



RESEARCH REPORT
Stakeholder Perceptions
and Suggestions

Responsible Mineral
Development Initiative
2010

World Economic Forum in collaboration with Australia's Commonwealth Scientific and Industrial Research Organisation and the World Bank Institute

The views expressed in this publication are based on workshops, interviews and research, and do not necessarily reflect those of the World Economic Forum.

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Preface

It is our great pleasure to launch this report as a milestone of the Forum's long-term Responsible Mineral Development Initiative (RMDI), which is representative of what the World Economic Forum stands for and aspires to:

- Initially framed in the context of the Summit on the Global Agenda 2009, the RMDI aims at providing possible paths forward on how to govern mineral wealth in mineral-based emerging economies.
- It provides a neutral platform for impacted and interested stakeholders of the mining sector around the globe, and particularly tries to reach out to like-minded efforts to bundle forces and work towards a framework that allows responsible mineral development following good practice guidance.
- It acknowledges the great general development potential mining has if done right and tries to provide suggestions how to get there and therefore is in line with the Forum's mission of improving the state of the world.
- The RMDI is a true multistakeholder cooperation between the World Economic Forum and leading global experts in the field: coming as an initial idea out of the Global Agenda Council on the Future of Mining & Metals; working intensively with the World Bank Institute and the Commonwealth Scientific and Industrial Research Organisation in scoping and conducting research; and consulting with representatives from the Forum's Mining & Metals Industry Partner Group, the International Council on Mining and Metals, the International Finance Corporation, EITI, the International Bar Association, and the Intergovernmental Forum on Mining, Minerals, Metals and Sustainable Development, as well as representatives from the public sector. It has collected the perceptions and suggestions of these stakeholders to serve as a basis for a framework for responsible mineral development.

We look forward to discussing the results of our research and suggested paths forward with you in Davos at the Annual Meeting 2011.



Robert Greenhill

Managing Director, Chief Business Officer
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Executive Summary

The World Economic Forum's Responsible Mineral Development Initiative (RMDI) was launched to explore the views, priorities and concerns of key stakeholders on mineral development, and to seek answers on what works, what does not, where discontent and frustration most commonly arise, and where improvements should occur.

This report presents the preliminary findings of research covering 13 countries in three regions. It is offered as a basis for further discussion to determine additional research, policy and action oriented deliverables of this initiative for 2011 and beyond.

Section 1 introduces the project and explains the research methodology. Section 2 summarizes the findings of the research and ideas raised by stakeholders. Sections 3 to 5 go into more detail on perspectives and suggestions of stakeholders in the 13 countries: in Africa (section 3), Ghana, Liberia, South Africa and Tanzania; in East Asia (section 4), Australia, Indonesia, Laos, Mongolia and Papua New Guinea; and in Latin America (section 5), Brazil, Chile, Colombia and Peru.

Key findings from across the stakeholder groups and countries included:

- Insufficient understanding of the nature of the mining industry itself, including the timeframe in which benefits may be realized, can lead to unrealistic expectations on the part of communities, civil society and governments.
- There is a major concern among different stakeholders about the integration of mining activities into the host countries' overall economies in which mineral investment flows, including the demand for more local content.
- In this respect, Mineral Development Agreements (MDAs) – as tools for mineral development – can act as a framework for a constructive ongoing relationship between investor and state – and, potentially, society – by allowing stakeholders to evaluate the benefits and impacts of mining in a structured and transparent way.
- MDAs may include provisions that go beyond strict legal compliance, for example regarding community development funds, local employment and training opportunities, environmental protection and remediation, which may help to define and secure an operation's social licence to operate.
- There is some concern, however, around the process of mineral development as such: this includes that, when not negotiated transparently, MDAs can provide opportunities for graft, and by filling the gaps where regulatory environments are inadequate they may hold back necessary regulatory reforms; furthermore, a number of stakeholders from communities and civil society feel that they're not being heard and included enough during the process.





- Finally, lack of government capacity to ensure compliance through contract monitoring and implementation/enforcement is a frequently cited problem. Insufficient transparency of agreements can also make it difficult to know whether companies are fully meeting their obligations under them.

Sample suggestions raised by stakeholders interviewed included:

- Conducting public education campaigns about the mining process and its possible benefits, risks, opportunities and responsibilities more broadly, and specifically prior to MDA negotiations
- Companies conducting and publishing research on the economic value and social impacts of their operations, ideally in cooperation with local government, academia and civil society
- Governments taking steps to attract manufacturing and service industries to mining areas
- Using the Local Development Forums model as a broad and democratic public space to involve local stakeholders and negotiate evolving local-level issues. Expanding transparency of geological data and licenses granted through cadastral management programmes
- Adopting the Extractive Industries Transparency Initiative, which might be usefully disaggregated at the sub-national level

- Companies agreeing to train government personnel to build their technical capacity to monitor compliance
- Establishing effective community-based grievance mechanisms and strengthening capacity for monitoring of implementation of MDA terms, including by third parties

Some of these ideas are already being implemented, others are in the design stage, and others are mere suggestions for consideration. The intention is to be illustrative rather than exhaustive.

By aiming to stimulate further debate, the RMDI's ultimate goal is develop a "good practice" guidance framework.

Section 1: Introduction and Methodology

About the RMDI

The World Economic Forum's Responsible Mineral Development Initiative (RMDI) was instigated by the Global Agenda Council on the Future of Mining & Metals (GAC) during its annual meeting at the Summit on the Global Agenda in November 2009. This meeting discussed the issues of equitable mineral development, and proposed to develop a framework regarding the negotiation structure of bilateral mineral development agreements (MDAs) between companies and national governments in developing countries.

Subsequently, at the Annual Meeting 2010 in Davos, participants debated the importance of a model investment agreement. They recommended it would be helpful to develop best practices for stakeholder interaction and relationship building between corporate actors, public sector representatives and civil society on all levels involved (national, sub-national, community), as well as key enablers for the process leading towards the agreement. This was supported by discussions at two subsequent regional meetings in Colombia and Tanzania.

The RMDI was launched in June 2010. Its aim was to explore the views, priorities and concerns of key stakeholders on mineral development and MDAs, and to seek answers on what works, what does not, where discontent and frustration most commonly arise, and where improvements should occur. Research efforts have been carried out in collaboration with partner institutions – Australia's Commonwealth Scientific and Industrial Research Organization (CSIRO) and the World Bank Institute. These efforts also enjoyed support from the Office of the President of Mongolia by means of a seconded project manager as well as co-hosting of the Mongolia Roundtable on Responsible Mineral Development.

There has been broader consultation and cooperation with national and international organizations, as well as with discussion forums that have an interest in the topic and share the aims of the Initiative.



A multistakeholder Roundtable on Responsible Mineral Development in Ulaanbaatar, Mongolia, in June 2010 identified the issues that need more insight and research. Discussions focused on the process of negotiating an MDA, and the substance of such agreements, as well as possible improvements to the overall arrangement between stakeholders. This roundtable also discussed the need and possible ways for building capacity of host governments to negotiate such agreements, enhancing transparency and accountability of negotiation and project operation processes as well as ensuring the participation of key stakeholders.

Subsequently a joint workshop was organized with the Intergovernmental Forum on Mining, Minerals, Metals and Sustainable Development, where discussions centred on the perceptions of stakeholders on “expected versus delivered” benefits of mining, negotiation and decision-making process, stakeholder engagement and transparency, the role of Mineral Development Agreements (MDAs) and their relationship with the overall legal and regulatory framework as well as economic integration of mining into the host economies.

Further sessions on the key research questions were held during the India Economic Summit, the Forum's Mining & Metals Industry Partners Strategy Meeting, and the Summit on the Global Agenda 2010.

Based on the results of this research and stakeholder consultations, RMDI now aims to explore the development of a framework that addresses the range of issues related to mineral development agreements through a process that includes all impacted stakeholders and delivers balanced benefits and outcomes over the life of

a project. This framework would be intended to contribute to the long-term process in emerging economies of developing a better regulatory framework for mineral development that reflects global good practice and local concerns, and promotes stability, confidence and consensus.

The Initiative also intends to generate value for participating organizations, countries and the global community through:

- Insight into key issues and stakeholders' priorities in targeted regions and countries on mineral development
- Engagement with key public, private and civil society stakeholders, as well as parallel initiatives relevant to mineral development
- Opportunities to develop shared priorities, partnerships and recommendations for action with like-minded organizations
- Agenda-shaping to raise the visibility of the challenges faced in mineral development

We propose this report as a basis for further discussion to determine additional research, policy and action oriented deliverables of this Initiative for 2011 and beyond. This report represents the preliminary findings of the research efforts which covered 13 countries in three regions of the globe.

Notes on Methodology: Country Selection, Participants, Research Approach and Limitations

To ensure a broad assessment of Mineral Development Agreement (MDA) making and implementation, research countries were chosen from Africa, Asia and Latin America. They were selected with several criteria in mind:

- The extent to which they are collectively representative of regional mining activities
- To ensure coverage of a diversity of approaches to shaping mining agreements
- The accessibility of the countries for research activities
- Continuity with previous and existing programmes of work by organizations such as the ICMM on the challenge of using resource endowments to foster sustainable development (ICMM, 2008)

Table 1 lists the countries chosen for the project, and for which research findings are discussed in more detail in sections 3-5.

Table 1: Countries included in RMDI project (those visited in person italicized)

Africa	East Asia	Latin America
<i>Ghana</i>	<i>Australia</i>	<i>Brazil</i>
<i>Liberia</i>	Indonesia	Chile
South Africa	<i>Laos</i>	Columbia
<i>Tanzania</i>	<i>Mongolia</i>	<i>Peru</i>
	Papua New Guinea	

Participants were identified through consultation with project partners and existing networks in each region. A total of 244 individuals from the resources industry, government, civil society (including NGOs) and other relevant actors (e.g. academics, consultants) were interviewed in person or by telephone for this study.

Topics for discussion with participants were largely guided by the key research questions identified at the Mongolia Roundtable on Responsible Mineral Development in June 2010, where MDAs were the main issue considered. Interviews therefore typically covered a range of topics under the following four broad headings (see full Questionnaire in Appendix 1):

Overview of the Mineral Development Sector

- Mining sector overview and purpose of MDAs
- Recent experiences or developments regarding MDAs

Institutional Context and Process for Developing Mineral Development Arrangements

- How MDAs are typically developed
- Stakeholder engagement in agreement development process
- Transparency of negotiation process

Implementation and Compliance

- Content of MDAs
- Capacity to ensure MDAs are implemented
- Flexibility and capacity to renegotiate MDAs



of the government, for example, may have made themselves available despite extensive efforts to solicit input into this research.

While the report does not claim to be representative of all stakeholder groups in all countries, the overall number of participants and coverage of the three stakeholder groups across countries does, however, allow for some confidence in the general “state of play” for MDAs as per the project aims.

Conditions for Success

- Societal attitudes towards mining and MDAs
- Frustrations in development and implementation of MDAs
- Recommendations or key points to take forward to the Annual Meeting 2011

Based on interviewer notes and interview recordings (taken with permission under strict confidentiality assurances), the lead researcher for each case study country developed a summary of participant responses for each of the three broad stakeholder groups (government, industry, and civil society). Each brief country summary report was then edited by the broader research team and reviewed by a person external to the research team to check for factual accuracy of information they contained (e.g. process for securing mining leases).

Two limitations of the project are important to note. With different researchers in the team conducting interviews in different countries, some in person and some by telephone, there was a risk of differences in the research experience potentially leading to differences in the way that information is collected and analysed. To address this risk, the core project team conducted the first set of interviews in Mongolia together to calibrate the questions and approach, and then worked to ensure additional researchers were conducting interviews consistent with the protocol and first set of interviews. Perhaps more significantly, due to the compressed timeframe for this research project, participants were identified through existing networks. While a large number and broad array of participants were interviewed, the sample is not purported to be representative of any of the three stakeholder categories. Indeed, in some countries no members

Section 2: Overall Findings and Suggested Paths Forward

Overview of Findings

This section synthesizes the separate country reports presented in sections 3-5 below.

Interviewers began most discussions by asking participants to provide an overview of the minerals sector in their country and to describe the role of MDAs in this context, if applicable. In instances where statutory regimes did not incorporate MDAs – such as Chile, Colombia and South Africa– the focus was on any similar forms of contracts or agreements and on issues such as stakeholder participation, transparency, compliance and dispute resolution in the overall mineral development arrangement.

For most participants across all three stakeholder groups, the chief role that an MDA was seen to play was in providing a stable fiscal framework for the relationship between the state and the company seeking to explore and extract a resource. This framework typically included taxation rates, royalty rates, divestiture or state equity provisions, and stabilization clauses. In a few countries – such as Mongolia and Liberia – the issues of upstream and downstream linkages with local economy, infrastructure and community development, environmental standards and rehabilitation were also part of the agreement.

The stakeholder groups had very different perceptions about the value of MDAs. For companies, this framework represented certainty on which to base very large, long-term financial investment decisions. For governments, it was viewed as a critical platform for attracting foreign direct investment. For civil society actors, however, MDAs represented a problematic and often opaque arrangement that may compromise benefits for the country (as opposed to the state) in the pursuit of FDI.

Where MDAs exist, the vast majority viewed them as necessary rather than desirable, and a way to compensate for inadequate and often outdated mineral legal frameworks. In countries with well-established legislative and regulatory frameworks, such as Chile, only a minority of respondents thought it desirable to introduce MDAs as an additional guarantee of fiscal stability.

Alongside this transactional narrative, the research also revealed a more positive emergent role of the MDA in mineral-rich developing economies, as a vehicle for socio-economic development. MDAs can act as a framework for a constructive ongoing relationship between investor and state – and, potentially society – based on trust and shared expectations, and an opportunity to discuss and openly debate the merits of resource extraction.

That said, many challenges to this more positive picture were also identified, including lack of capacity in government, corruption, the approach of some companies, and community understanding of the mining process itself. It was clear that in the negotiation of an MDA, most attention is paid to establishing the macro-level framework for a relationship between the state and company. Implementation and compliance components are often neglected or inadequately explored, and arrangements on post-closure largely absent in the discussions.

The inclusion of one developed nation among the selected case studies – Australia – demonstrates that a number of these issues remain just as challenging in contexts where strong and well established legislative and regulatory frameworks and governance do exist.

Finally, the diverse range of interviewees provided a raft of interesting good practice examples and initiatives operating at both the grass roots level and at national and international levels, and covering aspects such as: developing a greater understanding of economic impacts of mining for local communities and at a country level; involving communities or local businesses directly in shaping the types of benefits they may receive from mining; international transparency initiatives, and cadastre management systems.

Findings of discussions with participants are summarized below under four main themes identified in discussions:

1. Understanding and managing the expectations of different stakeholder groups in mineral development
2. Transparency and stakeholder inclusion in development processes
3. Economic value of mining and equitable benefit sharing
4. The interplay between MDA arrangements and regulatory frameworks

Understanding and managing expectations

Negotiating an MDA and developing a mineral resource are complex and lengthy processes. Time frames of between 2 and 6 years were frequently cited for completing MDA negotiations, with some taking 10 years or more to finalize. During these negotiations and in the implementation phase of agreements there appear to be many points at which expectations of different stakeholder groups can evolve in different directions.

From interviews it was clear that there are different expectations within countries regarding the nature of mineral development and the process and purpose of agreement making. This reflected both a lack of understanding on behalf of some stakeholders regarding the usual stages in a complex negotiation process, and the sometimes competing interests represented within and between stakeholder groups. Not only do companies and the state compete for favourable terms, with civil society striving for influence, but often also different ministries compete to influence negotiation processes.

The nature of the mining industry itself is not well understood by government (especially sub-national government) and broader society, leading to unrealistic expectations of the benefits that may be realized from mining. Among those consulted there was a strong sense, particularly among civil society organizations and members, that local affected communities may not understand how a large-scale mining operation will impact them, making it difficult to develop realistic expectations and engage them fully in consultation processes.

Community expectations may therefore not be reflected in the terms of MDAs agreed by state and company representatives, which ends up eroding trust in the agreement making process itself and seeding feelings of distrust among communities towards the company and government. This mismatch of expectations was viewed as a real threat to a company's social licence to operate, and many industry participants described going beyond the terms of an MDA to meet these expectations of local communities, particularly with respect to infrastructure development and service provision.

Different stakeholder groups also have different expectations for time periods in which the benefits from mineral development will be realized. Companies' time horizons for investment decisions are decades rather than years, with most operations experiencing a lag between beginning production and profitability. Communities however typically expect immediate and personal benefits to accrue from mining, and national governments were also characterized by industry participants as wanting to see benefits immediately upon production. This makes it very difficult to create an agreement which meets the resulting expectations of different stakeholders.

Transparency and stakeholder inclusion in development processes

MDAs are almost exclusively negotiated between the state and company. Some NGO and civil society interviewees suggested their sector directly participate in negotiations, although what seemed to be more important broadly was that civil society felt like it had voice in the process and that agreed outcomes were equitable, likely to facilitate positive development opportunities, and met the needs of stakeholders at different scales. The most appropriate points for broader input remain open questions.

Similarly, where agreements are not made public after they have been finalized, or where the award process itself lacked transparency and/or was misunderstood, it led to mistrust of the motives of those involved. Rumour and innuendo fill the information vacuum, often speculating worse terms than actually negotiated. There was a feeling that

it is difficult to trust the outcome of an agreement making process when you don't trust the process – lack of transparency and the pressure exerted by uninformed NGOs were considered as major barriers for constructive stakeholder consultation and engagement.

Companies and governments both cited commercially sensitive information as the chief reason for restricting access even to signed agreements. In some contexts, however, agreements are made public, either through formal or less formal channels, and at various stages of the agreement making process. For some it occurred when an MDA was taken to parliament for scrutiny, while in others once the agreement was signed it was circulated among communities to discuss local implications.

One compromise cited by company representatives and some NGOs was to withhold the sensitive commercial information and release the rest of the agreement publicly, or to summarize the key areas of negotiation and agreement. There was debate about whether making agreements public would compromise parties' future bargaining power by showing what are the "usual" terms of an agreement, or rather would lead to more sustainable deals by reducing pressure on companies to renegotiate at a later date.

Economic value of mining and equitable benefit sharing

Mining is a key driver of growth and development for almost all of the countries studied. There was therefore a lot of discussion regarding different aspects of economic benefit derived from the sector, and how and for whom this benefit is secured. From interviews and the Intergovernmental Forum a strong concern emerged that mining was not as well integrated into the broader economy as it might be, leading to opportunity cost and the risk of what is broadly referred to as the "resource curse".

For progressive companies and governments, MDAs offered a way to try to more effectively integrate mining into the economy and use it as an engine of broader economic development. Conditions and programmes are often included in MDAs related to local employment and procurement opportunities, local contracting opportunities, training and readiness for work programmes to enable greater local participation, local business development programmes, and other grass roots activities.

Some major companies have developed appropriate methodologies, partnership mechanisms and projects on supplier development and local content. A number of companies were also conducting detailed economic analyses of the impacts of their mining operations locally and more broadly, alongside household survey data to track social and economic development among local communities. While this analysis serves a public relations role, it also bridges a gap perceived by industry: poor government analysis and communication of the benefit of mining, including taxes and royalties.

Such initiatives also aim to address civil society criticism of industry about lack of transparency and the perceived uneven distribution of benefits from mining, including through local development funds.

Of interest also were the efforts by national governments in most of the contexts examined to maximize the value of mining for the state. In most instances, fairly blunt and sometimes risky mechanisms were used to try and achieve this – for example, windfall profits taxes were introduced in two of the countries covered in this sample, but with disastrous political consequences in both. Interviewees also debated the capacity for the state to take free-carried or paid equity in operations at varying stages of development (see Box 1).

Box 1: State equity in operations: A country comparison

Country	Free-carried	Paid
Ghana	✓	
Liberia	✓	
South Africa	-	-
Tanzania	✓	
Indonesia	-	✓
Laos	-	✓
Mongolia	-	✓
PNG	-	✓
Chile	-	-
Brazil	-	-
Columbia	-	-
Peru	-	-
Australia	-	-

There are risks of conflicting interests – in such cases government may be simultaneously a majority shareholder, indebted to one of the companies operating the mine to service the equity loan, and playing the role of regulator.

A number of countries are introducing or have introduced amendments to mining or minerals Acts to force companies to conduct more downstream processing in places where this may not make economic sense or may present environmental problems.

The question of renegotiating MDAs was also frequently raised. Some companies insisted that renegotiation was not an option, even up to a timeframe of 30 years, although in most contexts companies recognized the need to ensure agreements were contextually relevant. Stabilization periods were a matter for negotiation, as were tax holidays for companies in some jurisdictions, to entice FDI.

Potential for MDAs

For developing economies which depend on natural resource exploitation to drive their social and economic development, MDAs may offer more than just a stop-gap measure to deal with inadequate or restrictive legislative and regulatory frameworks. This project revealed many cases where MDAs included a large array of provisions beyond those defining the basic fiscal relationship between state and project developer. Clear examples include provisions on community development funds, local employment and training opportunities, environmental protection and remediation beyond formal requirements agreed by state and company.

Indeed, in countries where the MDA process has been sidelined in preference for a licensing system based in legislation, there was some consternation among industry representatives that a vehicle for dialogue had been lost. If embedded within a clear and transparent negotiation process, the development of an MDA offers an opportunity for key stakeholders in large new mining projects to interrogate a wide range of issues in a structured manner, allowing stakeholders to evaluate the benefits and impacts of mining.

Government and industry representatives indicated in interviews that such additional provisions in MDAs may help to define and secure an operation's social

licence to operate, both locally and with the broader host country community, offering a formalized and mutually agreed set of expectations held by state and company along with mechanisms to determine whether promises made are kept.

Counter-intuitively, the power of the agreement making process and “beyond compliance” content may be seen most clearly in a context where there is a strong legislative framework for mining: Australia. For companies and indigenous people on whose traditional land exploration or mining activity is proposed to take place, agreements for land access serve not only to capture obligations and expectations of each other in a formal, legally binding way, but also to construct a framework within which the relationship between these two actors will be taken forward.

The manner in which these negotiations take place and the terms of these agreements themselves may communicate respect and a commitment to achieve more than the efficient exploitation of an ore deposit. This is, of course, dependent on implementation and whether each side upholds its responsibilities; to paraphrase one participant, the relationship is then in the agreement-keeping rather than in the agreement-making.

Interplay between arrangements of MDAs and regulatory frameworks

Most participants indicated that MDAs are necessary to fill existing gaps in legislation that governs and regulates mining activities in many developing countries. A broader question is whether MDAs undermine the filling of those gaps, providing opportunity for graft and corruption through opaque negotiation processes in exactly the places where strengthening of legislative frameworks is required most.

However, many civil society and academic interviewees raised questions about governance issues. They raised the concern that developing country governments lack the expertise and capacity to negotiate better deals, while companies use loopholes in the legal and regulatory frameworks and disparity of information to their clear advantage and to the potential detriment of broader national interests.



One of the most frequently cited problems among all stakeholder groups interviewed was capacity to ensure compliance with the terms of MDAs. Government in most contexts was seen as being under resourced and without the technical capability to properly ensure compliance with mining regulations or any additional terms or conditions. A number of companies interviewed work with government at no cost to help train their people in technical skills to develop this capacity.

Some interviewees argued that, while MDAs are negotiated formally, their success depends largely on the less formal quality of relationships and trust – especially given asymmetries of information and negotiating power and historical legacies of mistrust. The process of formal negotiation can be seen as setting the foundation for the informal relationship between government and company, but the social acceptability of an operation among the public must be “deserved” through living the relationship.

Interviewees felt that in many cases large operations run by large companies generally met or exceeded the standards agreed to despite shortfalls in monitoring compliance. They suggested that while limited funds for compliance monitoring tended to be directed at larger operations, it was actually smaller operations that were more likely to have poor practices and negative impacts due to their lower budgets and often lower sensibility for environmental, safety and social concerns.

Even if companies are in fact following through on their agreed obligations, they may not be seen to be doing so. Some civil society participants indicated that lack of transparency of agreements make it difficult to know whether companies fully met their obligations under them.

When local communities perceive poor practice or have grievances, they often faced difficulties in taking formal legal action independently or having the central government address their concerns.

Possible Paths Forward

Over the course of the research interviews and stakeholder consultations conducted as part of the Initiative, a number of innovative ideas were put forward to address many of the key challenges identified above. Some of these ideas are currently being implemented at particular projects around the world, others are in the design stage, and others are mere suggestions for consideration.

We offer a sample of such ideas below, with the goal of stimulating further thought and debate among interested parties. Note that the ideas mentioned below are illustrative only, and are far from an exhaustive compilation of the many initiatives and suggestions that are currently focusing on this set of issues.

Setting the stage for negotiations

This set of proposed ideas is intended to help establish a strong platform for agreement negotiation and implementation. Central to this theme have been issues of transparency and promoting an understanding of the agreement-making process and the expectations of the parties and of society more broadly.

1. *Capacity Development.* Lack of capacity among government negotiators was one of the most discussed topics in this research. Several existing initiatives were cited as good examples that may be implemented in other contexts where applicable.

In Laos, the two key operations, at Sepon and Phu Bia, rotate government personnel through their technical laboratories and departments to develop their capacity to regulate and ensure compliance of existing and future mines in that country. This training is provided free to the government.

At a more macro level, the World Bank and the Australian government are working with the Lao government to deliver an US\$ 11 million capacity building training and education programme for the mining and hydro power sectors. This programme will train Lao government technical staff for deployment in ensuring regulatory compliance.

Similar initiatives may be included in MDA provisions regarding training and development, broadening the

usual scope of these provisions from developing the capacity of local people to work in the operation itself, to address the capacity of government officials to regulate the sector, monitor future compliance with the provisions of the MDA, and become more effective negotiators on future MDAs.

As part of its Model Mineral Development Agreement project, the International Bar Association identified a mechanism that has the potential to address capacity issues during the negotiation of an MDA: at the beginning of the negotiation process, the company makes a payment to the government (it could be in the form of a grant or an advance royalty payment) for use during the negotiation process to hire legal, financial and technical experts to assist the government's negotiating team during the upcoming talks.

Transparency is critical for this to work, and the government may need assistance in finding and retaining the right experts, but some participants felt this idea had potential to address a key capacity gap in future MDA negotiations.

2. *Information Provision and Availability.* Prior to and during the negotiation period there is often a dearth of quality information available to government, companies and civil society regarding issues such as the number and nature of existing mining leases in a country and quality geological survey data.

The World Bank cadastral management programme was cited by those countries that had implemented this initiative as a great step forward for transparent and accurate management of information. In Mongolia, for example, this system will be expanded to enable public access to this data via the Internet, while PNG has plans to implement a similar system. Initiatives to improve geological data coverage and detail would also enhance the ability of all parties to negotiate responsible mineral development agreements.

It is also important that an MDA negotiation is informed by data and information relevant to the scope and impact of the proposed project itself. The Mongolian Roundtable on Responsible Mineral Development in June 2010 strongly recommended that MDA negotiations should occur after pre-feasibility studies and environmental and social

impact assessments have been completed and publicly released for comment, so that the projected scope and impacts of the proposed project are known to the negotiators.

3. *Understanding and Transparency of Process.*

Prior to negotiations there may be value in holding scoping hearings and conducting public education campaigns regarding the form and nature of impending negotiations between the state and a development proponent. In this way all relevant issues may be canvassed and discussed openly, including the scope of the project, projected impacts, anticipated revenues, and timeframes for realization of benefits, employment opportunities and initiatives. Simultaneously, there may be value in a public education campaign aimed at developing greater understanding among civil society members of the MDA negotiation process itself, and the mining process more broadly.

Regarding the MDA development process, the timeframes and topics for negotiation should be communicated widely, and the points at which civil society may have input or influence articulated. It was suggested that a visualized process map of the MDA negotiation process – incorporating timeframes, points for public involvement, and topics to be discussed – may offer a useful vehicle for public communication and acceptance.

Subsidiary community benefit agreements underneath MDAs may also allow community involvement through development forums in components of the negotiation process that most affect local communities (e.g. to shape local development investment strategies).

There was also a strong emphasis in interviews with government and industry members that public education regarding the mining process itself would be of benefit. This was both to ensure the public was informed of the nature of the development proposed and the drivers that influence how mineral resources are developed, but also to empower the public, and particularly affected communities, to make informed decisions about how to engage with new projects, to develop realistic expectations regarding benefits and impacts, and to enable a thorough interrogation of the trade-offs required for a social licence in a particular context.

This of course requires proactive outreach to explain the agreement, including translation into local languages relevant to affected communities, reframing “legalese” in readily understandable terms, and using popular channels of communication.

Inclusive and transparent negotiations and agreement structures

Another set of ideas to emerge from this work involved the way in which MDAs are negotiated and structured.

1. *Stability Periods.* The proper length for stability provisions was discussed at the Roundtable in Mongolia, where it was suggested that it might make sense to include different stability periods for different issues. It was acknowledged that long, multi-decade periods make sense for the length of mining concessions or leases, and that while fiscal stability clauses may not need to last as long as the term of a lease or concession, they should be long enough to allow the company to recoup the value of its investment and earn a healthy return.

Importantly, it was suggested that other provisions in an MDA that focus on more local issues (e.g. employment and training, supply chain development, local economic development) should be structured with a shorter duration than the concession term and fiscal stability period, to allow for more flexibility in responding to changing conditions or emerging issues in the vicinity of the mine site.

Finally, many participants felt that it is inappropriate to include stability arrangements in an MDA that cover laws and regulations addressing environmental protection, health and safety, labour issues, and security. The view was that a sovereign government should never agree to “freeze” its regulatory authority over a particular project with respect to topics that address fundamental human rights or public health and safety.

2. *Subsidiary Community Development Agreements.*

A number of parties advocated the use of subsidiary agreements with local impacted communities as a way to address stakeholder inclusion and promote greater long-term stability for the proposed project (see Box 2). This would address the problem of local stakeholders being excluded from the negotiation of the broader MDA, and would allow for better coordination and increased input from local and regional governments.

Box 2: Stakeholder Engagement: Papua New Guinea

In PNG, Development Forums allow local affected communities to provide input into the scope and nature of a benefits package for large new resource projects. Legislation sets out that participation happens through social mapping and the process is governed by a committee chaired by the relevant national government minister. These Forums essentially set the terms for social acceptability of a project, or its “social licence to operate”.

In practice they may be undermined by poor governance, corruption, and politicization, and may be beholden to powerful local identities. However, they demonstrate a potentially useful and replicable model for enabling participation by communities in the development of an MDA, involving a range of stakeholder groups directly.

These side agreements could address local hiring and training, supply chain development, local and regional economic development and planning, infrastructure planning, water security, environmental protection and monitoring, local dispute and grievance mechanisms, and other topics of particular importance to the communities surrounding the project.

Another benefit of using such a subsidiary agreement would be that it could be of shorter duration than the main MDA and designed to be more flexible to changing conditions at the local level; as a separate agreement, changes would not affect the longer timeframes negotiated in the main MDA for fiscal stability.

3. *Civil Society Input.* Another recurring theme was the need to include opportunities for civil society input during the negotiation of an MDA. Ideas offered for consideration included (a) periodic public updates during the negotiation, (b) review and comment periods after a draft agreement is negotiated, (c) structured and limited mid-negotiation consultation with select representatives of impacted stakeholders, and (d) debate and ratification by the country’s parliament or highest legislative body.

Equitable distribution of the benefits from mining

An important component of sustainable development principles and the broader societal acceptance of mineral development is the equitable distribution of economic and other benefits from mining. This project highlighted the challenge of broadening and integrating the benefits from mining into the national economy and among local communities. A number of possible mechanisms to achieve this goal were mentioned by participants:

1. *Mineral Stabilization Funds.* At a macro-scale, many participants argued that the mineral stabilization funds developed by Chile and Botswana demonstrate forward thinking government policies aimed at securing wealth from the present commodities boom for the future prosperity and development of their countries.

In structuring future mineral development arrangements, participants encouraged countries to consider establishing these types of funds and, whether through legislation or an MDA, dedicating a percentage of mineral royalty and tax revenues from mining projects to such a fund. Note that other countries have established similar funds but at the local and regional, rather than the national level (e.g. the canon mineral funds directed to local and regional governments in Peru).

Key issues that arise in this context are transparency and prevention of fraud and waste, and building the capacity to manage, invest and distribute the funds. Countries must also establish the right balance between, on the one hand, safeguarding funds for future generations and to aid in periods of future fiscal crisis, and on the other hand, acting on the need to immediately scale up public investments to stimulate economic development and alleviate poverty.

2. *Local Economic Development.* MDAs provide an excellent vehicle for companies and national governments to articulate project-specific local social and economic development strategies. The inclusion of local employment and training initiatives, local procurement and contracting policies, physical and social infrastructure development and local business development programmes were cited as excellent ways to broaden local benefits from mining. (See Box 3.)

Box 3: Partnership for local supply development:

Antofagasta Mining Cluster is a forum that brings together the government, mining companies and local small and medium-sized suppliers in Chile's second-largest province. As well as providing an opportunity for buyers and sellers to interact informally, a qualification scheme through the Association of Antofagasta Industries (AIA) signifies that local suppliers have passed specialist courses on quality, cost and/or environmental management.

(Culverwell 2000)

Addressing these issues in an MDA can ensure the expectations and responsibilities of each party are clearly defined and agreed, and that necessary partnerships can be identified and planned. The International Council on Mining and Metals (ICMM) is addressing many of these issues through its Mining Partnerships for Development Initiative.

Participants cited examples where discrete mineral revenues were dedicated to local development funds, governed by local independent foundations, to direct funding to projects that meet a pre-agreed set of criteria to promote local economic and social development. Another model cited is a local development forum, which is a broad and democratic public space that allows for the effective participation of all interested stakeholders to formulate a long-term economic development agenda. Such a mechanism has been successfully implemented at Alcoa's Juruti Project in Brazil.

Once again, governance, transparency and capacity must all be addressed if a community is to truly benefit from a local development fund

3. *Understanding and Sharing the Full Value Derived from Mining.* In most of the countries included in this project, governments had implemented strategies to maximize the value they receive in the present commodity price boom (e.g. through windfall profits taxes, increasing royalties, downstream processing requirements).

At the same time, any discussion of the equitable distribution of benefits must recognize that companies are investing (and risking) very large amounts of money in mineral development projects, with potentially lengthy payback periods. Discussions should also range more broadly than direct economic benefits to encompass the economic "ripple effects" of mining throughout countries and the social impacts of mining, both positive and negative.

There may be opportunities to focus more on how to "expand the pie" (rather than how to "divide the pie") by looking to complementary government policies that can help to build on the relatively modest direct impact of mining (e.g. on employment levels). Examples might include designating mining regions as "poles of growth" to attract new manufacturing and service activities that complement the stimulus and infrastructure provided by mines.

Mining companies have a large role to play to inform and contribute to this dialogue. Companies that have adopted the Global Reporting Initiative's mining and metals-specific requirements are now reporting on key economic and social performance indicators that can inform the local community on a variety of levels. Some companies (e.g. MMG in Laos and Newmont in Ghana) have conducted and published more detailed research examining the economic value of mining to a particular region or province and to the country more broadly.

ICMM has found it helpful to convene in-country multistakeholder workshops to discuss mining's contribution to foreign direct investment, exports, royalties and taxes, GDP, employment, and poverty reduction. This sets the scene to catalyse action plans to focus on enhancing the economic and social contribution around issues such as artisanal and small scale mining, revenue management, and employment through the supply chain. Such workshops have led to follow up action in countries such as Colombia, Ghana, Peru and Tanzania.

There is also scope to broaden all of this work to encompass non-economic metrics and measures of development and iterative social impact monitoring processes.

4. *Understanding and Addressing the Full Impacts of Mining.* Just as MDAs must address the equitable distribution of benefits from a mining project, they should also attempt to address the equitable sharing of costs to address the impacts from mining.

For example, many participants felt that MDAs could be an effective means of addressing and mitigating the impacts of a project on biodiversity, ecosystem services, climate change, and deforestation. The MDAs could establish mechanisms to address land use planning (including post-closure uses), mitigation measures such as biodiversity offsets, participation in initiatives such as REDD+, and independent monitoring and evaluation of water quality, air quality and other environmental parameters.

Effective and transparent implementation and monitoring

Finally, there has been a tremendous amount of discussion over the last few months on the need for effective and transparent mechanisms to monitor compliance with the provisions of MDAs once they are executed, to ensure that the commitments made in the MDA are kept by all parties, and that the balance of costs, benefits, risks and responsibilities reflected in the final agreement actually comes to pass. A number of suggestions were made to meet this objective:

1. *The Extractive Industries Transparency Initiative (EITI).* The EITI supports improved governance in resource-rich countries through the verification and full publication of company payments and government revenues from oil, gas and mining. The premise behind the EITI is that, armed with actual data about how much revenues governments are receiving from taxes and royalties in the natural resources sector, communities, NGOs, donors and other interested stakeholders can become more effective in demanding accountability from governments with respect to the distribution and use of those funds.

During the course of the RMDI, many voices advocated the adoption of the EITI by governments and companies in the mining sector as a key tool for promoting accountability and effective implementation of MDAs. See www.eiti.org for more details.

Another point of discussion involved the level of disclosure, i.e. should the EITI data be disaggregated by project and to the sub-national level? Ghana is an example of an EITI country that is working on extending the EITI model down to the local and regional level, and this topic is currently being explored by the EITI and the World Bank. Other parties wondered whether the EITI model could be extended to cover local development funds and other subsidiary arrangements between companies and local communities and stakeholders, as they are often seen as badly managed and highly political. This could contribute to more transparency and everybody knowing whether firms' contributions reach their intended beneficiaries.

As noted above, some companies remain very sensitive about disclosure of project-level fiscal arrangements. It was noted that no detailed analysis has yet been done of the costs and benefits of project-level disclosure, either for companies or governments. Costs could include, for example, reduced negotiating power on future agreements, while benefits might include more credibility and "social license" with the local community. For example, the Columbia Law School is currently exploring measuring the impact on the share price of those companies that disclose.

2. *Independent Monitoring.* Another recurrent theme from the RMDI is the need for effective and transparent monitoring of compliance with an MDA after its implementation.

One model that has been put forward to address this issue is the use of an external monitor such as the one commissioned by the International Finance Corporation for the Chad-Cameroon Pipeline Project. The role of an external monitor would be to provide an independent, impartial and transparent party or apparatus for tracking and evaluating progress towards the implementation of commitments contained in an MDA. Whether this model could be effectively used in the context of an MDA, remains open for debate.

Other options might include more ad hoc coalitions of stakeholders with capacity or interests in monitoring particular aspects of MDAs, be it parliamentary committees, civil society organizations, the media or communities around mining sites, who can increasingly use information technologies to provide real-time feedback on mining practices and performance.

3. *Local Government Funding.* In countries where governance is a challenge, the PNG example of withholding a small percentage of tax revenues (agreed in advance with the government) to ensure funds are available to deliver on the state's commitments to local communities and provinces may be useful.
4. *Post-Closure Planning and Financial Assurance.* Many stakeholders mentioned the need for MDAs to establish a mechanism for an orderly post-closure planning process, that addresses both environmental and socio-economic dimensions, and to ensure that adequate financial assurance mechanisms are in place up-front, so that whatever post-closure plan is crafted can be adequately funded.

A key gap identified is government capacity to assess the level and method of financial assurance required, and to administer the various financial assurance instruments over the mine life-cycle.

5. *Community-based Grievance Mechanisms.* Numerous stakeholders noted the need to establish effective grievance mechanisms at the local level to facilitate the early and fair resolution of disputes that inevitably arise among the parties when a major mineral development is initiated. Recent guidance developed by the Kennedy School CRS Initiative at Harvard University helps companies to introduce or strengthen existing grievance mechanisms to make them more effective among local communities so that opportunities to achieve sustainable solutions to disputes are realized.
6. *Re-opener clauses.* Lastly, the somewhat controversial issue of renegotiation clauses in MDAs as triggered by material changes in circumstance or conditions around an operation still requires discussion. Many participants acknowledged that MDAs tend to be renegotiated fairly often, either formally or informally, regardless of whether such a clause exists, and many participants at least acknowledged that it may be appropriate for agreements to change as circumstances change. (See Box 4.)

Box 4: Indigenous landowner negotiating strategies in Australia

In Australia, legal representatives of Indigenous landowners indicated they try to provide the least amount of consent possible to access their traditional land in agreements with mining companies. This enables greater participation in later stages of a development as the project progress from exploration to construction and production. The success of this strategy is dependent on the informal bargaining position of Indigenous groups to lever these terms in the first instance and their legal power (and resources to pay for action) to enforce them.

The question is: Should there be a structured process defined within the MDA, with defined triggers and processes for renegotiation, if conditions change materially after execution? (Such a mechanism has been explored in Liberia.) There was absolutely no consensus on this issue, and many company representatives felt that such a provision would undercut the very purpose of an MDA in terms of creating the conditions necessary to make a substantial investment, but a desire was expressed by many to have a more fulsome debate on the pros and cons of such a structure.

Conclusion

The hope is that, over time, some of the ideas described above will emerge as “good practice” guidance that could form part of a model framework to address the range of key issues in mineral development arrangements, through a process that includes all impacted stakeholders and results in true “stability” over the life of a mining project. Ultimately, such a framework would need to address the following dimensions:

- The need for effective and transparent negotiating and monitoring processes throughout the life of the agreement
- Mechanisms to foster long-term trust and respect among stakeholders
- Recognition of the full contributions (direct and indirect) of all implicated interests: national, sub-national and local governments, companies, local communities and civil society, and other impacted stakeholders

- Awareness, respect and protection of the interests of all relevant parties
- Methods to quantify or benchmark the social and economic contributions and costs of mining projects
- Consideration of the full project life cycle from the onset of exploration through post-mining closure and reclamation
- The equitable distribution of costs, benefits, risks and responsibilities

We are far from having developed such a framework at this stage of the RMDI, but the above suggestions and ideas are offered in the hope of jumpstarting a dialogue that could eventually lead to that result.



Ghana Sector Overview



Key minerals: Gold, diamonds, manganese ore and bauxite

Contribution to GDP: About 5.8% of GDP (Mining Journal, 2010a)

Contribution to total export: About 45% in 2008; gold accounts for some 95% of the total mining contribution and its exports totalled US\$ 2.2 billion in 2008 (Mining Journal, 2010a)

FDI into mining: Total investment into the minerals and mining sector from 1994 to 2008 amounted to about US\$ 6.7 billion (Mining Journal, 2010a)

Revenue contribution: Between 1990 and 2008, the mining sector contributed an average of over 12% of government revenue annually, especially in the form of corporate and personal income taxes and royalties (Mining Journal, 2010a)

Employment in mining: As of December 2007, direct employment by member companies of Ghana's Chamber of Mines was 12,658; 98% of those employed were reportedly Ghanaians. Small-scale mines employed about 600,000 people as of year end 2006, and mining support services employed about 7,500 people (Ghana Chamber of Mines, 2008)

Legal and regulatory system: Under the Minerals and Mining Act 2006 (Act 703), the President holds the power to grant mining rights. Prior to 2006, the Mineral and Mining Law 1986, PNDCL.153 was the governing legislation. Draft subsidiary regulations are expected to be approved by Parliament in late 2010 to give full meaning and effect to key provisions of the 2006 Act, including the issues of royalties, mines support services, compensation and resettlement, explosives, health and safety and licensing. Mineral royalty rates are 3-6% based on gross market value of minerals sold and has since been amended to a flat rate of 5% by an Act of Parliament. The income tax rate is 25% and 22.5% for listed companies on the GSE (Mining Journal 2010). The state has the right to receive 10% free-carried equity interest in mining ventures (Parliament of the Republic of Ghana, 2006)

Section 3: Country Surveys – Africa

Ghana

Industry overview and stakeholder view of mineral development agreements

There had been a prevailing view in the Ghanaian public sector that MDAs should be a temporary mechanism leading to a comprehensive fiscal and legal regulatory framework, and it was argued that the 1986 Minerals and Mining Act was a good step towards setting standardized terms in the mining sector. However, the regime came back to MDAs with the 2006 Mining Act, despite some sections of public sector and civil society contending that MDAs often provide ungrounded taxation preferences and exemptions for mining companies.

Private mining companies see the benefits of MDAs in creating a stable operational environment given the long-term nature, capital-intensity and long-payback time of mining operations. Companies which do not have MDAs expressed the view that such agreements are distorting the level playing field. Civil society organizations, meanwhile, contend that MDAs fail to bring a fair share of benefits to the people.

There seems to be a considerable gap in perceptions about the economic impacts and benefits of mining. A large majority in the public sector and civil society feel that mining does not bring adequate benefits. Most mining companies believe the contribution of mining operations to budget revenue, infrastructure and its support for local businesses through its huge local spend on various inputs and community development has not been communicated effectively to wider society.

Most of the public sector and civil society criticism were centred on local economic integration. It is argued that mining companies should do more to increase local content and build partnerships with local suppliers. The government is seeking consensus with the private mining companies on using customs duty and foreign trade tariffs as leverage for raising local content. However, mining companies argue that they already support partnerships with local suppliers to develop products to the required specifications, and that local entrepreneurs needed to take advantage of these

opportunities. They further argue that targets on local content and value addition should be based on cost-benefit analysis rather than public pressure.

Primary concerns cited by mining companies ranged over issues including the instability of the fiscal and legal regime, (illegal) small scale mining, law and order, lack of infrastructure, land disputes, low capacity of regulatory and monitoring bodies, weak cohesion between decisions and regulations of various public authorities. Negative environmental and social impacts from small-scale, illegal mining are a source of concern which the government is attempting to regulate through allocating suitable land with identified deposits for small-scale mines. However, lack of funding for identifying such areas makes this difficult.

MDA development process, stakeholder engagement and transparency

Most interviewees agree that MDAs should be negotiated between the national government and a mining company. However, civil society organizations and NGOs stressed the need for more involvement and consultation during the negotiation process, for which there is apparently no written procedure. The public sector feels it is disadvantaged by asymmetry of information and negotiation capacities.

Civil society is not totally excluded as mineral agreements go through the Parliament for ratification, but concern was voiced over potential conflicts of interest within the Parliament and the formal nature of its involvement. Most mining companies say Parliament should set the basic parameters and mandate government to negotiate, while others see the ratification by Parliament as an additional guarantee of stability. Most interviewees say stakeholder consultation does take place in Ghana, but is hindered by deep mistrust among stakeholders, immaturity of democratic governance, absence of an embedded culture of public private partnership, and insufficient knowledge about the nature and economics of mining.

It was argued by many that transparency is missing on the negotiation and content of MDAs, contract awarding system and environmental assessment compliance data. Low capacity and the political reality at local communities impede broad engagement and transparency. It was suggested by some sections of government and private sector

that a balanced and well-structured approach should be taken on stakeholder engagement, as too broad consultation might delay the negotiation process.

Content, implementation, compliance and dispute resolution

Most public sector interviewees believe MDAs should provide stability of fiscal terms. Civil society and NGOs were in favour of shortening the term of agreements and including specific provisions on community development, compensation and environmental rehabilitation. Some companies were not against such provisions, as it would raise awareness of the contribution of mining. It was argued, however, that it was not necessary to include specific items like local content and employment targets as they highly depend on the actual efficiency of mining operations and availability of those inputs.

Most stakeholders feel that the capacity for compliance monitoring needs improvement. Public sector representatives argued that companies should be more transparent and fair, as allegedly the loopholes in laws and the weakness of monitoring capacity were misused. Mining companies argue that compliance is in their long-term interest. Civil society suggested that if MDAs and relevant data were made public, compliance can be monitored by communities or by independent non-state bodies.

Key messages and recommendations by respondents (Ghana)

- Government and companies should jointly work out feasible solutions to create better linkages of mining with the rest of the economy.
- More assistance for state capacity building is needed.
- The relationship between companies and communities, the issues of land, compensation and resettlement should be resolved through suitable mechanisms well before the start of negotiations on MDAs.
- Regulations and laws should reflect the specifics and current status of the mining industry.
- There should be a country-specific, rather than an international, template MDA.
- Impact study reports should better communicate the benefits and contribution of mining.
- Regional solutions must be found on the issues of mineral development by uniting countries to strengthen their bargaining position towards MNCs, as well as generating political will within the public sector.

Dispute resolution mechanisms are available under the new Mining Act. However, at the grass-root level the issues of compensation, land ownership and tenure, resettlement and loss of livelihood continue to be common causes of protracted disputes. The new Mining Act establishes principles to be taken into account in settling these problems and the relevant regulations are expected to be finalized in the near future. Most of the interviewees agree that disputes are best solved through dialogue, negotiation and mediation. It is argued that the relationship between companies and communities should be regulated well before signing the agreement.

It is also argued that not enough is being done to deal with human rights issues, especially the right to development of affected communities. Most interviewees from public sector and civil society were in favour of renegotiation clauses. Mining companies do not exclude the possibility of renegotiation on issues other than fiscal terms, which can be very damaging to the viability of projects.

Mining companies see the involvement of the state as an equity owner as a potential channel for engagement. However, they expressed some reservations about whether the state would be able to act as an investor or commercial partner. Civil society is in favour of state equity participation, although concerned by corruption and the absence of clear policy on how state equity would be managed.

Public sector and civil society acknowledge that some major mining companies are taking good steps on community development and compensation of impacted locals. Companies would like a greater part of royalties (30%), tax revenues or state equity to be directly distributed to affected communities.

Liberia Sector Overview



Key minerals: Iron ore, diamonds, and gold

Contribution to GDP: In 2010, the mining sector contributed US\$ 12.6 million to a total GDP of US\$ 911.9 million, or 1.4% (Ministry of Finance, 2010)

FDI into mining: US\$ 3,544,568 as of 2007 (National Investment Commission, 2009)

Revenue contribution: Approximately US\$ 6.43 million in revenues (Ministry of Lands, Mines and Energy, 2008)

Employment in mining: 2,508 people, plus thousands of artisanal miners (Ministry of Lands, Mines and Energy, 2008)

Legal and regulatory system: The mining sector is covered by the Mineral and Mining Act of 2000 and the Procurement Act (PPCC Act) of 2010. Risk and reward is determined by the Revenue Code (2011). There are plans to amend the existing mining law so that it more closely resembles the developed model MDA. The government also plans to establish a mining cadastre

Liberia

Industry overview and stakeholder view of mineral development agreements

After a number of contracts negotiated by the interim government during the civil war (2003 – 2005) were renegotiated by the new government on the basis that the interim government was “non-constitutional”, civil society and the mining industry both fear that any newly elected government may want to renegotiate deals signed since 2005 after the next elections in 2011.

Stability of the legislative and regulatory framework, as well as honouring what’s in the MDA, is considered most important by the private sector. For the government, MDAs represent a way to overcome what is, according to many, a very limited capacity to provide services to communities; it is in the government’s interest to have companies take over that role as much as possible. While other stakeholders often care about issues other than financial benefits, of main concern to government is how much money the deal brings in. Interviewees expressed that the government should be more concerned with the environmental consequences of mining.

A model MDA has been developed that addresses transparency and social and environmental requirements, and contains measurable targets for linkages to the local economy (upstream, downstream, infrastructure development, use of local labour). According to civil society, however, these linkages have not been implemented optimally. The final MDA is, for the most part, the same as the model MDA although specific parameters can be negotiated. Because there is limited regulation for the mining sector, ideally all obligations are clarified using the MDA. Ratified by the legislature, each signed MDA is a binding contract with a sovereign state.

From the company’s perspective MDAs mitigate risk by fixing the terms under which the mining process will be carried out. However, from government and civil society perspectives it is felt to be difficult to track implementation for each contract. It is agreed by all stakeholders that ideally, MDAs should not be necessary because everything should be outlined in legislation and regulation.

Key messages and recommendations by respondents (Liberia)

- Monitoring compliance with MDAs is the most important and at the same time most challenging issue, due to lack of government capacity and budget.
- The awarding process is a main concern for the private sector and civil society as deals seem to have been awarded to less competent and less transparent companies.
- According to the private sector, finding qualified local labour and local goods and services to fulfil high local content requirements is very difficult, in part due to low education levels.
- The government needs to define the objectives of the mineral sector and focus not just on how much money a deal makes but on how the money is spent and what economic benefit it brings. According to most interviewees, the focus of the government is to negotiate deals, not to track their implementation.
- Both the private sector and civil society state that unclear laws and regulations cause misunderstandings and disputes. They argue for a review of the mining law through a participatory process that involves local communities, Parliament, and civil society.
- Local government, private sector and communities need to be included in the community development process from the beginning. Roles and responsibilities need to be clearly defined and expectations have to be managed.

MDA development process and content, stakeholder engagement and transparency

The MDA development process is outlined in the Procurement Act. A public tender process is required only if full geological information is available, to allow for situations where the size and quality of the resource is not known and companies will undertake exploration only if with an assured right to exploit any commercial find made. However, according to civil society and some private sector representatives, this system does not work well with some recent deals negotiated through non-competitive sole sourcing. Less-known companies that lack clear ability to run mines and were unable to demonstrate sound financing have still reportedly won contracts.

The government states that it is difficult to conduct due diligence on smaller, less-known mining companies. According to civil society, the way government conducts due diligence is not transparent or according to the process outlined by law. Both government and industry representatives claim that the negotiation process is inefficient, and that it is difficult to get different parts of the government together. According to government representatives, their minimal capacity to prepare for negotiations means it can take years to sign an MDA.

Government and private sector encourage civil society to participate in the MDA process indirectly rather than having a seat at the negotiating table. Civil society's role is seen as providing input into the context for MDAs: legislation, policy, and the country development strategy.

Once an MDA is approved, the Freedom of Information Law ensures it is open to the public. The Liberia Extractive Industries Transparency Initiative also has a mandate, beyond disclosure of revenues paid to and received by government, to publish all concession agreements on its website. From the government's perspective, everyone should have access to the MDAs to minimize false assumptions about the deal. From the private sector side, contract transparency is encouraged from a risk-management perspective as it clarifies the roles and responsibilities of the company and the government.

According to civil society, however, there has been limited impact from contract transparency as there is a lack of capacity to effectively analyse and interpret the documents. Multinationals and civil society advocate for transparency of bidding documents as well, to address issues with the procurement process.

All stakeholders welcome the required consultation process with communities under the new procurement law. Multinationals say they've always had regular interactions with local communities and chiefs, and claim to do much more community engagement than is currently required by law.

Implementation, compliance and dispute resolution Changes in law and regulations should automatically be taken into account in existing MDAs, so that MDAs are always in line with the law. There should also be an option to renegotiate if circumstances change, such as commodity prices or interest rates. Therefore it is helpful to include a clause requiring periodical reviews, giving both parties the opportunity to evaluate the deal.

For the private sector it is important that an MDA includes off-shore arbitration options as well as stabilization clauses. These off-shore options have never been necessary, however, with disputes between companies and the government first being addressed through discussions directly with the relevant Ministers or the President. At the local level, communities do not have any other option to address disputes in any way other than approaching their elected representative. For civil society and the government an open access clause for infrastructure at non-discriminatory prices should be in the MDA, which will make linkages to the rest of the economy easier.

Monitoring compliance is the biggest challenge for both the government and civil society, as it takes a long time and is expensive. MDAs outline quarterly reporting procedures for companies but the government lacks the necessary capacity to analyse the reports. Interviewees stated that there is currently not sufficient clarity within the government on how much it would cost to monitor compliance and to follow up on implementation. There is a law before the Legislature that would create a Bureau of National Concessions, which would be responsible for monitoring and regular reporting to

the line Ministries. Some civil society organizations are monitoring compliance on a very small scale, but they feel that when they have pointed out issues of non-compliance, the government has not been responsive.

South Africa Sector Overview



Key minerals: Platinum metals, manganese, chrome, vanadium, gold, diamonds and precious metals, as well as coal

Contribution to GDP: 9.5% of GDP in 2008 (USGS, 2010a)

Contribution to total exports: About 50% in 2008 (USGS, 2010a)

FDI into mining: US\$ 22 billion in 2008 (Ericsson and Larsson, 2009)

Revenue contribution: Tax revenue was 10.033 million Rand in 2010, or 7.42% of total tax revenues (South African Revenue Service, 2010)

Employment in mining: 518,519 in 2008, and another 400 000 are employed by the suppliers to the industry (USGS, 2010a)

Legal and regulatory system: The Mineral and Petroleum Resources Development Act 28 of 2002 (the MPRDA) is the primary regulatory framework legislation. The principal laws that regulate the mining industry are the MPRDA and the Mine Health and Safety Act 29 of 1996 (the MHSA). Other related legislation includes: the National Environmental Management Act 107 of 1998 (NEMA); the Royalty Act, and the central BEE legislation is the Broad-Based Black Economic Empowerment Act 53 of 2000 (the BEE Act) (Mining 2010, 2010)

The recently reviewed South African Code for Reporting of Mineral Resources and Mineral Reserves (the Code or the Charter) sets out the required minimum standards, recommendations and guidelines for public reporting of exploration results, mineral resources and mineral reserves in South Africa (Mining 2010, 2010)

South Africa

Industry overview and stakeholder view of mineral development framework

The South African mining regime does not employ MDAs in their conventional format. With the Minerals and Petroleum Resources Development Act of 2001 ("the MPRDA"), all privately held mineral rights were returned to the State and a system of prospecting and mining permissions replaced the concept of a mineral "right", which no longer exists under the present statutory regime.

In return for the granting of permissions, the applicant has to satisfy a wide range of social, environmental, employment, equity and economic commitments to the government, many or most of which would typically be incorporated in an MDA. Most of the socio-economic and labour commitments are encapsulated in a Social and Labour Plan ("SLP"), which is a pre-requisite for a mining licence. Technical and operational work plans and environmental rehabilitation plans are submitted separately.

In principle, South Africa has a progressive, innovative and world-class legislative and regulatory framework. But in practice, interviewees felt laws are not consistently implemented and there is no clear evidence of systematic and objective monitoring or oversight. Companies stated that the inconsistent application of laws and regulations creates significant difficulties, and that many decisions by the Department of Mineral Resources appear to be taken arbitrarily and outside of policy or statutory requirements. There is often a difference in interpretation between the unions, government and the companies regarding the sector legislation as well, which is why the MPRDA will be amended in 2011.

Prospecting Permissions are acquired on a first come, first served basis. To facilitate the introduction of the new mineral law regime, the MPRDA created "transitional arrangements", under which holders of pre-MPRDA "old order" mining rights had the opportunity to apply to convert these rights into "new order" mining rights by 30 April 2009. There are significant backlogs in processing these applications due to lack of capacity of state institutions.

Key messages and recommendations by respondents (South Africa)

- Some respondents advocate for the establishment of an independent system of verification, where accredited bodies can verify compliance.
- South Africa could not take full advantage of the commodity boom because of structural barriers to the growth of the sector, like challenges to the supply of energy and water. Although prices are high in dollar terms, pressure on costs is large.
- The government has very high expectations for companies to supply social projects, and community expectations are high as well. A solution needs to be found together with private sector, government and civil society organizations. All parties need to be brought together to define a way forward and an equal distribution of responsibilities.
- Some respondents advocate for the establishment of an independent dispute agency that government, private sector, or communities can go to before they start a legal process. The agency could help mediate, advice, or facilitate between parties.
- The youth wing of the government party has been raising the issue of nationalizing the mining sector but a decision has not been made yet. The ongoing uncertainty is bad for investor confidence.
- There is a need for more detailed and clear-cut guidelines and regulations on compliance and requirements. Stakeholders claim that the inconsistent application of laws and regulations create disputes. Government capacity to track compliance and to process licenses needs to be strengthened.

Further, according to some respondents, companies have been awarded with licenses based on political rather than economic reasons. Reportedly, there have been a number of cases of politicized reallocations of mining permissions premised on the failure of mining companies to convert to new order rights.

The MPRDA is complemented by other laws such as the Royalty Act, which adopts a commodity-specific system of royalties to the State. There is no facility for negotiation on matters regarding tax stabilization or the fiscal structures governing the mining and metals industry.

There is also a tri-partite compact signed by the industry, organized labour (the National Union of Mineworkers) and the State agreeing on benefits to previously disadvantaged race groups. The Mining Charter came into effect on 1 May 2004 and companies seeking mining permission must achieve a minimum compliance by means of a points system encapsulated in a Scorecard. The 2004 charter required companies to establish a black empowerment equity (BEE) position of 15% by the end of 2009 and 26% by 2014.

The Charter has recently been revised after a consultative participatory review. The Stakeholders' Declaration on Strategy for the Sustainable Growth and Meaningful Transformation of South Africa's Mining Industry resulted from a mining summit convened by the Minister of Mineral Resources in March 2010, at which a working group was formed to review the provisions of the 2004 Charter and to provide some offset to the Codes of Good Practice ("the Code") which ran in parallel with the Charter. It was signed on 30 June 2010 by the Department of Mineral Resources, National Union of Mine Workers, Solidarity, UASA – The Union, the South African Mineral Development Association and the Chamber of Mines of South Africa.

Requirements include mining companies procuring at least 40% of their capital goods, 70% of services and 50% of intermediate inputs from black empowerment entities by 2014. Mining companies are required to achieve minimum levels of 40% black South Africans in executive, senior, middle and junior management ranks and within the realm of core and critical skills by 2014. They are also required to convert the single-sex hostels constructed for

migrant labour since the 1880's into family units by 2014, by which time an occupancy rate of one person per room must also be achieved.

Intrinsic to the concept of broader economic benefit that underpins the South African government's policy on mining and metals is an emphasis on the upstream and downstream value chains. As of the end of 2010, multinational suppliers of capital goods are required to contribute a minimum of 0.5% of annual income generated from local mining companies towards socioeconomic development of local communities into a social development fund. Mining companies are also required to facilitate local beneficiation of mineral commodities, but can offset the value of beneficiation against the 26% BEE ownership requirement up to a maximum of 11%.

Section 2.9 of the charter requires that every mining company must report its level of compliance with the Mining Charter annually in order to retain its permissions. However, the Charter is perceived as ambiguous and highly subjective. Even the revised Charter still has elements that are vague, imprecise or do not conform with the definitions in the MPRDA itself, which contributes to regulatory uncertainty. The Private Sector and government interpret the Charter in different ways, which is often a cause for dispute.

Framework development process and content, stakeholder engagement and transparency

Stakeholder participation is fundamental to the legislative and policy-making process in South Africa. Any new legislation requires input from the public, NGOs, private sector and other stakeholders and Parliamentary committees hold mandatory public hearings on Bills before they are promulgated into law. Civil society, direct and indirect stakeholders and the public at large are therefore integral to developing the legislative and regulatory framework for the mining sector.

In terms of the Access to Information Act, all documents and licenses are theoretically available to the public, but the bureaucracy involved in obtaining information is often extremely arduous. Applications for prospecting and mining permissions go into a computerized system which is publicly accessible. The MPRDA makes provisions for disclosure of information and data relating to mineral resources,

on application, based on the constitutional right of access to information. The health and safety, and social and labour plans, including the community development strategy are all publicly available. Civil society, however, reports that agreements between the companies and local communities are not transparent.

Community development aspects are consistent with international best practices. Companies need to consult with the local communities and inform them about their plans and effects on the community. They then need to develop a medium-term social plan together with the communities and local authorities, which includes a local economic development programme. This plan has to be in line with the already-existing development plans for the community. Communities have the opportunity to object, and companies need to include that objection in the application.

After mining rights are received and operations have started, companies are expected to engage with communities through forums on a monthly basis. According to civil society, there are good laws on promoting stakeholder engagement, but the government is not able to fully implement them due to capacity constraints. At the same time, affected communities are in practice not always consulted prior to mining operations.

There is a lot of pressure on companies regarding black empowerment and social requirements. Mining companies agree that they have a social obligation but feel that some of the requirements set by the government are not realistic. The right skills or partnerships are difficult to find due to lack of capacity of organizations and education levels.

Implementation, compliance and dispute resolution

Companies are bound to report on compliance annually to retain their permissions. Follow-up on these reports has, however, been constrained because of a lack of experience, skills and capacity in government. Companies perceive compliance as difficult due to ambiguous interpretations of the law. Government monitoring of mining companies' environmental compliance is also monitored by NGOs and a very active media.

As for disputes, when a party's rights or legitimate expectations have been materially and adversely affected, or when a party has been aggrieved by any administrative decision taken under the MPRDA, the MPRDA allows for an appeal against such decision. Once the party has exhausted the remedies provided for by the MPRDA, they may apply to the High Court for a review of the administrative decision.

The judiciary system works well at the national level, but in practice sometimes regulation fails to function at the local level. Some respondents advocate for the establishment of an independent dispute agency that government or private sector could go to before they start a legal process. Many disputes and conflict arise in connection with land surface use at community level. Although the legislation provides regulation of these issues, indigenous communities are excluded from Constitutional Court remedy on the loss of land properties and lack of capacity to reach indigenous people on this matter is a challenge.

Tanzania Sector Overview



Key minerals: Tanzanite, gold, diamonds

Contribution to GDP: By 2008 mining's contribution to GDP has doubled from only 2% in 1998. (Bank of Tanzania, 2009)

Contribution to total export: In 2008 the share of gold in total exports was 34%; diamonds, 1%; and coloured gemstones, copper, silver, and other minerals combined, 2% (Bank of Tanzania, 2009)

FDI into mining: Between 1998 and 2008 the cumulative direct foreign investment was about US\$ 2.5 billion (Mining Journal, 2008)

Revenue contribution: Overall contribution of mining about 4% of government tax revenue (US\$ 100 million annually) (Keeler, 2009)

Employment in mining: In 2007, formal employment was about 8,000; and an estimated 500,000 artisanal miners (Ministry of Finance and Economic Affairs, 2008)

Legal and regulatory system: The principal legislation is the Mining Act. Regulations issued pursuant to this Act include Mining (Mineral Rights), Mining (Environmental Management and Protection), Mining (Safe Working and Occupational Health) and Mining (Dispute Resolutions). The government established a Mining Review Contracts Committee in November 2007 to review all mining contracts in the country (Mining Journal, 2008)

In April 2010, a new Mining Act was passed imposing higher royalties, requirements for mining companies to list in the country, and free-carried state equity in future projects (Mining Journal 2010b). In addition to the Mining Act, large-scale mining companies may negotiate development agreements for projects involving capital investment of US\$ 100 million

Tanzania

Industry overview and stakeholder view of mineral development agreements

Both government and mining company interviewees see MDAs as an important tool for providing legal and fiscal stability, and promoting higher standards on environmental rehabilitation, compliance and community development. Most NGOs argue that MDAs should also set basic parameters for a balanced and fair share of benefits among contracting parties and impacted stakeholders. Civil society organizations interviewed believe that the length of development agreements is too long, excluding the possibility for change and flexibility.

There is a broad gap in perceptions of stakeholders on the expected and delivered benefits of mining in Tanzania, which mining companies see as being due to general misperception of the economics and benefits of mining. In the public sector and civil society, concerns were raised that the benefits from mining have been minimal: not enough added value and employment has been created, and mining operations are not well integrated into local economies. The main challenges cited were weak capacity and expertise of the state to negotiate balanced and beneficial agreements, lack of a skilled local workforce, and low capacity of local enterprises to benefit from mining. It was stressed most often that mining companies should do more to promote local suppliers and employees.

Mining companies cited the instability of the legal and regulatory environment as a major source of concern. Many felt that the new Mining Act imposes unreasonable requirements on local content, and while expressing willingness to contribute to local economies, felt that government should do more to improve the capacity of local enterprises. Further challenges included lack of infrastructure, especially in remote areas; absence of law and order in certain provinces; inadequate capacity and knowledge of government auditing and inspection authorities on the economics and nature of mining operations; and weak governance and coordination among state regulatory bodies.

Key messages and recommendations by respondents (Tanzania)

- Raising awareness, promoting transparency, stakeholder engagement and capacity of stakeholders is seen to be instrumental in bridging the gap of perceptions and expectations.
- The state and mining companies should do more on helping capacity-building of local entrepreneurs, developing appropriate tools and creating the enabling business environment for better economic integration of mining.
- Tools and guidelines for the management of state equity participation are desirable.
- Capacity-building, training of local skilled experts and technology transfer are necessary for the state.
- Developing a country- specific template agreement should be a useful means of raising transparency and creating level playing field.

MDA development process, stakeholder engagement and transparency

There were differing views on the scope and structure of stakeholder engagement throughout the negotiation process. For the public sector, stakeholder consultation was considered more appropriate in the development of legislation regarding community development, environmental impact, employment and local content rather than in MDA negotiations. Civil society would prefer broader engagement and direct input into MDAs. Mining companies stated that while stakeholder engagement is important, consultation that is too broad can delay the process as many of stakeholders do not possess sufficient knowledge about the nature and economics of mining. Parliament most often was cited by industry as an appropriate venue for stakeholder engagement and consultation.

All stakeholders considered transparency as the key element for sustainability and developing a more positive public view on mineral development, although the key focal areas for greater transparency differed between the groups. The EITI validation process in Tanzania was cited by many as a positive step towards broader transparency. MDAs are treated in the same manner as any other commercial contracts: it is possible to get access upon permission from the Parliament. Mining companies agreed that the negotiation process could be transparent to a certain extent, and that MDAs could be disclosed once completed. Civil society contended that the process leading to MDAs and the contents of agreements should be more visible to the public.

Content, implementation, compliance and dispute resolution

It was widely held by both the public and private sectors that fiscal provisions should be the key focus of the MDAs and that other issues like community development, environmental rehabilitation and local content should be addressed by relevant legislation and regulation. However, it was also argued within public sector that specific requirements on local content should be part of MDAs. Some mining companies suggested that MDAs should specify the percentage of royalties and tax revenues to be spent on community development.

With respect to compliance, lack of knowledge, expertise and capacity of relevant government bodies was often cited as a key challenge. Public sector interviewees felt that they needed further capacity building to ensure efficient monitoring of compliance on fiscal, environmental and workforce matters. Mining companies emphasized their commitment to compliance as the key guarantee for a long-term and stable operation. In addition, civil society representatives cited the lack of transparency regarding compliance indicators as problematic.

Dispute resolution did not seem to be a great concern at the national level as negotiation and dialogue were seen to be a preferred way of handling any disagreements. However, at the local level disagreements and disputes arise – mainly due to the absence of proper regulations, prior engagement and consultation with impacted communities – and negotiation, arbitration and mediation most often are seen to fail to bring results.

Some interviewees in government, NGOs and civil society believe that MDAs should be open to renegotiation should the circumstances require and be subject to periodic review. Industry members have no objections to renegotiation or discussions so long as it does not jeopardize the stability of their operating environment.

The issue of state equity ownership was raised often in relation to MDAs, mainly because of the recent provision of the new Mining Act on this matter. The majority of government and civil society representatives see it as a good way of ensuring stable revenue, an opportunity for capacity-building, skills and technology transfer. Mining companies on the other hand believe that the decision on government equity most likely is driven by political pressure rather than cost-benefit analysis. They express concerns that free-carried state equity adds to taxation and uncertainty about whether, as an equity owner, the state would be able to act as a commercial partner or investor.

Australia Sector Overview



Key minerals: Bauxite, coal, cobalt, copper, gem and near-gem diamond, gold, iron ore, lithium, manganese ore, tantalum, and uranium

Contribution to GDP: 8% in 2009-2010 (Minerals Council of Australia 2010)

Contribution to total export: 48% of the value (AU\$ 111.5 billion in 2009-2010) of total goods exported (Minerals Council of Australia, 2010)

FDI into mining: Foreign investment in the mineral exploration and development sector in 2008-09 was \$ 90.6 billion (FIRB, 2010)

Revenue contribution: Metal ore mining businesses (comprising copper, gold, mineral sands, silver-lead-zinc, bauxite, nickel and other metal ore mining) paid \$ 947 million, or 14% of \$ 6,573 million in total mining royalties (including payments under mineral lease arrangements, and resource rent taxes and royalties) in 2006-07 (ABS, 2010). In total, minerals (including coal) were forecast to contribute AU\$7billion in royalties as part of AU\$ 18 billion in State and federal taxes in 2008-09 financial year (almost 50% more than 2007-08) (Minerals Council of Australia, 2009)

Employment: Direct 158,000 in February 2010, 505,600 (est.) (Minerals Council of Australia, 2010)

Legal and regulatory system: The Australian system is common law-based (Mining 2010, 2010). While laws are made and regulated by three tiers of government – federal, state and territory, and local government – mining is regulated primarily by laws at the state and territory level. No special agreements are entered into between the Commonwealth (i.e. federal government) and mining companies. Agreements are entered into between companies and Indigenous and non-Indigenous landowners for land access

Section 4: Country Surveys – Asia and the Pacific

Australia

Agreement making overview and stakeholder views of agreements

Australia is a developed country with established mining legislative frameworks at federal and State level. However, these do not always lead to uniform and consistent agreements with Australia's Indigenous and non-Indigenous people regarding access to land. In fact, making agreements with traditional owner (TO) groups in Australia has been and remains a complex and contested space, politically and practically.

Some industry participants indicated that the chief purpose of agreements was to gain access to land to explore and develop a resource. However, there was a strong view that agreements also offer an opportunity to provide the framework for an enduring relationship with TOs. Interviewees working with and on behalf of TO groups say agreements with companies offer a rare opportunity to secure lasting and significant benefit to underpin social and economic development of remote Indigenous communities and family groups.

These interviews highlighted tensions between different parts of legislation dealing with Indigenous land rights. Tensions were also reported between companies and government wanting to see benefits spread broadly among Aboriginal communities (i.e. for "common good" purposes) while Aboriginal people themselves want to see individual and family group benefits accrue among those most impacted by new operations. For state government representatives interviewed, agreements with both Indigenous and non-Indigenous land owners are about balancing the rights of the State in accessing and exploiting natural resources with the rights of land owners to protect cultural heritage, gain compensation for disturbance to existing land use (e.g. cropping, cultural practice), and provide broader development opportunities for communities.

A key contextual feature derived from industry and representatives of TOs in negotiations is that the government plays an arms length role in negotiations and is generally not a party to them as

it considers them to be commercial arrangements. However, State governments have acted directly in support of large resource development projects through compulsory land acquisition (e.g. for a LNG operation in WA) despite TO opposition, and at a more structural level, arbitration decisions on mining leases by the Commonwealth National Native Title Tribunal (NNTT) have heavily favoured companies over TO groups (22 decisions to one, respectively). The approach of companies in negotiations appears to be influenced by size (i.e., smaller companies tend to focus on content of agreements, have fewer resources and are less likely to go beyond legal requirements in agreements and drive a harder bargain than larger, more resourced companies) and attitude to Indigenous agreement making (i.e., most larger companies see agreement making as an opportunity to secure more than ongoing access to land). This was not a universal experience, as it was cited that one large company had agreed to royalty arrangements with indigenous groups in one part of the country and refused in another (with large variation even within states). In his opinion, this inconsistency in policy and approach to negotiations reflected a commercial driver to limit the cost of ongoing access to land that was at odds with company rhetoric regarding agreement making.

Agreement making process and content, stakeholder engagement and transparency

The process of agreement making in Australia with TO groups can take 18 months, but an experienced industry member working for a large company suggested 3 years was a reasonable length of time to allow for an agreement to be reached and he indicated they can take up to 10 years (although this is rare). Land Councils (LC), described as “legal aid organizations for Indigenous land owners” by one LC member, often act on behalf of traditional owners in negotiations, identifying (i.e. through cultural surveys) and engaging with TO groups relevant to new exploration applications. A six month initial negotiation period is provided for by the “Right to Negotiate” under the Native Title Act for traditional owners and companies to reach an agreement on land access, although the parties frequently agree to extend this period (usually supported by the relevant State government). All State governments also have the right to compulsorily acquire land where it is to be used for public purposes. In practice, however, participants interviewed indicated companies (for ongoing relational and social licence reasons)

and Indigenous groups (for opportunity loss and bargaining power reasons) are loathe for this to occur and work to generate agreements.

The process of agreement making with TO groups can take 18 months, but an experienced industry member working for a large company suggested 3 years was more typical and they can take up to 10 years for more complex or significant projects. Land Councils (LC), described as “legal aid organizations for Indigenous land owners” by one LC member, often act on behalf of traditional owners in negotiations, identifying (through cultural surveys) and engaging with TO groups relevant to new exploration applications.

In Western Australia, where several very large mineral projects are currently in development or expansion, the traditional owners and company have only six months to reach an agreement, after which the state government can compulsorily acquire land and allow development activities to commence. In practice, however, participants interviewed indicated that both companies (for relational and social licence reasons) and Indigenous groups (for opportunity loss and bargaining power reasons) work hard to reach agreements in that time, and the government may also wait beyond those six months.

Practically, agreements are made between company representatives and representatives of the TO groups, who may meet weekly or monthly. The costs of legal representation for TOs are often one of the first points of negotiation in shaping the conditions under which negotiations will take place. While companies generally agree to pay, in more adversarial processes these costs are disputed by companies.

Some participants from industry, LCs and state government indicated that there may be a role for greater state government involvement in agreement making as a genuine arbiter of the process. This may also help to shift a view among TO representatives that the government is aligned with development interests rather than representing a broad array of stakeholders.

Some participants from industry, LCs and State government indicated that there may be a role for greater State government involvement in agreement making as a genuine arbiter of the process. This role

Key messages and recommendations by respondents (Australia)

- Agreement making with Indigenous and non-Indigenous land owners represents an opportunity to set a framework for a long term relationship between the parties based on a set of clearly articulated legal obligations and responsibilities from which trust may be developed.
- While Australia has strong legislation regarding the land rights of Indigenous people, this does not guarantee positive outcomes for Aboriginal people or companies.
- Legislation sets a baseline for agreement content and the extent to which agreements reflect the aspirations of all parties involved appears to be influenced by company policy, culture and the value they place in positive ongoing relationships with affected Indigenous communities as that interacts with and is shaped by the relative bargaining power of TO groups and their capacity to exert political influence on negotiations.
- There may be a role for State government to play in ensuring consistency of agreement making processes and as a genuine arbiter of negotiations, although their appetite for this role may not be high.
- Legislation sets a baseline for agreement content and the extent to which agreements reflect the aspirations of all parties involved appears to depend largely on company policy, culture and the value they place in positive ongoing relationships with affected Indigenous communities.
- There may be a role for Government to play in ensuring consistency of agreement making processes and as a genuine arbiter of negotiations.
- One initiative to support Indigenous agreement making in Australia is the Agreements, Treaties and Negotiated Settlements Project led by Prof Marcia Langton (University of Melbourne).
- The Australian Commonwealth government Department of Resources, Energy and Tourism has published a good practice guide for working with Indigenous people (DRET: <http://www.ret.gov.au/resources/Documents/LPSDP/LPSDP-IndigenousCommunitiesHandbook.pdf>).

may be at odds, however, with the strong support for resource development that State governments have demonstrated in recent years.

One of the greatest challenges for the representatives of both sides is bridging very different worldviews. Companies and TO representatives often find it complex to help Indigenous groups understand how the mining process works and the types of benefits they may receive, along with changes and impacts they may need to accommodate. Companies may be frustrated at having to go beyond their usual business models, negotiation methods and timetables. Direct negotiation between key representatives of the parties reduces the time taken to reach agreement, reduces opportunity for miscommunication and misinterpretation through intermediaries, and most importantly facilitates the development of relationships between key decision-makers that will be critical for successful implementation of the agreement. It was argued that lawyers, while important in the process, may become an impediment to this process of relationship- and trust-building between the parties. A number of company representatives felt that new agreements were inhibited by legacy issues, of interactions between indigenous peoples and industry and government representatives, and also within mining companies themselves as they seek to overcome sometimes prejudiced attitudes towards TO motives and positions.

Agreements with TO groups can include a broad array of terms and benefits, or focus more narrowly, depending on the approach of the company and the negotiating power of TOs. More comprehensive agreements often contain provisions such as: cultural heritage management and community development funds; local employment targets; community engagement and education programmes, to enable greater numbers of Indigenous locals to participate in mining (e.g. norms of work, health and safety standards in mines, cultural awareness training for non-Indigenous employees); and sometimes environmental impact and monitoring provisions in addition to those that are regulated.

One prominent lawyer working on behalf of TO groups indicated a preference for aboriginal groups to provide the least amount of consent possible in

an agreement. Narrowly defining the type of activity that may occur and conditions for reviewing and approving changes as the project progresses from exploration to construction and production enables greater participation and involvement in later stages of development.

For land access agreements with non-Indigenous land owners, the terms of agreements are usually narrower and focused more on individual compensation for lost earnings or damage to property. These agreements also usually contain conditions regarding insurance of property and people, dust levels and compensation, notification protocols, hours and periods of operation, and may have a separate component dealing with water use and treatment.

Generally, agreements between companies and Indigenous groups are kept confidential. For representatives of TO groups in negotiations, the most sensitive components of an agreement relate to compensation and financial benefits and to cultural heritage provisions and information. Similarly for companies, the financial and commercial terms of agreements are the most important to keep confidential. Both parties perceived that public availability of this information during or after the process would potentially undermine their future negotiating power.

That said, most of those interviewed also saw benefit in releasing agreements for transparency purposes and in seeking to benchmark conditions with other domestic and international agreements. A representative from one of the larger mining companies interviewed indicated that they were moving towards making their agreements more accessible as part of a drive for greater openness and transparency.

Implementation, compliance and dispute resolution

As in other jurisdictions, implementation of agreements is challenging and has not always been done very well. Industry representatives indicated that they have often had to step in to ensure the agreed implementation of programmes that are the responsibility of Indigenous stakeholder groups, when the latter lack capacity or adequate resourcing. While feeling this is worthwhile to ensure the health of the broader relationship between TO

groups and the company, structures implemented to minimize the risk of this occurring include, for example, high level operational committees (funded by the company) whose membership includes senior representatives from the mine site and key senior community representatives, meeting regularly to monitor implementation and compliance. Representatives of TO groups in negotiations also mentioned that while implementation was a critical topic of any negotiation, discussions regarding implementation occur towards the end of often exhausting and complex negotiations and may be neglected for lack of energy and time.

Representatives of TO groups indicated that aboriginal groups are able to take companies to court if they believe the company is not fulfilling their obligations, should they have the resources to do so. However, most disputes are resolved through discussions between the parties (i.e., through the high level operation committees mentioned above) or using standard arbitration clauses included in most agreements. Renegotiation is generally not a strong feature of agreements, although industry and Land Council interviewees recognized that these are long term agreements which may need to be renegotiated to ensure they remain relevant and appropriate.

Indonesia Sector Overview



Key minerals: Copper and nickel, tin, and gold and natural gas

Contribution to GDP: Of the total GDP of US\$ 511 billion in 2008, mining and quarrying accounted for 8.9% (US\$ 45.479 billion) (USGS, 2010b)

Contribution to total export: Mining and quarrying accounted for 10.8% (US\$ 14.8 billion) of total exports (US\$ 137 billion) by value (USGS, 2010b)

FDI into mining: About US\$ 200 million in 2009 of a total of approximately US\$ 4.2 billion (BKPM, 2010)

Revenue contribution: Total government revenues (taxes and royalties) was US\$ 2.7 billion in 2005 (PriceWaterhouseCoopers, 2006)

Employment in mining: Over 1% in 2008 (Maarten van Klaveren, 2010)

Legal and regulatory system: Indonesia has a civil law system inherited from Dutch colonial times. In 2009 the New Mining Law introduced a licensing system to replace the previous regime's combination of licensing and contracts

The industry is regulated at each of the central, provincial and regional levels of government through laws and regulations. (Mining 2010, 2010)

Indonesia

Industry overview and stakeholder views of MDAs

In 2009 the Indonesian government passed the New Mining Law and subsequent implementing regulations covering most parts of this law. The new law uses a licensing system, whereas under the previous mining regime a combination of licensing and a contracting system was used.

Under the old system, foreign investors in Indonesian mining projects were required to use a Contract of Work (CoW; or Coal Contract of Work, CCoW). Each CoW became an Act of Parliament. A different licence type (KP) was used for wholly-owned domestic companies. To enter into a CoW with the government, foreign investors were required to set up a limited liability company in an incorporated joint venture with a local company or individual (Mining 2010, 2010).

One key driver for the new law was the consequences of the decentralization policy in the years following President Suharto, under which government at all levels in Indonesia could grant mining licenses within their area of geographical authority. This led to uncontrolled and sometimes overlapping mining leases which were not recorded in any central location. The New Mining Law seeks to gain some control and consistency, with local levels of government able to grant licenses only with the approval of the central government.

Another driver is a sense that the state was not receiving the value it should from mining. Under the previous system, CoWs were negotiated by the company and the state, with some input from the relevant provincial level government. These agreements were set for the life of the mine – e.g. 30 years – and were not intended to be renegotiated, although there are some examples of this occurring. This led to tensions with the government when commodity prices were high, and a desire for greater flexibility in determining fiscal arrangements with companies.

The New Mining Law does not use the old system of contracts; instead the licensing system issues Mining Business Licenses (IUPs) for exploration

Key messages and recommendations by respondents (Indonesia)

- Strong legislative frameworks are not enough to provide certainty to mining companies – it requires consistency of behaviour and policy from government to build trust and faith in investing, which the former system of CoWs offered to an extent.
- Better information systems are required to register, map and determine which leases are legitimate and which are not.
- Education of local communities around exploration and mine sites is critical to developing a social licence and can influence the formal licensing process.

and production phases separately (there is some confusion about whether additional companies can tender for the production license). Under the new system, there is no distinction in the way that foreign and domestic investors are treated except that, by not later than the commencement of the fifth year of commercial production, not less than 20% of the issued shares of the IUP holding company must be held by local parties.

Existing CoWs and CCoWs are still recognized until their expiry although how these are to be treated under the new law is still being negotiated by existing holders and the government. KPs were required to be converted to IUPs by May 2010, although this has not taken place in many cases. How these residual KPs will be treated is also still unclear (Mining 2010, 2010).

Industry universally preferred the previous CoW system as it offered them stability and certainty and allowed for the negotiation of the terms of their investment. Under IUPs, issues such as regulatory frameworks and tax rates are not as certain.

MDA development process and content, stakeholder engagement and transparency

Under the New Mining Law several existing provisions were retained or reshaped (e.g. the government may take a 20% divestiture after 5 years for new mines) and new provisions were also included as conditions for operation (e.g. using Indonesian contractors unconnected to the mining company, which is seen as impractical and unreasonable by the industry).

As in other jurisdictions, the government is seeking to maximize its return from the commodities extracted by incorporating downstream processing of extracted ore as a license condition. The New Mining Law also contains a requirement for mining companies to implement local community development and Corporate Social Responsibility (CSR), as the government tries to formalize the social development aspects of mining in the country. Currently there is uncertainty about what this may entail as the implementing regulation has not been released.

There was little broad stakeholder consultation or inclusion in the negotiation of agreements under the previous mining regime, and there has been

little broad consultation with either the industry or civil society regarding the development of the New Mining Law either. Industry members, particularly smaller operators, stressed the importance of engaging openly and genuinely with local communities at exploration as a key means for gaining both a social license and formal legal license to mine. In this way a more reflexive package of benefits may be negotiated at a local level that meets the anticipated conditions of the formal licensing process, particularly as it relates to the CSR provisions.

One smaller exploration company operating in Indonesia took the initiative of establishing and partially funding an NGO, Yayasan Tambuhak Sinta (<http://www.tambuhaksinta.com/>), to operate independently from them in improving the quality of life of people in the area around the exploration activity, and the level of local governance. This has helped develop positive and trusting relationships locally with mining more generally, targeting development activity with local participation and involvement, and addressing issues around artisanal mining in the area to improve standards and offer alternative livelihood options.

Indonesia became a Candidate country for the Extractive Industries Transparency Initiative (EITI) in October 2010. This was supported by a coalition of 40 NGOs and also broadly within the industry, and especially welcomed by those in the donor and capacity building space. There is concern about the manner in which revenues generated by mining are collected and redistributed to impacted areas, and about the development of capacity to ensure compliance with mining regulations.

There was also concern regarding overlapping and illegitimate mining licences provided to companies under the previous regime at a provincial and regional level. Developing an accurate central register of mining leases that is available to the public was viewed as important for both sector development and investor confidence.

Finally, Indonesia has recently entered into an accord with Norway whereby, in return for substantial development aid, Indonesia will impose a 2 year moratorium on the conversion of forest lands to other purposes. This may impact adversely on the mining sector as, increasingly, the remaining prospective areas for mining activities are located in forest areas.

Implementation, compliance and dispute resolution
A number of participants indicated that key ministries within the Indonesian departments do not coordinate effectively, with the perception that this may lead to uncertainty and inconsistency at a policy and decision-making level regarding mining. Related to this, resourcing for compliance monitoring was seen to be inconsistent and related to current power balances between departments. Environmental oversight and monitoring is strong, with the power to shut down an operation if breaches are detected, while capacity for monitoring social impacts is seen to be much lower.

As with other jurisdictions, the general capacity of different levels of government and the political will to act against companies when necessary was seen to be variable and insufficient to ensure regulatory compliance. For industry participants, issues of bribery and corruption of local officials regarding the operating conditions of smaller, domestically owned coal mines has been a concern, leading to broader discontent with mining among the populace. The Indonesian Mining Association is trying to develop a social performance framework similar to the Enduring Values framework developed by the Minerals Council of Australia.

Under the CoW system, when a dispute with central or provincial government could not be resolved through discussion, it went to international arbitration. Under IUPs, the issue is heard in a district or provincial court depending on jurisdiction over the relevant mining area. An ongoing case regarding divestiture levels for a large operation in Indonesia indicates that decisions between different levels of the Indonesian court system may appear contradictory.

At a more local level, disputes between mining companies and local or central governments are also difficult to resolve. It appears that some issues are left unresolved in deference to political concerns, rather than consistency with legal and regulatory standards. One industry participant raised an example where testing had indicated waste water was non-hazardous under current legal definitions but the government department responsible would not agree to this finding or discuss it, with the company left to deal with the issue indefinitely.

Laos Sector Overview



Key minerals: Copper, gold, silver

Contribution to GDP: Real GDP growth for 2010 projected to increase to 7.8% from 7% in 2009, of which .4% is attributed to the mining sector (World Bank, 2010)

Contribution to total export: Over 50% of total exports, or more than US\$ 750 million in 2009 (World Bank, 2009)

FDI into mining: FDI expected to increase 5.7% in 2010 to US\$ 790 million, (World Bank, 2010)

Revenue contribution: Government revenue from mining and hydropower budgeted in 2008/09 was 1.7 billion Kip (21% of total revenues, ~US\$ 212 million in 2010 dollars) (IMF, 2009)

Employment in mining: An estimated 30,000 people are dependent on the two major mining projects in Laos

Legal and regulatory system: Laos is a single-party socialist republic ruled by the Lao People's Revolutionary Party. The mining industry is regulated by the Ministry of Planning and Investment (MPI). A new Minerals Law, passed into legislation in 2009, replaced the 1997 Mining Law

Laos

Industry overview and stakeholder views of concession agreements

Lao PDR, categorized as a Least Developed Country by the UN, has a largely undeveloped resources sector dominated by hydropower and two large and expanding mining projects (MMG Sepon and Phu Bia operations).

In 1997 the Laotian Mining Law was introduced, followed by an Implementing Decree in 2002 to try to facilitate development in this sector through FDI. A system of Mineral Exploration and Production Agreements (MEPAs) or "concession agreements" was used, based on the Indonesian Contract of Work system, and viewed by industry and government as a tool to fill gaps in mining legislation. However, uncontrolled granting of a great number of mining concessions at provincial level along with poor environmental monitoring has led to a moratorium on mining being imposed periodically over the last 4-8 years.

In an attempt to seek more control over how concessions are granted, improve environmental standards of small to medium sized operations, and try to screen for more serious exploration applicants, the Lao PDR government is working to introduce a new Minerals Law. They suggest this will help to centralize and control the granting of mining concessions for large projects and facilitate greater FDI.

Under this new law MEPAs will not be used, and instead new mining applications will be handled through legislation, with approval required at each stage of the mining process through the Ministry of Planning and Investment (MPI), and large projects requiring approval by the National Assembly. Government ministers and mining-relevant departmental directors stressed that the mining sector is a critical path to development for Lao PDR, along with the agriculture sector.

The Lao government intend the new Minerals Law to enforce higher environmental performance standards and social development provisions, and provide clarity and consistency on issues of taxation rates including exemption from import tax for mining equipment (although implementation of this provision under the current law is inconsistent).

Key messages and recommendations by respondents (Laos)

- Agreements between companies and the state should encompass a range of issues beyond fiscal arrangements, including exploration rights, community development, local employment and procurement, and social infrastructure planning. These agreements offer an opportunity for both parties to lay out in a structured way the expected benefits from mining and to shape expectations of each other's obligations.
- There is a need to inform and develop the capacity of a range of stakeholders in mining operations, from local communities who have limited experience of mining through to all levels of government regarding the economic drivers of mining and terms of agreements that make investing in Laos attractive to foreign entities.
- Through the Community Development Fund under the new Minerals Law, companies and state alongside representatives of provincial governments and local communities should ensure community funds (US\$500k per year for Sepon and US\$300k for Phu Bia) are distributed equitably and usefully to develop the areas immediately impacted by mining developments.
- A proposition to have a panel of experts to review operations, as with the NT2 project which is mandated by the World Bank, and may be useful for large mining operations to develop trust between parties regarding the level and types of benefits being derived from mining.

In practice this new law may be less clear than the system of concession agreements previously in place, with the government able to impose new conditions and requirements at each stage of the approvals process. For the major mining companies currently operating in Laos, the MEPA system allowed for a tailored approach to the tax rates, royalties and conditions such as tax holidays for their operations, providing certainty and arrangements appropriate for specific commodities and business models.

Beyond these financial arrangements, MEPAs also provided a broader, guiding regime for how large scale projects would operate in Laos, encompassing a range of other issues relevant to broader social and economic benefit such as training and development, and targets for local employment and local procurement.

MEPA development process and content, stakeholder engagement and transparency

MEPAs are negotiated by the company and MPI, which also has responsibility for implementation of the agreement. The advice of other relevant ministries such as the Ministry for Energy and Mining (MEM), Ministry of Finance and Ministry of Commerce and Industry is sought by the MPI in these negotiations. The Water Resources and Environment Administration (WREA) is responsible for monitoring all environmental and social aspects of project development.

There is little input of civil society or other stakeholders into the negotiation of concession agreements. There are generally low levels of trust between the mining sector, government and international NGOs operating in Laos, which have been largely critical of mining in the past. (There are no local NGOs, although not-for-profit organizations are currently being set up by the government). Terms of agreements are not made public as they are viewed as commercial agreements by both companies and government. This may lead to misinformation and misperceptions regarding the benefits derived from mining by the Laos people, and whether the government has negotiated a "fair deal".

Partly to address this issue, and demonstrate the local and national benefits derived from their project, the MMG Sepon commissioned research

by the Centre for International Economics to evaluate the economic impact of the operation on the Lao economy. This work detailed such things as the revenue going to the government from the mine, composition of mine expenditure (material and wages), and modelling of indirect economic benefits for Laos (CIE, 2010). While this work forms part of Sepon's public relations efforts, and NGO organizations question issues of distribution of benefit and environmental impacts of the mine, the data demonstrates large benefit from the mine.

Both the Sepon and Phu Bia operations also conduct detailed biannual household surveys, allowing them to demonstrate considerable local development across time as a result of the respective mines, and partly addressing the issue of distribution of benefit. These companies also involve local and provincial level government (and communities directly) in shaping their community development investment strategies.

The Lao government is keen to maximize benefit from mining, so the new Mineral Law insists that downstream processing occur in-country for commodities such as copper, despite the environmental and economic cost of such enterprise. Mining companies are working with government to explore the economic viability of smelting within existing business models. Another strategy employed by the government is to take paid equity of an operation when it moves to the production phase, usually 10%. It is also reserving strategic tenements for future exploitation by Lao-owned mining enterprises.

Implementation, compliance and dispute resolution

Through policy reform in Laos, provincial governments have been given more responsibilities with respect to issues of monitoring and compliance with concession agreements and general performance standards of mining operations, particularly for small to medium size operations. For the large projects operating under a MEPA, the central government retains responsibility for inspection and compliance. The capacity of the departments responsible (e.g. MPI coordinating and MEM and WREA monitoring) is limited, however, both in terms of number of people and their proficiency.

To this end, the two major companies are working with government to improve capacity by hosting technical government staff on site to work with their own technical departments (e.g. geology and environmental monitoring departments). One issue from discussions with government representatives is that data and information collected from sites are not freely shared among ministries, with potential for lack of coordination in addressing issues.

While the intent of concession agreements in Laos is to provide some certainty around a range of issues across a mine's life cycle, in practice most elements of the MEPAs currently in place have been renegotiated or altered according to changing conditions. This is handled through discussion and negotiation, and while usually instigated by government, companies have also negotiated changes where necessary.

Where disputes arise about the implementation of the agreement or its terms, MEPAs have standard conflict resolution processes built into them involving international arbitration if necessary. In practice, all parties see this as a last resort and seek to resolve issues as they arise through discussion.

Mongolia Sector Overview



Key minerals: Coal, copper, gold, fluorite, phosphorus, and zinc

Contribution to GDP: Mining represented 22.1% of GDP in 2009, down from 28.2% in 2008 (MRAM, 2010)

Contribution to total exports: 84.6% of total exports in 2009 (MRAM, 2010)

FDI into mining: In 2008 there was US\$ 133 million invested in mining, mostly from foreign sources (MRAM, 2010)

Revenue contribution: 39% of government revenues in 2008 (USGS, 2010c)

Employment in mining: In 2006, the employment share of mining was of 4.1% (Tsogtsaikhan, 2008). As of November 2010, estimates suggested that the minerals sector employed 16,802 people

Legal and regulatory system:

- Mining is regulated at the national level through the Minerals Act of 2006
- Mineral development agreements (MDAs) are entered into by the government with companies on major projects, and governments may take up to 51% of "strategic" projects in paid equity

Mongolia

Industry overview and stakeholder views of MDAs

The minerals industry in Mongolia has developed rapidly since the country transitioned from a state-controlled to free-market economy in 1990, and a new constitution was instituted in 1992 that emphasized private ownership. By 2008, exploration work and geological mapping had identified about 6000 mineral deposits, and the Mongolian government had classified 15 of those as strategically significant.

In line with other jurisdictions, the Mongolian government has sought to maximize value from mining, introducing a windfalls profit tax in 2005 and paid equity in mining projects through the 2006 Minerals Act (USGS, 2010c). Mining revenues account for about 40% of total public revenues with the windfall profits tax contributing 7.8% of the total. Although it has been a significant source of revenue for Mongolia's Government Development Fund (USGS, 2010c), the windfall profits tax was seen by many as a significant disincentive to new investment, particularly for the copper and gold sectors. It will be discontinued in early 2011.

In July 2009, the Parliament approved a law on prohibiting minerals exploration and exploitation on protected zones with a river source, reservoir and forestry. Consequently, in accordance with the Law, the government was assigned with the task of determining the frontiers of legally prohibited regions in detail and approving a regulation for compensation.

In discussions with interviewees, the Oyu Tolgoi (OT) copper/gold mine and Tavan Tolgoi (TT) coal mine were the most frequently mentioned projects. They represent the two largest deposits by size and value in Mongolia, and are both located in the South Gobi region of the country. OT in particular was a fulcrum for discussion, as an investment agreement (i.e. mineral development agreement or MDA) had recently been signed by the government and private investors Ivanhoe and Rio Tinto after more than six years of negotiations. Of interest is that the national government has taken a 34% equity share, financed through a loan arrangement

Key messages and recommendations by respondents (Mongolia)

- Government and companies should work out feasible solutions and conclude specific agreements on the issues of local content and workforce.
- More capacity building is needed for state negotiating, regulating and monitoring bodies.
- Stakeholder engagement and consultation mechanisms should be formalized and structured to allow constructive and meaningful dialogue and discussion.
- Effective policy mechanisms and tools should be developed on management of state equity participation.
- Community development standards need to be developed and subsidiary agreements on community development should be established. Community development should focus more on addressing environmental issues such as forestation and management of underground water reserves.
- Appropriate standards and regulations should be developed for resettlement and compensation of impacted local communities.
- Legal and regulatory frameworks should be more comprehensive and better harmonized to avoid inconsistencies and loopholes.
- A country-specific Model Mineral Development Agreement should be developed through multi-stakeholder consultation.
- Compliance monitoring and ensuring mechanisms should be strengthened. An independent compliance monitoring body should be established in the mining sector and compliance data should be publicly available.
- More capacity-building for local enterprises and suppliers to help benefit from mining supply and procurement opportunities.
- There should be a level-playing field for local and foreign mining companies.

organized through the investing companies. One OT copper/gold mine in addition to the Investment Agreement a Shareholders Agreement was concluded with the government, which has not been disclosed until recently. Because of the public criticism and discontent over the terms and conditions of financing of the state equity, the Shareholders Agreement has been disclosed to the public and is expected to be amended soon, including the reduction of the interest rate for the loan funding of the state equity.

In Mongolia, mineral agreements are required only for significant operations with majority foreign ownership. For the industry and government representatives interviewed, MDAs are primarily to ensure stability of tax arrangements for the life of an agreement (30 years in the case of OT, with an additional option to extend for two periods of 20 years) as a way of encouraging foreign investment. Mongolia was described as having a relatively immature minerals industry and associated legislative framework, with MDAs providing the certainty that foreign investors need to make commitments to operate there.

Other stakeholders (e.g. NGOs, civil society members, some sections of government) also saw MDAs as a mechanism for ensuring companies invest in local social development programmes and maintain high environmental standards, although this expectation was not necessarily met in their opinion. Government, business and civil society representatives also strongly emphasized local content, procurement, infrastructure and workforce issues, which they believe are instrumental for promoting economic diversification and spreading the benefits of mining in a sustainable manner.

Overall, there was a view that in a developing minerals economy, MDAs operated to set standards of behaviour expected of both parties that may not always be present in the legislative framework. It was also argued by several national private companies and civil society organizations that in the future setting up a comprehensive fiscal and legal regime would be a better way to proceed.

Major national mining companies are starting to apply international standards and good practice guidelines as benchmarks in their operations.

MDA development process, stakeholder engagement and transparency

In Mongolia, MDAs are ostensibly negotiated between the foreign investment partners and the government, before being debated and approved by parliament. In reality, the OT agreement, for example, was negotiated within a context of strong engagement by a very active civil society as reflected in vocal and influential NGOs and press. Different parties held very different perspectives on whether this negotiation process had been transparent and had included all relevant stakeholders.

It was apparent that the relationship between NGOs and government, although at times uneasy, was somewhat complementary in negotiations with the OT investors: NGOs were able to submit issues to government ministries who then took these forward in negotiations with the foreign OT investors, while at other times NGOs were able to exert pressure on the companies involved to secure more favourable terms for the nation. Stakeholders local to the mine were not explicitly included in negotiations, although their interests were represented both in formal negotiations by government and indirectly through NGO submissions, and through direct engagement by the prospective mine operators themselves. There was strong agreement that a single agreement should be signed rather than multiple agreements at different scales.

Expectations of society are very high regarding issues such as environmental protection and social investment, while the country has limited resources to meet these expectations. This represents a risk for government and industry, and companies or other agencies could consider investing in developing the capacity of regulatory agencies to ensure both compliance with the law and publicizing that compliance. The relationship between industry and civil society is immature and marked by mistrust and anxiety that Mongolia's enormous mineral wealth may be exported wholesale for the benefit of foreign companies and governments.

NGO representatives in particular believed that the negotiation of MDAs could be made more transparent, with the content of agreements – or at least the areas under discussion – made public from the beginning. Some sections of the agreement incorporating commercially sensitive information (e.g. taxation arrangements, royalties) could be withheld

until later in the negotiation process, so long as the reasons for this were made clear.

Industry and government representatives, on the other hand, believed that the process was transparent enough and it was sufficient for the terms of the agreement to become known once it reached parliament. This was the case with the OT agreement, a draft of which appeared in a local newspaper once it was tabled in parliament, prompting broad debate among civil society members.

Implementation, compliance and dispute resolution

MDAs have evolved considerably in Mongolia over the last two decades; originally they were called stability agreements and referred exclusively to tax regimes, while they are now referred to as investment agreements and include other relevant provisions such as social development and environmental standards of practice.

With respect to the most recent incarnation of these agreements, the common view was that everyone would have to wait and see how it operated in practice. Public sector representatives said that any substantive disputes or termination of agreements would most likely be due to non-compliance by mining companies. NGOs and government saw themselves as “learning by doing”, and expected that as their knowledge and experience of dealing with the mining industry developed, the terms of agreements should be open to renegotiation. Industry was strongly opposed to this, indicating that this would be a breach of faith and defeats the purpose of such an agreement, especially if changes to the tax and royalty arrangements were sought.

The OT agreement and future agreements are aligned with the legislated conditions for mining regarding e.g. environmental standards, and the regulatory regimes currently and hurriedly being developed to ensure compliance with these terms. However, questions were raised about potential conflicts between the government's roles as investor (34% of OT and 100% of TT) and regulator, and whether Mongolia has the human resources to inspect and ensure compliance of all operations with relevant regulations.

Finally, methods for dispute resolution within the terms of MDAs appeared to be underdeveloped. Arbitration by international independent parties was cited as a key clause in agreements to resolve disputes should direct negotiations fail. However, mechanisms were not well defined. Disputes between local communities and the operation are handled directly by mine operators where possible.

Some of those interviewed suggested local nomadic herders were able to take their concerns into a court of law to address their issues. The sparsely populated areas in which most mining occurs in Mongolia ensures large corporations are in a very strong position in any dispute resolution process, although multistakeholder engagement processes to address some of these issues were in development at the time of interviewing by a local NGO with support from an Australian university.

Papua New Guinea Sector Overview



Key minerals: Gold, copper, nickel

Contribution to GDP: The minerals sector accounted for over 27% of GDP in 2008 (about 30% of government revenue or US\$ 819 million; IMF, 2010)

Contribution to total exports: Minerals sector 30% of total export revenue from minerals in 2009. (Mining Journal 2009). The minerals sector (including mining, oil and gas) accounted for more than 70% of exports in 2008, or US\$ 4.262 billion, out of a total of US\$ 5.823 billion (IMF, 2010).

FDI into mining: US\$ 127 million investment in exploration spending in 2008; projects in the pipeline estimated at US\$ 8 billion (Mining Journal 2009)

Employment in mining: The minerals sector employed 137,800 people in 2008 (IMF, 2010)

Legal and regulatory system: Papua New Guinea has a common law legal system. Mining is regulated at the national level. The principal Act is the Mining Act 1992, and regulations made under that Act

Under the Mining Act, the state may enter into a mining development contract (MDC), consistent with the Act, to regulate a mining development. The Minister may, in the case of a major project, require that an MDC be entered into. All major mining projects have been the subject of an MDC (Mining 2010, 2010)

Papua New Guinea

Industry overview and stakeholder views of Mining Development Contracts (MDCs)

In Papua New Guinea (PNG), the functions of the Department of Mining (DOM) were split in 2006. The Mineral Resources Authority (MRA; a statutory body) was devolved to promote, manage and regulate the sector, while the DOM is now responsible for policy development and geo-hazards only (Mining 2010, 2010).

Civil society, in particular local communities around mining developments, has a lot of power to shape the nature of resource development in PNG. Although the government has the power to compulsorily acquire land for the purpose of resource exploitation, the Mining Act requires agreement with local communities before the issuance of a mining lease.

MDCs are legal agreements between the government and the mining company. They are viewed as important tools for mineral development by all parties in PNG. Industry participants indicated that clarity and certainty regarding the conditions for mining and obligations of each party are most usefully detailed in an MDC.

For the government of PNG, MDCs provide an opportunity to discuss a range of topics and establish clear expectations for the parties and benefits for the country and local communities. For NGOs and others, however, the endemic issues around poor governance, corruption and politicization of agreements and resource projects generally undermine the ability of MDCs to provide to the country and its people what they promise.

MDC development process and content, stakeholder engagement and transparency

The negotiation of a MDC is usually a long and complex process which can take 1-2 years to finalize. The MRA leads negotiations with a company on behalf of the government, coordinating input from relevant ministries.

To gain sign off on the mining lease, and before completion of the MDC, the Minister must also gain the approval of local project area landowners through a "Development Forum" process. These forums have become the chief mechanism by which

Key messages and recommendations by respondents (Papua New Guinea)

- A key issue is the government's ability to meet its obligations under mining agreements. Companies often have to step into areas of social development usually occupied by government, to ensure they do not lose their social licence to operate. A suggestion by one industry participant was to explore how companies and donor agencies may work more closely together to develop the capacity of the country to support agreement keeping.
- While mining takes place across PNG, local people may lack capacity to understand and develop realistic expectations regarding a new operation in its early stages.
- The Development Forum process is seen as an excellent vehicle for involving community and provincial government stakeholders directly in negotiation of benefit sharing arrangements. While in practice the outcomes of this process can be less universally positive, for instance due to potential failure of the national government to deliver on its commitments, the process itself may serve as a model for other jurisdictions.

the central government agrees to share the benefits of the development with local affected communities (determined through a landholder investigation process) and relevant lower levels of government (Filer, 2008). They have been acknowledged internationally as a means to increase involvement of communities in resource development (MMSD, 2002).

The aim of this process is to develop a Memorandum of Agreement (MoA) between all of the stakeholders which outlines the benefits sharing arrangements and the commitments of all stakeholders in terms of infrastructure and social services. In the Lihir project, this evolved into an Integrated Benefits Agreement (IBA) incorporating both the MoA and MDC.

While Development Forums represent a strong and representative process, industry representatives mentioned the need to contain the breadth of consultation to ensure the process may proceed in a timely manner. NGO representatives also discussed the potential politicization of these processes, and ensuring they are not hijacked by dominant local elites.

Participants mentioned a long list of elements usually contained in an MDC in PNG, including: royalties and taxation rates, the area licensed for mining, technical information regarding the resource, license to export material, central bank requirements, and a state participation clause (the government has the right to up to 30% paid equity). The MoA addresses the benefit sharing arrangements including the sharing of royalties and the management systems to support it.

The MoA also deals with the scale of the relocation package for local affected land owners, development obligations for the state and company (e.g. infrastructure, health, education, town planning, local economic development), and training and development opportunities. These agreements are also starting to include provisions on the percentage of local women employed, to address gender inequity and help meet Equator Principles obligations.

MDCs are kept confidential by most companies and the government. While compensation agreements and MoAs are also supposed to

be confidential, according to industry participants they are more freely available. It was also reported that it has been difficult to get traction for the EITI process in PNG, particularly at cabinet level. Issues of divestiture are particularly difficult to keep track of in PNG as these equity holdings, and the vehicles established to hold them, are traded without much public scrutiny or access.

Although community and provincial governments are involved in agreement making through the Development Forum process, there is no formal role for NGO organizations or other stakeholders in any of the negotiations. NGOs such as Oxfam Australia, however, are working to build the capacity of local community members regarding knowledge of sustainable development principles and issues of Free Prior and Informed Consent. Landowners in PNG have full powers of consent under the Mining Act – without a compensation agreement in place, no mining can commence.

Implementation, compliance and dispute resolution

A key issue is the disconnect between what is agreed to in MDCs and the broader MoA benefits package, and what is delivered on the ground. Most respondents said that central government does not always meet its obligations under the agreements, particularly with respect to funding infrastructure development (physical and social) and provision of services in the development area. Some commented that, when a new development is discussed, the government tends to withdraw from the area.

Reasons suggested for this included being distracted by other, newer projects; an expectation that the company will fill the vacuum; lack of resources and proper budgeting; lack of interest or political will; and lack of governance arrangements to properly administer development projects. In one example, a major mine in PNG had renegotiated the terms of their agreement to modify the governance arrangements for delivering development activities.

This state of affairs places operations at real risk of losing their social licence to operate, with community members seeing a large mining operation and little personal or broader benefit from it. In these instances, companies may choose to try to enforce the conditions of the agreement to get the government to shoulder its responsibility,

or step into the breach themselves. In large part to address this issue, the central government has agreed to participate in a tax credit scheme by which a percentage of taxable revenue (~0.75%) may be withheld for the company to spend on local infrastructure or other government development obligations. This is only available once an operation is paying tax, so is not available in exploration or construction phases.

The MRA has resources to inspect operations and ensure compliance, although these resources are stretched. In practice, industry participants indicated that local communities often act in a watchdog role regarding impacts (particularly in remote regions), reporting companies to the government for perceived breaches.

Standard clauses regarding arbitration are included in MDCs should a conflict or dispute between the government and company arise, although as in most jurisdictions the preferred approach is to resolve any issues through discussion.

At a local level, not only conflicts between communities and the company but also conflicts within communities can be damaging and complex to resolve. Benefit agreements sometimes cross-cut traditional status hierarchies, as in Lihir, or lead to costly infighting such as in Misima where legal action among community members regarding control of a trust fund has drained most of that fund's content.

A participant from the PNG government indicated that a general review of the terms of MDCs should occur regularly; approximately every five years for an existing operation and every two-three years for a newer operation.

Brazil Sector Overview



Key minerals: Niobium, iron ore, manganese, tantalite, aluminium, gold, nickel, copper and phosphate (Mining 2010, 2010)

Contribution to GDP: \$ 103.1 billion (5.1% of GDP) in 2008 (Brazilian Central Bank, 2009)

Contribution to total exports: 16% as of 2010

FDI into mining: Investment for mineral exploration \$ 346 million in 2008 (Brazilian Central Bank, 2009)

Revenue contribution: In 2008, revenue from financial contributions for exploration of mineral resources was R\$ 857 million (IBRAM, 2010).

Employment in mining: Direct employments in mining in 2008 161,000 workers (IBRAM, 2010)

Legal and regulatory system: The mining industry is primarily regulated at the federal level through the Federal Constitution and mining laws. These are supplemented by state and municipal regulations mainly regarding specific local taxes, environmental matters and soil usage matters. The exploration and exploitation works of mining companies are subject to licences and concessions by the federal government. The principal laws are the Federal Constitution, the Mining Code (and its Regulations) and the environmental legislation. Several other rulings issued by the mining authorities also have a significant role in the regulation of the Brazilian mining industry (Mining 2010, 2010)

SECTION 5: Country Surveys – Latin America

Brazil

Industry overview and stakeholder view of the mineral development framework

In recent years, mining has been growing very quickly, with more than a doubling of investment since 2007 and a large increase in mineral production. The mining sector represents the largest private sector investment in Brazil.

Privatization of the State-owned CVRD (Companhia Vale do Rio Doce) in the 1990s led to anti-mining sentiment amid concern that Brazil was giving away its natural resources to foreign companies. All interviewees recognized that generally society does not see mining or its benefits positively, and that a long-term programme is required to build trust and change public perception.

A greater spirit of participatory development has been seen since the election of President Lula in 2002, and civil society involvement is built into policy processes such as the Ministry of Environment, Ministry of Planning, Ministry of Social Development and Public Ministry. In recent years, mining activity has increasingly moved north into the Amazon region, and respondents highlighted that new approaches are required to build a global and local social license to operate there.

Mineral development or stabilization agreements are not used, as mining activities are governed through the mining legislation framework. Foreign companies are required to incorporate a local subsidiary, as only local companies with head office and management in Brazil can hold mining rights. The tax framework can change for specific projects if the government identifies a strategic interest, for example to boost underdeveloped regions such as the Amazon or the Northeast, where, for instance, projects can be exempt of income tax for several years. There are also examples of companies entering into agreements with local municipalities for socio-economic development plans, and with community associations for land settlement agreements.

The legal framework, and in particular environmental regulation, is generally felt to be comprehensive and includes environmental compensation tax and social

Key messages and recommendations by respondents (Brazil)

- Need for capacity building in government, including data/information and skills for public management.
- Need for joined up government e.g. coordination between Ministry of Mines and Energy and Ministry of Environment, and between federal, state and municipal government.
- Importance of strong institutions to support participatory policy and decision-making processes, as well as collaboration and information sharing.
- Companies need to understand the business case for socio-economic development at each stage of the mine cycle, and invest appropriately.
- Need for more effective community engagement and increase in capacity in community relations as well as willingness to really understand and meet community and cultural needs.
- Foster good practice and learning opportunities, and disseminate and communicate effectively to society as part of long term education on the potential benefits of mineral development.
- Need a forum to bring together the mining industry, experts and government to develop a vision and pragmatic system for mineral development; also potential for cross-industry learning and collaboration with the oil and gas industry to leverage experience and expertise.
- Improve transparency over tax and royalties, and how the money is spent, for example setting up a public database.
- Proposal for securitization of future royalties to invest in local infrastructure and socio-economic development when it is most needed in the mine cycle.
- Review international models to leverage long-term economic development from mineral assets, such as the Native Corporations in Alaska.
- Leverage development partners such as BNDES to set the framework and high standards for mineral development and local economic development projects.

provisions such as local employment. Interviewees identified the challenge of bureaucracy, together with lack of resources making both the policy-making and implementation processes cumbersome and slow. The complex permitting process was highlighted, as well as the need for regulatory certainty; interviewees identified some unpredictability in the current system, for example for newly elected State Governors or other officials to instigate regulatory reviews.

Framework development process, stakeholder engagement and transparency

The permitting process is transparent, with relevant information publicly available. It is regulated by the federal government, which grants authorizations for exploration and mining concessions. For a few minerals, such as sand and gravel, local municipal governments can grant licences for exploitation. These must be registered in the Federal Agency for mining, the National Department for Mining Production (DNPM).

Private sector and NGO stakeholders and experts identified a lack of transparency and openness during the initial stages of development of proposals for the new mining law. The first draft was developed within government, and the private sector is now engaging through IBRAM, the mining association. Full consultation will take place once the draft enters Congress.

The private sector, NGOs and mining experts would like to see greater transparency over royalties and taxes and how the money is spent by municipal/state/federal government. The private sector has assumed the role of the state where public spending is ineffective.

Leading companies are now implementing new participatory models for local development, including socio-economic baseline measurement and consultative development of five-year municipality strategic plans to meet local infrastructure, education and health needs, as well as partnership with relevant organizations to deliver and measure local development and environmental protection. The Juruti stakeholder council was highlighted as good practice. In addition, Local Agenda 21 processes convened together with a group of companies have engaged stakeholders in developing regional plans.

Content, implementation, compliance and dispute resolution

Responsible companies are felt to generally comply with relevant laws and understand the associated risks of non-compliance. However, the difference in performance standards of multinational companies and juniors was highlighted, raising the challenge that poor performance by smaller companies is impacting the reputation of the sector as a whole. To address this, the government has put in place training programmes on EHS impacts for small and medium sized companies.

Informal mining is a major challenge which the government is working to address. Social and environmental compliance of artisanal miners (garimpeiros) continues to be a problem. Where the mining activities are legal, there are examples of cooperation initiatives between artisanal miners and major mining companies which have resulted in an increase in environmental and social performance.

A strong environmental movement exists in Brazil and sets high standards. Environmental Impact Assessment is a well developed process, including hearings at state and municipal level. Companies are investing in community relations staff to hold pre-consultations to the permitting process, which is welcomed by NGOs. The Public Ministry acts in defence of laws and plays the role of enabler and mediator to help local people and movements to fully participate in the decision-making process. The legal framework provides the basis for dispute resolution associated with mining transactions and land rights dispute.

BNDES, the Brazilian Development Bank, is a major partner in local economic development projects, providing market incentives for companies to go beyond legislative requirements for socio-economic development. Given the large scale of BNDES investments, experts suggested there is a possibility to link them to a more structured framework to raise social and environmental performance (similar to the IFC Performance Standards).

Integration of mineral development in broader economic growth and prosperity

While recognizing the existing economic benefits, including employment and export-trade balance, all stakeholders agreed the need to develop a long-term strategy for integration of mineral development in the

broader economy and the importance of economic and political stability to foster investment.

Government is looking to at a value chain approach for mineral transformation to grow, and identified the need for technology and innovation. Several private sector respondents felt that there is a good and growing internal market, for example fertilizer production for agriculture. Limited infrastructure capacity and the high price of energy (and associated taxes) are currently barriers to developing downstream capacity such as refining and smelting, which are not competitive in the current global market.

Government stakeholders felt there is potential for companies to put more responsibility for companies to increase investment in alternative economies, such as support for local agriculture businesses, and company and NGO/expert respondents see potential in building investment through the supplier base. Large companies are investing in training and capacity building to support development of local industries.

Looking forward, the importance of an exploration pipeline to the future sustainability of the sector was identified, and a number of interviewees raised the need for better granularity or public availability of geological information – particularly in the Amazon region – to support exploration and the future mineral development life-cycle.

From a strategic standpoint, it was felt that the government recognizes both the economic and geopolitical benefits of good sustainability practice and responsible mineral development.

Chile Sector Overview



Key minerals: Copper, molybdenum, silver and gold, and many non-metallic substances

Contribution to GDP: 15.5% of the GDP in 2009 (Mining 2010, 2010)

Contribution to total exports: 58.1% of Chile's total exports in 2009 (Mining 2010, 2010)

FDI into mining: US\$ 4.4 billion in 2008 (USGS, 2010d)

Revenue contribution: Copper mining's contribution to fiscal revenues amounted to approximately 15% in the period 1991-2009

Employment in mining: The mining and extraction of crude petroleum had over 64,000 employees in 2008 (USGS, 2010d)

Legal and regulatory system: The legal system is civil law-based. At state level, the industry is regulated by means of certain provisions in the Political Constitution (PC), specific mining laws – the Constitutional Organic Mining Law (COM) and the Mining Code (MC) – and other general and special regulations. There are no special mining agreements (contracts) with the state. Mining companies may choose however to conclude foreign investment contracts with the state, which provide additional stability of fiscal provisions (Mining 2010, 2010)

Chile

Industry overview and stakeholder view of the mineral development framework

There was a general consensus among the interviewees that Chile has a well-functioning legal and regulatory framework for the mining sector. In the recent past, the biggest challenge was to recover investors' confidence after some companies were nationalized some decades ago. This was successfully addressed by developing a legal framework that gave more assurance to foreign and domestic investors on protection of property rights, leading to a rapid increase in mining investment in recent years.

Foreign investment agreements are available for all sectors, including mining, and mining companies can secure additional fiscal stability by concluding such agreements as their provisions cannot be overruled or changed by any laws or resolutions unless changed by Congress, which has the power to change or repeal the Foreign Investment Statute (DL 600) by simple majority.

Mining sector and academia representatives voiced their concerns over the recent decision to introduce a new royalty tax. The government is proposing a new methodology that would result in higher royalty percentages. However, to be applied it needs a voluntary acceptance by companies as they have a right to tax stability granted through their previous foreign investment agreements. Although the government initiated this change as part of the earthquake reconstruction plan, it is argued that it would affect Chile's standing among foreign investors. There is still uncertainty on what would be the legal and regulatory implications for those who choose not to accept it. The government is preparing an explanatory paper to better communicate how the new change would be applied in practice.

Substantial legal amendments and institutional reform are being undertaken on environmental aspects of mining, including the creation of a new Environmental Ministry responsible for environmental public policy, an Environmental Assessment Agency for administering the environmental impact assessment system and a new Environmental Superintendence tasked with monitoring of approved projects. Changes were

Key messages and recommendations by respondents (Chile)

- Rigorous and professional CSR programmes are needed to maintain social license. Genuine consultation and early stage stakeholder engagement strategy is crucial.
- Very few stakeholder management tools are available.
- Broader engagement and communication can change negative perceptions about mining.
- To enhance national and international standards on community development, develop tools for sustainable development practices and establish an international rating of performance of mining companies.
- Negotiations of community level agreements require structured participatory processes.
- Results of agreements should be publicly available and validated by relevant bodies.
- Closer public-private partnership should be forged among stakeholders.
- Mining companies should involve a broader spectrum of local suppliers and create a more competitive environment for local businesses on local procurement.

also made to enhance social participation in the approval process of projects. The new law requires companies to provide information about community development agreements they conclude directly with the impacted community.

Recent changes in environmental regulation are widely accepted by mining companies and NGOs. However, the requirements envisaged under the new forestry law, which is under discussion, are seen to be adding extra costs to exploration level operations. As the existing legislation focuses on taxation and environmental aspects, it was argued that community development agreements should be in place.

In addition to the issue of royalty, the issues of environmental degradation, water and energy supply constraints, lack of specialized personnel, increasing global competition for FDI into mining, concentration of licenses in the hands of major players to the exclusion of junior companies and the need for geological survey update were also cited by respondents as major challenges.

The sizeable mining industry is successfully integrated to all the sectors of the economy, creating jobs and business opportunities for local suppliers. In addition to private mining companies, major state-owned mines are generating huge flows of income for the state. The great majority of stakeholders agree that mining is indeed beneficial for the country.

However, it is argued that the political circle focus on taxation, while other benefits of mining are not acknowledged enough. To improve the productive linkages of mining, it was argued that mining companies should use more locally-developed solutions, innovations and technologies. However, it was also suggested that there is no need for special regulations that would require local content or procurement, but a competitive environment with less state bureaucracy and less conservatism should be promoted.

Framework development process, stakeholder engagement and transparency

As large-scale mining companies operating in Chile have higher international standards and internal regulations on health, safety, and environmental protection and community relationships, it can be said that they already implement the principles

promoted or incorporated in MDAs. Investment protection is also already in place through the Foreign Investment Legal Framework that grants tax and legal stability for long-term investments including mining projects.

Public sector representatives said the state makes significant efforts to ensure inclusive stakeholder engagement and broad consultation, with stakeholders' views considered in the process of lawmaking, and community consultations required in certain cases. For instance, NGOs were invited to present their views and recommendations on the proposals on royalty and environmental reforms, which were debated by Congress.

Mining companies said they were engaged and consulted on any changes to laws and regulations. Mining Councils and Associations are entitled to present their views and recommendations to the relevant committees of the Congress. Civil society views are especially given considerable weight in decision-making processes on environmental issues – stakeholder consultation is part of the Environmental Impact Assessment process, which is obligatory for all new mining activities.

In general, stakeholder engagement is not seen as a major concern in Chile, and there have been cases where large-scale projects were suspended due to the pressure and opposition from civic movements and indigenous communities. However, among NGOs and academia there was a concern that the stakeholder consultations were not broad enough and included mostly mining companies and influential trade unions and associations. It was also argued that stakeholders are not involved in the political decision-making of Congress, and that linkages between the mining industry and civil society are weak.

Consultation with local communities during the formulation of environmental and social impact assessments was cited by major companies as an appropriate way to proceed. However, indigenous communities lack capacity and knowledge to participate in the process in a meaningful way. On environmental impact assessment, stakeholders are not given enough time for comments and recommendations. NGOs feel that they should be involved right from the start of the process, not after the reports and relevant documents have been

already discussed between government and the company.

The centralized nature of governance presents a challenge to regional governments and local communities from being consulted. Lack of knowledge about the economics of mining in civil society was often cited as impeding genuine and objective stakeholder engagement and consultation.

In Chile, the mining industry is considered as one of the most transparent sectors. Access to necessary information for consultation is guaranteed, and the Transparency Law requires information disclosure except when the requested data is made confidential by a specific law. Environmental and social impact assessments are disclosed to the public. The recent reform on environmental law and institutions sets requirements to provide an update on the implementation of compensation agreements under the Environmental Evaluation System (SEIA).

The government is taking steps to ensure that not only public companies but private mining companies disclose their financial information. There is an ongoing discussion on listing mining companies at local stock exchanges, a move which is expected to bring more transparency and access to data. The law specifies that all relevant data related to mining operations subject to the existing royalty tax (e.g. with sales over 50k MT per annum in the case of copper) must be disclosed and published periodically. Regarding smaller scale operations, access to information other than on environmental impacts is still limited.

Content, implementation, compliance and dispute resolution

Most interviewees agree that mining brings substantial benefits in terms of employment, business opportunities and revenues. Major companies are taking initiatives on promoting community relations and creating economic linkages with the host community. National suppliers wish to be more broadly engaged in supplying mining operations and argue there is no need for special arrangements on local procurement if there is an open and competitive bidding process in place.

Community development and social impacts are regulated under the environmental impact assessment in which companies explain their plans

and commitments on community development, compensation etc. It was argued that instead of having individual mining companies doing community development work, there should be an arrangement that pools contributions from all mining companies and spends them on implementation of larger projects vital for local development in impacted areas or communities.

It was argued that the state has a well-developed compliance monitoring and oversight capacity. Compliance monitoring is performed by an independent state agency. NGOs and affected communities are involved in compliance monitoring on environmental and social impacts.

At the national level, any legal disputes or disagreements are addressed within a well-functioning legal and judiciary system. Disputes mostly occur on environmental issues at local level. Mining companies said the situation can be improved by better communication with local communities and civil society. Given the absence of dispute resolution mechanisms in the field, appropriate government or NGOs specialized in community affairs can act as mediators, or direct agreement can be reached between the parties.

It was said that most conflicts with local communities end up in courts. According to relevant NGOs, most mining companies do not take anticipatory measures to prevent conflicts or disputes, but rather respond once a conflict has evolved. Once there is a conflict, NGOs are involved at the invitation of the affected community or company.

Colombia Sector Overview



Key minerals: Coal, copper, nickel, iron, emeralds, barite, lime and gold

Contribution to GDP: The mining sector (excluding hydrocarbons) accounted for 2.36% of the GDP in 2009 (Ministerio de minas y Energia, 2010)

Contribution to total exports: US\$ 6.3 billion, 24% of total Colombian exports in 2009 (Banco de la República de Colombia, 2009)

FDI into mining: US\$ 3.2 billion in 2009. (Ministerio de minas y Energia, 2010)

Revenue contribution: The royalties from mining sector was US\$ 750 million in 2009 (Ministerio de minas y Energia, 2010).

Employment in mining: about 50 000 (DANE, 2007)

Legal and regulatory system:

Colombia's Mining Law 685 of 2001, amended in 2010 by Law 1382, is the key governing legislation. It states that all non-renewable mineral resources are the property of the state and establishes a standard mining concession contract issued by the Government for exploration and exploitation of minerals. Law 963 of 2005 establishes legal stability agreements to offer legal assurance and a stable legal environment to domestic and foreign investors. It enables investors to define the legal rules (contained in laws, decrees or other regulations, including tax rulings) that the investor considers of the essence for the decision to make a new investment. An environmental license is compulsory for mining operations

Colombia

Industry overview and stakeholder view of mineral development framework

Colombia has in recent years been described as having a mining boom. The new national government is trying to create a better environment for foreign direct investment and promote the competitiveness of local smaller-scale mining. It adopted the National Plan for Mining Development, Vision 2019, which incorporates the above goals.

In 2010, the Colombian Congress amended the Mining Law 2001. The most important changes were aimed at increasing state control over mining contracts to avoid speculation in mining areas, legalizing small illegal mines, and prohibiting mining in national parks and other protected areas. The amendments are also expected to raise the contribution of mining to the country's development. For instance, extensions of mining concessions with the term of 20 years will not be automatic unless it is shown that the project benefits the national interest.

Recently, the Congress has been considering a proposal for changes in the royalty regime, and discussion is underway about distributing mining revenues to all regions rather than only to the few municipalities where the operations take place. However, debates over these issues are expected to continue for at least several more months.

The instability of legal and fiscal frameworks was cited most often by private sector representatives as the key challenge, given the recent changes to the mining legislation and expected changes to the royalty regime. Private sector representatives also expressed the view that in most cases policy-level decisions were taken in an inconsistent manner as a short-term response or temporary solution. Recent amendments were said to have created some uncertainty for those who acquired exploration and mining rights under the previous legal setting, which the government is now working to clarify.

Representatives of the public sector and local businesses believe that, despite its potential, the mining sector fails to integrate closely with the rest of the economy. In addition to arguing

Key messages and recommendations by respondents (Colombia)

- A formal multi-stakeholder consultative or advisory body should be established to ensure regular communication, dialogue and awareness-raising about the benefits, impacts and risks of mining. Stakeholders should be consulted on mineral resource management, distribution of mining revenues, compensation payments.
- Legal and regulatory framework should address the issues of community development, workforce, infrastructure and dispute resolution in a more comprehensive manner.
- State should take comprehensive measures to address the issue of illegal mining.
- Revenues from mining should be distributed equally nationwide to all provinces and regions.
- It is necessary to have a transparent cadastre on mining concession areas and an independent mining registry system.
- Demarcation of protected areas, parks, forest reserve areas and parks should be based on appropriate technical and scientific studies and regulations should be simplified.
- The laws and regulations should be stable, simple and clear and consistent in application.
- Scientific research on environmental consequences, social and economic impact studies will provide sound foundation for transparency.
- The country's geological survey needs to be updated to allow clear identification of mineral resources and deposits.
- Capacity building in relevant agencies and authorities should be enhanced.

that mining companies are not doing enough, they support broad involvement of those in charge of the economy, commerce and industry to create an enabling environment through policies that promote the emergence of productive clusters around mining areas and enhance capacity building of local suppliers and experts. Lack of access to financing and capacity were cited as key impediments.

Mining has a negative public image in Colombia, with growing demands for higher taxes. This is due not only to poor industry practices, some of which are illegal, that led to severe environmental problems in some instances. The government is taking strong measures to control illegal mining operations. Both industry and public sector representatives believe that it is important to communicate better the impacts of mining as well as the expectations and views of different stakeholders, as the long-term nature of mining does not always meet the expectations of local communities for immediate tangible benefits.

State participation in mining is limited to policy formulation, regulation and management of mineral resources, selling concessions. According to Colombian mining law, the State does not participate in the operation and development of mining projects, respecting the autonomy of private investors in economic and corporate governance.

Other issues often stressed by interviewees included insufficient capacity of relevant state agencies and authorities, absence of law and order in some remote mining areas, illegal mining, social and environmental issues, mismanagement and sometimes alleged misuse of tax and royalty revenues by regional and local authorities.

Framework development process, stakeholder engagement and transparency

Congress has the ultimate decision-making power over the formulation of mining laws. The Ministry of Mines and Energy is in charge of formulation of policies, and the Mining and Energy Planning Unit aids sector planning. The Mining Code Act 685, adopted in 2001 and modified in 2010, establishes a mining concession contract between the state and mining companies. In general these contracts are not subject to negotiation, although there some types of contracts in which royalties and tax contributions can be negotiated.

Private sector and civil society feel that consultations, stakeholder involvement and compliance with commitments are more important than additional laws and regulations.

Environmental organizations are having greater influence on the regulation of the mining sector and the design of industry standards. Although there are an absence of labour unions or associations that can promote creation of formal employment potentially in the mining sector. According to some respondents the participation and voice of local suppliers of goods and services are gaining force.

The consultation process initiated by the new national government on the recent changes to the mining legislation was welcomed by the mining industry, which was represented by the two existing mining associations. However it was argued that this consultation had little impact on amendments.

Law also requires the affected communities to be consulted about environmental and social impacts. In general, affected ethnic minorities are consulted during the exploration phase. Recently, it has become necessary to hold public hearings or consultations with local communities in forestry areas.

Opinions differed on the effectiveness of consultation mechanisms. Some local private sector respondents said that all key stakeholders are involved in consultations although the consultative mechanism still needs some improvement. Some interviewees argued that both environmental organizations and local suppliers of goods and services have growing influence. There is, however, an absence of labour unions or associations that could promote formal employment in the sector.

Yet, it was argued by others that effective mechanisms are not in place for direct consultation and involvement of all stakeholders in formulation of laws and decision-making. Decisions are seen as being heavily influenced by politics rather than by comprehensive background studies and consideration of key technical and economic factors. The Congress is seen as the only place where discussions on decisions are more visible, providing some chance for stakeholders to exert some influence.

Some interviewees said that, in many cases, NGOs without a clear mandate to speak on behalf of affected communities make unrealistic demands, causing pressure, confusion and misinformation. It was suggested by both public and private sector representatives that, to form an effective consultative mechanism, the roles and responsibilities of stakeholders must be clearly defined and proper expertise and capacity building should be available. Major mining companies should pay more attention to community relations to build trust and partnership with local communities.

Most respondents agree that transparency is a key factor and needs enormous improvement. Industry representatives feel that the public sector is not adequately efficient and transparent in taking appropriate policy decisions and putting them into practice. In particular, transparency is a concern with regards to granting mining rights or concessions. The government is addressing this by setting up a new agency that would arrange open bids for qualified mining companies. CSR issues will be attached to the issuance of mining rights under the new Agency regulation.

Content, implementation, compliance and dispute

Colombia has an extensive legal framework that covers all key aspects of mining. Interviewees said that the most frequent sources of conflict are environmental pollution, mining concessions in areas inhabited by ethnic minorities, and conflicts between illegal miners and concessionaire companies.

Sometimes, disputes are addressed within the domain of corporate and social responsibility of mining companies. Industry representatives believe that the government should take a leading role in dispute resolutions through direct interaction with communities and mining companies. However, inconsistent application of rules and regulations on fiscal, environmental and social aspects makes compliance difficult for mining companies. The public sector feels that compliance monitoring is a considerable challenge due to its limited capacity and the increasing need for oversight. As a response, the government is introducing institutional reforms to optimize procedures and implementation.

Industry representatives believe that the government should take a leading role in dispute resolutions

through direct interaction with communities and mining companies. Both public and private sector representatives expressed the view that NGOs can play a positive role in monitoring compliance and initiating discussions under technical arguments. Lack of transparency of compliance data is, however, seen as an obstacle.

Public hearings and other consultation mechanisms at local level facilitate dispute resolution. Establishing a multistakeholder discussion forum was suggested by some respondents as a possible solution for dispute resolution, provided that the participants are well-informed and given full access to relevant information and data on particular projects. However, it was argued that public participation mechanisms often allow manipulation of results and fail to deliver objective solutions. At present, the possibility for arbitration is quite limited because concession contracts are not negotiable. Private litigations can be initiated by individuals, while mining companies negotiate directly with landowners on compensation matters.

Peru Sector Overview



Key minerals: Copper, gold, silver, zinc, molybdenum, lead, tin, iron, etc.

Contribution to GDP: 7.3% of Peru's GDP in 2009 (Mining 2010, 2010)

Contribution to total exports: US\$ 16.361 billion in 2009, 60% the country's total exports (Mining 2010, 2010)

FDI into mining: US\$ 2.771 billion in 2009 (Mining 2010, 2010)

Revenue contribution: over 10% of state revenues in 2005 (Revenue Watch 2010)

Employment in mining: Direct employment 125,603 people and 80,000 active informal miners in 2009 (Mining 2010, 2010)

Legal and regulatory system: Peru's legal system is civil law-based. Despite some specific regional, provincial and local (district) regulations, the mining industry is mainly regulated by laws and regulations issued by the National Congress and the executive branch. Mining concessions are granted through a simple administrative proceeding and not through agreements with the state

The general legal framework applicable to mining activities is set forth in the single unified text of the General Mining Act (GMA) approved by Supreme Decree No. 014-92-EM and its further modifications (Mining 2010, 2010)

Peru

Industry overview and stakeholder view of the mineral development framework

The regulatory framework in Peru has changed significantly in the past two decades. Privatization in 1990s and subsequent large investments in the mining sector are felt to have changed the relationship between investors, government and the population, particularly from 2002-2008 with the increase in commodity prices.

Both foreign and national investors can conclude Legal Stability Agreements, applicable to all sectors, and Stability Contracts under the protection of the General Mining Law. Stability contracts lasting 10 or 15 years allow benefits on tax, exchange and administrative stability. The agreements are subject to the Peruvian Civil Code and cannot be altered unilaterally by the government (Yupari 2010, p. 165-168). 250 legal stability agreements and stability contracts have been signed since 1993 (according to US Geological Survey Minerals Yearbook 2008).

Government and private sector respondents recognized the role that stability agreements have played in attracting FDI. Peru ranks third in the world for exploration investment. However, stability agreements have also been seen as hindering Peru's opportunity to accrue more revenues from its mining industry during times of mineral booms. In 2006, with increasing demands from the population for a higher share of mining profits, the Peruvian government agreed with 39 mining companies a voluntary contribution of 3.75 % of their net profits over the five years (Yupari 2010, p. 208). Local and regional governments use this money, along with resources accrued through the mining canon and royalties, to deliver social benefits.

There are mixed views on the effectiveness of the Voluntary Contribution, with NGOs and experts saying the money is not reaching affected communities and the impact is not measured. More generally, interviewees felt public infrastructure budgets are not spent effectively, with many "white elephant" projects.

Private sector interviewees felt that stability agreements should not be reviewed as it would

Key messages and recommendations by respondents (Peru)

- Strong multistakeholder structures are required to move beyond the current power dynamics between government, business and civil society and enable stakeholders to become partners for development.
- Need for capacity building at regional/local government level to ensure mining revenues effectively build regional development and deliver public infrastructure, health and education needs.
- Common challenge of poor administration and lack of management capacity.
- Need for transparency, measurement and reporting on how tax and royalties are spent, as part of the debate on potential increase in tax and royalties. Need to learn from good practice internationally, including data to demonstrate impact.
- Need for review of tax and royalty structure to avoid cyclical issues such as windfall taxes in commodity price booms, and avoid distortion in income between mining and non-mining states.
- Suggestion for community equity participation in projects.
- Community agreements negotiated between company and community could give way to local development plans formulated through participatory, stakeholder involvement as the basis for investment in local public services.
- Opportunity to build capacity to enable joint government and community involvement in compliance monitoring.
- Disconnect between company timeline and the time required to develop long-lasting, effective community solutions leads to quick fixes storing up future problems.
- Need for companies to work internally to ensure all management teams, not just HSE managers, understand the business risks associated with social and environmental issues and improve capacity on stakeholder engagement and cultural understanding.

defeat their purpose. One explained that stability is considered so important, some companies with stability agreements have faced less favourable taxes as a result. There is a divergence of private sector views on whether stability agreements continue to be necessary, or if a current general consensus on the economic direction Peru needs to go in is sufficient to provide economic and legal stability. A review of mining legislation, including the tax and royalties regime, is currently taking place.

Interviewees felt that in general stability agreements are not a contentious issue for local communities and NGOs, who are more focused on local community agreements, which are concluded separately between the mining companies and the communities. Peru is felt to have a strong environmental regulatory framework, and private sector respondents felt it would not be desirable for company or government to include environmental provisions in stability agreements, as public accountability is so important in this area.

Peru has an active NGO sector and a strong anti-mining voice exists in the public debate. Interviewees from government, business and NGOs acknowledged that it has become politically correct to criticize the mining industry. Most interviewees identified an absence of state in this debate, opening up a gap for politicization of stakeholder processes and misinformation. There is a lack of trust in public institutions to hold mining activities to account, while the historical context of terrorism and colonization is also seen to exacerbate social tensions in mining regions.

Framework development process, stakeholder engagement and transparency

In relation to the overall mineral development framework, it was felt that transparency is not a challenge. The permitting process requires public consultation and it is felt that participation in local government and development projects has increased. Prior consultation with communities is a legal obligation. Stability agreements are negotiated directly with the state and are publicly available.

However, several private sector and NGO/expert interviewees felt that transparency over how tax and royalty contributions are spent by regional and local government is a prerequisite to debate about revising the tax and royalty regime. The government has established an initiative to bring information on

distribution of Canon Minero to the public, and Peru is the first Latin America EITI candidate country.

To tackle politicization, respondents highlighted the need for transparency about the interests of all involved parties including government, business and NGOs. Both government and private sector interviewees acknowledged that there is almost a “conflict industry”, comprising community representatives, lawyers and others, and private sector interviewees called for a stronger state role in holding NGO and civil society organizations to account. Government and NGO interviewees in turn identified a need for companies to improve capacity in stakeholder engagement, in particular cultural understanding of the historical and customary context of local people.

While interviewees from all stakeholder groups agreed that a range of practice exists in terms of community consultation and effective stakeholder engagement, a number of interviewees believe that a shift from extreme conflict to dialogue is taking place. Multistakeholder decision-making bodies are increasingly being developed with a greater level of consultation and participation in mineral development activities.

Associations set up to manage Voluntary Contribution funds are required to include participation from the impacted communities, local and regional governments. However, they are set up under the control of the participating company which has a right of veto. In some cases, the company has given up the right of veto to ensure the association body can act as a true multistakeholder decision-making body.

Content, implementation, compliance and dispute resolution

Interviewees highlighted the legacy of poor performance of state-owned companies as a challenge to building trust with local communities. In addition, private sector interviewees felt that in some cases mining is wrongly blamed for problems such as water availability. Interviewees across the stakeholder groups highlighted the impact of small scale and artisanal mining (estimated to be a significant proportion – up to 35% – of mining economy in Peru) on the broader reputation of the sector.

One common perspective was that environmental issues are used to complicate the situation when

the real concern is contribution of resources to local development, and that therefore environmental frameworks should create the space to address development needs.

One interviewee suggested that new models for conflict management and negotiation are required, as there is a tendency by communities to take direct action such as blocking roads to try to force companies to renegotiate community agreements, rather than using the judicial system.

The roles of issuing and monitoring permit compliance have been split between Ministry of Energy & Mines and the Ministry of Environment. This is supported by the private sector, although interviewees felt that a high level of bureaucracy makes it challenging for companies to demonstrate compliance. Privatization and FDI has brought voluntary environmental and social standards of international companies that go beyond legal obligations.

Integration of mineral development in broader economic growth and prosperity

At a local/regional level, several companies are putting in place programmes to support local economic development (including programmes by ICMM and IFC), such as funding studies and participatory processes on the development needs of a region, economic potential and the associated infrastructure priorities. Good practice partnerships between companies and NGOs, and public private partnerships to deliver infrastructure projects are emerging.

Good practice supply chain development is also emerging, with 1200 community enterprises now existing. However, there is a challenge that creating local procurement and jobs also raises expectations that may not be met over the mine’s lifecycle.

Interviewees highlighted the potential for further economic development through research on technology and efficiency, investment in mineral treatment services (i.e. lab testing currently carried out abroad) and other knowledge-based services that could be transferred between industry sectors. It was stressed that for mineral development to effectively integrate in the wider economy, it needed to be reflected in government policy and vision, and that a mining policy limited to extraction could deliver only economic value related to extraction.

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Appendix 1

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Responsible Mineral Development Initiative

Interview Guide

Part I. Overview of Mineral Development Sector

- 1.1. Can you please provide a brief overview of the mining sector in your country, including the main mining regions or projects?
- 1.2. In this context, what is the purpose of a Mineral Development Agreements (or Arrangements) from your perspective?
- 1.3. What are or have been the expected results and benefits from the recent MDAs in your country at national, regional and local level?

Part II. Institutional Context and Process for Developing Mineral Development Arrangements

- 2.1. How are Mineral Development Agreements (or Arrangements) typically developed in your country?
- 2.2. What principles and good practice guidance are applied?
- 2.3. How do legal and regulatory frameworks, relevant civil and governance institutions, and mining companies interact to develop them?

Stakeholder engagement

- 2.4. Which stakeholders are involved in the negotiation process? Are any stakeholders excluded? What principles are used to determine who the stakeholders are?
- 2.5. How are the views of other stakeholders taken into account in these negotiations and who has the final say on decisions?
- 2.6. Do you think stakeholder engagement is working effectively in your country, and if not, how do you think this process could be improved?

Transparency

- 2.7. What mechanisms exist for ensuring transparency of the negotiation process and outcome and what good practice guidelines are applied?
- 2.8. What is the desired level of confidentiality of negotiations? On what issues and to what extent the public should be consulted?

2.9. Do you think mechanisms for ensuring transparency in the negotiation process are working effectively? If not, how do you think it could be improved?

2.10. Do you have any additional suggestions for how the structuring of negotiations could be improved?

Part III. Implementation and Compliance

Scope

1.1. Which issues do you think should be included in MDA or dealt with by agreements or under such arrangements? Please indicate all you think are relevant :

- structure of royalties and taxes
- government equity participation
- land tenure and acquisition
- community development
- workforce
- environmental issues
- other (please describe)
- infrastructure
- grievance mechanisms

1.2. How in depth should be the provisions on the above issues in terms of a balance between flexibility and stability of agreements?

1.3. What is typically excluded from an MDA? To what extent does the inclusion or exclusion of particular elements in an MDA:

- o Influence the development of a project?
- o Ensure flexibility or stability?
- o Lead to better outcomes for local communities, corporate stakeholders and national governments?

1.4. For an MDA to be successful, do you think a mechanism for renegotiation or flexibility is required? Why?

Dispute resolution

1.5. What issues contained in MDAs have been the cause of frustration, discontent and dispute?

1.6. How are disputes or conflict related to MDAs resolved? What mechanisms do exist for dispute resolution?

- o Involving stakeholders that are party to an MDA (e.g. companies and governments)?
- o Involving stakeholders that are not party to an MDA (e.g. local communities)

1.7. What do you think is the best way to resolve disputes related to mineral development arrangements or agreements?

Compliance

1.8. What mechanisms exist to monitor compliance with the MDA and which parties are involved?

1.9. Has compliance been a challenge, and if so, how do you think it can be improved?

- 1.10. What are the most common reasons why the terms of an MDA may not be delivered through the course of a project life?
- 1.11. What roles do the following key stakeholders (individually and together) have to play in delivering on the terms of an MDA?
- Government (national or local)
 - Mining companies
 - Other organizations, e.g. NGOs, community, international bodies like CAO

Part IV. Conditions for Success

- 4.1. Could you tell us what have been the biggest challenges in developing MDAs in your country?
- 4.2. Can you think of an example of an MDA that delivered positive benefits for a range of stakeholders?
- Why do you think it has been successful (was it thanks to flexibility clauses, renegotiation, consultation with impacted stakeholders and etc.)?
- 1.3. Can you think of an example of an MDA that failed to deliver the expected benefits?
- What do you think contributed to this outcome (was it because of changes of conditions, dispute, non-compliance and etc.)?

What kind of structure or mechanism for interaction among public, private sector and civil society would be desirable to support the MDA process from negotiation through to mine closure? Why?



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