceived imbalance between powerful economic actors such as MNCs, and the willingness and capacities of States to control them (2010:3 and 2008:3). However, authors such as Moon and Vogel, (2008:310), Ruggie (2004:504), and Shelton, (2002:274), claim that these 'gaps' have also stimulated a new global polity, resulting in new forms of global governance for these actors. To illustrate, Clapham (2006:7) observed the mobilisation of a global network of non-government organisations (NGOs), responding to the perceived dangers of global economic forces and actors. In addition to their attempts to influence international law, NGOs have recognised that directly influencing MNCs offers a platform to leverage their agendas that were otherwise unavailable prior to the Second World War (Ruggie, 2006:6 and 2004:511). As stated by Newell (2000, cited by Moon and Vogel, 2008:310):

'...*targeting companies directly offers the prospect of higher 'returns' given that the investment decisions of major* [MNC's] *now dwarf those of many states*.'

Ruggie conceptualised this new polity in terms of a global public domain: a transnational arena of discourse, contestation and action concerning the production of global public goods (2004:504). He argued that as a result of globalisation, the global public domain had evolved from one constituted primarily by States, to an increasingly institutionalised arena that involved a multitude of actors, a multitude of interests, and a variety of 'hard' (involuntary) and 'soft' (voluntary) governance mechanisms (Whelan et al, 2009:373).

Within that part of the global public domain devoted to human rights and business, both MNCs and NGOs present overarching cases for the former to undertake human rights responsibilities. Whereas NGO claims are typically grounded in normative ethical and moral arguments, Clapham (2006:197) claimed that these were generally considered secondary within the MNC case, which is usually listed as: (1) Protection of reputation with regard to consumers; (2) Reduction of disruption through strikes, protests and boycotts; and, (3) Enhanced attractiveness for future and current employees. In addition, Clapham (2006:195) also highlighted the increasing importance of MNC acceptance of human rights responsibilities as a means to secure project finance.

However, the scope to which MNCs should undertake human rights responsibilities is contested within this domain. Beyond a responsibility for the human rights of those directly affected by MNC activities, some NGOs claim that the scope of MNC responsibility extends to activities where they are perceived as complicit, or to have benefited indirectly from the human rights transgressions of other actors (HRWG, 2009:1). The scope of some NGO claims extend further, such that MNCs should act as advocates for human rights in and of themselves on the basis of their power and influence (*ibid*.). Within these debates resonate concerns based upon the conflation of the legitimate responsibilities of States and MNCs (ICMM, 2009:1 and Whelan et al, 2009:369), and these debates have also accommodated those long-standing issues associated with the human rights movement of cultural relativism and cultural imperialism (Baron, 2010:752). Beyond these debates, authors such as Zwolinski (2007:694), Shelton (2002) and Maitland (1997:603) offer economic arguments that the additional economic cost associated with human rights governance mechanisms distorts market forces, yielding undesirable economic and moral outcomes. This viewpoint argues that these costs limit foreign direct investment in developing countries, therefore restraining forces contributing to human rights.

Maitland however (1997:594), highlights concerns that much of the debate within the public domain fails to address these fundamental issues. Instead, Maitland claims that to maintain public interest, NGOs have generally sought to oversimplify the issue by promoting a media discourse described as: '...*a morality play featuring heartless exploiters and victimised third world workers*...' Perhaps in recognition that NGOs engender significantly greater public trust than MNCs and State counterparts (BSAIS, 2010, Edelman, 2010:3 and Edelman, 2009:6), Maitland claims that MNCs have judged that they cannot win media debates with their critics, and have treated NGO campaigns as public relations problems, to be managed to minimise harm to their reputation. In such circumstances, Maitland (1997:595) claimed the result is a: '...*great non-debate*...' within the media, and went on to argue that given their considerable benefit to developing countries, MNCs had a social responsibility to move beyond such public relations exercises, and engage in processes whereby these benefits are considered (Maitland, 1997:603-4).

## 2.5 The Reliance on 'Soft' Global Human Rights Governance Mechanisms Pertaining to MNCs

As outlined previously, MNC and NGO interests converge somewhat on the importance of MNCs undertaking human rights responsibilities, however Clapham (2006:195) outlined a divergence between these actors in relation to the human rights governance mechanisms they advocate. MNCs, along with State and international governmental organisations have generally urged the imposition of 'soft' governance mechanisms (Stephens, 2002:47). Clapham (2006:195) however, noted that the preference of MNCs for 'soft' mechanisms, typically promoted under the banner of Corporate Social Responsibility (CSR), is increasingly coming under criticism from the same NGOs that encouraged these initiatives in the 1990's. To highlight this change in direction Clapham, cited *The Economist*:

'*CSR was conjured up in the first place because government action was deemed inadequate: orthodox politics was a sham, so pressure had to be put directly on firms by organised protest. Ten years on, instead of declaring victory, as they might, disenchanted NGOs like Christian Aid are coming to regard CSR as the greater sham, and are calling on governments to resume their duties.... ....to ensure companies have a legal obligation to uphold international standards.*'

Notwithstanding this criticism, the past two decades has seen a proliferation of 'soft' human rights governance mechanisms in the form of codes of conduct and standards of behaviour (Nolan and Taylor, 2009:434), to which Stephens (2002:80) and Shelton (2002) highlight the success of the human rights movement in promoting internationally recognised standards as the basis of their human rights considerations. To illustrate, the principle 'soft' human rights governance mechanisms relevant to MNCs of: (1) The 1977 ILO Tripartite Declaration of Principles Concerning Multinational Enterprises and Social Policy; (2) The Organisation for Economic Cooperation and Development (OECD) Guidelines for Multinational Enterprises; (3) The International Finance Corporation (IFC) Performance Standards; (4) The Equator Principles; (5) The UN Global Compact (GC); and, (6) The Global Reporting Index, each require voluntary compliance with any combination of; (1) The IBHR; (2) The fundamental labour rights principles adopted by the ILO; and (3) Domestic laws implementing host-

country obligations under international law. A brief explanation of each of these mechanisms is contained within Appendix 1.

As a result of the criticisms of 'soft' governance mechanisms, in 2003 the UN Sub-Commission on the Promotion and Protection of Human Rights submitted the '*Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises with Regard to Human Rights*' (the Norms), to the UN Commission on Human Rights (Clapham, 2006:226). Unlike 'soft' mechanisms, the Norms advocated the development of legally binding obligations to be placed on corporations based upon a set of human rights standards drawn from existing UN documents (Seppela, 2009:403). Response to the Norms varied dramatically, and the debate became polarised between exponents of 'hard' and 'soft' governance mechanisms (JCHR, 2009:32). The mostly supportive NGO response contrasted with a mostly hostile corporate one, based on a feared transfer of State responsibilities to themselves (Seppala 2009:403). Similarly, most developing countries resented such intrusive legislation, and most developed countries claimed the Norms as either unnecessary or overreaching (Steiner et al 2007:1405).

## 2.6 The Work of the Special Representative to the United Nations Secretary General

Seeking to move the business and human rights debate beyond the polarised positions of its central actors, the UN Commission on Human Rights set aside the Norms, and in 2005 appointed Dr John Ruggie as the Special Representative to the Secretary General on the issue of human rights and other business enterprises (SRSG). The mandate given to the SRSG was to: (1) Identify and clarify standards of corporate responsibility and accountability...: (2) To elaborate on the role of states in effectively regulating [corporations]..., including through international cooperation; (3) To research and clarify the implications..., of concepts such as 'complicity' and 'sphere of influence'; (4) To develop materials and methodologies for undertaking human rights impact assessments of [corporate activities]; and (5) To compile a compendium of best practice.

*2.6.1 Protect Respect Remedy: a Framework for Business and Human Rights*

Despite the divisiveness that existed following the release of the Norms, the SRSG claimed that all stakeholders expressed a need for a common framework on which action could build in relation to business and human rights (Ruggie, 2008:4). The SRSG argued that as 'governance gaps' created by globalisation provided a permissive environment for human rights transgressions, the narrowing and bridging of these 'gaps' represented the fundamental challenge (Ruggie, 2008:3).

In 2008 the SRSG presented a principles-based conceptual and policy framework to address these 'governance gaps.' The 'Protect, Respect, Remedy Framework' (UN Framework), subsequently adopted by the UN Human Rights Council, was based on three differentiated, yet complementary principles: (1) The State duty to protect against human rights abuses by third parties, including business; (2) Corporate responsibility to respect human rights; and, (3) The need for more effective access to remedies (Ruggie, 2008:1).

In seeking to clarify the nature of a corporate responsibility to respect human rights within the UN Framework, the SRSG claimed that this required due-diligence:

*"...whereby companies become aware of and address the human rights harm they cause..."* (Ruggie, 2010:18).

Unlike the Norms, the UN Framework specifically avoided conferring State duties on corporations, or detailing a limited set of rights for which corporations are accountable. Instead, it recognised the respect of international human rights standards, as outlined in the IBHR and ILO Core Conventions, as a baseline expectation for all companies in all situations, which existed independently of State duties (Ruggie, 2010:13).

Notwithstanding the challenges faced in establishing consensus within the public domain devoted to human rights as outlined by Whelan et al, (2009), the SRSG has claimed that a consensus is forming around the UN Framework (Whelan et al, 2009:368). In addition to endorsements from peak global business organisations such as the International Chamber of

Commerce and the International Organisation of Employers (BIAC, 2009), the SRSG claimed that EU and UK have each referenced the UN Framework in conducting their own policy assessments. Furthermore several global corporations are aligning their due-diligence processes with the UN Framework, and civil society actors have employed the UN Framework in their analytical and advocacy work (Ruggie, 2010:4-5).

## 3.0 Human Rights Due-Diligence by MNCs Within the Mining and Exploration Industry

The previous Chapter established the origins, influence and criticisms surrounding the contemporary human rights movement, and described the domestic and international legislative framework for their recognition and protection. The Chapter also introduced concerns that globalisation had eroded State capabilities to control increasingly powerful MNCs, whom commensurate with their increasing influence within the public domain, have significant potential to negatively and positively contribute to the realisation of human rights. The previous Chapter concluded by introducing the UN Framework, and its claims of success in establishing a degree of consensus regarding the human rights responsibilities of MNCs. Having established under the UN Framework that a corporate responsibility to respect human rights requires due-diligence, this Chapter begins with a general overview of the M&E industry, including the antecedents and nature of the human rights issues that it faces. The Chapter then examines current human rights due-diligence practice within the industry, and despite a lack of organisational research in this area, it concludes by highlighting several issues that appear to be emerging in relation to these processes.

## 3.1 The Global Mining and Exploration Industry

Mineral commodities provide the basis for numerous products upon which society depends: non-recyclable mineral commodities such as coal, will continue to be utilised given current dependencies, and it is not possible to meet world needs without more of most kinds of recyclable mineral commodities in circulation (ICMM, 2002:*xxii*). Additionally, the process of producing, using and recycling minerals, contributes to many other societal goals such as the economic development of States, and the provision of employment, infrastructure and other benefits to local communities (ICMM, 2002:*xiv*).

A broad conceptualisation of the economic usage of minerals in society is depicted by the 'mineral cycle' in Figure 1. The 'mineral cycle' provides an overview of society's interaction with these non-renewable resources, from their location, exploration and extraction, to the different types of end use.
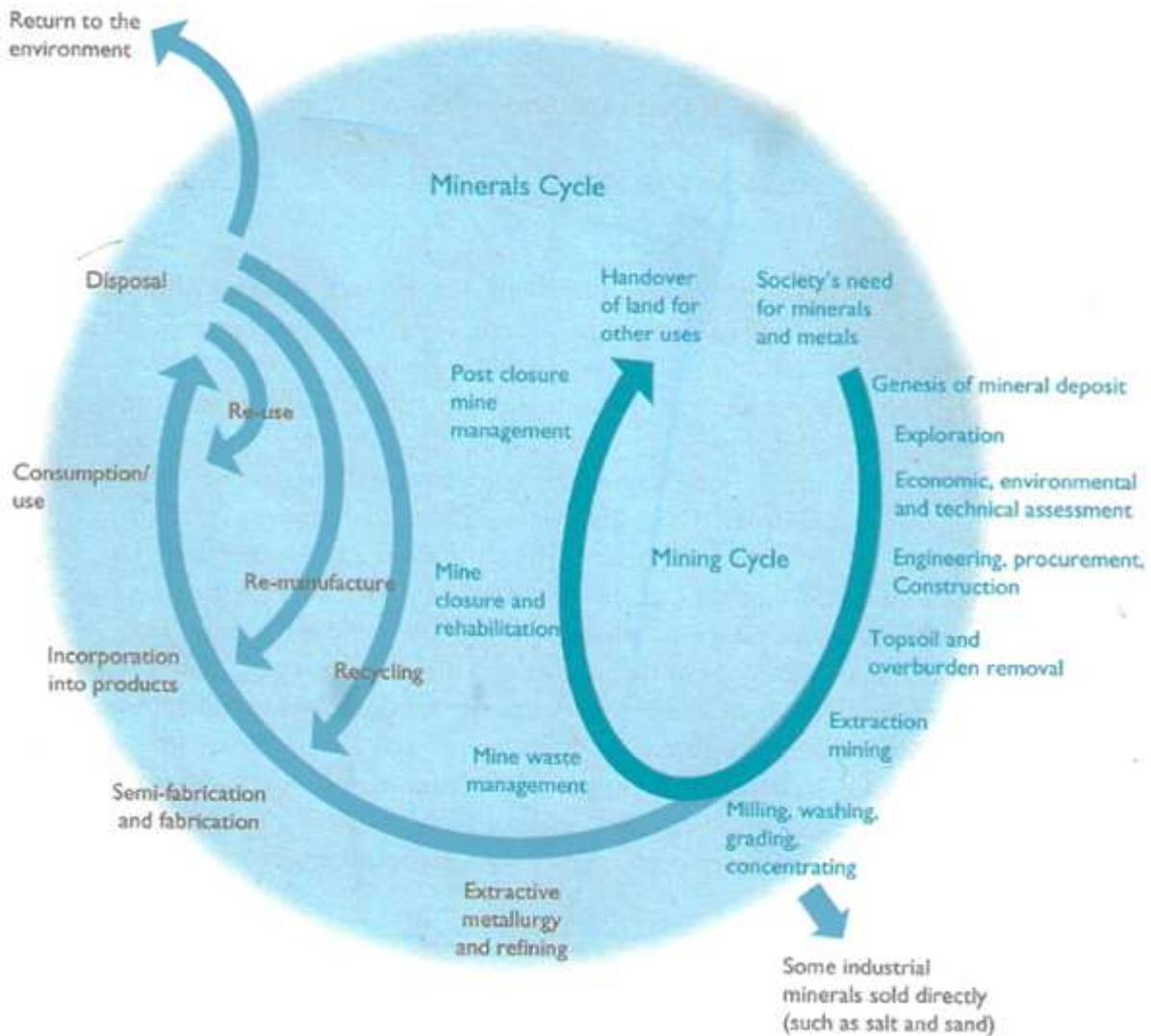
**Figure 1.** The Minerals and Mining Cycle. (Source: Spitz and Trudginer, 2009:165).

The M&E industry may be conceptualised within the 'mineral cycle' as a separate 'mining cycle', and is defined as all activities related to the extraction rock, stones, or minerals that can be sold for a profit (Spitz and Trudginer, 2009:7). As summarized by Spitz and Trudginer (2009:165), the 'mining cycle' exhibits the following principle activities:

- Exploration to identify potential mineral deposits that can be mined for a profit;
- Economic, technical, environmental and social assessment of the mineral deposit to determine whether it can be economically extracted and processed under current and predicted future market conditions at an acceptable environmental and social cost;

- Engineering, procurement and construction of the mine, ore handling and processing facilities, and associated infrastructure such as roads, power generation facilities, workforce accommodations and ports;

- Mining operations to remove overburden and waste rock in open pits and/or excavation of underground declines, shafts and tunnels to access deeper ore bodies, and to extract and transport the ore to the beneficiation plant;

- Milling, washing and grading of the ore to produce a concentrated product;

- Mine closure involving the repair and rehabilitation of the adverse effects of mining to leave a safe and stable mine site; and,

- Final handover of the mine site to other land uses.

Viewed from a global perspective, the M&E industry is heterogeneous and generalisations do not fully account for specific settings (MMCD, 2002:60). Nonetheless, a generalised structure of the global M&E industry is presented in Figure 2, and depicts that of an integrated production system, with companies occupying identifiable niches and using various business strategies to reduce risk and create growth opportunities. Therefore, the industry is generally described as highly interdependent, both throughout the supply chain and across different mineral groups. 'Junior' companies represented in Figure 2, are diverse in their business and risk management strategies, financial situations, and commitment to long term positions, however, two broad categories can be identified. The first group of 'Juniors' are those involved exclusively with exploration, and seek to negotiate arrangements with larger companies within the industry for the ore bodies they discover. The second group are expansionary or producing 'Juniors', whom attempt to gain a controlling interest in mining operations based on the ore bodies they discover (MMSD, 2002:63). 'Intermediate' and 'National' companies represented in Figure 2, typically operate several small to medium sized mines, possibly in a number of countries, offering growth potential through mergers amongst themselves or by being taken over by larger companies. Large M&E MNCs, represented in Figure 2 by 'Seniors' and 'Global Giants', are characterised by operations that span the 'mining cycle' to sell mineral concentrates and metals on the world markets.

The global M&E industry is also supported by an extensive network of consultants, contractors and service companies, which range in character from small, often highly specialised firms, to large integrated engineering organisations. In some cases mining is

carried out under contract, leaving the milling and marketing of mine products to the company owning the resource. Consultants and service companies are particularly prominent in the exploration phase of the 'mining cycle' (MMSD, 2002:63).
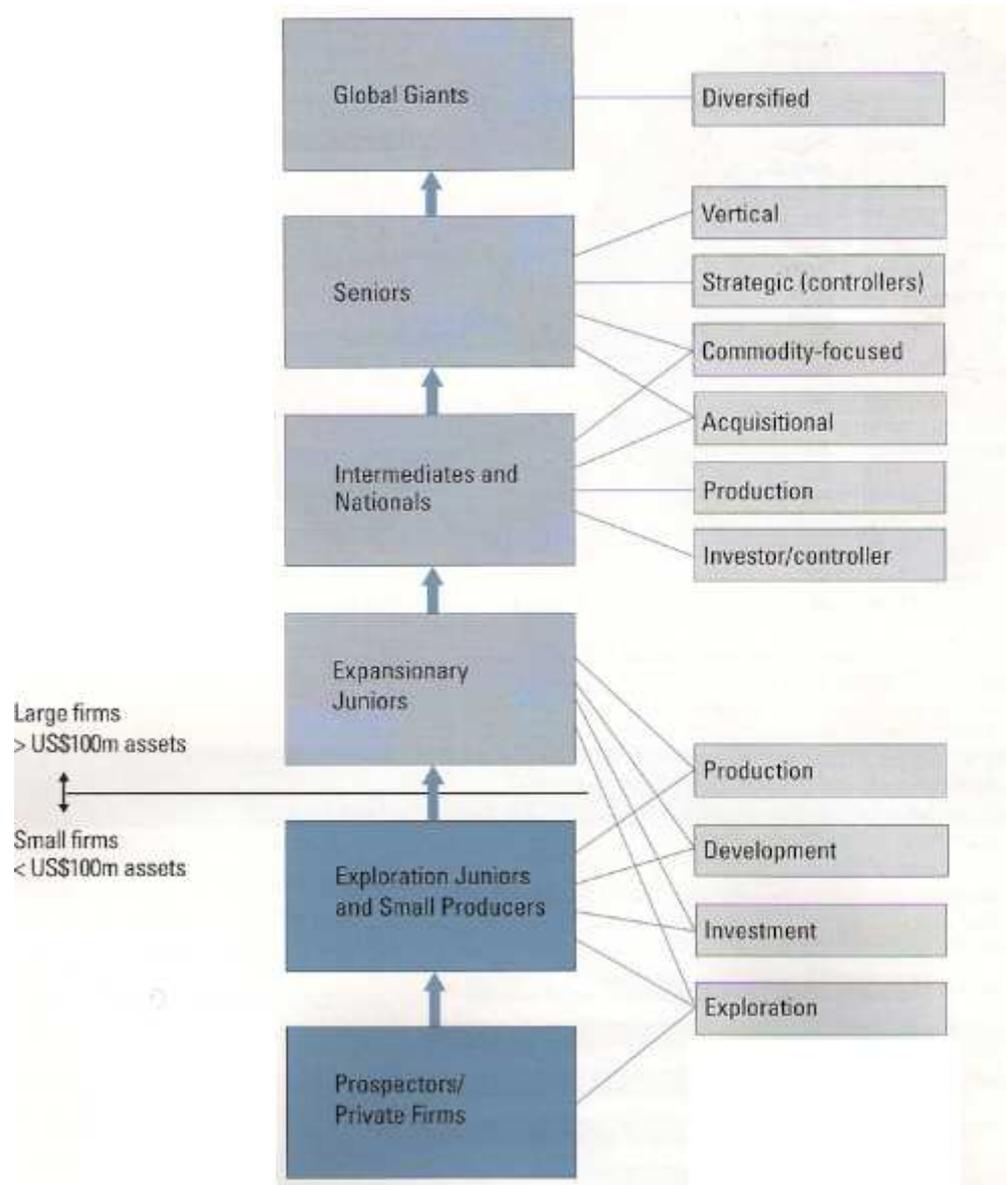


**Figure 2.** The Global Corporate Mining and Exploration Industry: Firm Size and Organisational Focus. (Source: adapted from MMDS, 2002:60).

**3.2 Human Rights Issues Associated With Mining and Exploration MNCs**

Many authors such as Muchlinski (2009:126 and 2001:31), Ruggie (2006:8) and Jones (2004:3) have highlighted a history of human rights transgressions associated with extractive industries,[4] and the M&E industry in particular (Spitz and Trudginer, 2009:6, MMDS, 2002:63). A study of NGO reports of corporate human rights abuse revealed that two thirds were associated with the activities of extractive industries (Ruggie, 2006:8). With respect to the M&E industry, two factors are often presented to explain this situation. Firstly, the location of operations is restricted to mineral resources which are increasingly located within remote areas of developing countries (MMDS, 2002:61), where 'governance gaps' as outlined in Chapter Two, may be extensive.

The second factor relates to the scale of M&E operations. Within an industry where excavation rates can exceed 500,000 tons per day in the largest mines, land clearing for mine access, ore extraction, and provision for waste rock and tailings can profoundly change the receiving environment. These operations can require the establishment of whole mining towns and associated infrastructure, including hospitals, air and sea ports, power plants, landfill facilities, and roads. Given the scale of these operations, within a developing country a M&E project may become the nucleus of region-wide, or even national development which may significantly impact the social, economic, and political fabric of the receiving community (Spitz and Trudginer, 2009:6).

In discussing the extractive sector more generally, Ruggie claimed that the circumstances they face may have compelled:

'...*responsible companies, faced with some of the most difficult social challenges imaginable, to perform de facto governmental roles for which they are ill-equipped, while other firms take advantage of the asymmetry of power they enjoy...*' (2006:9).

However, while the M&E industry has the potential to impact upon most, if not all recognised human rights, the International Mining and Minerals Council (ICMM, 2009:17)

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[4] Ruggie (2006:8) defined extractive industries as including the oil and gas, as well the mining and exploration industries.

identified the following categories of human rights issues that often persist throughout the industry as common sources of human rights controversy:

- **Employment**. ICMM (2009:17) discussed human rights transgressions with respect to employee representation, child and forced labour, and discrimination;
- **Security**. Muchlinski (2009:127), Jones (2004:3) and ICMM (2009:17), each discuss instances where security personnel (private and State) engaged to safeguard assets have been involved in illegal assaults and killings of persons;
- **Involuntary resettlement**. ICMM (2009:17) discussed transgressions related to both the physical displacement of people (relocation or loss of shelter), and economic displacement (loss of assets or access to assets leading to loss of income sources or means of livelihood);
- **Local and indigenous peoples**. Spitz and Trudginer (2009:6) and ICMM (2009:17) highlighted cases of inequitable distribution of the benefits and costs of M&E activities as processes alter the landscape and disrupt social and economic networks;
- **Conflict zones**. Muchlinski, (2009:127) and ICMM (2009:17) identified instances of complicity in conflicts generated by local competition for control over natural resources;
- **Artisanal and small scale mining** (ASM). ICMM (2009:17) discussed social, environmental, economic, health and safety issues relating to miners who may be operating without legal title in M&E concession areas; and,
- **Corruption and bribery**. ICMM (2009:17) discussed the subversion of due process of host States.

To assist readers to conceptualise the potential nature and scale of M&E operations, and their potential impact upon human rights within developing countries, a schematic and explanation of the Freeport-McMoRan copper and gold mine in West Papua is presented in Appendix 2.

## 3.3 Global Human Rights Governance Mechanisms Pertaining to Mining and Exploration MNCs

Reflecting the increasingly institutionalised global public domain as discussed in Chapter Two, large M&E MNCs are often high profile organisations within the public domain, and conscious of their reputation (MMSD, 2002:62), as their activities have often been the focus of NGO activism related to human rights (Spitz and Trudginer, 2009:875). As was described in Chapter Two for MNCs generally, beyond the domestic legislation of States, global governance frameworks that seek to regulate the human rights impact of M&E MNCs are characterised by their voluntary, or 'soft' nature. Each of those 'soft' mechanisms discussed in Chapter Two are significant initiatives within the industry (MMSD, 2002:68), and as a demonstration of increasing influence of NGOs (Spitz and Trudginer, 2009:875), several industry-specific voluntary initiatives exist as a product of multi-stakeholder processes involving States, NGOs and MNCs. Of particular significance are the: (1) Voluntary Principles on Security and Human Rights; (2) Kimberley Process Certification Scheme; and, (3) Extractive Industries Transparency Initiative, and each are explained briefly in Appendix 1.

In addition to these initiatives, the UN Framework, and the responsibilities it confers upon corporations, has received widespread support from within the M&E industry as demonstrated by its endorsement by the ICMM (2009:3). Testament to its influence, the approaches it espouses are reflected in guidance documents for the management of human rights within the M&E industry produced by the ICMM, IFC, and GC.[5]

## 3.4 Human Rights Due-Diligence by Mining and Exploration MNCs: 'State of Play'

Large M&E MNCs generally have well-developed codes of practice and management systems designed to manage financial, environmental and social issues (MMSD, 2002:62). As a result, most human rights issues are managed implicitly within these systems, which are often complimented by specific due-diligence processes conducted throughout the 'mining cycle' such as Social and Environment Impact Assessments (SEIAs), and community baseline assessments (ICMM, 2009:10). The business case presented by the ICMM (2009:9), outlining the benefits to M&E MNCs of undertaking human rights responsibilities, reflects

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[5] See ICMM (2009:8) and GHRIAM (2010a)

that of MNCs in general as discussed in Chapter Two, and as a result of the UN Framework, human rights due-diligence processes are attracting increasing attention within the industry (ICMM, 2009:9).

However, despite increasing interest in corporate management of human rights generally, Hamann et al, (2009:453) claimed that beyond the work of the SRSG, little research exits on the extent to which corporations recognise and respond to human rights concerns. Similarly, the development of due-diligence methodologies in support of corporate efforts is in its infancy (ICMM, 2009:10). Thus, a discussion pertaining to the human rights due-diligence approaches of M&E MNCs mostly relies on an extrapolation of the limited available research pertaining to corporations more generally.[6]

The SRSG claimed that on the basis of his research, a basic corporate human rights due-diligence approach demonstrates the following elements: (1) Human rights policies; (2) Human Rights Impact Assessments (HRIAs) to understand how current and proposed activities may impact on internationally recognised human rights, and development of plans to address and avoid potential negative human rights impacts throughout the project life-cycle; (3) The integration of human rights policies throughout a company to ensure consistent human rights performance throughout; and, (4) Monitoring and auditing processes to permit a company to track ongoing developments (Ruggie, 2008:18).[7] The SRSG also stressed the importance of effective grievance mechanisms, noting that they can provide: (1) Feedback to the company to help identify risks and avoid escalation of disputes; and, (2) Potential access to remedies for affected parties (Ruggie, 2010:17).

The SRSG claimed however, that most organisations do not have such systems in place (Ruggie, 2008:9). With respect to the elements of due-diligence outlined above, and as a possible reflection of the M&E industry, the Institute for Human Rights and Business (IHRB) estimated that of 80,000 MNCs in existence, only 250 have publicly stated policy positions on human rights (IHRB, 2010:10). Furthermore, the SRSG claimed that few companies engaging in large footprint projects conduct HRIAs[8], and few such projects provide for community complaints procedures or remedies (Ruggie, 2007a:387). A recent study of 24 MNCs claiming to be responding to human rights issues, found that none claimed to have

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[6] The efficacy of this approach is supported by the fact the SRSG's research and consultations encompassed the M&E industry. See ICMM (2008).
[7] See also Ruggie, (2010:17).
[8] In support of this claim, this research finds only two companies that have made their HRIAs available within the public domain, one of which is an executive summary. See Goldcorp (2010), and BP (2002).

fully integrated the basic elements of a corporate human rights due-diligence approach across all business functions, (IHRB, 2010:36).

**3.5 Emerging Issues with Corporate Human Rights Due-Diligence Processes**

Despite limited research regarding corporate human rights due-diligence processes, a number of issues surrounding these processes have emerged, and those most consistently identified are discussed as follows.

*3.5.1 Defining the Scope of a Corporate Responsibility to Respect*

Debate persists within the public domain surrounding the scope to which MNCs should undertake human rights responsibilities as discussed in Chapter Two. The SRSG claimed that while the domestic laws of the State defines the scope of legal compliance, the broader scope of a corporate responsibility to respect human rights is defined by social expectations, and that:

> *'Failure to meet this responsibility can subject companies to the courts of public opinion – comprising of employees, communities, consumers, civil society, as well as investors - and occasionally to charges in actual courts...'* (Ruggie 2008:16-7).

Responding to this, McCorquodale (2009:392) expressed concern that this might contribute to potentially 'severe' problems for corporations seeking to operationalise the UN Framework, arguing that:

> *'...to base... ...a corporation's obligations in relation to human rights on the nebulous idea of a social licence to operate and on vague social expectations is deeply unsatisfactory...'* (2009:392).

He highlighted the practical difficulties that exist should corporations seek to empirically define 'social expectations,' and as in the case of MNCs, the relevant society upon which such an enquiry would be based. Perhaps in response to such concerns, the SRSG claimed that a corporate 'social licence to operate' is based on prevailing social expectations as demonstrated by the near-universal acceptance of human rights standards enshrined in those 'soft' governance mechanisms discussed previously (Ruggie, 2009:13). Nevertheless, those wider debates surrounding the IBHR highlighted in Chapter Two, support McCorquodale's concerns that the precise determination of 'social expectations' in relation to human rights is problematic.

The persistence of this issue was recognised by the SRSG himself, whom illustrated the issue by discussing the supply chains of corporations. For such instances the SRSG was unable to offer precise guidance on how far due-diligence should extend beyond immediate suppliers into an extended supply chain, and instead deferred this issue to further research and consultation (Ruggie, 2009:18-9).

*3.5.2 Reporting and Engaging on Human Rights Issues With External Stakeholders*

The SRSG established the centrality to due-diligence processes of reporting and engaging on human rights issues with external stakeholders, by claiming that HRIAs were similar in their principles and methodologies to Social and Environmental Impact Assessments (SEIAs) (Ruggie, 2007b:6). These processes are commonly used within project impact assessment processes of the M&E industry, and in discussing their use, Spitz and Trudginer (2009:875) claimed that while impact assessments may incorporate science:

'*...at best, these processes are systematic processes for society to mediate acceptable levels of change arising from human action...*'

However, Sherman and Lehr (2010:4), Roling and Koening (2010:16) and Ruggie, (2009:20) echo Maitland's (1997:594) charges of corporate reticence to engage within the public domain on fundamental human rights issues as discussed in Chapter Two. Explaining this reticence, each of these authors highlight corporate concerns that human rights due-diligence increases the potential for external actors to use information otherwise unavailable, as the basis of vexatious legal claims and publicity campaigns.

Addressing these concerns, Ruggie (2009:20) rejected the former, citing a variety of corporate governance regulations whereby companies are required to assess, manage and disclose material risks, as well as evaluate the effectiveness of their systems for doing so in order to avoid liability. With respect to vexatious public campaigns, the SRSG argued that meaningful stakeholder engagement creates opportunities to mitigate these risks, as disingenuous actions will find little support beyond the actors who initiate them. Moreover, the SRSG argued that:

'...*recent experience shows that other social actors are quite capable of concluding and stating publicly that a company facing criticism has undertaken good faith efforts to avoid human rights harm, and that transparency in acknowledging inadvertent problems can work in its favour...*' (Ruggie, 2009:20).

These arguments are supported by the: (1) Research related to corporate human rights due-diligence efforts (IBLF, 2010:37); (2) Literature dealing with stakeholder engagement processes conducted by M&E organisations facing publicly contentious issues (Spitz and Trudginer, 2009:875); and, (3) Literature guiding corporate responses to publicly contentious issues in general (Edelman, 2010, Senge et al, 2008:48-50, Sandman, 1994:29-32, and Senge, 1990:14-17).

*3.5.3 'Integrated' vs. 'Stand-Alone' Human Rights Due-Diligence Approaches*

The SRSG (Ruggie, 2009:19) and various publications supporting corporate assessment and management of human rights such as those produced by the IBLF (2010:29), ICMM (2009:10) and IFC et al, (2008:4), highlight debate surrounding the efficacy of 'integrated' human rights due-diligence processes, in comparison to 'stand-alone' processes.

The SRSG described 'stand-alone' approaches as discrete procedures, similar in their approaches to SEIAs, yet distinct in that they are framed by consideration of how corporate activity impacts upon internationally recognised human rights standards (Ruggie, 2007b:6). Conversely, the IBLF (2010:34) cited the SRSG to claim that the intent of an 'integrated' process is to make respecting human rights part of the parameters within which business is conducted. Thus, human rights (and those features of 'stand-alone' approaches) are integrated within the existing management system of the organisation. The SRSG summarised the debate between these two approaches as follows:

*'An advantage cited for* ['stand-alone'] *procedures is that the relevant issues get the attention and professionalization they deserve. But a disadvantage may be that it is not connected to the rest of the company. In contrast,* ['integrating'] *human rights due-diligence into ongoing processes may put human rights on par with other key issues when managers evaluate potential projects, but the unique attributes of human rights may thereby get diminished...'* (Ruggie, 2009:19).

While the SRSG claimed that a single model is unlikely to fit all situations (Ruggie, 2009:19), the IBLF claimed that a near-consensus existed amongst MNCs participating in their research, supporting an 'integrated' approach. Their research revealed that 'stand-alone' processes may involve significant overlap with existing processes, leading to resistance and confusion on the part of managers within MNCs, and a duplication effort (IBLF, 2010:34). With respect to the M&E industry, these findings are supported by the ICMM, whom argue that while rarely expressed in term of human rights, those rights associated with the occupational health and safety of employees, and environmental issues

are already well understood, and may be managed according to recognised standards, guidance and management practices (ICMM, 2009:17).

However, both the SRSG and the IBLF identified similar issues relating to 'integrated' human rights due-diligence processes.  Firstly, companies reported a lack of sufficient expertise and experience for integrating human rights due-diligence across their main business functions, such as operations, human resources, legal counsel, procurement and supply chain, marketing, finance, and capital allocation (IBLF, 2010:35 and Ruggie, 2009:15).  Secondly, companies reported a limited capacity to view their activities from a human rights perspective (IBLF, 2010:35 and Ruggie, 2009:15).  For example, the IBLF (2009:27) identified concerns regarding the ability of existing risk assessment processes that focus on identifying corporate risks, to properly identify and assess the human rights risks to individuals or communities impacted by corporate activities.  In particular the IBLF claimed that risk assessments often consider human rights through a narrow perspective of the risk to corporate reputation.  Finally, the IBLF research highlighted the importance of 'functional champions', and the active commitment of senior leadership, to 'drive' the integration of human rights across business functions (IBLF, 2010:35).  This finding is supported by Hamann et al, (2009:470), and with respect to corporate social responsibility efforts more generally by Bansal and Roth (2000:731), and Trevino and Nelson (1995:157-64).

*3.5.4 Legal Compliance*

As discussed in Chapter Two, human rights norms inform the legislative structure of most States, however the SRSG highlighted concerns that in countries where domestic laws are poorly enforced, corporations often do not treat legal compliance as an obligation about which they must be proactive (Ruggie, 2010:27).   The International Organization of Employers, International Chamber of Commerce, and Business and Industry Advisory Committee to the OECD, specifically addressed this issue in their consultations with the SRSG to claim:

*"All companies have the same responsibilities in weak governance zones as they do elsewhere. They are expected to obey the law, even if it is not enforced, and to respect the*

*principles of relevant international instruments where national law is absent...*" (IOE et al, 2006).

The SRSG also highlighted conflicts between international standards and domestic laws, reflective of those cultural relativism debates discussed in Chapter Two in claiming that:

>*"...one of the toughest dilemmas companies face is where national law significantly contradicts, or does not offer the same level of protection as international human rights standards..." (Ruggie, 2009:17).*

While the SRSG highlighted this issue, claiming that in some instances corporations remain caught between honouring international standards and violating domestic laws, he was unable to identify resolutions to such dilemmas, and has instead deferred the issue to further research and consultation (Ruggie, 2009:17).

## 4.0 Research Strategy and Methods

Having established the lack of organisational research related to human rights due-diligence processes of M&E MNCs within the previous Chapter, this Chapter outlines the research strategy and methods used to describe the human rights due-diligence process of a minerals exploration subsidiary (herein called the Operation) of a M&E MNC (herein called the Organisation). The objective of this research is to support the efforts of other MNCs seeking to acquit a corporate responsibility to respect human rights as espoused by the UN Framework. While it is hoped that this description offers utility to other MNCs in its own right, this research also examines how the Operation addresses those emerging issues, identified previously as particular to human rights due-diligence processes, as well as issues revealed by the research itself.

In keeping with these aims, this Chapter introduces significant concerns related to the efficacy the research approaches adopted, and explains how these will be managed within this research. Particular attention is paid to the rationale for, and explanation of the theoretical framework underpinning this work. As corporate concern of exposing human rights issues within the public domain was established within preceding Chapters, this Chapter concludes by outlining how the confidentiality concerns of Operation under examination, and its employees participating in this research, are accommodated within the presentation of the results and discussion, without compromising the research objectives.

## 4.1 Research Strategy: A Descriptive Case Study of the Due-Diligence Process of a Mining and Exploration MNC

Case study research consists of detailed investigation of phenomena within their context (Hartley, 2004:323), and is therefore particularly suited to research which requires an understanding of organisational processes (Gummesson, 2008:40, Hartley, 2004:323). In organisational research, the overall approach is generally similar: inductive analysis focusing on processes within their social context (Hartley, 2004:323), however, case studies have also been used as descriptive cases to present the actions of organisations (Gummesson, 2008:38), and it is this approach which is adopted within this research.

A standard criticism of case study research is that their findings cannot be generalised (Bryman, 2008:57), however, considerable advances have been made in contributing to their external validity (Hartley, 2004:331). For descriptive case studies, Hartley (2004:331) suggests two actions that support their external generalisation. The first is the use of existing literature to assess the extent to which any findings may be generalised, and is addressed within the discussion in Chapter Six. The second is the use of a clear theoretical framework as addressed in the following.

*4.4.1 The Theoretical Framework*

Although sometimes described otherwise, case studies are not research methodologies in themselves, but research strategies within which any number of methods may be used (Hartley, 2004:323 and Gummesson, 2008:39). Accordingly, each case study is defined by the theoretical framework which systematically informs and makes sense of the research data (Hartley, 2004:324). The theoretical framework utilised for this descriptive case study is provided by the '*Guide to Human Rights Impact Assessment and Management*' as depicted in Figure 3.

The selection of the GHRIAM as the theoretical framework is based upon the following factors. Firstly, the GHIAM is one of only two 'off-the-shelf' due-diligence methodologies consistently referenced as supporting corporate due-diligence efforts, and the only one freely available (Lenzen and d'Englebronner, 2009:17, ICMM, 2009:10, and Ruggie, 2006:8).[9] Secondly, Lenzen and d'Englebronner (2009:21) claimed that the GHRIAM is suitable across all sectors, and especially MNCs, given its development by the International Business Leaders Forum (IBLF), IFC, and GC, and the contribution of several corporations who trailed an earlier 'draft GHRIAM.'[10] Thirdly the GHIAM specifically aligns its own due-diligence process with that espoused by the UN Framework (GRIAM, 2010a).

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[9] The alternate methodology, the '*Human Rights Compliance Assessment*', produced by the Danish Institute for Human Rights, is available on-line to corporate subscribers only (ICMM, 2009:10), and its use is therefore beyond consideration given the resource constraints of this research.
[10] See International Finance Corporation et al, (2007).
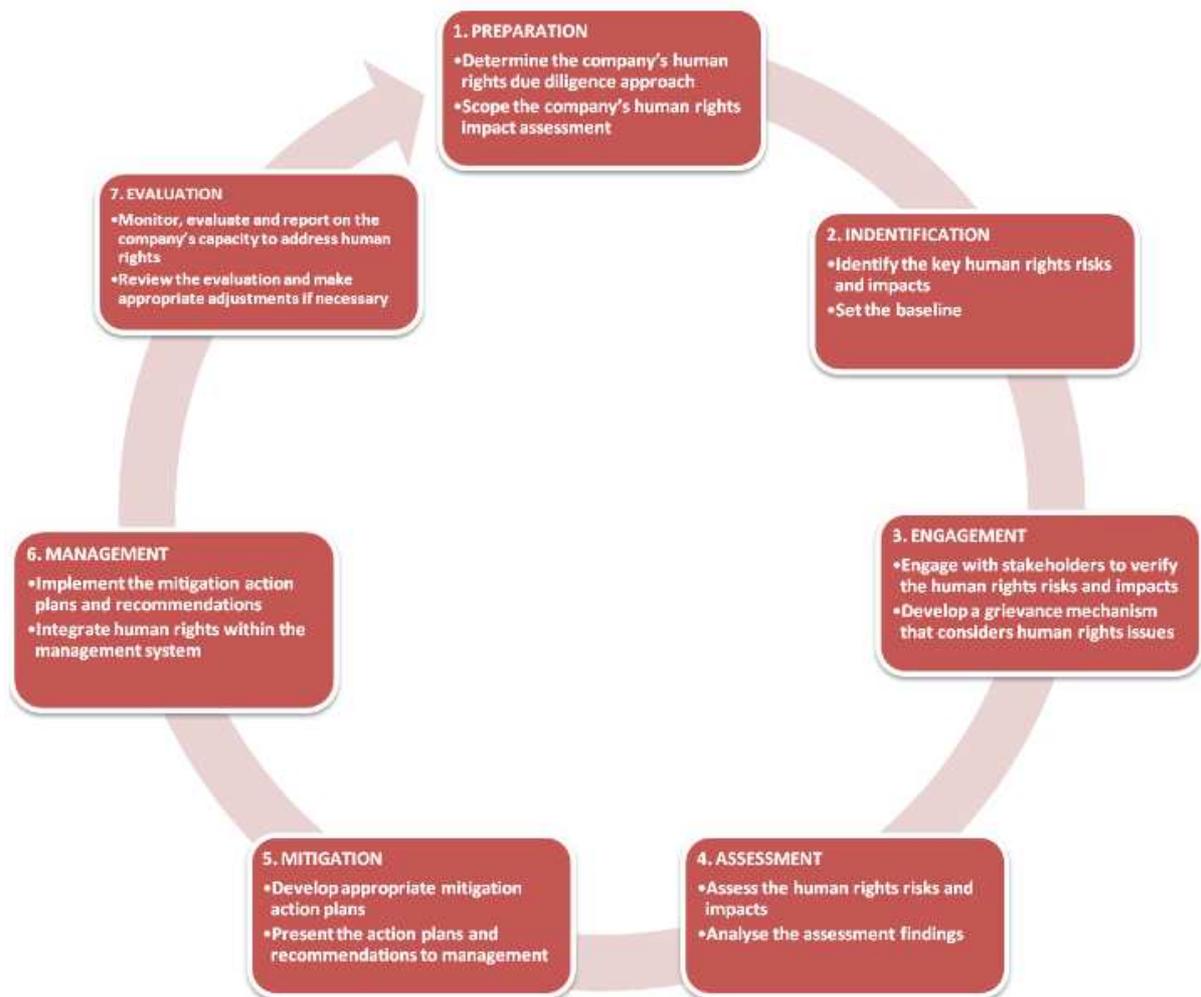
**Figure 3:** The theoretical framework used in the descriptive case study of a human rights due-diligence process (Source: Adapted from GHRIAM, 2010a).

Finally, preliminary analysis of the Operation revealed an 'integrated' human rights approach, and in their respective reviews of due-diligence methodologies Roling and Koening (2010:12), and Lenzen and d'Englebronner (2009:21), identified the GHIAM as the only methodology designed to guide systematic integration of human rights due-diligence into corporate planning and management systems. Therefore, each element of the GHIAM provides a clear and systemic basis to examine and describe the 'integrated' due-diligence process of the Operation as explained below.

*Element 1 (Preparation):* Description of the Operation's overall human rights due-diligence approach that enables it to become aware of, prevent and addresses human rights risks through appropriate and relevant policies, risks and impact assessment processes and management systems (GHRIAM, 2010b).

*Element 2 (Identification):* Description of how the Operation identifies the human rights contexts of its different exploration operations, such as the country and locality of operations, business relationships, and the Organisation's human rights policies, procedures and commitments (GHIAM, 2010c).

*Element 3 (Engagement):* Description of how the Operation identifies, analyses and engages with stakeholders during the HRIA process, and throughout the project life-cycle, and manages human rights related grievances (GHRIAM, 2010d).

*Element 4 (Assessment):* Description of how the Operation establishes the scope of the assessment, and how it undertakes the assessment and analysis of human rights risks associated with its exploration activities (GRHIAM, 2010e).

*Element 5 (Mitigation):* Description of how the Operation develops mitigation/improvement plans for existing or potential adverse human rights impacts associated with their activities, and how these plans are presented to management within the Operation (GHRIAM, 2010f).

*Element 6 (Management):* Description of how the Operation integrates and implements human rights mitigation/improvement plans within the management system (GRIAM, 2010h).

*Element 7 ( Evaluation):* Description of how the Operation monitors, evaluates and reports on its capacity to manage human rights impacts, and makes adjustments to its due-diligence process if necessary (GHRIAM, 2010h).

## 4.2 Research Methods: Qualitative Organisational Research

Within the research strategy outlined above, this research employs qualitative organisational research methods, however authors such as Bryman (2008:366) and Cassell and Symon (2004:1-2), highlight the difficulty in defining qualitative research given the variety of methods based in different epistemologies that claim this title. Instead, both defer to describing general characteristics of qualitative research. Bryman (2008:366) argued that most obviously, qualitative research tends to be focussed with words rather than numbers and consists of the following features:

- An inductive view of the relationship between theory and research, whereby the former is generated out of the latter;
- An epistemological position described as interpretivist, meaning that in contrast to positivist approaches in quantitative research, the stress in on understanding the social world through an examination of that world by its participants; and,
- An ontological position described as constructionist, which implies that social properties are outcomes of the interactions between individuals, rather than phenomenon 'out there' and separate from those involved in its construction.

Similarly, the question of criteria by which qualitative research may be judged is vexed. Both Bryman (2008:376-381) and Cassell and Symon (2004:4-5) highlight concerns surrounding the appropriateness of applying positivist notions of validity and reliability commonly associated with quantitative research. Both authors discuss the existence of a multitude of alternative 'lists' of criteria that various authors claim are pertinent to qualitative research. However, both authors highlight concerns, principally amongst qualitative researchers and reminiscent of their concerns regarding quantitative research, that the rigid application of such lists presents a risk of 'methodologism' (Salmon, 2003, cited by Cassell and Symon 2004:5): an over-emphasis on procedure rather than understanding the research

process itself. Cassell and Symon, (2004:2) propose an alternative approach that would abandon the term 'qualitative' and instead seek a reflexive practice whereby researchers account for their methods and assumptions whatever they are. Although familiar qualitative methods are retained within this research, this reflexive approach is adopted here.

Despite the difficulty in defining qualitative research as discussed above, Cassell and Symon, (2004:7) claim it is often argued that there are essentially three kinds of qualitative research: participant observation, interviews and document analysis, and each exhibit a rich diversity of methods. Given the resource constraints of this work, in-situ participant observation of the Operation was impractical. Instead, this research employs semi-structured interviews of company staff, and qualitative content analysis of official company documents to examine the due-diligence process of the Operation relating to each element of the theoretical framework.

*4.2.1 Semi-Structured Interviews*

Interviews remain the most common method of data collection in qualitative research used in organisational studies yet their use is far from uniform (Alvesson and Svensson, 2008:118, and King, 2004:11). Bryman (2008:438) provided a general description of the semi-structured interview, and this is adapted below to describe the approach employed in this research.

Two employee's of the Operation were selected for their involvement in this research, whom collectively were responsible for the management of operations, employee health and safety, environment and community issues related to the Operation. The interviewee's were also instrumental in the development of the Operation's human rights due-diligence process and each participated in a separate interview of approximately 90 minutes. For each interview the interviewer used an interview guide, with specific topic areas represented by each of the theoretical framework elements. In addition, a topic area was added seeking the interviewee's general reflections on the current efficacy of, and challenges to, the Operation's human rights due-diligence process. The interviewee's were afforded all discretion in their responses, thus, in keeping with King's (2004:11) description of semi-structured interviews,

the interview process was flexible, with the goal being to view each topic area from the perspective of the interviewee, and understand how and why they came to have this perspective.

As explained by King (2004:11), a key feature of qualitative research interviews, and a significant source of criticism, is the nature of the relationship between the interviewer and interviewee. In quantitative studies using semi-structured interviews, the researcher's concern is to obtain accurate information from the interviewee untainted by relationship factors. Contrastingly, the qualitative researcher believes the 'relationship free' interview is a myth, and that the relationship is part of a research process in which the interviewee is viewed as a participant in the research, actively shaping the course of each interview. This work adopts the position of Sims (2008:117), whom argued that as interview data derives from this relationship, the data is should be viewed as a product of this relationship, and not as having emanated solely from the interviewee.

Each interview was recorded and subsequently analysed such that the actions of the Organisation in relation to each element of the theoretical framework could be accurately described in the results. To ensure the validity of the analysis, interviewee's were offered the right of retraction of any statements made, and were provided with an earlier draft of the results section for their comment.

*4.2.2 Content Analysis of Company Documents*

Qualitative content analysis is the most prevalent approach used in the qualitative analysis of documents (Bryman, 2008:528) and is employed in this research. Documents were selected for their analysis as required to support a description of the actions of the Operation for each element of the theoretical framework in the results. The document analysis also provided an opportunity to more rigorously test the integration of human rights due-diligence within the Organisation's management systems. Accordingly, documents selected for analysis were limited to those requiring some of level of management approval within Operation or Organisation. The documents analysed included Organisation-wide policies, standards and guidance notes, and the Operation's own policies and management system procedures designed to give operational effect these Organisation-wide documents. The analysis also

included management plans written to manage risks associated with employee health and safety, environment and community issues. The single exception to this focus on company documents, was analysis undertaken on a document produced by an external consultant on behalf of the Operation. A compilation and brief explanation of each document analysed is compiled in Appendix 3.

*4.2.3 Confidentiality and the Reporting of Results*

Previous Chapters established the sensitivity of MNCs to exposing human rights issues within the public domain, and confidentiality was a condition of the Organisation's participation in this research. As a result of these concerns, no quotations of company documents are presented in the results, as many of these derive from easily traceable, publicly available documents. With respect to internal documents of the Organisation, this approach also mitigates concerns that this research might reveal commercially confidential information. Assurances of anonymity were also provided to each participating interviewee, and quotations forthcoming from the interviews are presented within the results so that they are not attributable to either participant.

As a result of these constraints, and in keeping with the reflexive approach of this research, the results presented in the following Chapter only provide a level of detail that: (1) Maintains the anonymity of the entities and persons involved; (2) Adequately describes the due-diligence process of the Operation; (3) Allows the specific issues and problems faced by Operation to be revealed and discussed; and, (4) Does not compromise the potential external validity of this research.

Subsequent to these caveats, the results presented in the following Chapter comprises of: (1) General description of the organisation and operation; (2) Description of human rights due-diligence process for each element the theoretical framework; and (3) Issues associated with the due-diligence practice of the operation.

With respect to the second of these three parts, preliminary analysis of the Operation suggested that processes associated with the establishment of a new exploration project within a new country of operations, as one which allows a comprehensive description of its

human rights due-diligence process.  Accordingly the description provided in the results is mostly considered from this perspective.

## 5.0 Results

This Chapter presents the results of the research strategy and methods outlined in Chapter Four as follows. Section 5.1 provides general descriptions of the Operation under examination, and the Organisation within which it conducts its activities. Section 5.2 describes the human-rights due-diligence process of the Operation for each element of the theoretical framework, and Section 5.3 describes issues revealed by the interviews that are particular to the Operation's human rights due-diligence process.

## 5.1 General Description of the Organisation and Operation

An analysis of the Organisation's most recent annual report suggests it may be described as analogous to those large M&E MNCs described in Chapter Three, with operations spanning the 'mining cycle' to sell mineral concentrates and metals on the world market. Similarly, the document analysis suggests that the Organisation maintains a high profile within the public domain, is conscious of its reputation, and has well-developed codes of practice and management systems designed to manage financial, environmental and social issues.

The Organisation's annual report suggests that the Operation under examination is analogous to that of a wholly owned subsidiary of the Organisation, managing a number of exploration projects, at various stages of their life-cycle, within different countries in the search for mineral accumulations that can be profitably mined. To provide an indication of the varied nature and scale of these projects, a summary of key stages in the life-cycle of an exploration project is presented in Table 1.

The interviews revealed that the operational context facing many of these exploration projects are characterised by those weak governance zones discussed in Chapter Two, with several projects being remotely located within developing countries. As a result, the interviews revealed that the Operation contends with a variety of human rights issues akin to those identified by the ICMM in Chapter Three, as common sources of human rights controversy within the M&E industry, falling within board categories of:

- Employment;
- Security;
- Local and indigenous peoples;

- Conflict zones; and,
- Corruption and bribery.

| | Life-Cycle Stage 1:<br><br>Area Selection | Life-Cycle Stage 2:<br><br>Target Identification | Life-Cycle Stage 3:<br><br>Target Testing | Life-Cycle Stage 4:<br><br>Resource Evaluation |
|---|---|---|---|---|
| **Resolves the following key questions...** | *Does the area have the potential to contain an ore body for the Organisation?* | *Is there a target present which could represent the mineral deposit sought?* | *What is the nature and abundance of minerals in the target area?* | *What is the size, metallurgy and grade of the deposit discovered? Will it be economic?* |
| **Involves...** | *Review of geological information and mining history. Issues identification. Area visit.* | *Geological mapping. Geological Surveys. Geochemical surveys.* | *Limited trenching.* | *Drilling many holes.* |
| **Time required...** | *A few weeks.* | *Some months.* | *Some weeks to a few months.* | *Many months to a few years.* |
| **Cost...** | *Some tens of thousands of dollars.* | *Tens of thousands to a few hundred thousand dollars.* | *Hundreds of thousands of dollars.* | *Millions of dollars.* |
| **Environment impact...** | *Negligible.* | *Limited clearing of vegetation.* | *Small excavations. Minor water usage. Limited track/road access. Possible dust and noise. Drill sites. Helipads. Small camps.* | *Excavations. Water usage. Possible dust and noise. Drill sites. Helipads. Camps.* |
| **Community impact...** | *Negligible.* | *Access to community land. Some local services and supplies required. Some local labour required.* | *Continued access to land. Some local services and supplies required. Some local labour required.* | *Continued access to land. Significant local services and supplies required. Local office and accommodation required. Local labour required.* |
| **Chance of proceeding to next stage...** | *100%* | *<10%* | *<0.3%* | *<0.06%* |

**Table 1: Generalised overview of the key stages of the minerals exploration process of the Operation** (Source: The Organisation)**.**

## 5.2 Description of Human Rights Due-Diligence Process for Each Element of the Theoretical Framework

The following describes the overall human rights due-diligence process of the organisation by outlining its practices for each element of the theoretical framework. As explained in the previous Chapter, the results described here are particularly focused on processes associated with proposals to establish and manage new exploration projects within new countries of operations.

### 5.2.1 Element 1 (Preparation)

The document and interview analysis revealed an Organisation-wide policy framework to which all subsidiaries are expected to comply, and to which all consultants, agents, contractors and suppliers to the Organisation are expected to comply through appropriate contractual arrangements. This Organisation-wide policy framework consists of an overarching code of conduct (COC) that outlines the general framework for management of economic, social and environmental issues faced by the Organisation. The COC is supported in its implementation by various Organisation-wide policies, standards and guidance documents, and the supporting policies and procedures of each subsidiary of the Organisation.

The Organisation-wide policy framework demonstrates an 'integrated' approach to the management of human rights issues. To illustrate this approach, whereas the COC includes an explicit commitment to the UDHR, and those 'soft' global governance initiatives pertaining to MNC's, discussed in Chapters Two and Three, the management of human rights appears mostly implicit within the supporting Organisation-wide policies, standards and guidance. Of significance to this 'integrated' approach are Organisation-wide policies pertaining to employment, procurement, workplace health and safety, environmental and community management. A separate Organisation-wide human rights policy and guidance document does exist within this policy framework, however, its content generally reaffirms commitments made elsewhere, in addition to highlighting human rights issues that often require particular attention in the areas of employment, communities, security, contractors and business partners.

Analysis of the Operation's *Health, Safety, Environment and Communities Policy*, and the semi-structured interviews, revealed that the Operation's management system, by which its activities are planned, implemented, monitored and reviewed, is designed to provide the operational effect to the Organisation-wide policy framework. With respect to human rights, this system reflects the Organisation's 'integrated' approach, thus the process that enables the Operation to become aware of, prevent and address human rights risks is 'integrated' within this system.

Within the Operation's management system, three specific written procedures exist that enable the Operation to become aware of human rights risks and impacts. The first, the '*New Country Procedure'* (NCP), outlines the process for identifying, assessing and proposing strategies to manage the risks of establishing a new exploration project within a new country of operations. The second, a '*Health, Safety, Environment and Communities Management System Procedure'* (HSECMSP), outlines the design and operation of a discrete *'Health, Safety, Environment and Communities Management System'* (MSECMS) that exists within the wider management system of the Operation. The HSECMS is the process whereby the Operation plans, implements, monitors and reviews the management of employee health and safety, environmental and community risks arising from its activities. The third, a '*Change Management Procedure'* (CMP), is a written procedure that exists within the HSECMS, that outlines a process designed to ensure that significant risks associated with planned or un-planned changes to the operational context of the Operation's activities are identified, assessed and integrated within the Operation's management system.

*5.2.2 Element 2 (Identification)*

For a proposal to establish a new exploration project within a new country of operations, the process for identifying the human rights context faced by each project is generally implicit within the NCP. The interviews revealed that the NCP was designed to be flexible to accommodate a wide range of operational contexts, as demonstrated by the following.

Interviewee: "*... it's a way of generating potential 'red flags' on whatever the range of issues might be, so its structured enough to make sure everything gets covered and flexible enough to respond to the situation, for example, there's no point implementing the voluntary principles of security and human rights if we're doing brown-fields exploration in* [home-country]."

An early stage of the NCP requires a 'desktop' identification of the security, reputation, commercial, health, safety, environmental and community risks of the proposed project. As part of this stage, the procedure specifically asks for an assessment of human rights issues associated with communities in the locality of the proposed project as explained in the following.

Interviewee: *"There's a separate heading of human rights within the NCP which would aim to pick up any local significant issues such as, this is the government's approach to women, or this is the on-the-ground context where the local militia come across the border and does whatever."*

Within the NCP 'desktop' assessment is followed by a commercial assessment of the proposed project, and includes identification of the host-country legal, fiduciary and employment requirements, and due-diligence on potential business partners. The commercial assessment includes information from the ongoing negotiation of commercial terms, and also from visits to the host-country and locality of the proposed project. The interviews revealed that the host-country visits in particular, provide an important opportunity to examine the efficacy of the assessment process to date, and include new information as required.

*5.2.3 Element 3 (Engagement)*

The interviews revealed that the Operation currently has no formal procedures for the identification, analysis and engagement with external stakeholders within the NCP, although the possibility of doing so informally was not excluded.

Interviewee: "*...if we know there's NGOs who have concerns we probably would involve them in the decision making to get advice...*"

Conversely, the NCP requires the involvement of internal stakeholders throughout the Operation (and the Organisation) within this process, dependent on the requirement for the expertise and knowledge needed to understand the risks associated with the proposal.

Interviewee: "*Part of the NCP that's very clear is that it's a multi-disciplinary thing.*"

Although separate from the NCP, the interviews revealed that following approval by the Operation to commence any exploration project, each project implements an external community engagement program which includes ensuring local communities are aware of, and are provided opportunities to express concerns prior too, and throughout the project life-cycle.[11]  The interviews revealed that this provided feedback to the company to help avoid escalation of disputes.

Interviewee: "*There's a view we have to invest early in our communities work.*"

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[11] At the time of writing the Operation claimed it was currently developing a set of guidance documents to support the identification and analysis of, and engagement with, external stakeholders.  A particular focus of these documents will be communities in the locality of exploration projects.

The interviews revealed that interactions and commitments arising from these programs are recorded within the Organisation's management system, and that this represents a process akin to a grievance mechanism for external stakeholders in lieu of dedicated formal mechanisms.[12]   A formal grievance mechanism does exist for internal stakeholders throughout the Operation (and Organisation), to which all employees are made aware of and provided access to.

*5.2.4 Element 4 (Assessment)*

The assessment and analysis of human rights risks associated with a proposed exploration project within a new country is guided by the risks identified as the NCP progresses through the 'desktop' and commercial risk assessments outlined above.  The assessment and analysis of the identified risks involves the formation of multi-disciplinary teams to undertake semi-quantitative risk assessments (SQRA) of identified risks.  The SQRA process utilised is similar to those commonly utilised within the M&E industry, and comprises of an assessment that considers each risk's 'likelihood' (the probability an event will occur), and 'consequence' (the resultant impact of that event).  The composition of these multi-disciplinary teams includes expertise that is both internal and external to the Operation (and Organisation), as required to complete to the assessment.

Interviewee: "...*we pull together the risks, and in there you have a multi-disciplinary team of [health], [safety], [environment] and [community], and human rights, and geologists and anthropologists and environmental specialists.*"

To provide an indication of the composition of these teams, the job titles of those persons involved in a recent NCP are presented in Appendix 4.  The interviews also revealed that the Organisation engaged external consultants to contribute specific detailed work to contribute to the process.

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[12] At the time of writing the Operation claimed it was currently developing a formal external grievance procedure.

Interviewee: "*The NCP allows us to embed a risk assessment methodology and then secondary to that, go into detail if required, to contract a specific piece of work.*"

For example, where an operational context is identified as conducive to human rights risks, the Operation engages specialist external expertise to conduct a 'stand-alone' HRIA. One such HRIA was analysed as part of this research, and it claimed to support systematic and comprehensive management of human rights issues through: (1) Identification and analysis of host-country human rights laws and practice; (2) Identification of human rights risks associated with the proposed project; and (3) Recommendations for their prevention and mitigation. The findings of this 'stand-alone' assessment were then integrated into the Operation's management system as required.

Interviewee: "*There was a process of going through it and saying what's rights for our context now, there was a process of going through it and seeing what's already been covered, and then it was about making sure those things that are in place are up to scratch.*"

*5.2.5 Element 5 (Mitigation)*

The 'desktop' and commercial assessments undertaken as part of the NCP are combined to produce an overall business case for the proposed project. This business case includes a 'register' of significant risks, and proposed mitigation strategies for how each of these will be managed. The business case is presented by the Operation, to the Organisation for its consideration, and a decision is made whether or not to proceed. The level within the Organisation to which the business case is considered is dependent on the level of risk and expenditure involved. The interviews revealed that proposals demonstrating the highest risk, often those within weak governance zones, required consideration by the Organisation's most senior investment committee.

For every exploration project (including those recently approved under the NCP process), the HSECMSP outlines the development and review process for a '*Health, Safety, Environment and Communities Management Plan*' (HSECMP), which is required prior to the commencement of, and throughout the life-cycle of each project. The purpose of each HSECMP is to identify the significant health and safety, environmental and community (HSEC) risks associated with each project, and outline how each of these will be managed. Each HSECMP also outlines performance indicators by which the performance of the exploration project in managing these risks may be monitored. In keeping with the 'integrated' human rights approach, the mitigation of human rights risks associated with HSEC aspects is implicit within these plans.

The development process for each HSECMP includes the formation of internal multi-disciplinary teams to undertake SQRA pertaining to the HSEC risks of each exploration project. Their development also involves the engagement of external legal expertise to produce legal registers that discern the HSEC legislative context of the host-country, and the legal obligations to which the Operation must comply. Any legal obligations peculiar to an exploration project are included within the HSECMP, or integrated within the wider management system of the Operation as required. Finalised HSECMPs require the approval of the Manager of the Operation, prior to the commencement of exploration activity.

For exploration projects recently approved under the NCP process, each HSECMP includes the HSEC risks identified as significant by the preceding the NCP.

Interviewee: "*All the work with the* [NCP] *is captured in a 'significant risk register' and the business case that goes forward, the actions and risks coming out of that drop into the 'project risk register' and* [HSECMP]*, so the tools are all aligned, it uses the same* [MSECMS] *to cascade down, and the [HSECMP] is the tool to operationalise it and verify that the actions have been done.*"

*5.2.6 Element 6 (Management)*

The interviews revealed that the integration of human rights risks and their operational management is generally implicit within the following two processes. Firstly, risks identified by a NCP that remain outside of the scope of a HSECMP are integrated within the Operation's management system as required. Secondly, the management of significant risks identified within HSECMPs are integrated within HSECMS of the Operation.

The design and function of the HSECMS is based on internationally recognised management system standards for workplace health and safety, and environmental management (ISO 18001 and ISO 14001 respectively). Analysis of the HSECMSP revealed that each significant HSEC risk requires the production, by a multi-disciplinary team, of a written management procedure. Each procedure outlines how the risk will be managed, including those responsible for implementing the procedure, and any training requirements. In addition to these training requirements, the interviews revealed that the Operation also conducts specific human rights training for managers and supervisors as required by the operational context of each exploration project.

Interviewee: "*Where there's a specific 'red flag', for instance a high risk area for whatever reason, then we would implement some training. For example, in* [Country X] *what I anticipate..., ...is that there aren't security risks, but the human rights risks are livelihoods, and land access and putting a drill rig on a rice paddy, so the training there, will be with the project team to make sure they do their land access and compensation piece.*"

The interviews also confirmed that planned and unplanned changes to exploration projects are identified, assessed and managed through the CMP. The process for undertaking a CMP may be described as a 'microcosm' of the HSECMP development process, incorporating the same SQRA process, formation of multi-disciplinary teams, and written plans for the management of significant risks associated with the change. These procedures also require management review and approval.

*5.2.7 Element 7 (Evaluation)*

The interviews revealed that reporting and evaluation undertaken by the Operation regarding its capacity to manage human rights issues is mostly implicit, internal, and related to internal audit processes of the Operation's management system. In particular, the performance indicators of each HSECMP are reviewed quarterly, and the HSECMP itself is reviewed and amended annually. This review includes a review of the SQRA process used in its initial production, and the outcomes of any HSEC audits and CMPs undertaken since the previous review. Additionally, every three years external consultants are engaged to review the legislative context of the host-country, and the legal obligations to which project's must comply. Each revised HSECMP requires the approval of the Operation's senior management.

Exploration projects of the Operation are also subjected to external audits from the Organisation, and of particular relevance to human rights management are audits associated with workplace health and safety, environmental and community management. In the case of environmental management, audits are sometimes conducted by auditors external to the Organisation as part an accreditation program to an environmental management system standard.

The interviews revealed that there is no systematic reporting of the capacity or performance of the Operation's due-diligence process to external stakeholders. The interviews did suggest that within the host-countries, this would be implicit within community engagement programs of each project, as the information requirements, or grievances of communities within each project's locality, would be included by these processes. However, there was no systematic reporting within the home-country of the Operation, and the interviews revealed that the Organisation retained the responsibility of engaging within the public domain of its home-country at the expense of subsidiaries such as the Operation.

**5.3 Issues Associated with the Due-Diligence Process of the Operation**

The following are issues that were revealed exclusively by the interviews as particular to the Operation's human rights due-diligence process, and are presented in no specific order.

*5.3.1 The Overall Efficacy of the Operation's Human Rights Due-Diligence Process*

Interviewee: "*I think we're as good as any other company.*"

The interviewee's were generally confident of the efficacy of the Operation's human rights due-diligence process, claiming that commensurate with the nature and scale of its activities, it generally became aware of, and addressed its human rights impacts. In support of this, interviewee's alluded to the development and review processes for NCPs and HSECMPs to reflect the operational context of exploration projects. Interviewee's also highlighted the lack of human rights issues identified by the community engagement programs, and internal and external audit processes associated with each exploration project. However, the interviewee's did express some concerns as demonstrated below.

*5.3.2 Lack of Policy Prescription and Guidance*

At various stages throughout the interviews, interviewee's expressed concerns that human rights policy pronouncements made within the public domain devoted to business and human rights, often failed to consider or provide practical guidance as to how to acquit a corporate responsibility to respect human rights.

Interviewee: "*I mean I can read human rights, and I can see that in the dusty recesses of Geneva that's fine, but in reality when you're on the ground it doesn't [deleted] work like that*."

Similarly, the interviewee's were also consistent in claiming that the Organisation-wide policy framework, and voluntary human rights initiatives to which the Organisation is signatory, provided little practical guidance on how to implement a corporate responsibility to respect human rights, or resolve operational human rights dilemmas faced.

Interviewee: "*We've got human rights at a strategic level, what we need now is better guidance to move that forward.*"

However, this was not always viewed negatively by the interviewee's, as they claimed the lack of prescription had allowed the Operation to develop due-diligence processes best suited to their circumstance as reflected in the following.

Interviewee: "*In many respects the system should be created by the end users so they'll be aligned to what we need, which has happened in this case so its fine. The worst thing to happen would be for it to go the other way, because it will be unaligned with our business practices...*"

*5.3.3 The Scope of Human Rights Due-Diligence Processes*

The interviewee's expressed an uncertainty as to whether the Operation was compliant with Organisation-wide policies pertaining to human rights, with respect to procurement practices within the locality of some exploration projects. Essentially, the issue discussed was a question of the scope to which human rights due-diligence should be conducted, particularly within operational contexts where human rights transgressions were endemic. In these circumstances, an example regularly cited was the difficulty in ensuring that local goods and services supplied to exploration projects were derived from supply chains free of child labour.

Interviewee: "*How do you guarantee that eggs bought from the market were not collected by a three year old when they probably were?*"

The dilemma facing the Operation, and its approach in these situations was illustrated by one interviewee using the following example.

Interviewee: "*...for supply chain we don't really have a way of managing that, ....so let's talk about we need to make some beds, so we're looking at low volume, low value arguably, but still a large impact in the community, and we want to invest locally, we want to build local capacity, and we want to employ locally, and we want to get local suppliers. However our only approach is to go out, and based on quality of goods, find three providers, ask them each to provide a bed to our specs. We buy each of the beds, assess the best one, and we'll go back and ask for more beds from the one that did well. We'd visit their site and see whether they were using child labour and their working practices, alongside that ask the supplier to fill out a form which asks them to clarify some of their business practices... beyond that it's very difficult to be more practical... ...what practically could we do there that we're not already doing?*"

*5.3.4 'Integrated' vs. 'Stand-Alone' Human Rights Due-Diligence Approaches*

The interviewee's were consistent in their preference for an 'integrated' human rights due-diligence process, as opposed to a 'stand-alone' approach. Reasons provided included the avoidance of confusion and duplication with other management system processes, and avoidance of resistance from other managers, whom might otherwise view 'stand-alone' processes as an additional workload.

*5.3.5 Legal Compliance*

The interviews revealed the difficulty in resolving conflicts between Organisation-wide commitments to respect internationally recognised human rights, and compliance with host-country legal obligations.

Interviewee: "*...under* [Country X] *law we can't employ women at night,... ...so as an equal opportunity employer, and aligned with the principles of human rights we're non-compliant.*"

*5.3.6 The Prioritisation of Rights*

The interviews revealed concerns surrounding conflict pertaining to operational decisions that required the prioritisation of some human rights standards at the expense of others, when such rights are often described as equally important.

Interviewee: "*...should we be employing teachers straight out of university, and doesn't that stop the next generation learning? Should we be excluding them from application, treating people like we're a colonial power telling people what they should and shouldn't do when that's patronising and wrong? However, you can imagine the headline on the Sunday Times saying* [the Organisation] *employs ten teachers and the secondary school is unable to run anymore because* [the Organisation] *is building capacity and screwing the locals,..... ....but fundamentally we have to treat people equally, if that person wants to apply for the job they can apply for the job.*"

Another example offered by an interviewee explained that the Operation's exposure to human rights risks could be reduced by importing materials at the expense of contributing to the local economy.

Interviewee: "*How do we resolve conflicts between human rights?  How do we resolve that conflict? How do we deal with that on the ground?  Because you turn around and say we're not compliant with this, and then say well hang on, we can't fulfil that because we're trying to do this.  Is there a priority system?*"

## 6.0 Discussion

The preceding Chapters established the paucity of organisational research directed towards corporate human rights due-diligence processes, including the absence of any case study research. This then suggests both the novelty and external validity of this research in its own right for other M&E MNCs, and MNCs generally, that seek to acquit a corporate responsibility to respect human rights as espoused within the UN Framework. A further indication of the contribution of this work is that, whereas existing research is unable to identify any MNC claiming to have integrated a corporate responsibility to respect human rights throughout their business functions, within the constraints of this research, the Operation under examination arguably does so. The description of the Operation's due-diligence process provided within the results suggests that, commensurate with the nature and scale of its activities, it mostly demonstrates the elements of a human rights due-diligence process outlined by the UN Framework of: (1) Policy statements articulating a commitment to respect human rights; (2) Periodic assessment of actual and potential human rights impacts of company activities and relationships; (3) Integration of these commitments and assessments into internal control and oversight systems; and, (4) Tracking and reporting performance. Similarly, the external community engagement programs of each exploration project managed by the Operation, combined with an official internal mechanism available to all employees, fulfils much of the requirement for a grievance mechanism as also outlined by the UN Framework.

Interestingly, whereas the SRSG claimed in Chapter Two that a single due-diligence model is unlikely to fit all situations, the variety of human rights contexts faced by each exploration project throughout its 'life-cycle', subjects the Operation's due-diligence process to a broad scope of human rights issues. These issues fall within the broad categories of employment, security, local and indigenous peoples, conflict zones and corruption and bribery, and are akin to those identified by the ICMM in Chapter Three as persistent throughout the M&E industry. In addition to providing a rigorous 'proving ground' for the Operation's due-diligence process, the variety of issues faced by the Operation further supports the possible utility of this case study to other organisations.

If it is accepted that the Organisation generally demonstrates a corporate responsibility to respect human rights under the UN Framework, then consideration of how it addresses several of those issues surrounding corporate due-diligence practice identified in Chapter

Three, is likely to interest other MNCs seeking the same. Therefore, while each element of the Organisation's due-diligence process described in the results is likely to contribute to the efficacy of the process as a whole, the following are particular aspects of the Organisation's process which appear to be significant in addressing many of these issues.

With respect to the debate between the efficacies of 'integrated' human rights due-diligence processes, as opposed to 'stand-alone' approaches, the adoption by the Organisation of the former supports their utility to other MNCs. This finding is unsurprising, as the interviewee's rationale for, and choice of an 'integrated' process as one that avoids confusion and duplication with other management system elements of the Operation, is reflected in the research of the SRSG. Furthermore, the IBLF demonstrated near-consensus amongst those MNCs participating in their research for an 'integrated' approach, a finding which was also loosely supported by the ICMM in their provision of guidance to the management of human rights issues within the M&E industry.

However, the discussion in Chapter Three pertaining to 'integrated' processes identified specific concerns relating to their use. These included a lack of expertise for integrating human rights due-diligence across business functions, and the limited capacity to view activities from a human rights perspective. The description of the Operation's due-diligence process contained in the results suggests that to overcome these concerns, the Operation made extensive use of multi-disciplinary teams throughout its process. In addition to the interviewee's claims that their use contributed to the identification, assessment and development of mitigation plans for risks facing exploration projects, it is likely that they also fostered a shared understanding of these issues across the business functions of the Operation. Further to the use of these teams, to ensure that risks were considered from a human rights perspective, the interviewee's demonstrated a willingness to engage internal and external expertise to fully understand the human rights issues associated with each exploration project. The most obvious demonstration of this, is the engagement of external consultants to produce 'stand-alone' HRIAs, for proposed exploration projects within operational contexts identified as conducive to human rights transgressions. Interestingly, this finding suggests that the debate between 'integrated' and 'stand-alone' due-diligence process may be an overly simplistic one, as use of the latter by the Operation, and the integration of its findings within its own 'integrated' process, suggests that in certain circumstances these will also benefit other MNCs.

Of those issues surrounding corporate due-diligence practice, Chapter Three also highlighted the importance of 'functional champions', and the active commitment of senior leadership, to 'drive' the integration of human rights across business functions. Within the Organisation this was demonstrated by the interviewee's themselves, as they were collectively responsible for the management of operations, employee health and safety, environment and community issues related to the Operation's activities, and instrumental in the development of its due-diligence process. Furthermore the results demonstrated the active support of leadership within the Operation and Organisation, as demonstrated by their involvement in decision making processes that specifically addressed human rights issues. As an example of this, project proposals demonstrating the highest risk, often those within weak governance zones and therefore facing significant human rights issues, required the consideration and approval of the Organisation's most senior investment committee.

A further concern identified in Chapter Three was the failure of corporations operating within weak governance zones to treat legal compliance as an obligation to which they must be proactive. The results indicated that the Operation overcame this in part, by engaging external legal expertise to discern the legislative context, and obligations within host-countries as required by the NCP, and in the production of HSECMPs. Whereas these processes are expected to identify legal obligations pertinent to human rights in themselves, they are complimented where 'stand-alone' HRIAs are produced, as these documents specifically include identification and analysis of host-country human rights laws and practice.

Despite the Operation's apparent ability to overcome many of those issues surrounding corporate due-diligence practice identified in Chapter Three, the results demonstrate that it continues to face some of these issues, and others, for which their resolution is unclear. The results revealed that, in these instances the interviewee's identified a lack of practical guidance forthcoming from either the Organisation's policy framework, or those voluntary human rights initiatives to which the Organisation is signatory. To illustrate the significance of these issues, if one accepts that the Operation described in this case study generally demonstrates the due-diligence elements espoused by the UN Framework, then notwithstanding the ability of such processes to identify them, this research suggests that it is possible certain human rights issues will persist independently of these processes.

The first of these possibly persistent issues considered here pertains to the scope to which MNCs should undertake human rights responsibilities, and echoes similar debates within the public domain discussed in Chapter Two. To illustrate, both the results and Chapter Three revealed an uncertainty as to the extent to which a corporate responsibility to respect human rights should extend within supply chains providing goods and services to the corporation. While the UN Framework does provide some guidance on the scope to which MNCs should undertake due-diligence processes, the SRSG himself acknowledged the persistence of problems in this area, and has deferred such issues to further research and consultation.

A further possibly persistent issue identified by this research, which itself was not identified in Chapter Three, pertains to the inherent conflict in operational decisions that require prioritisation of some, or a group of human rights standards at the expense of others, when such rights are often described as equally important. The persistence of this issue is perhaps unsurprising when viewed within the context of the conflict between States, and within their own societies pertaining to the validity and relative importance of various rights contained within the IBHR as discussed in Chapter Two. The same can be said for a further issue that the results suggest is persistent, pertaining to the resolution of conflict between a corporate responsibility to respect international human rights standards, and compliance with host-country traditions. In both cases, it is possible to view these operational dilemma's, which are likely to be faced by managers within other MNCs, from the perspective of those cultural relativism and cultural imperialism debates surrounding the human rights movement. Once more the work of the SRSG has recognised these issues, yet has been unable to fully define their resolution, and their providence discussed in Chapter Two suggests their persistence beyond the remit of his UN program to clarify business responsibilities with respect to human rights.

It is possible however, that a solution either in whole or in part to these persistent issues that the Operation faces, exists within a possible shortcoming of its due-diligence process as explained by the following. A comparison of the elements of a human rights due-diligence process espoused by the UN Framework, with the description of the Operation's process in the results, reveals that within its home-country, there was no systematic reporting or engagement with external stakeholders on the capacity or performance of its human rights due-diligence process. To illustrate the significance of this shortcoming as a possible solution to these issues, Chapter Three established similarities between human rights due-

diligence, and project impact assessment within the M&E industry, and which in themselves offer corporations:

'...*systematic processes for society to mediate acceptable levels of change arising from human action...*' (Spitz and Trudginer, 2009:875).

Therefore failure of either the Operation or Organisation to significantly engage with external stakeholders within their home-countries ensures that these entities do not benefit from any mediation as to what might be acceptable with respect to these persistent issues. This finding is self evident, and likely to be relevant to other MNCs, given the reticence of these actors to engage stakeholders on human rights issues within the public domain as discussed in Chapter Two, and identified as an emerging issue surrounding human rights due-diligence practice in Chapter Three. To illustrate the possible benefits forgone by the Operation, an engagement with these stakeholders offers the potential to mediate an acceptable resolution to those persistent issues identified above such as; (1) The scope to which it should undertake human rights responsibilities; (2) The prioritisation of some human rights standards at the expense of others; and, (3) Conflicts between corporate respect of international human rights standards and compliance with host-country traditions. This does not deny the considerable challenge that is likely to exist in mediating a consensus on such issues, as their persistence is grounded within long-standing contentions surrounding the legitimate human rights responsibility of business, and the IBHR, for which consensus on either has proved elusive. However, the lack guidance of that is currently available pertaining to these dilemmas, suggests that the mediation of even a weak consensus on what is considered acceptable, would represent a contribution to the operational decisions of managers, faced with issues that often present considerable reputational risk to corporations.

The rationale supporting the lack of engagement with external stakeholders within the home-country of the Operation was not explored in this research. As described in the results, the Organisation generally retained the external engagement role at the expense of the Operation, and was therefore beyond the scope of this research. Therefore, to claim that this lack of engagement within the public domain, derived in any part from concerns that external actors might use information provided in these exercises, as a basis for vexatious legal or publicity

campaigns, is purely speculative. Nevertheless as discussed in previous Chapters these viewpoints are widely held, and likely to exist within both the Organisation and Operation. If however, those arguments responding to these views presented in Chapter Three, that claim reporting and engaging with stakeholders creates opportunities to mitigate these risks are accepted, then it is self evident that not engaging with external stakeholders fails to realise these opportunities.

An opportunity forgone may be illustrated by considering the current position of the Operation within the public domain of their home-country, who, having arguably demonstrated considerable achievement in respecting human rights, still face: (1) Low regard for the reputation of corporations in general as discussed in Chapter Two; and, (2) Chronic exposure to reputational risks as a result of 'persistent' human rights issues outlined above. Notwithstanding the challenge of establishing consensus on human rights issues as discussed previously, a failure to establish any consensus on the overall due-diligence process of the Operation, suggests that it is likely to be at odds with the expectations of many other actors within the public domain. Therefore, it is arguable that a mediation of even a weak consensus for its due-diligence process, would represent a significant improvement on the Operation's current position within the public domain, mitigating its exposure to risks associated with their reputation, or 'social licence to operate.' If these arguments are accepted, then they are possibly relevant to other MNCs facing similar situations within the public domain of their home-countries.

## 7.0 Conclusion

Despite increasing interest in the area of human rights and business, there exists a paucity of organisational research directed towards corporate human rights due-diligence processes. This includes the absence of any case study research of organisations seeking to acquit a corporate responsibility to respect human rights as espoused by the UN Framework, upon which a consensus is claimed to be forming within the public domain.

In response to this shortcoming, this research has adopted the research strategy of a descriptive case study, and has endeavoured to describe the human rights due-diligence process of a M&E MNC. The objective was for the descriptive case study itself, and a discussion of the issues particular to human rights due-diligence processes revealed by this research, to contribute to other MNCs seeking to acquit their human rights responsibilities.

To facilitate this research, the GHIAM was employed as a theoretical framework to provide a clear and systemic basis to describe the due-diligence process of the MNC under examination. In addition to the novelty of this research, its external validity was supported by the finding that for the most part, this MNC arguably demonstrated a corporate responsibility to respect human rights throughout their business functions, and managed to do so facing a variety of human rights contexts and issues. In particular, the case study was able to reveal how the Operation was able to address several emerging issues surrounding corporate human rights due-diligence practice. These included various issues relating to the use of 'integrated' human rights due-diligence processes such as: (1) Their use as opposed to 'stand-alone' due-diligence processes; (2) Lack of expertise for integrating human rights due-diligence across business functions; and, (3) Limited capacity to view activities from a human rights perspective. The MNC examined in this case study also demonstrated a proactive approach to legal compliance within weak governance zones, and suggested a role for 'stand-alone' HRIAs within 'integrated' human rights due-diligence processes.

An important finding of this research is the suggestion that some human rights issues may persist independently of corporate resources devoted to human rights due-diligence processes, and for which the current suite of policies and initiatives within the public domain are unable to completely resolve. Interestingly, viewing these issues from the perspective of the 'journey' undertaken by this research, that began with the contemporary human rights movement, and ended examining corporate efforts to respect the rights it espouses, demonstrates a journey that in part arrives at the beginning. To illustrate, despite the claimed

consensus forming around the UN Framework, the lack of guidance pertaining to the scope to which corporations might extend their due-diligence processes revealed in this case study, alludes to the persistent contention on this issue. Furthermore, a lack of guidance surrounding operational decisions that prioritise some human rights standards over others, or the respect of international standards over host-country traditions, reflects long-standing cultural relativism and cultural imperialism debates surrounding the IBHR.

As a possible solution to these issues, this research has suggested MNCs engage proactively within the public domain on human rights issues, arguing that the establishment of even a weak consensus for their due-diligence process, would contribute to the operational decisions of their managers, and improve their position within this domain, otherwise characterised by mistrust. If such arguments are accepted, then future research might investigate the business case for MNCs in doing so, and how these engagement processes might be best undertaken.

**8.0 Appendices**

**Appendix 1. Summary of 'Soft' Global Human Rights Governance Mechanisms Pertaining to MNCs Discussed Within this Research.**

As a specialised agency of the UN, the International Labour Organisation (ILO) remains the key institution concerned with the rights of workers worldwide (ILO, 2010). While ILO standards are generally addressed to member States for their implementation within domestic legislation, the 1977 '*ILO Tripartite Declaration of Principles Concerning Multinational Enterprises and Social Policy*', addresses the obligations of corporations, worker groups, employer organisations, and governments, with each signatory required to respect the IBHR in addition to other undertakings (Shelton, 2002).

The Organisation for Economic Cooperation and Development (OECD), an organisation of States committed to promoting democracy and market economies (OECD, 2010a), highlights the influence of the IBHR within the 2002 revised OECD Guidelines for Multinational Enterprises. Within each OECD member State, and participating non-member States, the Guidelines require MNCs to respect human rights consistent with the obligations and commitments of host governments (Shelton, 2002). Similarly, the IFC, itself a member of the World Bank Group, with the mission of promoting private sector investment within developing countries (IFC, 2010a), released its "*Performance Standards on Social and Environmental Sustainability*" for all investment projects in 2006. In addition to requiring a risk-based approach to identification and management of social and environmental issues associated with each project, the Standards also require compliance with those laws implementing host-country obligations under international law (IFC, 2010b). The IFC Performance Standards also provide the basis for the "*Equator Principles*", to which signatories from the financial sector commit to not providing loans to projects where the borrower will not, or is unable to comply with host-country laws (EP, 2010).

Launched in 2000 the UN Global Compact (GC) seeks to develop policy networks of international institutions, civil society, private sector organisations, and national governments in the promotion of UN goals. The GC has since become the world's largest corporate social responsibility initiative (Ruggie, 2007:819), with some 3,000 participating companies required to respect the UDHR, and the four fundamental labour rights principles adopted by

the ILO of: (1) Freedom of association and the effective recognition of the right to collective bargaining; (2) Elimination of all forms of forced and compulsory labour; (3) Abolition of child labour; and, (4) Elimination of discrimination in respect to employment and occupation (Muchlinski, 2003, cited by Crane et al, 2008:235).

The Global Reporting Initiative (GRI), a network-based organisation of corporations, NGOs, labour organisations, and professional institutions, introduced the most widely used standardised sustainability reporting framework (GRI, 2010a) in 2000.  Released in 2006, the third version of the "*GRI Guidelines*", outlines specific reporting requirements for human rights and other economic, environmental, and social performance indicators.  The GRI also recognises a degree of convergence between the principles and disclosure requirements of the aforementioned GC and IFC initiatives, and is designed to compliment to these mechanisms.

With respect MNCs within the M&E industry, each of the above mechanisms is significant (MMSD, 2002:68).  Additionally, the GRI and IFC each provide specific industry guidance within their mechanisms (GRI, 2010b), and the OECD is also currently producing specific guidance with respect to human rights due-diligence within the extractives industry (OECD, 2010b).

Reflecting the increasingly institutionalised global public domain as discussed in the Chapter Two, several industry-specific 'soft' governance initiatives exist as a product of multi-stakeholder processes involving States, NGOs and MNCs.  Of particular significance to the industry are the: (1) "*Voluntary Principles on Security and Human Rights*" which provides guidance to the extractive industry on maintaining the safety of their operations within a framework that ensures respect for human rights (IBLF, 2010); (2) "Kimberley *Process Certification Scheme*" which seeks to certify that shipments of rough diamonds are free of those used by rebel movements to finance wars against legitimate governments by imposing certification requirements on its members (KP, 2010); and, (3) "*Extractive Industries Transparency Initiative*" which aims to strengthen governance pertaining to both MNCs and States by the verification and full publication of company payments and government revenues from the extractives sector (EITI, 2010).
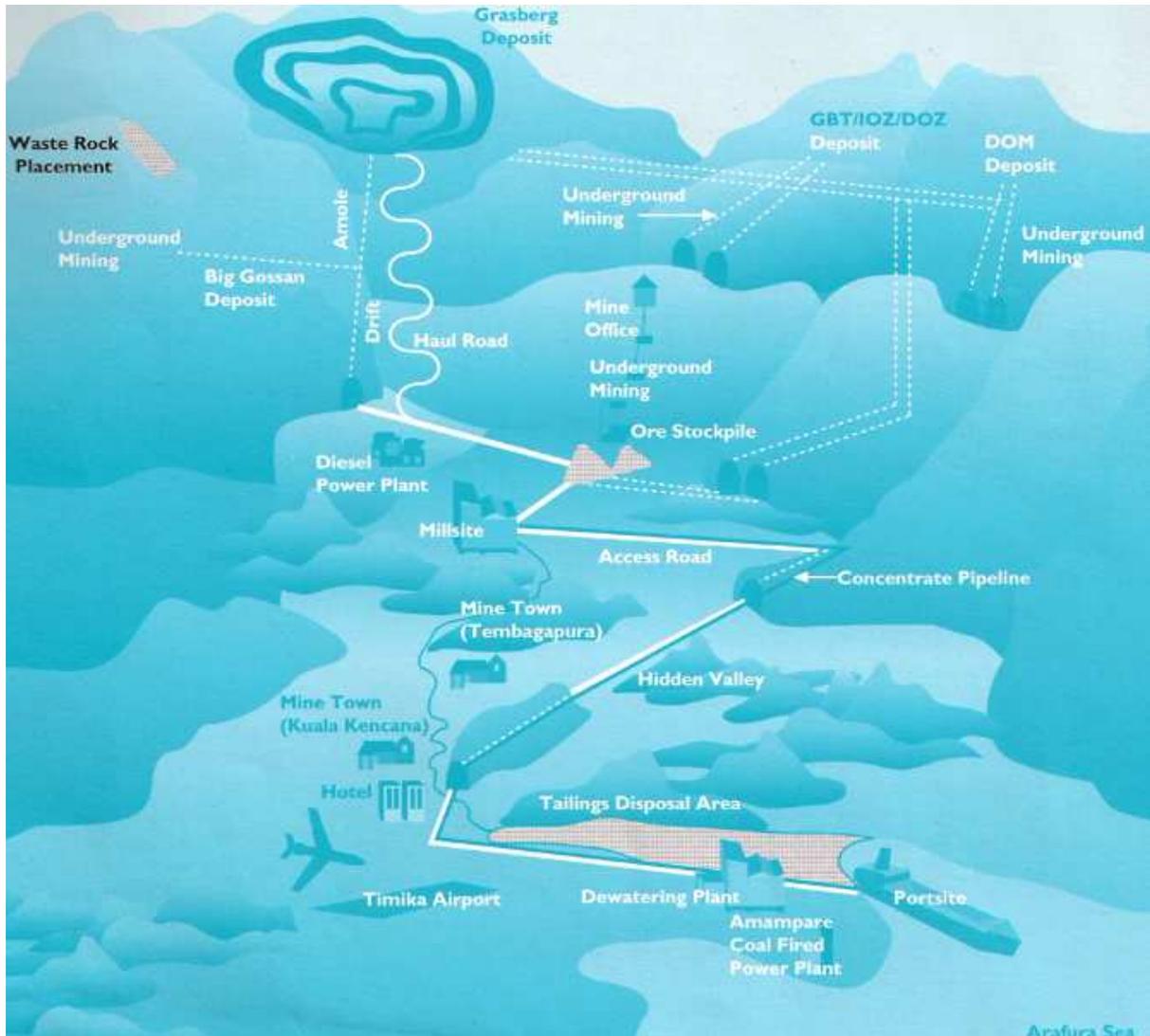
**Figure 4.** M&E Operations of the Freeport-McMoRan Copper and Gold Mine in Papua.

With a daily ore production rate of well over 200,000 tons, the Grasberg mine is situated on the world's richest gold and copper deposit in one of the remotest areas on Earth. Royal Dutch Shell first found minerals in the 1930s on an expedition to nearby Carstenz Glacier, one of the few equatorial glaciers on earth. In 1959 Freeport Sulphur, now Freeport-McMoRan, arrived. Systematic exploration began in the 1970's, leading to development of

the Ertsberg open pit mine. In 1991 the massive Grasberg deposit was discovered nearby, just as the Ertsberg deposit was depleted. The Grasberg and associated ore bodies have proven reserves of 46 m ounces of gold and about 40 m tons of copper according the company's 2004 annual report. Freeport prospered to a company with $2.3 billion in revenues, and became among the biggest, and in some years the biggest, source of revenue for the Indonesian government. It remains so. Freeport states that it provided Indonesia with about $15 billion in direct and indirect benefits between 1992 and 2005, almost 2% of the country's gross domestic product (GDP), including approximately $1 billion per annum in payments to the Indonesian government in the form of dividends, royalties and taxes.

The Freeport mines contributed about 70% of the GDP of the province of Papua in 2006, and close to 100% of the Timika' regency in which the mine is located. The company provides additional funds for community development program to the amount of $50 m per year.

The original legal agreement between Freeport and the Indonesian Government, signed in 1967, served as a model for all subsequent contract-of-work agreements. In spite of the enormous economic benefits, however, the mine continues to be the focus of environmental and social controversy. Constrained by unsuitable topography from developing conventional tailings disposal systems, the mine disposes its tailings into the natural river system. The tailings are contained by a system of levees in the lowlands forming a tailing deposition area covering more than 100km2. Fine tailings are also carried into the Arafura Sea.

Many of the decisions during mine development were made by the central government without consultation of with local government and local tribes. The central government still holds a 10% share in the mine, while the local government has none. Freeport has been accused of killing local people, violating the rights of Indigenous Peoples and polluting the environment. Mining and significant community funds resulting from the mining operation has attracted large numbers of people, and the population of the town of Timika grew from a few thousand to more than 60,000 over less than a decade.

**Appendix 3. Annotated Summary of Documents Selected for Qualitative Document Analysis.**

**Documents of the Organisation Analysed**

*Organisation-Wide Code of Conduct*

The 'peak' policy document of the Organisation outlining the general framework for management of economic, social and environmental issues. The 'operationalisation' of this document is supported by the other Organisation-wide policies, standards and guidance documents, and the policies and procedures of individual business units and subsidiaries of the Organisation. This document is publicly available on the Organisation's website.

*Human Rights Policy and Guidance Documents*

Organisation-wide documents that provide guidance for managers on implementing the human rights commitments contained within the Organisation-Wide Code of Conduct. These documents are publicly available on the Organisation website.

*Community Relations Policies and Guidance Documents*

The Organisation's statement of business practice, and guidance provided to managers as it relates to relationships within the communities within which the Organisation operates. These documents are publicly available on the Organisation's website.

*Employment Policy*

The Organisation-wide statement of business practice as it relates to its employment function. This document is publicly available on the Organisation's website.

*Environment Policy*

The Organisation-wide statement of business practice as it relates to the management of environmental risks and impacts of it activities. This document is publicly available on the Organisation's website.

*Health and Safety Policies*

The Organisation-wide statements of business practice as it relates to the management of employee occupational health and safety. These documents are publicly available on the Organisation's website.

*Procurement Policy and Guidance Documents*

Organisation-wide statement of business practice, and guidance provided to managers as it relates to the procurement function. These documents are publicly available on the Organisation's website.

*2009 Annual Report and Accounts of the Organisation*

This document is publicly available on the Organisation's website.

**Documents of the Operation Analysed**

*Health, Safety, Environment and Communities Policy*

The Operation's statement of commitment to implement Organisation-wide policies, guidance and standards throughout its business practices, in relation to employee health and safety, environmental and community issues. This document publically available from the Operation on request.

*Health, Safety, Environment and Communities Management System Procedure*

Detailed overview of the design and operation of the Operation's management system that addresses the risks associated with employee health and safety, environment and community issues. This document also outlines the development and review process for a *Health, Safety, Environment and Communities Management Plan*, including the semi-quantitative risk analysis process utilised, which is required for each Exploration Project. This document is not publically available and was provided by the interviewee's.

*Change Management Procedure*

A specific due-diligence procedure of the Operation designed to ensure that significant risks associated with changes to the operational context, and/or the activities of the Operation are identified, assessed and integrated within the Operation's management systems. This procedure uses the same the semi-quantitative risk analysis process outlined within the *Health, Safety, Environment and Communities Management System Procedure.* This document is not publically available and was provided by the interviewee's.

*New Country Procedure*

A specific due-diligence procedure of the Operation to ensure that all risks associated with establishing exploration projects within a new countries, are identified, assessed and integrated within the Operation's management systems. This document is not publically available and was provided by the interviewee's.

*Health, Safety, Environment and Communities Management Plans*

Detailed plans produced by the Operation for each exploration project. Each plan summarises the operational context of the project, detailing how risks associated with employee health and safety, environment and community issues will be managed throughout the project life-cycle. These plans include identification of performance indicators by which the performance of the project may be evaluated for these aspect, and the results of the semi-quantitative risk analysis by which the risks were identified, assessed and prioritised. These documents are not publically available and were provided by the interviewee's.

*Human Rights Impact Assessment Report*

Human Rights Impact Assessment produced by the Danish Institute of Human Rights for a proposed exploration project of the Operation.

**Appendix 4. Composition of a Cross-Functional Team Involved With a Recent '*New Country Procedure*' Conducted by the Operation.**

**Employee's of the Operation:**

Finance Manager

Exploration Manager (for the Geographic region)

Senior Exploration Project Geoscientist

Human Resources Manager

Data & Information Manager

Information Services and Technology Manager

Operations Manager

Compliance Coordinator

HSEC Administrator

General HSEC Manager

HSEC Manager (for the Geographic region)

Project Geoscientist

Senior Community Relations Adviser

**Employee's of the Organisation (external to the Operation)**

General Manager (from a large infrastructure development project operating within a similar operational context to the proposed exploration project)

Senior Security Manager (from a subsidiary of the Organisation operating within a similar operational context to the proposed exploration project)

Senior Legal Counsel

Principal Adviser Risk Analysis

Senior Intelligence Analyst

**External Expertise**

Logistics & Security Consultant (for the Geographic region)

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Nottingham University Business School

MBA Programmes

**[Management Project (N14M70)]**

[Proposed Outline and Overview of Research Strategy and Methodologies]

[20th June 2010]

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**Table of Contents**

**Introduction**

This paper presents a proposed outline of a management project to be submitted as part of the course requirements of an MBA (CSR) and consists of two parts. Part One presents a proposed chapter summary of the management project, for which an index is presented in Appendix One for the reader's convenience. Part Two presents an overview of the research strategy and methodologies that are intended to be employed in this work.

**Part One. Proposed Chapter Summary.**

**Title:** *'A Case Study of Human Rights Impact Assessment and Management Within a Multinational Corporation.'*

**Abstract**

**1.0 Introduction**

**2.0 Human Rights and Multinational Corporations**

*2.1 The Development of the International Bill of Human Rights*

The purpose of this Section is to introduce the concept of Human Rights and provide an overview of the Universal Declaration of Human Rights (UDHR), which is recognised as the founding document of the modern Human Rights movement (Whelan et al, 2009:369). The Section will briefly highlight key influences in the development of the UDHR such as the Second World War, and less directly, forms of natural rights espoused by Kant, Locke and Rousseau which played such *'...a crucial role in the political discourse of eighteenth century Europe and its colonies, as manifest in the United States Declaration of Independence (1776) and the French Declaration of the Rights of Man (1789)...'* (Campbell, 2006, cited by Whelan et al, 2009:369).

Highlighting the Western 'ethical heritage' of the UDHR will provide a prelude to discussing the lack of universal acceptance of the Human Rights concept. As highlighted by Whelan et al (2009:370), if one looks beyond the United Nations (UN) ratification of the UDHR as a non-binding document, acceptance of Human Rights diminishes. This is evidenced by the limited ratification of the two covenants codifying the two basic sets of rights contained

within the UDHR; the International Covenant on Civil and Political Rights (ICCPR, 1966), and the International Covenant on Economic, Social and Cultural Rights (ICESCR, 1966).[13]

This Section will also provide a general outline of international 'hard' (involuntary) and 'soft' (voluntary) governance structures as they relate to the UDHR.

## 2.2 Human Rights and Multinational Corporations

The purpose if this Section is to discuss the increasing relevance of multinational corporations (MNC's) to the Human Rights discourse.

As a result of the growth in size, number and power of MNC's since the Second World War, foreign direct investment by MNC's in developing countries: '...*constitute powerful forces capable of generating economic growth, reducing poverty, and increasing demand for the rule of law, thereby contributing to the realization of a broad spectrum of human rights*...' (Ruggie, 2008:3). However, the discourse within the public domain[14] devoted to Human Rights and business is contentious. This Section will introduce Ruggie's concept of 'governance gaps' (2010:3, 2008:3 and 2004:518) as a 'root cause' explanation of this contention: whereby the rights and capacities of MNC's have outpaced the construction of governance frameworks that might control them (Whelan et al, 2009:374).

Ruggie (2010:3) argued that 'governance gaps' have provided a permissive environment for Human Rights transgressions by business. This concept will also be utilised to partially explain the rise of civil society concern within the public domain, as it is into these 'gaps' that civil society has moved to promote various Human Rights agendas (Moon and Vogel, 2008:310, and Ruggie, 2004:511). Similarly, this Section will also highlight that the power and influence of MNC's themselves partially explains the scale and focus of civil society concern. As stated by Newell (2000, cited by Moon and Vogel, 2008:310): '...*targeting companies directly offers the prospect of higher 'returns' given that the investment decisions of major* [MNC's] *now dwarf those of many states*.'

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[13] *Taken together, the UDHR, ICCPR, ICESCR are referred to as the International Bill of Human Rights (IBHR).*

[14] This paper defines the 'public domain' as: *'...the arena in which expectations regarding legitimate social purposes, including the respective roles of different social sectors and actors, are articulated, contested, and take shape as social facts...'* (Ruggie, 2004:508).

Building upon the previous Section's discussion of the lack of universal acceptance of the IBHR, this Section will highlight the broad and contested scope of civil society expectations faced by MNC's. These expectations often extend beyond calls for MNC's to accept responsibility for Human Rights transgressions that are a direct consequence of business activity, to claims of culpability where MNC's are perceived to benefit indirectly from abuse in some way (HRWG, 2009:1). These expectations can extend further still, based upon claims that MNC's should act as an advocate for Human Rights in and of themselves. These claims may be based on a principle that influence MNC's have over states places a moral obligation on them to act: the more severe the Human Rights abuse and the greater the influence the MNC is perceived to have, the greater the obligation (HRWG, 2009:1).[15]

To further highlight the contested nature of the discourse within the public domain devoted to MNC's and Human Rights, this Section will explore opposing viewpoints such as those espoused by ethicists such as Zwolinski (2007:694), whom offer arguments claimed as influential amongst economic theorists. These viewpoints claim that the additional economic costs borne by MNC's through the imposition of Human Rights governance frameworks, distorts market forces, yielding undesirable economic and moral outcomes. This viewpoint holds that these added costs limit MNC investment in developing countries, thus restraining the '...*powerful forces*...' Ruggie (2008:3) claimed as capable of contributing to the realisation of Human Rights. Zwolinski (2007:696-700) thus refutes demands for additional governance frameworks as limiting the benefits of freely chosen employment, and as a result causing harm to those persons they seek to assist.

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[15] Muchlinski (2003, cited by Crane et al 2008, p239) suggested the Universal Declaration of Human Rights itself provides a measure of legitimacy for this viewpoint when it states: *"...every individual and every organ of society, keeping this Declaration constantly in mind, shall strive by teaching and education to promote respect for these rights..."* (UN, 2010).

## 2.3 The Work of the Special Representative to the United Nations Secretary General

This Section discusses the work and influence of John Ruggie in his role as the Special Representative to the United Nations Secretary General (SRSG) on the issue of Human Rights and transnational corporations and other business enterprises.

The Section builds on previous ones by highlighting the failure of the UN Norms on the Responsibilities of Transnational Corporations and other Business Enterprises (the Norms), to establish a consensus on the Human Rights responsibilities of business. Adopted by the UN Sub-Commission on Human Rights in 2003, the Norms proposed a relatively coercive governance approach, setting out a series of Human Rights standards for companies and requiring them to respect and promote those rights. The Norms were strongly opposed by many businesses and Governments on the grounds they were too broad and too vague (JCHR, 2009:31). Furthermore, many of these stakeholders perceived them to conflate state and business responsibilities (Whelan et al, 2009:369). As a result, the business and Human Rights debate became polarised between proponents of 'hard' and 'soft' governance initiatives (JCHR, 2009:32). Despite considerable differences between stakeholders involved in this debate, the appointment of the SRSG in 2005 recognised a collective desire for a common conceptual and policy framework on which thinking and action could progress (Ruggie, 2008:4).

This Section then discusses the three interrelated concepts of the conceptual and policy framework (herein called the UN Framework) outlined by Ruggie (2008):

- The State duty to '*protect*' against Human Rights abuses by third parties through appropriate policies, regulation, and adjudication;
- The corporate responsibility to '*respect*' Human Rights through due diligence to avoid infringing on the rights of others; and,
- Greater access by victims to effective judicial and non-judicial '*remedy*'.

This Section will pay particular attention to that required by MNC's under the UN Framework to 'respect' Human Rights through due diligence.

Notwithstanding the challenges faced in establishing consensus within the public domain devoted to business and Human Rights as highlighted by Whelan et al (2009), the SRSG has recently claimed that a consensus is forming around the UN Framework (Whelan et al, 2009:368). This Section concludes by discussing the influence of this work. For example:

- The United Kingdom is one of several countries to reference the UN Framework in conducting their own policy reviews;
- Several MNC's are aligning their due diligence processes with the UN Framework; and,
- Civil society actors have employed the UN Framework in their analytical and advocacy work.

The UN Framework is also influencing the UN OECD as it updates its Guidelines for Multinational Enterprises, the International Finance Corporation (IFC) as it revises its Performance Standards, the Human Rights Working Group of the Global Compact in identifying best practices, and the European Commission which is exploring ways of ensuring responsible behaviour by European firms (Ruggie, 2010:4-5).

## 3.0 Mining and Exploration and Human Rights

Having established the general discourse within the public domain devoted to MNC's and Human Rights, the overall purpose of this Section is to provide an overview of the mining and exploration industry and its relationship to Human Rights.

### 3.1 Mining and Exploration

This Section will provide a board overview of the process of mining and exploration.

*3.2 Mining, Exploration and Human Rights*

Building on the discussion in Section 2.2, this Section will provide a general overview of the Human Rights impacts of mining and exploration within developing countries. It is intended that this Section will make use of academic articles, civil society literature and the supporting documents of industry associations such as the International Council on Mining and Metals (ICMM) publication, '*Human Rights in the Mining and Metals Industry: Overview, Management Approach and Issues*.' This Section will also source information from the supporting documents of financier organisations such the IFC.

*3.3 The Management of Human Rights Within Mining and Exploration*

Building on the discussion Section 2.3 regarding the responsibilities of MNC's under the UN Framework, this Section will examine the processes used within the mining and exploration industry to manage Human Rights issues. As in Section 3.2, this Section will primarily draw from guidance documents produced by organisations such the ICMM and IFC, and will devote particular attention to the use of Human Rights Impacts Assessments in the management of Human Rights issues within mining and exploration.

**4.0 Research Strategy and Methods**

*4.1 Case Study, Semi-Structured Interviews, Qualitative Content Analysis of Company Documents*

The purpose of this Section will be to provide an overview of the use of case studies as a research strategy in relation to this work, and the research methods used within this strategy of;

- Semi-structured interviews; and,
- Qualitative content analysis of company documents.

This Section will also discuss how access to data is acquired, maintained, analysed and how the findings may be generalised beyond the chosen case.

*4.2 Theoretical Framework*

This Section will draw on Sections 3.2 and 3.3 to highlight significant Human Rights issues associated with the case under examination, and provide an overview of the theoretical framework used to guide the research strategy and methods. The framework used will be based on IFC guidance for the corporate assessment and management of Human Rights. Preliminary research suggests significant Human Rights issues associated with the case are likely to arise from within the areas of;

- Procurement practice;
- Site security;
- Occupational Health and Safety; and,
- Use of child labour

**5.0 Analysis**

This Section will explain the results of the research strategy and methods outlined in Section 4.0.

**6.0 Discussion**

This Section will discuss the findings outlined in Section 5.0. Where the analysis identifies actual, or the potential for the infringement of internationally recognised Human Rights standards, this work will discuss currently accepted methods of 'best practice' management and provide recommendations for their resolution. This Section will conclude with a discussion of the external validity of both the findings and recommendations offered.

**Part Two. Overview of Research Strategy and Methodologies**

**1.0 Descriptive Case Study**

This work intends to explore the assessment and management of Human Rights by MNC's in developing countries by examining a minerals exploration operation of a mining company as a case study.

Case study research consists of a detailed investigation of phenomena within their context, for example, the phenomenon under investigation in this work is the assessment and management of Human Rights. Unlike research that might be undertaken in the laboratory for example, the phenomenon is not isolated from its context, but is of interest precisely because the aim is to understand how behaviour and/or processes are influenced by, and influence context (Hartley, 2004:323). Therefore, case studies are particularly suited to research which requires a detailed understanding of social and organisational processes because of the rich data collected in context (Gummesson, 2008:40, Hartley, 2004:323). In organisational research, the overall approach is generally similar – inductive analysis focusing on processes within their social context (Hartley, 2004:323). However, case studies have also been used as 'descriptive' or 'practitioner' cases to present the actions of an organisation (Gummesson, 2008:38), and it is this approach which is adopted here.

Authors such as Hartley (2004:323) and Gummesson (2008:39) have made the point that a case study is not a research methodology in itself, but a research strategy within which a number of methods may be used, either qualitative or quantitative. A case study is therefore not defined by the methods used, but by the theoretical framework which informs and makes sense of the data which can be systematically examined during the case study for plausibility (Hartley, 2004:324). For this work, the principal theoretical framework used will be guidance provided by the IFC for corporate assessment and management of Human Rights.

One of the standard criticisms of case study research is that their findings cannot be generalised (Bryman, 2008:57). However, considerable advances have been made in assessing how case studies may be used to understand phenomena beyond the immediate case (Hartley, 2004:331). For 'descriptive' case studies, the use of existing literature to assess the

extent to which any findings may be generalised, and the use of a clear theoretical framework are both actions that Hartley (2004:331) suggests will support external generalisations. Both will be employed as part of this work.

## 2.0 Semi-Structured Interviews

The interview remains the most common method of data collection in qualitative research used in organisational studies yet their use is far from uniform (Alvesson and Svensson, 2008:118, and King, 2004:11). Bryman (2008:438) provided a general description of the two major types, the unstructured and semi-structured interview, and it is the latter that is utilised in this work.

Within the context of a semi-structured interview, the researcher has a list questions or fairly specific topic areas to be covered, often referred to as an interview guide, but the interviewee has a great deal of discretion in how to reply. Thus the interview process is flexible and the goal is to view the research topic from the perspective of the interviewee, and understand how and why they come to have this perspective (King, 2004:11). A key feature of the qualitative research interview, and a significant source of criticism, is the nature of the relationship between the interviewer and interviewee. In a quantitative study using semi-structured interviews, the researcher's concern is to obtain accurate information from the interviewee untainted by relationship factors. Contrastingly, the qualitative researcher believes there can be no such thing as a 'relationship free' interview. Indeed the relationship is part of the research process. The interviewee is seen as a participant in the research, actively shaping the course of the interview (King, 2004:11). As a result of these concerns, Sims (2008:117) suggested that as interview data comes from this relationship, the data should be viewed as a product of this relationship, and not as having emanated solely from the interviewee.

For the purposes of this work the interview guide for the semi-structured interviews used will derive from the theoretical framework discussed previously.

## 3.0 Qualitative Content Analysis of Company Documents

Qualitative content analysis is the most prevalent approach used in the qualitative analysis of documents and comprises of identifying underlying themes in the materials being examined (Bryman, 2008:528). This work will focus on formal documents produced by the organisation under examination pertaining to the assessment and management of Human Rights. Where relevant, these documents may include those within the public domain such as annual reports, mission statements, press releases and public relations documents in printed form and on the World Wide Web. Where relevant, internal documents such as guidance and procedural documentation that supports organisational policies may also be used. As discussed in the previous Section, the theoretical framework will guide the 'search' for these underlying themes.

**Appendices**

**Appendix One.** Proposed index.

**Title: '*A Case Study of Human Rights Impact Assessment and Management Within a Multinational Corporation*.'**

**Abstract**

**1.0 Introduction**

**2.0 Human Rights and Multinational Corporations**

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**8.0 References**

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