

**Submission to the
Inquiry into the Provisions of
the Corporate Code of Conduct Bill 2000**

**Prepared by Liam Phelan
for the Australia Tibet Council**

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1. Introduction

Australia Tibet Council (ATC) welcomes the opportunity to comment on the provisions of the Corporate Code of Conduct Bill 2000. ATC has more than 3000 members and exists to support Tibetan people in their pursuit of basic human rights, particularly self determination. Specifically, ATC works to achieve United Nations Resolution 1723 of 1961 calling for 'the cessation of practices which deprive the Tibetan people of their fundamental human rights and freedoms, including their right to self-determination'.

ATC considers this Bill to be offering potentially significant protection and benefit to Tibetan people. Western corporations, including Australian corporations, notably mining companies, are increasingly able and likely to be operating in Tibet, currently occupied by China. This is for two reasons. First, China is aggressively pursuing a 'Western Development Plan' which includes Tibet. This is a massive project requiring the involvement of foreign corporations, their expertise, capacity and access to foreign capital. Second, China's induction to the World Trade Organisation would appear to be imminent, and with that will come increased opportunities for western corporate activity in Tibet through liberalisation of regulatory regimes over minerals, oil and gas and other natural resources. ATC supports the introduction of this Bill.

2. The scope of the Bill

ATC recognises that the Bill in no way impinges on the sovereignty of other states and nor would we want it to. The need for the Bill is clear. The benefit of this Bill will be felt most clearly in low income countries which are less able than Australia to institute regulatory frameworks for the activities of large and multinational corporations effectively. Recognition of this is inherent in the reasoning behind consideration of this Bill. For Tibet and Tibetan people this is particularly critical (see 'China's Record in Tibet' section 4).

3. The need for legislated and mandatory standards – the example of the Minerals Council of Australia *Code for Environmental Management*

Put simply, voluntary codes of conduct do not work. There is ample evidence for this. The Code of Environmental Management of the Minerals Council of Australia, developed in 1996 and reviewed and updated in 1999 is an instructive example.

The Code was developed with the aim of improving the Australian mineral industry's 'environmental performance and reputation'. The Code was reviewed and updated in 1999.

Although forty-six companies are signatories to the Code, incidences of environmental and social devastation are still very frequent. This is demonstrated by the two damaging cyanide spills in Romania and Papua New Guinea in the first two months of 2000. Signatory mining companies and non-signatories alike have caused long-term and irreversible damage, both in Australia and overseas. The international reputation of Australian industry is possibly at an all-time low.

The Code narrowly defines 'environment' as the physical surroundings, neglecting the important aspects of the social environment, including human rights and protection of local economies. The seven principles incorporated by the Code are:

- Accepting environmental responsibility for all our actions;
- Strengthening relationships with the community;
- Integrating environmental management into the way we work;
- Minimising the environmental impacts of our activities;

- Encouraging responsible production and use of our products;
- Continually improving our environmental performance; and
- Communicating our environmental performance.

Despite this powerful use of environment statements in this framework, the recent cyanide poisonings of international waterways by Australian mining companies calls into question the effectiveness of this Code. The ineffectiveness of the Code is likely due to voluntary commitment of companies; allowing companies to 'self-assess' their commitment; there are no concrete standards or procedures which companies have to comply with; there are no sanctions on companies if they do not comply with the code.

Following is a list of environmental and social impacts caused by Australian mining companies, most of which have occurred since the introduction of the Code in 1996. The list includes Australian companies that have and have not committed to the MCA's Code.

Signatory Mining Companies and their record:

Aurora Gold, 1998-:

Human Rights Abuses and environmental pollution in Kalimantan, Indonesia

BHP, 1984-:

Ok Tedi: Long-term destruction impacting on livelihoods and environment for 40,000 landowners

ERA/North Limited, 1997-2000 now Rio Tinto:

Uranium mining in World Heritage National Park against the wishes of the Traditional Landowners

Placer, 1995-:

Porgera: Thousands of tonnes of mine waste dumped into river daily

Rio Tinto :

Freeport and Lihir: Social and environmental abuses, ocean dumping, human rights abuse

Ross Mining NL, 1997-now Delta Gold:

Contamination threatens rivers in Solomon Islands, refusal to release environmental impact study in direct contradiction with MCA code

WMC Limited, 1997-2000:

manipulation of community consent processes as Indigenous people oppose mine on their land

Non-signatory Mining Companies and their record:

Dome Resources NL, 2000 now Durban Roodeport Deep:

Helicopter drops one tonne of cyanide pellets into PNG forest, also several months later diesel fuel accident from helicopter

Esmeralda Exploration, 2000:

Cyanide spill into rivers of Hungary, Romania and Serbia, killing 60 tonnes of fish, contamination stretches into the Danube.

Highlands Pacific, 1999-:

Plan to dump waste into the Coral Reef-rich Astrolabe Bay

The Minerals Council of Australia's Code for Environmental Management is available for reference at www.enviro-code.minerals.org.au

4. China's Record in Tibet

Since invasion in 1949 Tibet has been occupied by China. The Tibetan Government-in-Exile (TGiE), seated in Dharamsala in northern India is recognised by Tibetans inside and outside of Tibet as the only true representation of Tibetan people. Yet the TGiE has no authority in Tibet and therefore no capacity to regulate economic or indeed any other activity in that area.

Chinese colonisation and occupation of Tibet has been characterised by widespread and ongoing human rights abuses. The most obvious is the Tibetans' lack of a right to self-determination. Other abuses have included imprisonment, torture, killings and lack of religious, political and economic freedoms. Many hundreds of thousands of Tibetans have fled into exile, including the Dalai Lama, recognised by Tibetans as their spiritual and temporal leader. As many as 3000 Tibetans a year continue to escape into exile every year.

This same regime – the Chinese Government - that is responsible for the horrific conditions in Tibet currently has control over official development and economic activity across Tibet. Recent proposed development projects have included the transmigration of 60,000 Han Chinese into Tibetan areas, a project notable for the likely destructive impact on Tibetan culture and livelihood. This is a project that the World Bank was considering financing but refused to touch in the face of substantial criticism and pressure from supporters of Tibet.

China has also recently promoted oil and gas developments in Tibetan areas. Concern over the human rights and environmental impact of such projects has led to the TGiE releasing *Guidelines for International Development Projects and Sustainable Investment in Tibet*, along with a *Statement of Opposition on Sebei-Lanzhou Pipeline and Increased Oil and Gas Exploration on the Tibetan Plateau*, which refers to a specific proposed project. Both documents clearly enunciate the wishes of Tibetan people in relation to development generally and oil and gas extraction projects specifically.

Given the Chinese control over Tibetan areas however, and the pursuit of destruction of Tibetans as a people and culture, there is little chance that the rights of Tibetans, as expressed through the TGiE can be entrusted to the Chinese leadership. Human rights abuses will likely continue unless an effective regulatory framework is applied where it can and will be enforced. The site for this framework is clearly not in Tibet under Chinese occupation, but in the countries in which corporations are based. Australian corporations are likely to be increasingly active in Tibet (see 'Sino Mining in Tibet' below), and so consideration of this Bill is exceedingly timely.

5. Sino Mining in Tibet

Practices, labour conditions and environmental planning are not up to international standards and international capital won't invest in assets that are managed in this manner... Anything that can be brought to bear to make the mine adhere to international standards should be encouraged because you will upgrade the labour conditions, the skill set and the environmental standards for an existing operation.

Nicholas Curtis, Chairman, Sydney-based Sino Mining International, in O'Donnell, L, 'Miner digs in over gold project on Tibetan plateau', in *The Australian*, 1 November 2000.

Sino Mining International (SMI) is a Sydney-based mining operation. SMI is 35% owned by Chinese interests, 65% by Australian and US investors. The company is registered in the Cayman Islands, a well-known tax haven. In its promotional material, SMI prides itself on bringing together networks of Chinese contacts and Australian mining expertise, as well as having access to Western capital. SMI has control of the Tanjianshan gold deposit, lying within northern Tibet's Chokle Namgyal mountain range, containing up to 37 tonnes of gold, potentially worth US\$335 million. SMI is placed at the forefront of a potential avalanche of Western corporate involvement in Tibet.

The company has made the claim that adherence to ‘international standards’ is a prerequisite for attracting capital to a project, and that the application of these standards is to be welcomed. The argument is that the application of international standards will be a significant improvement on current practice and therefore a benefit to the region and the people that live there. Yet ‘international standards’ is not defined and it’s unclear exactly what these standards might entail. Critically, it’s unclear who determined these international standards. Significantly, the best practice of the mining industry, as evidenced by the record of Australian mining corporations above, is disgraceful and not something to aspire to but rather something to legislate to prevent. The sorry record of Australian mining corporations extends across the areas of human rights, environmental protection and ecological sustainability and extends to labour relations.

The application of Australian standards that are legally binding would ensure that clear and unambiguous standards were in place that could be easily understood and applied.

6. Benefits to Australian businesses

The benefits to Australian business of the introduction of this Bill will be substantial, particularly in the medium to long term. Competitive advantages will accrue for our companies – ‘clean’ production can result in the double dividend of more efficient industry and reduced pollution. Further, through the certainty that only a legislative framework can provide, the broader Australian community will be reassured that Australian corporations are properly representing Australia in their overseas operations. ATC encourages Australian businesses that conduct activities overseas to embrace the opportunities that this Bill will create.

7. The Australia Tibet Council

The Australia Tibet Council is an independent, non-profit Australian organisation, with in excess of 3000 members and branches throughout Australia. ATC works to achieve United Nations Resolution 1723 of 1961 calling for ‘the cessation of practices which deprive the Tibetan people of their fundamental human rights and freedoms, including their right to self-determination’.

ATC does this by raising awareness of the situation in Tibet at all levels of Australian society, by encouraging government and community leaders to take positive action, and by supporting appropriate Australian and international initiatives.

ATC believes that the peaceful resolution of the Tibet/China conflict would be a significant step towards world peace.

Australia Tibet Council
National Office
Lvl 1 13-15 Wentworth Ave
SYDNEY NSW 2000
Post: PO Box 1236
POTTS POINT NSW 2011
Phone: (02) 9283 3466
Fax: (02) 9283 3846
Email: tibetcouncil@atc.org.au
Web: www.atc.org.au