
Mining and Indigenous Peoples

A Brief Assessment from IUCN's Social Policy Perspective

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Executive summary

Mining and mineral exploitation is an important industrial activity, but the economics of mining often does not take into account environmental, health, cultural, and social impacts. Mining areas significantly overlap with areas inhabited by indigenous and tribal peoples and by other local communities whose livelihoods depend on the land and other natural resources. These communities bear the direct brunt of mining activities in terms of costs of externalities and yet, they are often marginalized by the mining industry and by governments.

In the last few decades, these environmental and social issues arising from mining has generated important international dialogue involving the United Nations, multilateral financial institutions, non-governmental organizations (NGOs), mining companies, and indigenous peoples and their organizations.

IUCN has reiterated on several occasions the importance of indigenous peoples as key actors in conservation and sustainable natural resource management, and has called for policies and actions that are respectful of their rights and interests. IUCN is committed to promoting and supporting the involvement of indigenous peoples in environmental matters of their concern. IUCN's policies, contained in Resolutions and Recommendations from its Congresses, consistently refer to standards and principles of international instruments, acknowledge the role of indigenous peoples in the conservation and management of biodiversity, and specifically address indigenous peoples, minerals, and oil extraction.

IUCN and the International Council on Mining and Metals (ICMM) launched a joint dialogue on mining and biodiversity at the World Summit on Sustainable Development (WSSD) held in Johannesburg in August 2002. The purpose of this initiative is to provide a platform for communities, corporations, NGOs and governments to engage in a dialogue to seek the best balance between the protection of important ecosystems and the social and economic importance of mining. Among other terms of reference, the dialogue aims to develop the best practice guidance that is intended to assist ICMM members and the mining industry in implementing the Principle of Biodiversity Conservation within the overall context of host communities and their environments.

While international processes can bring about consensus on best mining practices and social development, it remains the responsibility of the national governments to set up the legal, regulatory and judicial framework to implement their national and international obligations to indigenous communities and local people potentially affected by mining. Even in countries with constitutional recognition of the rights of such communities, the provision of regulations to implement the laws is often missing or is contradictory. Most often, the rights of indigenous communities to land does not translate into rights over sub-surface minerals, and they do not receive a fair share of

benefits from mining operations on their lands. Indigenous peoples and their organizations are often not able to enter into fruitful relations with the mining companies due to the lack of an enabling environment which recognizes their rights and interests – including their claim to give free, prior informed consent about potentially dangerous activities taking place in their homelands.

The mining companies have responded to critics by emphasizing the development of indigenous areas due to mining operations. These developments are in the form of improved infrastructure such as electricity, accessibility by roads, school construction and services. But they often neglect the need for long-term compensation measures for lost livelihood.

While there has been some recognition of participation in identifying mitigation measures and crafting development initiatives, mining companies have been reluctant to take on rights-based approaches judged as beyond the responsibilities of the private sector. Still, it is argued, given the weak role of governments in many countries in the South, mining companies, particularly multinationals, should be encouraged by headquarter countries and international institutions to take on responsibility for ensuring decent and respectful partnerships.

There exists a need to promote and support effective participation and previous arrangements with indigenous peoples in the design, adoption, implementations and monitoring of mineral exploitation that might affect their lands and natural resources.

The lack of capacity to engage with government and corporate actors in successful discussions and negotiations, including on national-level policy, remains a basic hurdle for indigenous communities and their organizations. In response to this deficiency, indigenous organizations are organizing themselves, mobilizing broader civil society networks and building their capacity to engage in negotiations, agreement building and monitoring activities.

The WSSD plan of action calls for more efforts to address social and environmental impacts of the mining industry, including the enhancement of the participation of local and indigenous communities. There is a growing call among indigenous peoples to ensure their right to say no and to negotiate their own conditions through prior informed consent, to the establishment of a moratorium of mining on their lands until new conditions are met, and to the creation of “no-go zones”, which needs to be better linked to efforts to ensure that protected areas are free from threats posed by mining operations. At present, practical approaches to, and measures for, social impact assessments, appropriate consultation measures, and prior informed consent and appropriate mitigation remain marginal in the broader debate.

The enormous field of common ground of shared objectives and problems between indigenous peoples and conservation organizations presents a significant opportunity to act together on a number of issues concerning the impacts of mining. On the other hand, IUCN is committed to working with extractive industries in the search for better environmental and social practices. Given the broad institutional commitment of IUCN to both social and environmental sustainability, it is appropriate for it to offer a

platform for bringing together stakeholders to concur on the path forward to reach these goals.

The global context

Introduction

Minerals and mineral exploitation are closely linked to most industrial activities and, thus, in many ways represent important industrial and economic interests in the national development agenda.

There exists considerable overlap between areas of mining interest and the customary lands, waters and resources of indigenous and tribal peoples. The actual extent of this overlap is debated. Minewatch, an NGO, estimates that over half of the world's uranium comes from indigenous lands and that by the year 2010 half of the world's copper and gold will come from such areas (Chatterjee 1996).

This overlap and the huge environmental and social issues at stake have generated an important international dialogue in the last few decades involving the UN, multilateral financial institutions, NGOs, mining companies and indigenous peoples organizations.

The population of indigenous and tribal peoples is estimated between 250 and 350 million, covering a wide diversity of communities, livelihoods, and types of economic & political organization. Indigenous peoples are unquestionably among the most organized civil society movements, which have been particularly effective in raising their voice in international policy arenas. Many indigenous peoples have formed their own organizations, created pan-indigenous representative institutions and regional associations. This has resulted in a number of key policy statements, inputs and lobbying efforts regarding a wide range of areas of concern to their constituents. These include human rights, environment, development and health issues.

The wide diversity of local conditions and contexts faced by indigenous people also leads to a diversity of particular challenges faced by the communities. Behind broad policy agenda, indigenous communities are taking on specific strategies and action related to mining companies in their areas. These range from survival strategies as hazardous unskilled employment among tribal communities in India to legally sanctioned royalty arrangements in Australia and North America.

The mining issue has a long legacy of marginalizing indigenous communities. The social fact that indigenous peoples remain among the most marginalized communities should not be forgotten, as it significantly influences their capacity to enter into dialogue with the mining industry.

“Partnerships with Indigenous Peoples must address power asymmetries in order to be equitable. Providing resources for the strengthening of Indigenous decision-making structures and self-governance processes is key in this regard” (Weitzner 2002)

In terms of overall cost-benefit analysis, indigenous peoples have rarely pulled net benefits out of large-scale mining operations. Far too often, costs of externalities related to mining operations have been borne by indigenous communities. The Mining, Minerals and Sustainable Development (MMSD) initiative offers fundamental conclusions in this context:

“In many instances, communities do not receive a share of the equity of mining operations since their surface rights to land do not translate into the rights over minerals” (MMSD 2002a: 201).

“The actions of companies and governments need to reflect cultural sensitivity and relevance...the current situation often falls short of these goals: local communities all too often do not participate in decision-making or in guiding the impacts of mining, bear a disproportionate share of the costs of mineral development without adequate compensation, and receive an inappropriately small share of the economic and social benefits” (MMSD 2002a: 208).

This recent global review documented a considerable gap between international commitments, principles and the reality on the ground. Others emphasize how indigenous rights frameworks are rarely used to ensure effective partnerships. This in turn depends on national legislation, jurisprudence and actual implementation.

Today, the strategies taken by indigenous people, however, are not homogenous. Some communities have established strong organizations that are able to negotiate benefit-sharing agreements with mining operations on their customary lands. Others are struggling to avoid severe impacts and have little, if any, recognition of their basic concerns. After a brief description of the IUCN policy in the area, a brief overview is given of some of the indigenous issues at stake.

IUCN policies

The focus of IUCN policies has been on resolutions and recommendations specifically related to indigenous people and the management of their lands and resources. IUCN has on several occasions reiterated the importance given to indigenous peoples and their role in conservation and sustainable natural resource management (for an excellent overview, see the internal IUCN discussion paper titled “Indigenous peoples in IUCN”). Three key aspects need to be highlighted here. First, IUCN commits to the involvement of indigenous peoples in environmental matters of their concern. Second, resolution WCC 1.51 specifically address indigenous peoples, mineral and oil extraction. Third, IUCN resolutions and recommendations consistently refer to ILO Convention 169.

There are other resolutions and recommendations with relevance for mining and indigenous peoples. These include country specific recommendations such as the 1994 recommendation on the Conservation of Kakadu World Heritage Site. However, the focus here is mainly on the core texts with global relevance to the discussion:

- 1) Several IUCN resolutions and recommendations touch upon indigenous peoples. To highlight the overall recognition of indigenous peoples in the work of the Union, Resolution 1.49 on Indigenous Peoples and the IUCN

acknowledges the role of these peoples in the conservation and management of biodiversity rich areas, and

1. REQUESTS the Director General to consider the following measures: a) to ensure a greater participation of indigenous peoples in IUCN conservation initiatives and policy development; b) to recommend that IUCN Regional and Country Offices establish institutional mechanisms to enable indigenous peoples to participate in regional programmes; c) to recommend that IUCN Commissions facilitate the participation of indigenous peoples in their activities; d) to obtain as much as possible of the funds necessary to continue supporting the processes initiated at regional level, for example, in the Southern Africa Region with the Network on Indigenous Knowledge Systems (SARNIKS); in Meso-America with the Working Group of Indigenous Peoples and Protected Areas; in the Amazon with the agreement with the Confederation of Organizations of Indigenous Peoples from the Amazon Basin (COICA) for the development of conservation policies in the Amazon in areas inhabited by indigenous peoples; and in other regions where there is an interest to develop activities; 2. CALLS UPON IUCN members to: a) facilitate effective participation of indigenous peoples in their programmes; b) consider the adoption and implementation of the objectives of ILO Convention No 169 and the Convention on Biological Diversity, and comply with the spirit of the draft UN Declaration on the Rights of Indigenous Peoples, as well as adopt policies, programmes and laws which implement Chapter 26 of Agenda 21; c) promote and support the objectives of the International Decade of the World's Indigenous People.¹

- 2) Resolution 1.51 recalls that extraction “not directly and substantially benefited these peoples and has led to a deterioration of the quality of life and their cultures”. It highlights the government’s responsibilities for the common good of indigenous peoples and expresses concern about the negative impacts on the lands or territories of indigenous peoples as well as concern about the exclusion of indigenous peoples from decision-making regarding investment and activities on their territories. It refers to key international agreements and instruments such as ILO Convention 169 and

REQUESTS the Director General, the Secretariat and its technical programmes, the Commissions, members and Councillors of IUCN, within available resources, to participate in the development and support of a clear policy on the use of non-renewable natural resources which includes criteria for the conservation of natural resources and respect for the rights of the world’s indigenous peoples, based on the following principles;

- a) recognize, respect and comply with the rights of indigenous peoples over their lands or territories and natural resources, as a condition for achieving sustainable development;
- b) consider the adoption and implementation of the objectives of ILO Convention No 169 and the Convention on Biological Diversity, and comply with the spirit of the draft UN Declaration on the Rights of Indigenous Peoples, as well as adopt policies, programmes and laws which implement Chapter 26 of Agenda 21;
- c) respect the rights and interests of indigenous peoples in all activities connected with extracting non-renewable natural resources, including geological surveys, mineral exploration, claim-staking,

¹ Note. This Resolution was adopted by consensus. The delegations of the State members Australia, Germany, New Zealand, Switzerland, United Kingdom and United States indicated that had there been a vote they would have abstained. In the case of New Zealand, this was because their country had not adopted or ratified ILO Convention 169 because of the special position accorded to the Maori people by the Treaty of Waitangi, 1840. In the case of the United States, it was considered the Resolution used the term “indigenous peoples” without clarifying its implications with regard to the right of self-determination and the right to sovereignty over natural resources, and that this usage does not correspond with that used in many international instruments and fora. The delegation of the State member India dissociated itself from this Resolution because the Government of India does not recognize indigenous peoples as distinct from other social groups. The use of the term “indigenous peoples” in this Resolution shall not be construed as having any implications as regards the rights which may attach to that term in international law.

infrastructure and development works, and adopt adequate measures to minimize environmental, health, cultural and social impacts;

- d) adopt measures to compensate indigenous peoples for damages to their lands or territories;
- e) design and execute development plans with the equitable participation of all parties concerned recognizing their needs and cultural characteristics;
- f) promote effective participation and previous agreements with indigenous peoples in the design, adoption, implementation and monitoring of processes, projects and legislative and administrative policies regarding the exploration and exploitation of non-renewable resources that might affect their lands or territories and natural resources;
- g) facilitate the establishment of mechanisms for the negotiation between indigenous peoples, the State and other interested parties to promote the equitable resolution of conflicts arising from the use or potential use of natural resources.²

The resolution clearly adopts a rights-based framework and encourages the adoption and compliance with the “objectives of ILO Convention 169 and the spirit of the draft UN declaration”. It raises a number of other fundamental aspects such as damage repairment, equitable and effective participation, mechanisms for negotiation, agreement building, equitable development planning and conflict resolution.

- 3) The fact that ILO Convention 169 is consistently referred to by the IUCN confirms important commitment to core aspects of strengthening international standards on mining and indigenous peoples. These include:
 - a. Article 1 on coverage. It is particularly important in terms of recognizing self-identification as an important criterion. This addresses a concern of many indigenous peoples struggling with severe mining impacts due to their lack of legal recognition as such.
 - b. Article 2 on governmental responsibilities
 - c. Article 4 on special safe-guard measures
 - d. Article 5 recognizing the social, cultural, religious and spiritual values and practices
 - e. Article 6 on government consultation and the establishment of means for participation
 - f. Article 7 on the right to

“decide their own priorities for the process of development as it affects their lives, beliefs, institutions and spiritual well-being and the lands they occupy or otherwise use, and to exercise control, to the extent possible, over their own economic, social and cultural development. In addition, they shall participate in the formulation, implementation and evaluation of plans and programmes for national and regional development which may affect them directly.”

And the need for governments to ensure that:

“whenever appropriate, studies are carried out, in co-operation with the peoples concerned, to assess the **social, spiritual, cultural and environmental impact** of

² Note. This Resolution was adopted by consensus. The delegations of the State members Australia, Germany, New Zealand, Norway, Switzerland, United Kingdom and United States indicated that had there been a vote they would have abstained, in the case of New Zealand and the United States for the reasons given under Resolution 1.49. The delegation of the State member India dissociated itself from this Resolution for the reasons given under Resolution 1.49. The use of the term “indigenous peoples” in this Resolution shall not be construed as having any implications as regards the rights which may attach to that term in international law.

planned development activities on them. The results of these studies shall be considered as fundamental criteria for the implementation of these activities.”

“in co-operation with the peoples concerned, to protect and preserve the environment of the territories they inhabit.”

- g. Article 8 on customary law and institutions
- h. Article 12 on access to legal institutions
- i. Articles 13-19 on land rights. Article 15 specifically mentions minerals

Article 15

1. The rights of the peoples concerned to the natural resources pertaining to their lands shall be specially safeguarded. These rights include the right of these peoples to participate in the use, management and conservation of these resources.

2. In cases where the State retains the ownership of mineral or sub-surface resources or rights to other resources pertaining to lands, governments shall establish or maintain procedures through which they shall consult these peoples, with a view to ascertaining whether and to what degree their interests would be prejudiced, before undertaking or permitting any programmes for the exploration or exploitation of such resources pertaining to their lands. The peoples concerned shall, wherever possible, participate in the benefits of such activities, and shall receive fair compensation for any damages which they may sustain as a result of such activities.

- j. Part III on recruitment and employment conditions
- k. Other articles are also of general relevance for example for addressing particular development aspects, livelihood activities, education and social protection.

Beyond the resolutions listed above, it is also relevant to mention Recommendation 2.82, adopted at the 2000 Amman Congress, which, although specifically on protected areas on mining, recognizes the importance of indigenous peoples, life styles and cultures and invites governments and companies to promote and implement best practice in all stages of mining and extraction, from first exploration to the decommissioning and subsequent land use.

Taken together, the “incremental” IUCN policy approach, determined by the different resolutions and recommendations, confirms a rights-based approach, which addresses and confirms many of the policy concerns highlighted by indigenous peoples.

The actual details of the IUCN policy approach would involve undertaking a more in-depth analysis of the IUCN resolutions and recommendations together with relevant international policy instruments, jurisprudence as well as emerging good practice from other IUCN activities such as the World Commission on Dams.

Indigenous peoples' statements

Indigenous peoples' statements cover a wide range of international declarations, national and local statements. Many reveal the close understanding and experience of

mining operations with particular detail. The following are (some of the) relevant articles from the Indigenous Peoples Earth Charter, Kari-oca, Brazil (1992):

32. Our territories are living totalities in permanent vital relation between human beings and nature. Their possession produced the development of our culture. Our territorial property should be inalienable, unceasable and not denied title. Legal, economic and technical backup are needed to guarantee this.
33. Indigenous Peoples' inalienable rights to land and resources confirm that we have always had ownership over our traditional territories. We demand that this be respected.
34. We assert our rights to demarcate our traditional territories. The definition of territory includes space (air), land and sea. We must promote a traditional analysis of traditional land rights in all our territories.
35. Where Indigenous territories have been degraded, resources must be made available to restore them. The recuperation of those affected territories is the duty of the respective jurisdiction in all nation states which cannot be delayed. Within this process of recuperation the compensation for the historical ecological debt must be taken into account. Nation states must revise in depth the agrarian, mining and forestry policies.
36. Indigenous Peoples reject the assertion of non-Indigenous laws onto our lands. States cannot unilaterally extend their jurisdiction over our lands and territories. The concept of terra nullus should be forever erased from the law books of states.
37. We, the Indigenous Peoples, must never alienate our lands. We must always maintain control over the land for future generations.
38. If a non-Indigenous government, individual or corporation wants to use our lands, then there must be a formal agreement which sets out the terms and conditions. Indigenous Peoples maintain the right to be compensated for the use of their lands and resources.
39. Traditional Indigenous territorial boundaries, including the waters, must be respected.
42. Indigenous Peoples must not be removed from their lands in order to make it available to settlers or other forms of economic activity on their lands.
45. Toxic wastes must not be deposited in our areas. Indigenous Peoples must realize that chemicals, pesticides and hazardous wastes do not benefit the peoples.
46. Traditional areas must be protected against present and future forms of environmental degradation.
61. Indigenous Peoples must consent for all projects in our territories. Prior to consent being obtained, the people must be fully and entirely involved in any decisions. They must be given all the information about the project and its effects. Failure to do so should be considered a crime against the Indigenous Peoples. The person or persons who violate this should be tried in a world tribunal within the control of Indigenous Peoples set for such a purpose. This could be similar to the trials held after World War II.
- 69(a). In order for Indigenous Peoples to assume control, management and administration of their territories, development projects must be based on the principles of self-determination and self-management. (b) Indigenous Peoples must be self-reliant.

Ten years later, indigenous peoples at the WSSD in Durban released the Kimberley Declaration and demanded

“that free, prior and informed consent must be the principle of approving or rejecting any project or activity affecting our lands, territories and other resources.”

The Declaration expresses deep concern with the activities of multinational mining corporations on indigenous lands, and notes in a later section of the Declaration that

“In case of the establishment of partnerships in order to achieve human and environmental sustainability, these partnerships must be established according to the following principles: our rights to the land and to self-determination; honesty, transparency and good faith; free, prior and informed consent; respect and recognition of our cultures, languages and spiritual beliefs.”

The Declaration does not go as far as the “United Outcry Against Mining Greenwash”, where almost 200 individual and collective signatories denounced the partnership between IUCN and ICMM as greenwashing. Presented as representing “a global coalition of indigenous peoples’ organizations, mine-affected communities and civil society organizations”, the statement calls for a moratorium on mining until indigenous peoples’ right to self-determination and to free, informed and prior consent are respected.

The 2003 “Indigenous Peoples’ Declaration on Extractive Industries” came out of a workshop held by the Forest Peoples Programme and Tebtebba Foundation in April 2003:

“We, indigenous peoples, reject the myth of ‘sustainable mining’: we have not experienced mining as a contribution to ‘sustainable development’ by any reasonable definition. Our experience shows that exploration and exploitation of minerals, coal, oil, and gas bring us serious social and environmental problems, so widespread and injurious that we cannot describe such development as ‘sustainable’. Indeed, rather than contributing to poverty alleviation, we find that the extractive industries are creating poverty and social divisions in our communities, and showing disrespect for our culture and customary laws.”

A long list of detailed recommendations include:

- Calling for a moratorium on further mining, oil and gas projects that may affect us until human rights are secured
- Banning destructive mining practices
- Damage repair, compensation and rehabilitation of degraded environments
- Land restitution
- Industry, development agency and financial institutional commitment to indigenous peoples’ rights in legally accountable ways
- Good governance involves respecting indigenous rights
- Recognition of collective rights and self-determination
- Recognition of rights to territories, lands and natural resources
- Free, prior and informed consent
- Mechanisms for redressal of grievances, arbitration and judicial review
- Education and capacity building
- Marginalization, insecure land rights, and lack of citizenship
- Indigenous Peoples’ Development Plans (IPDPs)
- From voluntary standards to mandatory standards and binding agreements, formal policies & appeal procedures
- Accountability measures and independent oversight mechanisms
- Right to equal and effective participation in planning processes
- The World Bank member states’ obligations on international human rights law and existing national legislation on indigenous peoples’ rights.

- Poverty alleviation
- Independent and participatory environmental, social & cultural assessments

Although the declaration calls for a moratorium, it is also clear that such development activities are not rejected *per se* provided a number of conditions are in place. The Declaration ends with:

“As indigenous peoples, we do not reject development but we demand that our development be determined by us according to our own priorities. Sustainable development for indigenous peoples is secured through the exercise of our human rights, and enjoying the respect and solidarity of all peoples”

Beyond such international statements and declarations, a vast number of country or region specific indigenous peoples statements have been presented to the UN fora through media campaigns and letters addressed directly to mining operations. These may be of a more general nature, but provide very specific recommendations for action forward. They may call for a moratorium on mining on their lands, but may also accept mining on certain conditions. In 2000, for example, the Resource Committee of the Navajo Nation Council affirmed a 1983 moratorium on uranium mining with the exception of *in situ* leaching. A number of indigenous peoples policy statements or elements concerning minerals reveal that many are not *per se* opposed to mineral exploitation, but may accept it on a number of conditions. For the Tahltan Tribal Council these conditions include that:

- Development will not pose a threat or cause environmental damage,
- Tahltan aboriginal right claims will not be compromised,
- The project will provide more positive than negative impacts,
- There will be provision for Tahltans to participate equitably in the project,
- Widest possible employment, training and education opportunities for Tahltan people during all phases of development will be provided,
- Widest possible development of Tahltan business opportunities over which the developer may have control or influence will be provided, and
- Development provision to assist the Tahltans with accomplishing the above objectives will be established by providing financial and managerial assistance and advice where deemed necessary

As the different statements reveal, there are a broad number of concerns shared by indigenous peoples as well as very different opportunities, strategies and approaches taken. The next sections seek to give more detail to illustrate these commonalities and differences.

Indigenous rights: An international perspective

“Human rights provides a right to eat the cabbage, indigenous rights provides a right to own the farm”
(Participant quoted in MMSD 2002b:10).

As we have seen in the above statements, a key point of departure for indigenous peoples and their organizations (as well as IUCN) when engaging in international and national policy dialogues on indigenous issues concerns the evolving body of

international human rights law. These include a number of key instruments such as the ILO Convention 169, the UN draft declaration of the rights and the Organization of American States (OAS) Declaration on the Rights of Indigenous Peoples. They cover fundamental principles regarding indigenous concerns such as:

- Prior informed consent
- Land rights
- Natural resources rights
- Consultation
- Development
- Self-determination

While it can be discussed to what extent this body of law has practical implications at the national level, it is clear that a growing number of countries have undertaken legal action to this effect. The ILO Convention 169 on the rights of indigenous and tribal peoples (www.ilo.org) has today been ratified by 17 countries, most of them in Latin America. Nationally enacted legislation are having great influence, although not without problems, in terms of addressing indigenous rights listed above in concrete terms.

A further aspect of the international body of rights involves the potential international brokering of agreements between indigenous peoples, governments and mining companies. In 1995, the Suriname government invited the OAS to broker a tri-partite agreement between government, mining companies and the Maroon communities. Although negotiations were inconclusive (in part, governments and companies did not recognize customary land rights), such processes reveal the importance that international standards can have in setting up a legal context for further discussions and agreement building.

Furthermore, in terms of international jurisprudence, on September 17, 2001, the Inter-American Commission on Human Rights ruled that the government of Nicaragua violated the rights of the Mayagna indigenous community by ignoring customary land ownership when giving a logging concession. This led to Nicaragua being ordered to demarcate customary lands of the community as well as to set up new legal mechanisms for this community (Downing 2002: 27). This is having implications all over Latin America.

Different approaches to mining

Mining as a threat: the negative socio-cultural, environmental and economic impacts

For a long time, mining has been highlighted by indigenous peoples, their organizations and support NGOs and academicians as a considerable threat to their way of life. (See Davis (1977) for examples). It has also been repeatedly stated that mining is an environmental concern. In many cases, mining operations have destroyed the basic ecological conditions, resulting in depleted fish stocks, polluted waters, and disrupted migration routes. This has compromised the sustainable livelihoods of indigenous peoples. The mining industry has been extremely bad at acknowledging and respecting indigenous cultural practices such as customary land use as sacred sites. All regions of the world show cases of mining operations being set up or continued on sacred sites despite indigenous documentation and protests regarding their spiritual values. A root cause involves the threat to indigenous peoples' basic rights to determine their own future and development priorities.

In the North, this was particularly evident in the early phases of the mining industry with the "rushes" to goldfields such as Yukon and Northwest Territories in Canada or the Northern Territory in Australia (Young 1995). Mining was dominated by outsiders. Some will argue that little has changed, while others will emphasize the growing legal necessity to address indigenous concerns. Others will argue that the mining industry is facing considerable pressure. It all depends on the specific national context.

Beyond economics: land as part of cultural identity

A frequently misinterpreted and misunderstood issue involves the indigenous peoples relationship to their customary lands and resources. This relationship needs to be perceived beyond basic economic terms as more than mere commodities. The implications for relationships with the mining industry are relatively clear. For the industry, mining is fundamentally about minerals, a commodity, and establishing agreements involves balancing costs and benefits of exploiting this commodity. For many indigenous peoples, it may involve touching upon land-based notions of self, community and culture.

Beyond the significant role of the land in terms of sustainable livelihoods, the land may be regarded with spiritual significance and may not lend itself to economic calculations and transactions. Respecting such cultural relationships through acknowledging indigenous rights to cultural landscapes is gaining recognition in the conservation community. Experiences and policy developments in the conservation community are indeed relevant for the mineral extraction companies.

Innovative valuation methods and practices, which go beyond basic economic parameters and take on board non-monetary values based on indigenous value systems and cultural practices, are important.

As noted by a recent review under the MMSD umbrella:

“By and large, encounters between indigenous peoples and the mining industry result in the loss of sovereignty for traditional landholders and multidimensional creation of new forms of poverty imposed upon already poor people...Indigenous peoples are suffering a loss of land, short and long-term health risks, loss of access to common resources, homelessness, loss of income, social disarticulation, food insecurity, loss of civil and human rights, and spiritual uncertainty” (Downing et al 2002: 3)

A statement to the WSSD in Durban, based on research in Colombia and Guyana, also concludes that:

“ mining has not led to social welfare improvements, particularly in the light of the severe impacts on the environment, traditional livelihood systems, cultural identity, community mental and physical health, women and youth.” (Weitzner 2002:10).

The 2002 statement “United outcry against mining greenwash”, which addressed the IUCN dialogue, then partnership, with the International Council on Mining and Metals (ICMM) goes in this direction. The statement speaks of:

- The systematic rape of Mother Earth
- By nature, mining is unsustainable
- Poor records of community accountability
- Legacy of impoverished communities and environmental despoliation

The statement calls for a moratorium on mining activities until “governments and corporations respect indigenous peoples rights to self-determination and to free, prior and informed consent to all forms of mining”. It also calls for reparations and restitution to affected communities as well as a Convention on Corporate Accountability. Indigenous and non-indigenous organizations remain extremely sceptical that appropriate agreements can be found to ensure payment for damages, risk mitigation and benefit-sharing mechanisms. Such actors often opt for fundamental changes to secure that the indigenous peoples have a fair say in the final decision-making.

Total rejection argument

“On July 27, 2000 the Takla Nation, whose traditional territory is centred northwest of Prince George around Takla Lake, Canada issued a press release announcing the closure of their territory to all resource extraction. In that release, Councillor Edna Johnny states that “We are tired of watching our resources leave our territory without any benefits to the Takla First Nation.” In stark contrast to the few “best practice” examples of resource sector consultations with Aboriginal Peoples in Canada, according to Councillor Cheryl George, in Takla territory there have been no consultations and resource corporations have steadfastly ignored the small, impoverished Takla Nation.” (Hipwell 2002: 36-37)

The reasoning raised above summarizes the thinking of “total rejectionists”. A number of indigenous peoples organizations and support organizations totally reject any engagement with the mining industry, be it national or international. This has, by some authors, been characterized as a “just say no” Plan A, as part of a much larger “war” where:

“advocates on either side of the issue are likely to understate or misstate the projects potential impacts – both positive and negative (Downing et al 2002: 2).”

Their point, while acknowledging that such strategies are understandable, is that others simultaneously are planning an alternative to resistance and confrontation (a so-called Plan B). The authors argue that indigenous peoples often lose both battles, having first attempted to resist mining without developing second best choices.

Proponents of the total rejection strategy will argue that even potential benefit-sharing arrangements will rarely cover even the costs of the potential risks induced by the mining operation. The “total rejection” movement has played an important role in pushing the agenda beyond broad principles and policy commitment. The insistence on that fact that the mining industry does not contribute to sustainable development, among other things, triggered the Extractive Industries Review undertaken by the World Bank. A recent synthesis report written by the Forest Peoples Programme and the Tebtebba Foundation concludes that the World Bank should withdraw from its involvement in extractive industries (Caruso et al 2003).

These actors also played an important role in generating a “total rejection” consensus at the WSSD in Durban, 2002. Points that have been highlighted include the lack of reference to “no-go zones” in mining elements of the WSSD plan of action. They also push for more recognition and respect of indigenous rights.

The issue is critical. Multinational, national or small private enterprises are in many cases running legal, commercial mining operations, while neglecting indigenous rights, simply because the relevant national legislation does not effectively secure indigenous rights. Experience shows that companies in such cases tend to perceive the indigenous rights issues as beyond their scope of action and sphere of influence.

International support NGOs

A number of international NGOs support indigenous peoples from a more general perspective as well as more specific initiatives on mining. Such international organizations supporting indigenous peoples include IWGIA (www.iwgia.org), Cultural Survival (www.cs.org) and Survival International (www.survival.org). On mining and local communities, these include Minewatch, Project Underground and Mines and Communities. (www.minewatch.org, www.moles.org, www.caa.org.au, <http://www.minesandcommunities.org/Aboutus/aboutus.htm>)- Many of these sites contain links to dozens of other organizations working in the area. They include NGOs working closely with the mining industry as well as organizations closely connected to indigenous peoples organizations and other civil society movements. Support to indigenous peoples and their organizations is provided through:

- Capacity building
- Campaigning
- Information – sharing
- International – national partnerships

Networking, Advocacy & lobbying

A direct or indirect source of employment

Mining operations may provide a direct or indirect source of employment for indigenous communities. Yet, the overall trend should not be forgotten. Employment opportunities are disappearing in many mining areas. Over 3 million jobs in mining were lost between 1995 and 2000, and employment conditions may be worsening³.

In some countries in the South, indigenous and tribal communities make up a significant proportion of unskilled workers engaged directly or indirectly in the mining industry. In Keonjhar District (Jharkand, India) mining is an important economic activity employing thousands of unskilled labourers. Around the Barbil-Joda mining area, 35 slums have emerged employing a significant number of tribal *Mundas* having migrated to the area. One study documents tribal women working in open mines work and loading/unloading of minerals for trucks and railways wagons. The study documents poor working conditions exacerbated by employment through local contractors and discriminatory labour protection practices. Furthermore, other activities such as firewood collection are penalized by local forest guards (Khan 2001).

It is also being argued that growing mechanization of the mining process requires a smaller, but technically more specialized, labour force (see, e.g., United Nations 1994: 25,28). This, in turn, limits the demand for mining areas as a job creation source. If one further adds the widely documented environmental impacts and reduced resilience of customary livelihoods, the impact of mining operations on communities is considerable.

Many mines are today closed specialist enclaves with few employment opportunities to local indigenous communities (MMSD 2002a). Indigenous peoples, therefore, rarely make up a large proportion of the occupational communities. They are mainly residential communities or customary user, non-residence, communities of the lands and resources. This has been confirmed from studies in Peru and elsewhere. This limits local involvement to the construction phase (MMSD 2002a :201). A contrasting example involves the Grasberg mine in West Papua, which apparently created 75,000 indirect jobs to support the 14,000 employees. It should, however, be noted that the population in the mining area exploded from 1,000 to over 100,000 (ibid: 202). Whether indigenous communities actually benefit from the situation is also questioned by a number of other political and economic factors surrounding the mine. In some cases, in Australia for example, mining agreements with indigenous peoples involves negotiating substantial employment contracts. Companies may have indigenous employment policies and strategies.

³ <http://www.ilo.org/public/english/dialogue/sector/sectors/mining.htm>, Although only accounting for 1% of the global workforce, mining is responsible for up to 5% of fatal accidents at work (about 15,000 per year, or over 40 each day) (ibid).

Finally, it is clear that mining operations attract further migration to and settlement in indigenous areas in the same manner as other large-scale extractive or infrastructure initiatives. This puts further pressure on the often fragile environments, lands and available resources. Beyond the growing employment insecurity, weakened livelihood opportunities that may follow, there is also a considerable danger of heightened social conflict.

Commercial mining operations cannot simply be equated with a new job market or even a good alternative to other resource-dependent livelihoods. It needs to be looked at in a broader context of rights, resources and cultural resilience.

Small-scale mining and boosting indigenous private enterprise

Small-scale mining is practiced by many indigenous peoples often in stark contrast with larger scale mining operations. The phenomenon is observed in Asia, Africa and Latin America. Partly, this may involve the growing number of small-scale enterprises and job creation in indigenous areas, partly it may involve informal, at times illegal, small-scale mining in areas with concessions to other parties. In Guyana, many Amerindians are directly engaged in the 14,500 small-scale mining permits issued by the Guyana Geology and Mines Commission (Colchester et al 2002).

The 1994 UN case study from the Philippines describes, for example, how Kankanaey and Ibaloi of Benguet province engage in both small-scale pocket mining and panning for gold, and wage labour in commercial mines (United Nations 1994: 24). As the case study shows, small-scale mining and larger-scale commercial mining may co-exist for certain periods, but often end up in conflicting situations after a certain period. In the case cited, disputes erupted with the expansion of the commercial operation, which are often in an advantageous position compared to small-scale miners in terms of securing mining permits

Based on research in Latin America, the Canadian North South Institute (Weitzner 2002) has documented a growing number of Amerindian communities shifting towards small-scale mining, revealing a number of social and environmental costs.

The case study from the Philippines also illustrates the case of indigenous peoples themselves engaging in mining enterprises, joint ventures or particular services. Boosting such small-scale enterprises can take place in different ways ranging from community ownership cooperative models to standard run private enterprises. Such small-scale initiatives tend to remain relatively marginal compared to more large-scale initiatives, although they make a considerable part of the formal and informal economy in some areas.

An interesting case from Uttar Pradesh in India, involves Sankalp, an NGO supporting self-help organization among tribal mine workers to form worker cooperatives. Based on the observation that families were bonded to mining contractors, the NGO facilitated economic empowerment. By March 2001, forty self-help organizations had been supported, of which initially three had obtained mining leases (Wazir 2001).

In many cases, indigenous peoples have a relatively long history of small-scale mining without formalized rights. When concessions are handed to mining companies, such customary rights and practices easily risk being disregarded.

Striking deals with mining companies: some key aspects

Given the nature of major mining operations (capital intensive and technical), indigenous participation is mainly one of engaging as a business partner rather than being directly involved in the actual operations⁴. This necessarily results in a particular type of (business) relationship. Finally, as Young has pointed out, most mining rarely addresses local market demand (1995). There is thus a natural inclination to be less concerned about local sustainable development issues and grant greater importance to overall business development goals. This may, in some cases, be an advantage for indigenous communities. If the overall business opportunity is sufficiently promising, there may be much goodwill to ensure secure deals with the indigenous communities.

Whether agreements are of a voluntary or of a legally binding nature, depends very much on legislation, actual implementation monitoring and local governance issues.

A recent UN workshop on indigenous peoples, private sector and human rights took up three major aspects of the mining – indigenous peoples relationship:

1. consulting with indigenous communities prior, during, and following the development of private sector projects;
2. benefit-sharing by indigenous communities in private sector activities; and
3. solving disputes.

Given the diversity of indigenous – mining relationships, it is of crucial importance to think in terms of major benchmarks and indicators when assessing these relationships. As the UN report also acknowledges, a certain number of companies are putting efforts into improving dialogues and work with human rights frameworks. The workshop acknowledged the efforts being made by a number of companies to address these issues, improve dialogue, work within a human rights framework, develop appropriate benefit-sharing arrangements and find mutually acceptable mechanisms for dispute settlement. A recent MMSD report on indigenous peoples and mining encounters highlighted the following 8 major components for agreement building:

1. Examination and explanation of the project's economic and legal aspects to the community in a way they will understand
2. Full assessment of the project's risks and benefits
3. Budgeting and organization of actions to mitigate each risk
4. Determination, by the people, of how the project fits within their cultural vision
5. Arrangements of institutional and financial steps that assure the project's benefits are opportunely and transparently allocated to the peoples
6. Distribution arrangements are focused on a common community endeavour and/or distribution within the group, as decided by the beneficiaries

⁴ There are exceptions to this of course.

7. Preparation of a strategy for negotiating with the project promoters, financiers, government and other key stakeholders. The negotiations focus on benefit arrangements over and above risk mitigation
8. Formalization of negotiated arrangements with legally binding arrangements (Downing et al 2002:30)

In this model, the authors argue, there is a hope for establishing clear-cut differences between payment for damages, risk mitigation and benefit-sharing mechanisms. The following is a discussion of various key elements of agreement building between indigenous peoples and mining corporations.

Negotiation and agreement building

Good practice agreements rely on 3 key elements: process, content and implementation of agreements (MMSD 2002b: 14). It should be noted that good practice - in practice - remains rare. A recent review on aboriginal peoples and mining in Canada concludes that good practice agreements remain “the exception rather than the rule” (Hipwell et al 2002: 44).

As governments have gradually started recognizing indigenous communities as primary stakeholders with particular rights and concerns, negotiations of relationships with mining corporations has increased. There has been some spill over effect to other countries, where corporations are active, but it is not uncommon to find double standards being practiced between countries, and even within the same countries due to differing regional legislation and actual recognition of indigenous peoples.

Negotiations have proven extremely difficult in many cases. Identifying win-win solutions is not a one-time result, but relies on addressing impacts and problems in a long-term process. While there are a considerable number of indigenous peoples and their organizations which seek to strike deals with mining companies and move along with government and corporate driven processes, there exist critical questions regarding the capacity of indigenous organizations to enter into a dialogue. There is a willingness to enter partnerships, but previous experiences reveal that the time pressure mining companies are under rarely leaves sufficient time to sufficiently understand the risks in place and develop effective mining alternatives.

In Australia, the Ranger and Nabarlek mines were the first to operate under agreements conferring substantial royalty payments to Aboriginal people. In 1986, after 6 years of operation, the companies involved had paid over \$70 million to the Aboriginal Benefits Trust Account. Seventy percent of the royalty payment was disbursed to the land councils and local associations, while the rest was used to fund development activities in the whole territory (Young 1995: 163). Today, the Australian context contains a variety of experiences. MMSD Australia recently commissioned a project to identify best practices in relation to agreements between indigenous peoples and mining companies where 140 agreements were recorded (MMSD 2002b: 14).

The Yandicoogina Land Use Agreement signed in 1997 with the Gumala Aboriginal Corporation for the development of the Hamersley Iron's Yandicoogina iron ore project in the Pilbara, Western Australia, illustrates an important aspect of the nature of agreements. In 2000, Hammersley Iron signed an MoU with the community in which the terms of negotiation for an Indigenous Land Use Agreement (ILUA) covering 10,000 sq. km. is stipulated. The agreement is binding, and overcomes the common law principle of that contracts are only binding to the signatories. (Warden-Fernandez 2001).

A variety of agreements are found in Alaska and Canada. In Alaska, indigenous communities have reached agreement in relation to the Red Dog mine area to:

- Have flexible work hours allowing for communities to continue hunting and fishing
- The establishment of a Subsistence Committee, which among other things selected a transportation route which avoids important migration paths, spawning areas and nesting sites. (MMSD 2002a: 207)

Mi'kmaq, Canada: Melford Gypsum Mine Agreement

“The agreement, concluded without the involvement of federal or provincial government agencies, includes the following provisions:

- Employment: 25% of the workforce is to be Mi'kmaq, and training and apprenticeships will be provided by the company whenever required for employment objectives.
- Unama'ki Marine Institute: The company has agreed to contribute \$0.05/tonne (approximately \$100,000.00 annually) to the Unama'ki Marine Research Institute, a Mi'kmaq-run not-for profit organisation established as part of the agreement to conduct environmental research and monitoring.
- Sub-contracting: Trucking contracts are to be awarded preferentially to the Mi'kmaq
- Ecological Monitoring: Mine-site monitoring to be conducted by Mi'kmaq Guardians (roughly equivalent to Conservation Officers) with a \$10,000.00/annum contribution by the company, and a further \$5000.00/annum contribution toward wider watershed monitoring by the Eskasoni Fish and Wildlife Commission.
- Scholarships: One \$5000.00 scholarship for a Mi'kmaq student engaged in environmental or technical studies will be provided by the company each year for the life of the project.”

In addition, a consultation, liaison and committee structure was established, known as the Unama'ki-Georgia- Pacific Co-ordinating Management Committee. This Committee includes two representatives from the communities and two company representatives. Among other things, its mandate is to ensure that the provisions of the Agreement are observed and attempt to resolve any disputes; to discuss and resolve matters including those related to the contractor and Company Native Employment policies, environmental monitoring and existing or planned Native hiring and contracts; and to meet at least once every three months, with expenses paid by both parties (secretarial expenses are covered by the Company). (Hipwell 2002:35-36).

The role of advisory and assistance bodies are often necessary for agreement building. In Australia, the MMSD report emphasized the instrumental role of Native Title Representative Boards (NTRBs) in arriving at the beneficial solutions:

“The representation of NTRBs, however, varies greatly from region to region, because of problems with funding and lack of resources. In their findings, it also emerged that a lot of companies expressed dissatisfaction in dealing with NTRBs, though the report concludes that it is better to work cooperatively with NTRBs than to bypass these bodies.” (MMSD 2002b: 14).

Such assessments are relevant for the global context, where advisory bodies differ considerably in terms of mandate, capacity and resources.

At the policy level, there are also some developments for more indigenous involvement. In Panama, the policy reform of an old mine act, has involved contracting indigenous technical assistance to ensure that rights are respected (Downing 2002: 19).

Impact and risk assessments

The lack of international standards for integrated social and environmental impacts remain an important obstacle. This gap has proven to result in extremely diverse practices.

The IUCN raises, specifically in resolution 1.51, the issue of impact assessment and furthermore, by endorsing ILO Convention 169, recognizes the importance of integrating social, spiritual, cultural and environmental impact assessments (EIA).

In 2002, the CBD Sixth Conference of the Parties adopted a set of recommendations for the conduct of cultural, environmental and social impact assessment regarding developments proposed to take place on, or which are likely to impact on, sacred sites and on lands and waters traditionally occupied or used by indigenous and local communities. These recommendations essentially argue for an integrated approach when impact assessments are undertaken. Further work on guidance will hopefully provide further concrete steps in this direction.

Other aspects include:

- The full disclosure and availability of information
- Effective communication of scientific data and resources
- Promoting the precautionary principle

EIA and the Innu

“The Innu nation’s leadership set up a task force with funding from VBNC, which then held a series of community meetings about the project and received a clear mandate from the people. A consensus emerged that the Innu people did not want any mining developments until their land claim agreement was signed. They also would not consent to any mining developments without first negotiating an impact benefit agreement (IBA) with the mining company; this IBA would first require an environmental assessment of the project. A Memorandum of Understanding (MOU) between the Innu Nation, the Labrador Inuit Association, the federal and the Newfoundland governments was signed to outline the requirements for a harmonized Environmental Assessment process. In that MOU, the definition of “environment” was broadened from that given in the CEAA to include “social, economic, recreational, cultural, spiritual and aesthetic” components (cited in Cleghorn 1999). It also gave all the parties to the MOU the right to appoint the EIA panel members.”(Hipwell 2002: 38).

Consultation and Free and informed prior consent

Much debate concerns the levels and kinds of consultation and participation stake and, thus, ultimately the extent to which indigenous peoples are engaged in decision-making processes concerning their lands and resources.

In the Vienna Declaration and Programme of Action (Part I, para. 20 and Part II, para. 30), States recognize the importance of the free and informed participation of indigenous peoples in matters affecting them as a means of contributing to their rights and well-being.

ILO Convention 169 speaks of consultation through appropriate procedures, in particular, representative institutions, participation at all levels of decision-making and consultations “carried out in good faith and in a form appropriate to the circumstances, with the objective of achieving agreement or consent to the proposed measures.”

Others have emphasized how free and informed consent is a basic pillar if indigenous peoples are at all to be considered equal partners. As Downing and others note, “indigenous peoples become stakeholders when they have the right to prior informed consent” (2002: 32). Mere participation does not validate a process, but should allow for indigenous peoples to engage and say no.

Loss of this right is viewed as a loss of sovereignty and self-determination. The basic argument is that full recognition of customary rights to self-determination, land and resources is a requirement to allow for true prior informed consent. The difficulty arises when there is little or no recognition of indigenous rights. A recent Asian Development Bank (ADB) study for the Indonesian Act No. 11 concerning Basic Provisions on Mining notes:

“Giving priority to large companies (including foreign investment) in the exploitation of mining resources, this Act ignores the people’s traditional mining rights. The rights of local people (including *adat* communities) are not sufficiently accommodated in this Act, which does not give local communities (including *adat* communities) the right to be consulted before a mining concession is granted...Strict safeguards regarding the protection of the environment are not included.” (ADB 2002a: 17).

The publication also notes when discussing the Draft Act on General Mining, “it is possible that protection over sacred forests, cemeteries and *adat* houses can be ignored in relevant legislation” (ibid.: 19).

“Neither does the draft Act mention what principles are to be fulfilled when the area for a mining concession is determined. Further, there is no mention of the need to inform and obtain the consent of people, including *adat* communities, who live in or around the proposed mining concession area.” (ADB 2002a: 19).

Even in countries with stronger legislation to protect indigenous rights, loopholes are often present. As another ADB study for the Philippines notes:

“There were the indications that the processes of issuing titles and certificates to allow mining and other activities have been compromised, if not corrupted (ADB 2002b: 15).”

Although the implementing Rules and Regulations (IRR) sustain the right of indigenous peoples to prior informed consent, considerable resistance from the mining industry came about questioning indigenous claims to the resources. Leases previous to the IRR (1998) were exempted and an Administrative order (no. 3, 12 October

1998) declared all written agreements with and/or resolutions by indigenous communities prior to the IRR as “free and prior informed consent” (ADB 2002b: 15).

The case reveals the danger of the “prior informed consent” concept being misunderstood and misinterpreted. Putting the concept into practice requires aiming for a community-driven ownership process. It is not sufficient to get “yes” or “no” answers based on distributing technical impact assessment reports. In other words, there is a need to implement the prior informed consent concept in conjunction with a broader set of procedural standards recognizing the rights of indigenous peoples.

What it takes to make prior informed consent work in practice will depend on the specific dynamics. Many indigenous peoples have started crafting criteria, principles and guidelines for interacting with extractive industries⁵. These provide some of the local substance for engaging with the mining industry.

Damage prevention and risk mitigation measures

It has been noted that there has been an overemphasis on benefit-sharing agreements neglecting basic responsibilities of the industry to address what is done about damages in terms of risk assessments, preventive and mitigation measures. Indigenous peoples have continuously highlighted the amount of damage being done to indigenous lands and waters, reflecting the limitations of mining operations in terms of addressing the real environmental impacts at stake. Key issues typically involve the lack of involvement of indigenous communities in designing the EIA process, the sudden withdrawal of mining companies leaving ruined land behind and no “obligation” to clean up or compensate for losses (UN 2002: 19).

Addressing (potential) damages is a fundamental requirement even before dialogue on benefit-sharing can begin. The role and support of conservation organizations is critical in order to ensure that impact assessments are of the highest technical standard and to integrate the cumulative effects of industry projects.

Benefit sharing and compensation

Mining deals generally provide governments with much needed fiscal revenue, easy to collect and in considerable amounts, at least within a short time-frame. Although most tax revenue goes to local and central governments, and thus only indirectly affect indigenous communities (depending on the public redistribution programs), there are examples of royalties and taxes going to community organizations, development boards and other local institutions. The Northern Land Council exploration licence agreements (Australia) provide traditional Aboriginal owners with an equity position of 5% as a result of exploration on their lands (2002a: 211). In Asia, benefit-sharing often involves setting up community development projects.

⁵ See for example consultation documents available through the Nishnawbe Aski web site at www.nan.on.ca. He noted that the NAN consultation process provided a way forward and much sought-after “certainty” for the industry. (UN 2002: 12)

Revenue flows can substantially transform indigenous communities. Based on negotiated agreements, there is growing body of experiences involving redistribution of mining income in countries as diverse as Bolivia, Canada, Colombia, Indonesia, the Philippines, Papua New Guinea, South Africa and Venezuela (MMSD 2002a: 210). Some of these experiences involve further redistribution to decentralized governments, while others involve direct channelling to indigenous or other local communities. Applying economic and often short-term compensation solutions to long-term needs and requirement of indigenous peoples have often gone wrong.

One aspect that has been raised by indigenous peoples, involves the extent to which decisions made by indigenous communities on benefit sharing are based on independent decisions by representative institutions. A problematic aspect of this involves providing benefits to indigenous communities not recognized by government.

As discussed above, the Prior Informed Consent concept is highlighted as a fundamental aspect, in part indicating the extent to which governments and corporations recognize indigenous rights to land and resources.

Actual experience from implementing various forms of benefit-sharing schemes show varied results. In Papua New Guinea, several development initiatives have been developed in complement to the mining operations of Freeport. Seeking to compensate for lost customary territories and splitting up of the community, various approaches to empowered development are being undertaken in part by external Djakarta based NGOs (ADB 2002a: 23). These involve resettlement in other areas, infrastructure construction and economic development activities.

“The project was designed to last 10-15 years with 14 staff, mostly from Java, and 51 local facilitators. The problems that the project faces include lack of support from local NGOs and limited understanding by new local members of parliament on the project (ADB 2002a: 24).”

Much work needs to be done in supporting home grown rather than externally devised solutions. There are interesting efforts by indigenous peoples to counter externally devised approaches with indigenous-driven sharing mechanisms. In Australia, the Queensland's Aboriginal Land Act creates a hierarchy of land affiliations, which has been rejected by Aboriginal organizations that seek more equitable royalty sharing mechanisms (MMSD 2002a: 211).

Further work needs to be done in the area of benefit-sharing and compensation arrangements. Indeed, the experiences of mining companies and indigenous communities seeking to cooperate share many elements with integrated conservation and development activities, which often involve more or less explicit agreement building on a number of lost opportunity costs and corresponding benefits. More policy work in this area of the IUCN could indeed help inform these actors.

Development projects

The natural development benefits are sometimes emphasized by mining companies as “bringing development to the bush”: the creation of new towns, infrastructure and

construction. However, as pointed out by Young (1995), most of these services are generally restricted to highly mobile outside/ expatriate staff.

“The contrast between the Aboriginal and mining communities in the Argyle area of Australia’s East Kimberley region is particularly stark. Here the town, developed and administered by Argyle Diamond Mining Inc., is off limits for everyone without an entry permit. Aboriginal people travelling between the small cattle station communities where they live must divert around the town area, and cannot use any of the services available although some of these, for example health and retail services, are very limited in their own settlements.” (Young 1995:157).

Despite the well-documented fact that benefit-sharing arrangements require more action, it is somewhat surprising the extent to which the “obvious development benefits” are promoted by local development agencies, investment companies and others. Even more importantly, such infrastructure, goods and services are rarely maintained after mining operations. This easily provokes disruption among communities dependent on the service. In contrast, the negative social, environmental and economic impacts tend to remain.

Beyond the obvious direct threats, it should be noted that mining operations have been viewed as a key development solution to remote and so-called backward areas. These areas are often promoted and subsidized through national development schemes. These development solutions are not sustainable, as can be seen from the many ghost towns in Canada and Australia.

In conjunction with, but often separate from a rights-based approach, many mining corporations, particularly in the South, run more or less accountable “welfare” development projects providing social services, income and skills development. There is often considerable local interest in taking on board such development opportunities.

In Papua New Guinea, “the Development Forum concept was incorporated in the 1992 Mining Act. The outcomes took the form of three Memoranda of Agreement among the landowners, the provincial governments, and the national government. They cover issues such as the provision of infrastructure, the delivery of government services, local staffing, the breakdown of royalty payments, funding commitments, and the provision of equity for local communities and provincial governments” (MMSD 2002a: 211).

There are a number of emerging lessons learned in the area:

- Community ownership

There are several cases of mining companies outsourcing “local development” to local NGOs or governmental agencies with little impact on the ground. The reasoning is probably often based on securing smooth management or the lack of local capacity. This is critical. However, community ownership is firmly anchored from the very beginning.

- The long-term institutional sustainability

Many development schemes involve setting up boards, funds and new organizations. Addressing long-term institutional capacity issues from the beginning can prevent structures from collapsing at the end of external funding.

- Discrimination, rights and equity issues

Taking rights-based approaches to indigenous peoples' development highly depends on the existence of national laws, but can nonetheless be promoted through other interim measures and through the application of international standards.

- Sustainable financing

Financial arrangements are fundamental and need to be determined for the overall process as well as different types of development activities. It needs to be addressed from the first Memorandum of Understanding.

- Empowerment and capacity building

This issue remains one of the major challenges. Mining companies feel uncomfortable with strong organizations, although it could be argued that strong community organizations can actually help ensure stronger commitment to and respect of agreements made with indigenous peoples.

- Development Plans

One effort to formalize such development processes has been through "development plans" or agreements. The World Bank "Indigenous Peoples Development Plans (IPDPs)" or the MMSD suggested "Community Sustainable Development Plans" (2002a: 227) are proposed as "frameworks" to address indigenous community concerns. Implementation records of the WB IPDPs suggest that they may work, but its success depends on existing legal frameworks, monitoring capacity and continued commitment beyond the life-span of the project.

Impact monitoring and benchmarking

Impact monitoring and benchmarking covers a broad range of issues related to the implementation of relevant legislation, agreements and other issues through monitoring a range of economic, social, cultural and environmental factors. Governments, for example, have a major role in monitoring and overseeing legislation requiring consultation with indigenous peoples. In some countries, government agencies mediate agreements. While Guyana, for example, has a policy requiring companies to consult with Amerindians, there are indications that the agency in charge is not overseeing these negotiations (Colchester et al 2002). A critical issue involves the role of increasingly decentralized administrations overseeing local agreements. The capacity of such local government units for enforcing agreements faced with the considerable power of important tax payer is questionable. In Canada, for example, negotiations between federal, NWT governments, mining companies and the Dene/Metis included monitoring social and economic impacts (Young 1995). In Australia, an interesting approach has involved the Community Aid Abroad Mining

Ombudsman, which has been set up to receive and communicate complaints concerning Australian mining operations abroad.

There has been a growing concern about the aftermath of mining operations once they pull out. Indigenous peoples have expressed concern with the conditions of their lands upon return after mining operations pull out.

Community-based social monitoring systems remain rare, which, coupled with poor information on cost and benefit flows, make it difficult to assess and monitor agreements. Ideally, such systems are established on the basis of institutional capacity and data found in initial social impact assessments, allowing for realistic plans and secured budgets.

The devil is in the detail. Essentially, indigenous peoples and support NGOs call for more independent monitoring of social and environmental impacts and close monitoring of the implementation of agreements. Much thinking is evolving around appropriate mechanisms and practices at national and international levels to ensure this takes place. Thoughts evolve around:

- Internal and external monitoring and review mechanisms
- Setting up international monitoring bodies such as indigenous monitoring institutions
- Strengthening the regulatory role of central and local government along good governance lines (transparency, accountability)
- Consistent involvement of indigenous communities in monitoring process
- Effective “stick and carrot” methods

Normandy, an Australian company relies on the Environment Code as the benchmark for performance monitoring. Given the lack of comparable social standards, ISO 14001 is used, and there are plans to incorporate human rights standards. External auditors are used with audits taking place over a 4-day period. The information is publicly reported. A performance bar, which is lifted every 3 years, determines the number of stars a particular operation obtains based on the level and type of community involvement (MMSD 2002b: 12).

In short, there is a critical need for strengthened social impact and assessment standards and methodologies. As highlighted in the CBD process, the MMSD process and elsewhere, it is critical that such standards are closely integrated with Environmental Impact Assessment approaches.

Dispute resolution and settlement

The dispute resolution issue has essentially been addressed from two angles. On one hand, it is argued that most “important” disputes can be avoided if a right consultation and collaboration approach is taken from the beginning. On the other hand, there is an emphasis on the need for accessible and effective dispute resolution mechanisms. The need for open dialogue is fundamental, and effective dispute resolution mechanisms are needed to ensure this.

Lawsuits

“In June 2000, the Innu Nation filed a lawsuit with the Federal Court of Canada to cancel the permission for Voisey’s Bay Nickel Company pending conclusion of land claims negotiations and the signing of IBAs with the Innu and Inuit, on the grounds that the federal government failed to meet its fiduciary responsibility to the Innu and Inuit when it ignored EIA Panel recommendations that such negotiations and agreements must be concluded before project approval is given. The suit also asked for clear legal measures outlining participation, consultation and compensation in respect of the project (Innu Nation 1999). This highlights the legislative void at both the provincial and federal levels. Further research might be directed at developing a set of minimum, universally applicable standards that could be written into legislation across Canada.” (Hipwell 2002:38).

It is rare to find effective dispute resolution and settlement mechanisms in place to assist indigenous peoples and mining companies solve disagreements and conflicts. Conventional national mechanisms are rarely geared to these needs or are simply too far to be of any relevance. There are exceptions, of course, which have provided concrete detail to the major issues at stake.

One important challenge continues to be the effective recognition of indigenous rights to lands and resources combined with the establishment of legally binding agreements allowing for better access and use of existing legal mechanisms. Many indigenous peoples have little, if any, access to legal assistance or courts for that matter. Therefore, they stand a poor chance to win a case, should it go so far. This may not be easy, particularly given the unequal relationship between big multinational companies and small Southern communities with limited recognition. The Australian Ombudsman listed above can act as a mediator for a dispute resolution process (MMSD 2002a: 217).

Further, capacity building projects that address knowledge needs and stopgaps in existing legal systems and the judiciary systems could assist countries in the South to establish and maintain well-functioning practices. Independent dispute resolution mechanisms would be fundamental in this regard.

A growing number of bilateral and multilateral donor agencies run good governance and human rights capacity building initiatives. Their support could be mobilized.

Roles and responsibilities

National legislation and the role of government

“It was noted that indigenous peoples with recognized land and resource rights and peoples with treaties, agreements or other constructive arrangements with States, were better able to enter into fruitful relations with private sector natural resource companies on the basis of free, prior, informed consent than peoples without such recognized rights (United Nations 2002: 3).”

The role of good governance is fundamental. Indigenous peoples’ strategies depend to a large extent on the existence or lack of legislation which protects their rights in the context of mining. It, therefore, concerns legislation on indigenous peoples rights in general, as well as specific legislation on mining and resource exploitation. There is growing documentation and concern that internationally supported deregulation and reform processes of mining legislation does not take indigenous concerns into account (Caruso et al 2003).

Beyond the legislation itself, strategies depend on actual implementation of provisions addressing indigenous rights. As it was noted back in 1994:

”Participation depended, in turn, on the extent to which the laws of the host country gave indigenous peoples the right to withhold consent to development, and on the degree to which indigenous communities themselves were fully informed, and effectively organized for collective action(UN 1994: 8).”

While indigenous peoples have gained access to international recognition and policy arenas, national recognition and legislative practice differs widely. The growing recognition of indigenous peoples’ rights in Latin America with a considerable number of countries ratifying ILO Convention 169, is not yet mirrored in Asia and Africa. Even in countries with constitutional recognition the provision of regulations to implement the laws is often missing or is contradictory. There may also be incoherence or inconsistency between central and provincial laws. The Philippines is a case in point. Despite an Indigenous Peoples Rights Act (IPRA) recognizing a bundle of indigenous rights, the 1995 Philippine Mining Act exempts mineral lands from the issuance of ancestral land claims (Downing et al 2002: 18). State ownership over subsurface minerals is, as in many countries, upheld. In Fiji and Papua New Guinea, for example, the state owns and leases subsurface minerals combined with significant recognition of customary land ownership.

“In many instances, communities do not receive a share of the equity of mining operations since their surface rights to land do not translate into the rights over minerals. (MMSD 2002a: 201).”

In other cases, national legislation may seek to protect indigenous rights, but implementation may still lag or particular exemptions are created to accommodate particular mining interests. It is important here to emphasize that IUCN Resolution 1.51 notes that even in situations with States maintaining rights to subsurface resources, the State should “ensure the common good and the rights of indigenous peoples.”

There are tensions between local community rights and national rights and interest. The land and resource rights issue is perhaps the best example which relates to a subset of other rights issues such as compensation rights, right to consultation, right to a healthy environment, etc.

A frequently raised issue involves the widely different situations of indigenous peoples and mining relationships even among countries. A major cause for this diversity involves the relative levels of recognition, different types of claims and complex legal regimes.

The role of governments is, therefore, crucial and does not limit itself to legislation. Some governments are funding schemes to improve alternative mediation and relationship building between indigenous peoples and the mining industry. The Australian government, for example, is providing A\$ 1.2 million over a 4-year period to promote mutually beneficial partnerships (Warden-Fernandez 2001). An important component of this funding is for capacity building.

“Corporate social responsibility should not be confused with or substituted for government social responsibility. Governments need to uphold and implement their national and international legal obligations to indigenous peoples, and strengthen legal, regulatory and judicial frameworks where these are weak” (Weitzner 2002)

In many cases, governments are shareholders of mining ventures, or benefit considerably from tax revenues. Although this has, at times, been interpreted as a disincentive for good governance, it is also an opportunity for influencing mining policies and practice.

Despite the number of examples where government action has resulted in weakened regulatory obligations rather than the opposite, there is a potential to go in the opposite direction. Government are often third parties, observers or mediators to agreement building with the mining sector.

Some mining codes include special references and norms for mining in indigenous areas. In Colombia, mining titleholders should carry out activities in such a way that they do not cause adverse impacts on indigenous communities. Consultation is required before prospecting and exploration, and indigenous communities (as a whole) have preference for the granting of concessions.

A strong government regulatory framework would include both “carrot” and “stick” solutions providing incentives for good governance and heavy penalties when laws are violated. Governments, both central and local, have an important role to play not only in terms of setting up legal frameworks, but also in convening parties, supporting implementation efforts (e.g., overseeing agreement building) and ensuring effective monitoring and access to the legal system, if necessary.

A major building block involves ensuring and maintaining that basic indigenous land and resource rights and assets are well protected through effective land demarcation and titling schemes.

Strengthened efforts to coordinate and integrate public regulation efforts by Ministries of Labour, Environment and Indigenous affairs are fundamental to make policies work in practice.

The corporate perspective

Much has been written about the importance of public image and reputation for a mining industry. Some have even emphasized its importance for ensuring higher social standards. Still, the effect of public image building has yet to be seen on a global scale.

“The actions of companies and governments need to reflect cultural sensitivity and relevance...the current situation often falls short of these goals: local communities all too often do not participate in decision-making or in guiding the impacts of mining, bear a disproportionate share of the costs of mineral development without adequate compensation, and receive an inappropriately small share of the economic and social benefits (MMSD 2002a: 208).

The corporate response has to a large extent been to emphasize accompanying wealth and development of mining operations, while minimizing negative impact such as social disruption. Emphasis is typically on access to infrastructure, school construction or services, which are stand-alone components and, thus, relatively easy to finance and manage. Particularly, in developing countries such solutions are proposed, often neglecting the need for long-term compensation measures for lost livelihoods. Corporate responses to indigenous peoples will of course differ depending on region, size, life span, life stage and other issues. As discussed above, national legislation and jurisprudence is fundamental in requiring certain levels of corporate behaviour.

There has been considerable amounts of research at both national and international levels undertaken by mining corporations on social sustainability, indigenous peoples rights covering, among other things, the vast array of issues raised above.

The major trend by the corporate sector has been to advocate for voluntary measures rather than binding agreements and principles. Various forms of codes of conduct, recommendations and guidelines have been the concrete outputs. However, specific company policies and corporate social responsibility officers at the central HQ level have not necessarily been paralleled with similar advances on the ground

Furthermore, while there has been some recognition of participation in identifying mitigation measures and crafting development initiatives, mining companies have been reluctant to take on rights-based approaches judged as beyond the responsibilities of the private sector. Still, given the weak role of governments in many countries in the South, mining companies, particularly multinationals, should be encouraged by HQ countries and international institutions to take on responsibility for ensuring decent partnerships.

The international draft ICMM principles are an example of such an industry initiative. The principles address a wide number of concerns and have been up for public consultation on the website. While the effort to take up more proactive work in this

direction is applauded, responses from the NGOs have emphasized the need for more concrete commitments to a number of key issues and concepts (in part discussed earlier in this document) if they are to make a real difference on the ground. The principles related to social standards are disappointingly vague and non-committing.

It should be noted that ICMM is working with the Mining Policy Group of the Oil, Gas, Mining and Chemicals Department of the World Bank “to develop new approaches and tools to support government, industry and community efforts to realise more sustainable community development around mining and mineral processing operations.” This includes, among other things, the following components:

1. Guidelines and methodologies for social sustainable development assessments
2. A typology of government approaches to supporting sustainable development within mining zones
3. An assessment of skill and resource capacity needs at the community level for participation in planning processes and effective planning for community sustainable development
4. Guidelines and methodologies for public consultation
5. Guidelines and methodologies for dispute and conflict resolution
6. Corporate strategic planning framework for community development

Such efforts need to be reviewed in the context of the poor track record of the corporate world. As Downing and others note:

“Mitigation of mining-induced impoverishment risk is possible, but not a priority for the mining industry. A survey of the strategies and tactic of the principle stakeholder groups involved in encounters reveals a lack of standards for dealing with indigenous peoples and minimal concern for their welfare.”(Downing et al 2002: 4).

The basic reasons for this are clear. International guidelines or principles are hardly effective in replacing legally binding social standards. Unfortunately, track records reveal poor compliance without strong government-driven regulatory frameworks to protect indigenous rights in general, and ensure compliance in the mining sector specifically.

Mining enterprises have in general not prioritised the value of strong agreements and the potential for greater assurance and predictability. A rights-based approach would generally require more time in the agreement building process than provided by typical corporate schedules.

Indigenous peoples’ and environmental organization play a critical role in ensuring that detailed responses are developed to incorporate efforts to set new standards. Mining corporations in turn need to be far more transparent in their operations and be more responsive to the need for international standards.

Indigenous capacity

Lack of capacity to engage with government and corporate actors remains a basic hurdle for indigenous communities and their organizations. In addition to the need for concerted governmental and corporate action taking on a rights-based approach applying principles of free and informed consent, there is a need to equilibrate the power balance to ensure effective dialogue. This goes beyond the recognition of

indigenous decision-making structures, and involves ensuring sufficient funding and supporting capacity building to take on the new challenges implied by encountering mining companies.

The need for strengthened customary decision-making institutions, representative bodies and information sharing mechanisms are fundamental if consultation processes are to take place in a decent manner and result in robust agreements that are to be implemented in the long-term.

Existing experiences reveal the weakness of many social institutions. These institutions are easily shaken by the introduction of new elements such as increasing circulation of resources, power and influence. Maintaining accountable processes is not always easy, particularly not in situations where companies have sought to co-opt local leaders or certain factions (United Nations 1994). It involves lengthy internal community debates and thought processes that mining companies rarely have the time or interest in resolving.

Strengthening the *resilience* and *dynamism* of social institutions is a critical aspect of such a process. This in part requires on a strong legal framework, which recognizes indigenous customary institutions and allows for agreement building with these.

At a global scale, indigenous organizations are organizing themselves, mobilizing broader civil society networks and building their capacity to engage with government and corporate actors. The indigenous environmental network, for example, runs the indigenous mining campaign project (http://www.ienearth.org/mining_campaign.html), which aims to:

“support and empower indigenous peoples to develop strategies for the protection of Mother Earth and the health of their communities against the spiritual, cultural, economic, social and environmental impacts of mining and oil extraction.”

At another level, the MMSD consultations led to the suggestion that an international indigenous organisation be set up to monitor and oversee performance of the mining sector by “developing a minimum set of standards that mining companies will have to comply with when operating in indigenous communities. (MMSD 2002b: 16).”

There is a consistent call for more transparent consultation processes with indigenous organizations at national and international levels to strengthen the development of better and binding corporate standards (Weitzner 2002, Caruso et al 2003). Addressing indigenous capacity issues in response to these demands, or their absence, will involve local, regional and international level attention.

The international context

The international context is fundamental to ensure progress in these areas. Some key aspects are listed below:

- 1) There is clear need for further international standard setting in the areas of social impact assessments, recognition of indigenous rights, appropriate consultation processes and good practice benchmarking.

- 2) Given the international nature of the mining industry, there is a need for commitment from governments to ensure that their companies act on agreed-upon principles at home as well as abroad.
- 3) International financial agencies and institutions providing credit support to mining operations need to develop and take on board social and environmental criteria for engaging with the mining industry.
- 4) Multilateral and bilateral development agencies need to strengthen and develop funding and lending policies with appropriate criteria and benchmarks to ensure that good governance, international rights are respected. Promoting the ratification of ILO Convention 169 would be an important benchmark.
- 5) There is a need from the international mining community to take on responsibility and commit to international human rights and environmental standards, including the growing body of international policies and jurisprudence on indigenous rights, to ensure community recognition and equity for mining operations in countries including those yet to set up appropriate legal frameworks.
- 6) There is a call from both indigenous and environmental movements for strengthened monitoring processes of agreements and their implementation at both national and international levels to ensure accountability and transparency.
- 7) There is a need for the international community, including the entire list of institutions listed above, to engage in capacity building of indigenous peoples communities and organizations to appropriately engage in negotiations, agreement building and monitoring activities.
- 8) There is a need to support and bolster indigenous monitoring mechanisms and bodies
- 9) There is a need for strengthened market mechanisms and certification schemes to recognize and support companies implementing high social and environmental standards

A comparative matrix

	Greenwash statement ⁶	ICMM draft principles ⁷	Indigenous peoples' declaration on extractive industries ⁸	IUCN policy approach ⁹	ILO Convention 169 ¹⁰	UN workshop on indigenous peoples, private sector natural resource, energy and mining companies and human rights ¹¹
Recognition of indigenous rights	Calls for the respect of ip rights to self-determination and free prior informed consent	According to principles ILO C169, Rio and others have been reviewed Article 3 speaks of upholding fundamental rights, respecting the culture and heritage of local communities and indigenous people, but no mention of C169 or other rights instruments.	All future extractive industries development must uphold indigenous peoples' rights. By human rights, we refer to our rights established under international law. We hold our rights to be inherent and indivisible and seek recognition not only of our full social, cultural and economic rights but also our civil and political rights. Respect for all our rights is essential if 'good governance' is to have any meaning for us. In particular we call for recognition of our collective right as peoples, to self-determination, including a secure and full measure of self-governance and control over our territories, organisations and cultural development.	Resolution 1.51 principles : recognize, respect and comply with the rights of indigenous peoples over their lands or territories and natural resources, as a condition for achieving sustainable development; b) consider the adoption and implementation of the objectives of ILO Convention No 169 and the Convention on Biological Diversity, and comply with the spirit of the draft UN Declaration on the Rights of Indigenous Peoples, as well as adopt policies, programmes and laws which implement Chapter 26 of Agenda 21; c) respect the rights and interests of indigenous peoples in all activities connected with extracting non-renewable natural resources, including	An international human rights standard on the rights of indigenous and tribal peoples	The workshop also acknowledged that a precondition for the construction of equitable relationships between indigenous peoples, States and the private sector is the full recognition of indigenous peoples' rights to their lands, territories and natural resources.

⁶ "United outcry against mining greenwash" signed by 50 individual and collective persons, November 1 2002

⁷ International Commission on Metals and Mining

⁸ Oxford Workshop on Indigenous peoples and the Extractive Industries - 13-15 April 2003, "Indigenous Peoples' Declaration on Extractive Industries"

⁹ Based on IUCN Resolutions and Recommendations (www.iucn.org)

¹⁰ Convention No. 169 of the International Labour Organization on the rights of indigenous and tribal peoples.

¹¹ E/CN.4/Sub.2/AC.4/2002/3

				geological surveys, mineral exploration, claim-staking, infrastructure and development works, and adopt adequate measures to minimize environmental, health, cultural and social impacts;		
Consultation practices			<p>All proposed developments affecting our lands should be subject to our free, prior and informed consent as expressed through our own representative institutions, which should be afforded legal personality. The right to free, prior informed consent should not be construed as a 'veto' on development but includes the right of indigenous peoples to say 'no' to projects that we consider injurious to us as peoples</p> <p>We demand our right to equal and effective participation in these planning processes and that they take full account of our rights. Given the country-wide embrace of these national strategies, we demand that the agencies such as the World Bank give equal attention to the application of existing laws and regulations which uphold our rights in policy and country dialogues and financial agreements. Development agencies should give priority to securing our rights and ensuring they are</p>	<p>promote effective participation and previous agreements with indigenous peoples in the design, adoption, implementation and monitoring of processes, projects and legislative and administrative policies regarding the exploration and exploitation of non-renewable resources that might affect their lands or territories and natural resources;</p>	Articles 6 and 7 in particular	<p>The workshop recommended that consultation between indigenous peoples and the private sector should be guided by the principle of free, prior, informed consent of all parties concerned.</p>

			effectively implemented before facilitating access to our lands by private sector corporations such as extractive industries. Mining laws which deny our rights should be revised and replaced.			
Impact assessments			<p>Promotes the precautionary principle</p> <ul style="list-style-type: none"> ◆ Independent and participatory environmental, social and cultural assessments must be carried out prior to the start of projects, and our ways of life respected throughout the project cycle, with due recognition and respect for matrilineal systems and women's social position. 		Article 7	The workshop recommended that the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people pay attention to the impacts of private sector activities on indigenous peoples' lands in the exercise of his mandate.
Benefit sharing and compensations	Implicit in terms free, prior, informed consent	Article 3: Minimise involuntary resettlement, and compensate fairly for adverse effects on the community where it cannot be avoided	Before projects are embarked on, such problems as marginalisation, insecure land rights, and lack of citizenship papers must be addressed. Indigenous Peoples' Development Plans (IPDPs) must be formulated with the affected communities and Indigenous peoples should control mechanisms for the delivery of project benefits.	design and execute development plans with the equitable participation of all parties concerned recognizing their needs and cultural characteristics;		The workshop recommended that private sector development on indigenous peoples lands ensure mutually acceptable benefit sharing.
Reparation to affected communities and restitution for past practices	Calls for reparations to affected communities and restitution for past damages	Development of : Guidelines and methodologies for dispute and conflict resolution	Damages and losses caused by past projects (which have despoiled our lands and fragmented	adopt measures to compensate indigenous peoples for damages to their lands or territories;		

		Corporate strategic planning framework for community development	communities) made good for. Not only remuneration for economic losses but also reparations for the social, cultural, environmental and spiritual losses Measures should be taken to rehabilitate degraded environments, farmlands, forests and landscapes and restitute lands and territories			
Corporate practice	Calls for i) Convention on Corporate accountability Convention ii) stop to environmentally damaging practices iii) downsizing mining industry iv) moratorium until rights are recognized		Moratorium on further mining, oil and gas until human rights are secure No further investments, funding until rights are assured	the development and support of a clear policy on the use of non-renewable natural resources which includes criteria for the conservation of natural resources and respect for the rights of the world's indigenous peoples,		
Accountability		Speaks of setting up a suitable verification system	Formal policies and appeals procedures should be developed to ensure accountability for loan operations, official aid, development programmes and projects. These accountability measures should be formulated with indigenous peoples with a view to securing our rights throughout the strategic planning and project cycles.	facilitate the establishment of mechanisms for the negotiation between indigenous peoples, the State and other interested parties to promote the equitable resolution of conflicts arising from the use or potential use of natural resources.		The workshop recommended that mutually acceptable independent mechanisms be established for resolving disputes between indigenous peoples and the private sector.
Further action		Guidelines and methodologies for social sustainable development assessments A typology of government approaches to supporting sustainable development within mining		the development and support of a clear policy on the use of non-renewable natural resources which includes criteria for the conservation of natural resources and respect for the rights of the world's		recommended that States, United Nations system organizations, indigenous peoples and the private sector continue to review experiences in relation to private sector natural resource

		<p>zones An assessment of skill and resource capacity needs at the community level for participation in planning processes and effective planning for community sustainable development Guidelines and methodologies for public consultation</p>		<p>indigenous peoples,</p>		<p>development on indigenous peoples' lands, consider best practices, and explore the links between recognition and respect for indigenous peoples' land rights and the successful experiences.</p>
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Ways forward – a common ground

There is an enormous field of common ground, of shared objectives and shared problems between indigenous peoples and conservation organizations. It is clear that most environmental damage also impacts on indigenous communities in terms of health, livelihoods and customary land management. The right to enjoy a healthy environment is among the basic rights often ignored by mining legislation or actual practice. This presents a significant overlap between the interests of indigenous peoples and that of environmental protection organizations. This overlap is not just a question of shared interests, but as discussed below, also involves shared goals and to a large extent agreement on the path forward to reach these goals.

The need to develop new principles and guidelines for “good practice” is evident from recent developments in the mining industry. While the links made between the mining industry, indigenous peoples and the environment in an effort to spell out paths towards “sustainable development” have been grabbing our attention, most results call for more concrete commitment at both international and national levels. Much debate and different opinions have been generated. These debates generally agree on the need for more binding action that responds to urgent need for improvement rather than ignoring the issues through vague commitments and politically correct terminology.

A comparison of different approaches and agenda also reveals that most indigenous organizations call for more social and environmental responsibility at the corporate level. The statement labelling the IUCN partnership, now dialogue, as greenwash, for example, calls for an end to environmentally damaging practices and a new Convention on Corporate Accountability. While it is certain that not all can be achieved through a dialogue between the mining industry and the IUCN, the need for more dialogue is evident.

It is unrealistic to expect the mining industry to independently identify environmentally or socially damaging practices. Furthermore, given the broad institutional commitment of the IUCN to both social and environmental sustainability, it is an important locus for furthering a new dialogue and agenda. IUCN resolution 1.51 provides a strong basis for such a dialogue along with the general recognition of indigenous peoples and their rights in various resolutions and recommendations.

The WSSD plan of action calls for more efforts to address social and environmental impacts of the mining industry, including the enhancement of the participation of local and indigenous communities. There has been considerable international debate as to whether or not mining operations contribute to sustainable poverty alleviation (Ross 2001, Weitzner 2002). Initiatives have called for the necessity to further review international financing and lending operations catalysing, among other things, the World Bank Extractive Review. There is also a growing call among indigenous peoples to ensure their right to say no through PIC, the establishment of “no-go zones”, which needs to be better linked to efforts securing the protection of protected

areas against mining operations. There is an overwhelming consensus that a “no-go” approach should be based on integrating social, cultural and environmental priorities.

The 2003 Parks Congress approach, “Benefits beyond Boundaries” to cement the interrelationship between protected areas, poverty alleviation and indigenous peoples underlines the importance of this consensus. By taking up one central issue, protected areas can accommodate both biodiversity and cultural objectives securing many indigenous peoples’ legal recognition of ancestral lands and waters under co-management arrangement. Current IUCN work through its Social Policy Programme and the Task Force on Indigenous and Local Communities and Protected Areas (TILCEPA) to harmonize these issues can provide an important avenue for securing legal protection. Should protected areas be recognized by the mining industry, it would be important to cover the wide range of protected areas currently recognized by the international conservation community through the groundbreaking work of the IUCN.

Furthermore, from an ecosystem perspective, much land of both biodiversity and indigenous importance remains legally unprotected. Securing commitment from the mining industry to recognize such areas outside existing categories and undertake required precautionary action should be a common objective of conservation organizations and indigenous peoples. IUCN can facilitate such a dialogue.

The presence of a strong indigenous lobby with well-informed indigenous professionals can offer an important critical mass of opinions to bring to the table. Despite much effort, the spelling out the practical approaches to and measures for social impact assessment, appropriate consultation measures and prior informed consent remain marginal in the broader debate.

An important locus where much innovative development is taking place in this respect involves the Convention on Biological Diversity and its Ad Hoc Working Group on Article 8(j). The recent recommendations and upcoming guidelines on integrated impact assessments are of key importance. Again the IUCN is in a strong position to bring the different actors together in finding a way forward.

Furthermore, the large number of NGO members of the IUCN provides the institution with a broad mix of actors to engage in proactive discussions with the mining industry as well as to secure further monitoring of agreements from both governmental institutions and civil society.

Proponents of further and strengthened agreement building use a pragmatic logic arguing that agreement building is more likely to secure some benefits in comparison to what they see as “blind” pursuance of a total rejection strategy. They may be right in many cases. However, a considerable number of examples also prove the opposite. Basic building blocks in terms of national legislation, jurisprudence and implementation measures are often absent in many countries. This limits agreement building to voluntary, often short lasting, commitments of companies to secure buy-in from indigenous communities. Given the centrality of legal and policy dimensions, this would be an important further item of work.

As IUCN has noted in its comments to the ICMM draft principles, the very fact that the industry is willing to commit, sign up and be accountable to a set of international standards is an important first step forwards. The next step involves identifying the nature and contents of such international principles.

Both indigenous movements and environmental organizations have called for the necessity for strengthened international environmental and social standards. IUCN has in its response to the ICMM first draft principles, among other things, sought to contribute with a number of points and issues, which need further elaboration. These include:

- The need for further operational guidelines, as the overall framework of principles remains vague
- The need for strengthened compliance and accountability measures
- Indigenous peoples' issues, particularly the need to specifically address indigenous peoples' rights.
- Good governance: the need for good governance within all operations
- The need for commitment to objective SEIA/ EIA with essential guidance
- The precautionary principle
- The need for more definitive language on the recognition of rights, protected areas and other issues

A number of detailed comments are put forward, which rely on the in-depth understanding of the IUCN office. The point is that there is a much broader potential to engage IUCN professional networks, NGOs and indigenous peoples organizations. Indeed, such a dialogue is fundamental to move towards governments and corporations respecting indigenous rights and apply the concept of prior informed consent.

Finally, the World Commission on Dams (WCD) continues to be perceived as a well-crafted and credible process, which is also highlighted by indigenous peoples organizations and NGOs as the right approach, contrasting it with more closed review processes (see Caruso et al 2003: 7). The IUCN should promote further dialogue based on, and further strengthening, the body of consultation practices and experiences generated in the WCD process. A World Commission on Mines could be among the options to explore with a number of NGO, indigenous peoples, governments and industrial actors currently preoccupied by the issue.

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Annexes

Annex 1: Probability of sustainability model (Downing et al 2002)

The probability of an empowered, sustainable outcome increases as each of 14 elements is brought into an encounter:

1. Sovereignty is respected and strengthened.
2. The rights and access to indigenous land and nature are secured.
3. At the beginning, both indigenous and non-indigenous stakeholders' presuppositions about one another are aligned with fact.
4. The desired outcomes of the encounter for indigenous peoples emerge from meaningful, prior informed consent and participation.
5. Non-indigenous stakeholders fully and opportunely disclose to the indigenous group their plans, agreements and financial arrangements related to the indigenous group in a culturally appropriate manner and language.
6. Likewise, the non-indigenous stakeholders identify and disclose all the risks of a proposed mining endeavour. Full risk assessment means not only identification of the threats posed by the loss of land - but also the full range of social, economic and environmental impacts.
7. Prompt unambiguous institutional and financial arrangements to mitigate each risk.
8. Provisioning of benefit-sharing arrangements that goes beyond compensation for damages.
9. Indigenous peoples, as an informed group, have the right to approve, reject, or modify decisions affecting their livelihoods, resources, and cultural futures.
10. Should restoration of a disturbed habitat prove impossible, then the non-indigenous stakeholders make provisions for an improved habitat that supports a lifestyle acceptable to indigenous peoples.
11. The basic human and civil rights are protected, as specified in international conventions.
12. The focus of the encounter is on protecting indigenous wealth, especially their social relations that guide the sustainable use of their natural resources.
13. Financial and institutional arrangements are forged that bridge the discrepancy between the multigenerational time frame of indigenous peoples and the short-time frame of mining.
14. A guarantor to assure compliance with and funding of any negotiated and mutually satisfactory agreements