

TOWARDS AN IMPROVED GOVERNANCE AGENDA FOR THE EXTRACTIVE SECTOR



**Report based on RIIA workshop:
Sustainable Relationships: Financing and
Monitoring Responsibilities,
10–11 October 2002**

**Dr Malaika Culverwell
Bernice Lee
Izabella Koziell**



© Royal Institute of International Affairs, 2003

Cover design by Matthew Link, photograph by Ian Britton,

Sustainable Development Programme

Royal Institute of International Affairs

10 St James's Square, London, SW1Y 4LE, UK

www.riia.org/sustainabledevelopment

The Royal Institute of International Affairs is an independent body which promotes the rigorous study of international questions and does not express opinions of its own. The opinions expressed in this publication are the responsibility of the author(s).

All rights reserved. No part of this publication may be reproduced, stored in a retrieval system, or transmitted by any other means without the prior permission of the copyright holder.

Malaika Culverwell is a Senior Research Fellow at the Royal Institute of International Affairs

Bernice Lee is a Strategic Knowledge Manager at the International Centre for Trade and Sustainable Development

Izabella Koziell was formerly at International Institute for International Development, and is now an Environment Adviser for the UK Department for International Development, in Nairobi, Kenya

The organization of the workshop '*Sustainable Relationships: Financing and Monitoring Responsibilities*' and the production of this report was made possible by the generous support of the **Japan National Oil Corporation (JNOC), Shell International Limited, the International Petroleum Industry Environmental Conservation Association (IPIECA) and Synergy.**

Contents

1	INTRODUCTION	1
2	MAXIMIZING ECONOMIC IMPACTS: ‘ASSURING BENEFITS AND SUSTAINING LIVELIHOODS’	4
2.1	ESTABLISHING AGREEMENTS	5
	<i>Revenue sharing and distribution</i>	<i>5</i>
	<i>Local/national share</i>	<i>7</i>
	<i>Transparency</i>	<i>8</i>
2.2	IMPLEMENTING AGREEMENTS	9
	<i>Engaging with stakeholders</i>	<i>9</i>
	<i>Linking with suppliers</i>	<i>11</i>
	<i>Transferring technology and capacity-building</i>	<i>12</i>
2.3	CONCLUSION: OPTIONS FOR ‘NEXT STEP’ ACTIONS	13
3	MINIMIZING NEGATIVE ENVIRONMENTAL IMPACTS: PROTECTING SENSITIVE AREAS: ACCESS AND MANAGEMENT ISSUES	16
	<i>What might constitute better practice?</i>	<i>17</i>
3.1	ESTABLISHING AGREEMENTS	18
	<i>Establishing legitimate new roles and responsibilities</i>	<i>18</i>
	<i>A coherent set of prioritized action-oriented guidelines</i>	<i>18</i>
	<i>Transparent, inclusive decision-making processes</i>	<i>19</i>
	<i>Better systems for identifying the most critically valuable areas</i>	<i>19</i>
	<i>Adopting the concept of ‘net benefit’ rather than ‘net loss’</i>	<i>20</i>
	<i>Policy, planning and legislation that harmonize land use</i>	<i>20</i>
	<i>Consistent application of standards</i>	<i>20</i>
3.2	IMPLEMENTING AGREEMENTS	21
	<i>Engaging in equitable and diverse partnerships</i>	<i>21</i>
	<i>A risk-based approach to impact assessment</i>	<i>21</i>
	<i>More rigour and independence in environmental impact assessments</i>	<i>22</i>
3.3	CONCLUSION: OPTIONS FOR ‘NEXT STEP’ ACTIONS	22
	<i>Possible next step actions :</i>	<i>22</i>
APPENDIX: EXISTING GOVERNANCE STRUCTURES AND INITIATIVES CN PROTECTING SENSITIVE AREAS.....		26
INTERNATIONAL LEVEL.....		26
	<i>UNESCO World Heritage Sites</i>	<i>26</i>
	<i>UNESCO’s Man and Biosphere approach</i>	<i>26</i>
	<i>The UN Convention on Biological Diversity</i>	<i>26</i>
	<i>Other international conventions influencing access and management of sensitive areas</i>	<i>27</i>
	<i>Indigenous peoples’ conventions</i>	<i>27</i>
	<i>NGO-led initiatives</i>	<i>27</i>
	<i>Industry initiatives</i>	<i>28</i>
	<i>Partnerships</i>	<i>28</i>
	<i>The financial community</i>	<i>28</i>
COMPANY - AND ORGANIZATION - SPECIFIC INITIATIVES		29
NATIONAL LEVEL INITIATIVES.....		30
	<i>Other relevant laws and agreements at national level.....</i>	<i>30</i>

1 INTRODUCTION

Today, the extractive industries (oil, gas and mining) face enormous challenges in maintaining their so-called ‘social licence to operate’, especially in developing countries. This issue has become important not least because of mounting pressures on the traditional boundaries of corporate responsibility in the past decade. These pressures include the appeal of the sustainable development agenda, rising expectations and demands from civil society, the political imperatives of home country governments, conflicts between extractive companies and communities/ civil society, and the evolution of corporate culture and values.¹ Half of the respondents to the latest UK corporate responsibility study by MORI (Market and Opinion Research International) say that business should give as much attention to society and the environment as to financial performance.² If most natural resources extraction will increasingly take place in developing countries or in remote, mostly undeveloped places, the public will increasingly expect the local communities and host countries to benefit from the activities of extractive companies.

The challenge of maximizing economic benefits and minimizing negative environmental impacts are not new. Discussions have taken place in many different forums, and it is now clear that implementation and actions are far more important than words.

One way of addressing these challenges is via partnerships or relationships with key stakeholders. ‘The term ‘multistakeholder processes’ describes processes which aim to bring together all major stakeholders in a new form of communication, decision-finding (and possibly decision-making) on a particular issue. They are based on recognition of the importance of achieving equity, accountability and transparency in communication between stakeholders.’³

Growing attention to the issue of partnerships and stakeholders involving business and other development actors is generally justified on the basis that new forms of governance are necessary in an increasingly globalised and integrated world. There is considerable appeal in this seemingly pragmatic, constructive and cooperative approach. Indeed, it is so appealing that many organizations are rushing headlong into ‘partnerships’ or ‘stakeholder relationships’ with business without much critical reflection on their implications. Utting (2000) outlines pertinent concerns such as ‘how will the agenda of the partners change?’, ‘how will partnerships affect the capacity of different actors to influence decision-making processes?’ and ‘what criteria are used to select partners?’⁴ So far, however, it looks as if stakeholder dialogues, ways of feeding them into decision-making and concrete follow-up are mostly being organized and prepared on a rather ad hoc basis. There is vast experience with participation at community levels and increasing experience at national and global levels. Yet studying and comparing the different approaches and distilling some common but flexible guidelines from a stakeholder perspective is lagging behind. According to Hemmati (2002), governments and inter-

¹ Jim Cooney (2002), ‘Mounting Pressures on Mining Firms to ‘Get Involved’, presentation at the World Bank Workshop on Local Management of Mineral Wealth, Washington DC, 10–11 June.

² Alison Maitland (2002), ‘Pressures Mount for Great Disclosure’, *The Financial Times*, 10 December.

³ Minu Hemmati (2002), *Multistakeholder Processes for Governance and Sustainability – Beyond Deadlock and Conflict*, London, Earthscan, p. 2.

⁴ Peter Utting (2000), ‘Business Responsibility for Sustainable Development’ *Occasional Paper No. 2*, United Nations Research Institute for Social Development (UNRISD).

governmental bodies, industry, NGOs, local governments and other stakeholders are still trying out various approaches.⁵

What has been the response in the extractive sector to date? For a start, the **Extractive Industries Review** was launched by the World Bank Group to discuss its future role in the extractive industries with concerned stakeholders. It is a work in progress with the aim of producing a set of recommendations that will guide the involvement of the World Bank Group in the oil, gas and mining sectors. **The Mining, Minerals and Sustainable Development (MMSD)** project, as part of the Global Mining Initiative, completed an independent two-year project of research and consultation seeking to understand how the mining and minerals sector could contribute to the global transition to sustainable development. Commissioned by the World Business Council for Sustainable Development (WBCSD), MMSD was a clear illustration of collective action, though it remains to be seen whether there is sufficient momentum for the reorganized mining industry association, the International Council on Mining and Metals (ICMM), to carry the work forward to the more difficult implementation stages. In 2002 the **International Association of Oil and Gas Producers (OGP)** joined forces with the **International Petroleum Industry Environmental Conservation Association (IPIECA)** to produce a guidance document for industry practitioners. In preparing the final document they conducted limited consultation with both industry and non-industry groups to produce a 'List of Questions' which they felt were the key questions that would need to be asked and answered in considering the social dimension of oil and gas projects. Another significant initiative was that of 'Natural Resources Clusters' of **Business Partners for Development (BPD)**. This project involved work on practical examples, based on the experience of specific natural resource operations around the world, of how three-way partnerships involving companies, government authorities and civil society organizations could be an effective means of reducing social risks and promoting community and regional development.

There is a noticeable development within the extractive sector and industry groups towards participation in 'partnerships' and 'stakeholder processes' to enable the industry to improve their management and implementation of key sustainable development issues.

The Royal Institute of International Affairs hosted a workshop on 10 and 11 October 2002 at which some thirty-five delegates met under the Chatham House Rule⁶ to participate in a two-day workshop entitled 'Sustainable Relationships: Financing and Monitoring Responsibilities'. With a focus on specific issues covering the socio-economic and environmental dimensions of sustainable development, the aim of the workshop was to see how far the extractive sector had come in the participatory process with regard to creating and implementing development agreements.

The first day of the workshop focused on **Assuring Benefits and Sustaining Livelihoods**, and *maximizing opportunities* from resource rents formed the basis of discussion. The main topics under analysis included revenue distribution/sharing and local employment and capacity-building. Participants were encouraged to discuss the merits and challenges of types of agreements, participatory processes, measurement issues, and financing and monitoring arrangements.

Day two focused on *minimizing impacts*. Here the conceptual, strategic and practical dilemmas of establishing agreements for 'protected areas' were debated. **Access and Management Issues around**

⁵ Hemmati (2002), p. 5.

⁶ *Chatham House Rule*: 'Participants are free to use the information received, but neither the identity nor the affiliation of the speaker(s) nor that of any other participant, may be revealed.'

Sensitive Areas centred discussions around extractive industries' experience with designing governance agreements with governments and international organizations; the role of the finance community, and the challenge of effective implementation at the field level.

Many of the issues discussed at this workshop were not new – they had been debated in different forums, at the United Nations and elsewhere. The challenges, as well as the solutions, were familiar. Participants agreed that, in the spirit of the 2002 World Summit on Sustainable Development (WSSD), implementation and action were more important than words. They also agreed that it was in the interest of the extractive companies and industry bodies to act in concert to raise the standards of their operations. This would not only help to level the playing field; it would also enable the sectors to deal with the free-rider problem in the long term.

The most significant aspect of the workshop was that it provided extractive-sector participants who were not involved in international policy debates with an opportunity to understand the extent to which agreement had been reached on certain issues such as community development programmes and the management of sensitive areas. This was particularly the case for extractive corporates and policy-makers from developing countries. Although the debate around 'financing and monitoring responsibilities' might have been better structured, participants felt that a return to these issues with greater participation by the mainstream finance and socially responsible investment community was certainly necessary.

This report covers the issues discussed in the workshop. It highlights the challenges faced in the creation and implementation of agreements with stakeholders on two key areas of sustainable development: the economic and the environmental. As such the report is divided into two parts: 'Maximizing Economic Benefits' and 'Minimizing Negative Environmental Impacts'. Each part describes policy initiatives that are currently in place and discusses what needs to be done in terms of the ways agreements are established and then implemented with stakeholders. Conclusions particular to each issue – i.e. revenue distribution, local employment, capacity-building, protecting and managing sensitive areas – are by no means exhaustive and reflect only part of a much larger and very challenging agenda.

2 Maximizing economic impacts: 'assuring benefits and sustaining livelihoods'⁷

Oil/gas and mineral development should bring extensive economic and other potential benefits to the host countries.⁸ According to McPhail, since projects in the extractive industries can 'generate sizeable revenues, create jobs and business opportunities, and often bring new roads and access to water and power to isolated rural areas in which they are typically located', they can potentially stimulate economic growth, reduce poverty and raise living standards in the host countries.⁹ For example, World Bank figures show annual oil and gas incomes of around \$35 billion for Mexico, \$30 billion for Venezuela and \$22 billion for Nigeria.¹⁰ These benefits are especially important for poor countries and regions without alternative sources of development, but they are by no means automatic.¹¹

While many countries (such as Australia, Canada, Norway, Sweden and the United States) have benefited in the past from oil/gas and mineral extraction, more have failed to capitalize on the opportunities brought by the extractive sector.¹² This has been known as the 'resource curse'. The development impacts of oil have generated a wide range of literature pointing to a series of negative impacts. *Petro-states: Predatory or Developmental?* argues that resource-rich developing countries have performed markedly worse in terms of GDP per capita growth than resource-poor countries.¹³ *The Paradox of Plenty* by Terry Karl documents many detrimental impacts of oil booms in Latin America, as well as in the Middle East and North Africa (such as Iran and Algeria).¹⁴ *The Price of Oil* – a report by Human Rights Watch – draws public attention to human rights abuses associated with hydrocarbon development in Nigeria, as do reports by other NGOs such as Christian Aid (on Myanmar), or Global Witness (on Angola).¹⁵ The way in which oil undermines governance and democracy is also discussed widely by other academics.¹⁶ Oxfam America, an NGO, also published a report examining the negative relationship between the extractive sectors and the poor.¹⁷

⁷This part of the Paper is written by **Bernice Lee** (blee@ictsd.ch), a Strategic Knowledge Manager at the International Centre for Trade and Sustainable Development, and **Dr Malaika Culverwell** (mculverwell@riia.org), a Senior Research Fellow at the Royal Institute of International Affairs.

⁸ Kathryn McPhail (2000), 'How Oil, Gas, and Mining Projects Can Contribute to Development', *Finance and Development*, Vol. 37, No. 4.

⁹ Ibid.

¹⁰ Referenced from IPIECA/OGP (2002), *The Oil and Gas Industry - From Rio to Johannesburg and Beyond*, p. 7.

¹¹ MMSD (2002), *Breaking New Ground: Mining, Minerals and Sustainable Development*, Earthscan, London.

¹² For a recent debate on the impacts of mining on developing countries, see, for example, Monika Weber-Fahr (2002), *Treasure or Trouble? Mining in Developing Countries*; Michael Ross (2002), Comments on *Treasure or Trouble? Mining in Developing Countries*; or Friends of the Earth (2002), *Treasure or Trash? The World Bank's Flawed Defense of Mining As A Tool For Economic Development*. All of these documents can be found on the Extractive Industries Review website at <http://www.eireview.org>.

¹³ Helge Ole Bergesen, Torleif Haugland and Leiv Lunde (2000), *Petrostates – Predatory or Developmental?* Report by the ECON Centre for Economic Analysis and Fridtjof Nansen Institute, Oslo, Norway.

¹⁴ Terry Lynn Karl (1997), *The Paradox of Plenty: Oil Booms and Petro States*, University of California Press, Berkeley.

¹⁵ See, for example, Christian Aid, *The Scorched Earth: Oil and War in Sudan*, <http://www.christian-aid.org.uk/indepth/0103suda/sudanoil.htm>; and Global Witness (2002), *All the President's Men*, <http://www.globalwitness.org/campaigns/oil/index.html>.

¹⁶ See, for example, Mick Moore (2001), 'Political Underdevelopment: What Causes Bad Governance?', *Public Management Review*, Vol. 3, No. 3; or Michael Ross (2001a), 'Does Oil Hurt Democracy?', *World Politics*, April.

¹⁷ Michael Ross (2001b), *Extractive Sectors and the Poor*, an Oxfam America Report.

In short, many of the oil/gas- and mineral-dependent countries have failed to attract non-mining/oil/gas investments, to diversify their economies or to generate sustainable livelihoods and development in their countries. Revenues from extractive projects are also often unequally distributed within the host countries – between social groups – and among regions. In addition, many of the host countries suffer from serious fiscal deficiencies owing to the lack of budgetary controls and a broader civil, political and human rights framework.

Breaking New Ground, the report of the MMSD project, outlines three main schools of thought on why many mineral-dependent countries seem to have fallen short of realizing the economic development potential of mineral production. The first blames external market forces – and more specifically, volatile or low commodity prices. The second emphasizes internal economic stresses, arguing that a large natural resource base can cause the economy to veer off in one direction and destabilize or damage other sectors. The third argues that windfall mineral revenues tend to distort processes of economic decision-making and may foster the kind of corruption that undermines political and social institutions.¹⁸

Capacity deficit is often, however, not the only bottleneck. Oil/gas/mineral rents have been easily diverted – through corruption, patronage or military expenditure. As a representative from an international organization suggests, ‘there is often method in the madness’. In many corrupted countries, in the North as well as the South, there are well-oiled means and methods to deliver benefits to the corrupted vested interests. In these situations, it is not only capacity, but also political will and the quality of governance, that prove wanting.

Although many countries have suffered from the ‘resource curse’, many others have not. These include, for example, Australia, Botswana, Canada, Chile, Indonesia, Malaysia and Norway. More research is needed to analyse the common qualities within the group of countries that are often cited as the exceptions to the rule. It has been suggested that the quality of governance of these countries, in particular the quality of the senior civil service, might have accounted for their experiences.¹⁹ One academic participant at the workshop asked what persuaded the politicians in these countries to allow their senior civil servants to get on with it. Deeper understanding of these issues will provide valuable policy lessons for countries planning to develop their extractive sectors.

2.1 Establishing agreements

Revenue sharing and distribution

In the case of natural resource rents, governments often transfer selected property rights to industry, such as the right to mine or to exploit an area in exchange for some amount of economic rent. The most common forms of revenues are direct taxes (corporate income tax, royalty tax, withholding tax, import and export taxes, excess profits tax) and fees (registration, land, water, infrastructure use) for the use and development of the nation's resources.

Large extractive projects have long lead times, but public costs are incurred well before operations begin. In many countries, the majority of tax revenues (especially from mining) do not begin to flow

¹⁸ MMSD, *Breaking New Ground*, pp. 174–7.

¹⁹For more information see papers written by Dr Paul Stevens, Centre for Energy, Petroleum and Mineral Law and Policy (CEPMLP) University of Dundee, for example <http://www.dundee.ac.uk/cepmlp/journal/html/article11-8.html>.

until the project has been in operation for several years, due to provisions for accelerated depreciation or tax holidays. This means that resource rents do not accrue to either the national or local government when they are most needed. Resource flows tend to be low or non-existing when public expenditure is highest: during project development and closure. Some governments have chosen to levy a royalty from the beginning of operations to ensure that a minimum level of revenue is received. Another problem for governments is that revenue flows from mining are unstable, owing to the long term and/or short-term price instability resulting from changes in the international economy and the resultant supply and demand for commodities over time.²⁰ Last but not least, despite royalty payments, company taxation and similar fiscal instruments, 'regulatory frameworks for revenue distribution frequently fail to distribute wealth to communities across the region of operation.'²¹

A report prepared for the United Nations Global Compact describes three general categories of revenue-sharing regimes:²²

- a) Stabilization funds that apply revenues to immediate needs of economic stabilization and development.
- b) Future-generation funds that collect current revenues for future use.
- c) Sustainable economic development revenue regimes that allocate proceeds for current social, environmental, and developmental purposes such as the construction of hospitals, schools, roads, and infrastructure.

The World Bank's arrangement with the government of Chad provides an example of good donor practice. The agreement stipulates that oil revenues from the Chad-Cameroon project will be deposited initially in an offshore escrow account, subjected annually to an independent audit. It also specifies that the funds have to be spent according to a strict formula that allocates 80% to education, social services, rural development, infrastructure, and environmental and water resource management. This process is also supposed to be supervised by a board that includes both government officials and representatives of labour and human rights NGOs.

However, even though the World Bank/Chad arrangement provides a good practice example for donors and financing institutions, it has already encountered some stumbling-blocks. One highlighted example highlighted by Brown (2002) shows that the Chad government has sent the first £10 million of money it received from the consortium on arms for its security forces rather than on the developmental projects for which the money was intended.²³

Some participants suggest that there is currently a major step-change spearheaded by selected top-tier extractive industry players, which is creating a widening gap with the rest of the national and

²⁰ Dr Allen Clark (2000), 'Political, Economic and Administrative Decentralization: Addressing the Distributional Effects of Mineral Sector Development in Asia' paper presented at the 'UNCTAD workshop on growth and diversification in mineral economies in Africa', Cape Town, South Africa, 7–9 November 2002

²¹ Business Partners for Development, *Tri-Sector Partnerships: Contributing to Long-Term Regional Development*, Briefing Note 8, BPD - Natural Resource Cluster.

²² Juliette Bennett (2002), 'Conflict Prevention and Revenue-Sharing Regimes', United Nations Project: *Policy Dialogue: Business in Zones of Conflict* United Nations Global Compact.

²³ Paul Brown (2002), 'Chad Oil Pipeline Under Attack for Harming the Poor', *The Guardian*, 27 September.

international, private/state-owned players. For some of the major projects operated by British Petroleum (BP) in the Caspian region, for example, continuous disclosure processes have been put in place for environment and social impact assessments (ESIAs) as well as legal documents such as Project Sharing Agreements, Host Government Agreements for a number of major upstream oil & gas development projects.²⁴ BP, on behalf of project shareholders, has also put forward a proposal to work with NGOs in developing and implementing a multi-million dollar Community Investment Programme.²⁵

Local/national share

Oil/gas/mineral revenues generally accrue to central government. Sometimes there are provisions for revenue sharing with lower levels of governments, with three possible formulas:

- 1) Taxation authority delegated to lower levels (e.g. Canada, United States)
- 2) Lower levels receive a proportion of tax income (e.g. Indonesia, Philippines, Peru)
- 3) Lower levels receive allocations over central government budget (e.g. most countries)

How to share revenues between the central government and local governments and communities in oil/gas and mining areas remains a contentious issue. The amount of any additional revenues from mineral development to allocate to the local level as opposed to other national purposes is a political decision within the sphere of a sovereign government.²⁶ Few countries with extractive projects in developing countries have been able to resolve the issue satisfactorily.

In many countries, this is now changing, and negotiations and agreements increasingly include communities and regional or local authorities receiving a share of the revenue. Attempts have been made, through policy and legislative changes, to redistribute some of the benefits to the local level. These changes have taken place in a range of countries, including Bolivia, Canada, Colombia, Indonesia, the Philippines, Papua New Guinea, South Africa, and Venezuela – and they have achieved a varying degree of success. In some countries, implementation is hindered by the vagueness of policy.

Peru's mining law (the *Canon Minero*), for example, provides that a fixed percentage of the revenues collected from mining by the central government will be paid to regional authorities, though owing to 'fiscal problems' the central government has for years delayed payments to local governments. Indonesia's decentralization process – under way since 2000 – will enable the regions to retain up to 80% of the resource revenues from within the boundaries. However, there have been some serious doubts about the technical capacity of local administrations to handle these new responsibilities.

Distribution of revenues to the local level presents enormous capacity challenges for all the actors at the local level. Local authorities, for example, need to be able to formulate and execute plans for the development of social and physical infrastructure. However, skills are often scarce and difficult to build in advance. Central governments may also question the need for local authorities to acquire such capacity, fearing adverse political implications. The local communities often have no experience of new economic activities, which means that outsiders may exploit these opportunities. These

²⁴ See, for example, <http://www.caspiandevlopmentandexport.com/>.

²⁵ See, for example, BP's Request for Proposals (RFP) – for Community Investment Programme for Baku-Tibilisi-Ceyhan Oil Pipeline (BTC) and South Caucasus Gas Pipeline (SCP), issued on 30 September 2002.

²⁶ The discussion in this section is drawn from MMSD (2002).

communities will need the capacity to identify future and use current economic opportunities. Last but not least, companies too may be unfamiliar with these situations and lack the skills to provide support.

In reality, few countries have provisions for revenue distribution beyond the national level. Where local governance or administration is weak, one option is for companies to take on some of the distributive functions. In some countries, money and infrastructure such as schools and hospitals are directly set up by companies (without filtering through local administration or local governments).

The instability in prices and revenues has an even greater impact on local governments, particularly if a substantial amount of their revenues is tied to resource rents. This is because local governments, unlike the national government, often do not have access to other sources of revenue to stabilize revenue flows over time.

Transparency

“Oil, gas and mining industries are important in over 50 developing countries, which are home to some 3.5 billion people and where 1.5 billion of these people live on less than \$2 a day. Twelve of the world’s 25 most mineral-dependent states and six of the world’s most oil dependent states are classified by the World Bank as highly indebted poor countries – with amongst the world’s worst Human Development Indicators.”

Publish What You Pay Campaign Appeal

Many governments or local authorities that are charged to manage oil/gas or minerals revenues are often unaccountable to their citizens. The payments they receive from companies are often not disclosed either by the government or by companies. As the *Publish What You Pay* campaign argues, this lack of accountability facilitates embezzlement, corruption and revenue misappropriation.²⁷

In the past decades, many home governments of extractive companies have adopted laws to promote transparency in international business transactions. These include the US Foreign Corrupt Practices Act (FCPA) of 1977, the Inter-American Convention on Corruption in 1996, and the OECD Convention Against Bribery of Foreign Public Officials in International Business Transactions in 1997. The signatory countries of the OECD Convention account for 90% of foreign direct investment worldwide.

Despite these breakthroughs in outlawing bribery by multinational companies of foreign officials, it is not clear whether this legislation has achieved the desired outcomes. The OECD Convention, for example, has yet to produce a prosecution (apart from US cases brought under the FCPA). A serious budget shortfall is stalling a review of its enforcement.²⁸ It is suggested that governments may hold back from initiating prosecutions for fear of putting their companies at a disadvantage.

International financing organizations such as the World Bank and the International Monetary Fund (IMF) have also attempted to address this issue. The IMF has a Code of Good Practices on Transparency, which recommends that public funds be subject to publicly reported audits of financial operations and an independent third party monitoring of central government financial operations.²⁹ It

²⁷ See <http://www.publishwhatyoupay.org>.

²⁸ Peter Eigen (2002), ‘Multinationals’ Bribery Goes Unpunished’, *International Herald Tribune*, 12 November.

²⁹ See <http://www.imf.org>.

also restricts its operations in countries where it believes that corruption is hampering economic performance. The World Bank has introduced sanctions on firms and governments engaged in corrupt practices – guilty firms are banned from World Bank-financed procurement worldwide.

Transparency and independent monitoring are therefore key to ensuring success in revenue distribution and use. The *Publish What You Pay* campaign, led by a coalition of NGOs, calls for mandatory disclosure of payments to and transactions with governments by multinational natural resource companies, their subsidiaries and business partners.³⁰ The MMSD report also calls for the establishment of an international register of payments by mining companies to governments at all levels.³¹

At the World Summit for Sustainable Development (WSSD) in Johannesburg, UK Prime Minister Tony Blair called upon governments of both developed and developing countries, development agencies, extractives companies and NGOs to address the problems of a lack of transparency of payments. The UK government and its partners will develop a framework to promote transparency of payments from companies to governments and government management of the revenue through their budget. The UK government will play a leading role in following up this work after WSSD and will be hosting an international meeting involving all of the partners/prospective partners to agree on who will lead the work, its content and process, including monitoring arrangements.³²

A commitment by extractive companies to full transparency in both investment payments and revenue distribution would pay huge long-term dividends. Civil society activists acknowledge that it is not up to companies to dictate how governments should spend the revenues, even though revenues paid to central governments may lengthen the stay of illegitimate governments. But a commitment to ‘radical transparency’ by extractive companies will certainly help to change the parameters of the debates and focus civil society attention against the ‘real culprits’.

2.2 Implementing Agreements

Engaging with stakeholders

Revenue distribution, ideally, should be decided through equitable, effective and participatory decision-making structures – involving representatives of the affected stakeholder groups or constituencies.

However, engaging with the right range of stakeholders and constituencies (or their legitimate representatives) presents one of the major challenges for the extractive industries – not least because a very wide range of stakeholders are involved. Some of these stakeholders, such as the central government and affected communities, may have few direct relationships and communications with one another.

³⁰ For detail of the Publish What You Pay campaign, please see <http://www.publishwhatyoupay.org>.

³¹ MMSD (2002), p. 187.

³² The Extractive Industries Transparency Initiative was launched by Prime Minister Tony Blair at the World Summit on Sustainable Development in Johannesburg, September 2002. Its aim is to increase transparency over payments by companies and revenues to governments in the extractive industries. For more information see <http://www.dfid.gov.uk>

The mismatch between national and local interests in the host countries has also been problematic for many companies. In many countries, governments have failed to act as fair intermediaries between local communities and the investors – balancing local rights with national needs. The national government may also be of questionable legitimacy. The issue of power imbalance – between the company and the local community, the company and the host government, and the local community and the central government – also raises serious concerns.

As a result, some companies have put a great deal of effort into increasing the ability of the local communities to understand the choices they have been asked to make, not least because more informed consent tends to improve the spirit and the long term stability of the operations, as suggested by a mining executive. However, the concept of ‘Prior Informed Consent’ (PIC) presents particular difficulties for companies. While companies do not wish to operate amidst difficult social circumstances, low morale or unrest, they also find it difficult ‘to give the veto power to a small group’.

Empowering local communities to decide their own future is therefore extremely important but is neither simple nor short-term. It will take a long time to build capacity for local communities.

When engaging with the local communities, companies also face many serious challenges in, for example, distinguishing between *recognized* versus *representative* leaders and institutions. Working with ‘real’ representatives may undermine recognized institutions, but working with recognized ones may not always be representative of the people. Further complications may arise since companies, like other influential agents, can ‘create apparent legitimacy, simply by opening negotiations with a particular party or group’.

Incorporated into Papua New Guinea’s 1992 Mining Act, PNG’s Development Forum provides a useful example. Based on a participatory approach to decision-making involving government, company and local community representatives, this forum covers 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’.³³

Participatory approaches are necessary but insufficient to ensure that the extractive sectors contribute to poverty alleviation.³⁴ Many states that are relatively democratic – such as Papua New Guinea, Bolivia, Ecuador, and Ghana – have failed to make effective use of the revenues derived from extractive projects to alleviate poverty.³⁵

It is important that the extractive industries would continue to embrace participatory approaches – either through public/private partnerships or through other processes of engagement with stakeholders or constituencies of concern. Lessons learnt from global engagement processes, such as the Mining, Minerals and Sustainable Development (MMSD) project, include the following³⁶:

³³ MMSD (2002), p. 211.

³⁴ Ross, (2001b) p 18.

³⁵ Ibid.

³⁶ MMSD (2002), p. 11.

- A broad-based, inclusive process of initiation is fundamental to the success of any stakeholder engagement or consultation effort.
- The time frame must take into account the differing capacities and expectations of participants as well as the need for a timely outcome.
- No one actor should have ownership of the follow-up process.
- A group that is trusted for its diversity and insights must be given primary responsibility for steering and leading the process.
- No global-level engagement process should override the importance of local or regional endowments (cultural, environmental and economic); thus decentralization should be the guiding principle.
- The process cannot succeed if any one group attempts prematurely to claim the high ground in public.
- The rules of evidence are crucial – every stakeholder group needs to work to the same standard of rigour, honesty, transparency and accountability.
- Any financial resources applied should not affect the relationships between different stakeholder groups or constituencies; at the same time, appropriate responsibilities for follow-up have to be recognized.

Linking with suppliers

A key factor determining the benefits host countries can derive from FDI are the linkages that foreign affiliates establish with domestically owned firms. Backward linkages from multinationals to domestic firms are important channels through which direct and indirect employment can be created. There are also intangible and tangible assets that can be passed on from multinational to local businesses, such as new technologies and managerial knowledge and skills.³⁷ Some multinational companies are increasing their commitment to generate local employment and business opportunities through direct employment and indirect jobs via local procurement/outsourcing and SME development. At the Gamsberg Zinc project, operated by Anglo America, 70% of their recruits are to be locals. In addition, the company is outsourcing from the onset, as well as providing training and support for new business start-ups. Anglo's procurement from black-owned businesses in South Africa has increased from R67 million in 1995 to R1.3 billion in 2001.

However, when revenues are not satisfactorily shared with local governments and when most oil/mining productivity leaves the local regions via exports to be processed elsewhere, the income and employment linkages that could be established with local businesses present one of the most important opportunities for local economic development.

In the extractive industries today, many contradictions exist. First, mining and oil operations are becoming more capital-intensive, generating fewer jobs. Secondly, if there are no competitive local contractors, international contractors are brought in instead. Thirdly, there is little research on ways of reconciling this dilemma.

Stewart Carter (1998) observed that certain mining corporations did not participate in the real development or 'capacity-building' of local suppliers. After nine case studies of mining projects across seven developing countries, Carter found that only in a very few cases did the mining company aim to build up local contractors to a standard where they could compete with larger contract companies.

³⁷UNCTAD (2001), *World Investment Report: Promoting Linkages*, UN Press, New York.

Instead, he observed that most mining companies tended to nurture relationships with relatively efficient 'operational contractors' that already supplied services to mining operations.³⁸

A study by Culverwell (2002) investigated the buyer–supplier relationship by observing the contractual process between mining corporations, local suppliers and local government in Chile over a two-year period. A number of international and inter-regional trade agreements (e.g. on joint ventures, domestic equity, employment), explicitly prohibited or discouraged government intervention measures previously used to promote linkages. These trade restrictions and the political ideology in Chile sympathetic to them overturned decades of statist economic policies that had protected industrialists and organized workers. More importantly, the procurement strategies of multinational mining companies had a powerful and deciding influence over linkages with local suppliers.

Culverwell's findings demonstrate the complexity of aligning commercial contracts with ideals of MNC-local linkages. Corporate purchasing strategies, organizational structures, superior bargaining power and often negative attitudes regarding 'paternalism' towards local suppliers often hinder contracting opportunities. From the local suppliers' perspective, short term, ad hoc contracts above all, had a strong negative impact on their ability both to meet their internal organizational needs and to understand and meet their client needs. Moreover, financing issues including difficult loan requirements and mixed experiences of the inter-supplier (merger) collaboration that government sought to promote all contributed to weak bargaining position among local suppliers.³⁹ Thus a powerful combination of government-sanctioned trade restrictions and centralized MNC procurement strategies all hindered local backward linkages. The implications are equally dismal for certain Latin American mineral economies under the Free Trade of the Americas (FTAA.) agreements.

A study by Aroca (2001) shows how to measure impact economics from extractive industry production in a geographical area. Aroca uses an input-output matrix for Region II in Chile to calculate the impact on output, income and employment.⁴⁰

This type of quantitative exercise would help the local communities to assess the impacts of the project on the local economies, such as output, income and employment.

However, workshop participants noted that although there are tools to help quantify economic benefits of multinational activity, what was needed was better dissemination of the tools available and improved partnerships between academics and corporate practitioners to make the tools more user-friendly for corporations.

Transferring technology and capacity-building

Widespread community demands for relevant, direct, and sustained benefits from oil/gas and mineral wealth are a relatively recent phenomenon, so frequently neither government institutions nor companies or communities themselves have been properly equipped to respond to them. As discussed

³⁸A. Stewart Carter (1998), 'Mining Companies as Agents of Development? Corporate Social Responsibility, Participation and Local Community at Mining Projects', PhD thesis, School of Management, University of Bath.

³⁹M. Culverwell (2002), 'Foreign Direct Investment and Corporate Linkages with Local Suppliers: An Exploration of Backward Linkages in the Mining Industry in Chile', forthcoming PhD thesis, Judge Institute of Management: University of Cambridge, UK.

⁴⁰ P. Aroca (2001), 'Impacts and Development in Local Economies Based on Mining: The Case of the Chilean II Region', *Resources Policy*, vol. 27, pp. 119–34.

earlier, capacity-building for all the actors involved is therefore key. These range from policy advice and guidance for host national governments, building local administrative and other capacity in and around the extractive projects, to training in sustainable development and community relations for employees of the extractive sector.

Since the extractive industry is the leading investor in many countries, corporations play a key role in technology cooperation and capacity-building. Technologies from the oil and gas industries introduced to host countries include a myriad of industrial production and manufacturing processes along with the infrastructure needed to distribute energy products to local consumers. This transfer of knowledge also includes novel technologies to control or reduce environmental impacts of activities and products. Capacity-building encompasses a range of training for the local workforce including introducing management systems and skills required (1) to operate complex equipment and technology safely and efficiently and (2) to improve business performance while protecting the environment and helping communities develop.⁴¹

The MMSD report has come up with an agenda for change for the mining and minerals industry which highlights the role that the industry can play in effective capacity-building at all levels. A significant proposal is for extractive projects to be incorporated into local and regional sustainable development plans to ensure sustained benefits and a diversified resource base. Where such a plan does not exist, *Breaking New Ground* suggests that it should be developed through some form of multi-stakeholder forum. An NGO or an independent third party could be responsible for the initial administration if the capacity of the government is low in the region.

2.3 Conclusion: options for 'next step' actions

The rationale for collective action has never been clearer: it is in the interest of the extractive companies to act in concert to raise the standards of the whole industry's operations, from the big to the small. Acting in unison will not only level the playing field; it will also enable the extractive industries to deal with the free-rider problem in the long run.

More research also needs to be done to define the monitoring role that can be undertaken by the international finance community, such as commercial banks. Many of these financial institutions have faced increasing stakeholder scrutiny in the past decades, and many NGOs have campaigned against the financing of projects that have serious environmental and social impacts in the developing world or in zones of conflict.

Do these international finance institutions have a legitimate role to play? Some, on the one hand, say no, not least because bankers, in their opinion, should not act as judge and jury on development issues. Banks are not always powerful levers against industries – once the money is gone banks lose control. On the other hand, many banks and financial institutions are clearly lagging behind the industries in addressing corporate responsibility issues, and it is important that banks should become more accountable for the destination of their capital and the potential social, environmental and human rights impacts of their investments. Transparency on their decision-making criteria will also help.

During the workshop, a participant suggested that if financial institutions are to act as effective monitors of extractive industry standards then an 'objective, fact-based, multi-stakeholder governance

⁴¹ IPIECA/OGP (2003) p. 12.

body could be set up for the financial sector to vet/approve projects and to act as ombudsman', with a threat to remove the licence to operate of 'rogue banks'. These financial institutions should also include environmental and social criteria/risks in their capital adequacy ratios⁴². If multinationals are serious about corporate responsibility for the extractive industries, they should also use their power to hold their banks to higher financing standards. Build lasting changes will take time, but there are interim steps that can be introduced, such as better ESIA systems, and objective, measurable, usable financing criteria.

The OECD governments could also take the lead by introducing transparency as well as social and environmental standards and guidelines to their export credit agencies (ECAs). The ECAs 'are estimated to support four times the amount of oil, gas and mining projects as do all Multilateral Development Banks such as the World Bank Group'⁴³.

The agenda of the 2002 World Summit on Sustainable Development and the World Bank's Extractive Industries Review⁴⁴ both illustrate these expectations. At the local level, this means that the public will increasingly expect extractive projects to create local economies that:

- are diversified;
- have growth potential;
- sustain livelihoods when the project closes;
- meet standard-of-living expectations; and
- provide a broad range of employment opportunities.

As a result of these demands and expectations, many extractive companies have stepped up their operating standards. They want to show that they are responsible and helping to improve rent-capture that flows to communities. In any case, at the project level, there are significant economic implications for companies if they do not respond adequately to social issues such as 'protests, delays in permitting and project start-up, tarnished external relations, impeded project financing, and human resources management problems'.⁴⁵ As an industry participant suggested, 'There is often a correlation between low morale and low productivity'.

However, many key questions or dilemmas remain to be addressed for companies and stakeholders in the extractive sector:

- While companies need a more defined vision of corporate social responsibility that both knows its limits but also reaches them, what are the limits to corporate social responsibility?
- How far should companies take on the role of the governments if the long-term intention is to build capacity at the local and national level for sustainable development?
- Can companies help to move the discussions on 'regulation versus voluntary initiatives' away from the either/or dichotomy towards a 'regulation *and* voluntary' discussion in order to raise the standards of the industry.

⁴² The capital adequacy ratio is a measure of a bank's capital expressed as a percentage of a bank's risk weighted credit exposures.

⁴³ See <http://www.eca-watch.org/> for an NGO campaign against the social, environmental and human rights record of export-credit agencies. See also http://www.eca-watch.org/eca/ecas_explained.html.

⁴⁴ See the website of the Extractive Industries Review for more information at <http://www.eireview.org/>.

⁴⁵ Nicola Acutt with Ralph Hamann, Assheton Carter and Paul Kapelus (2001), *Towards Evidence of the Costs and Benefits of Tri-Sector Partnerships*, Business Partners for Development Natural Resource Cluster Working Paper No. 10.

- Regulations favour the big – as large multinationals are more capable of absorbing the higher costs associated with higher standards, stricter rules and regulations. What kind of system can be put in place (through, for example, chains of custody) to ensure that small and medium-sized enterprises are also raising the standards of their operations?
- When the price of commodities is internationally traded, how can the price of the product reflect the externalities?

3 Minimizing Negative Environmental Impacts: Protecting Sensitive Areas: Access and Management Issues⁴⁶

Certain areas are considered ‘sensitive’ because they have been found to contain unique or special characteristics that are easily obliterated when disturbed. Such areas are sensitive because they contain and support one or more of the following qualities:

- rare ecology, e.g. endemic or Red Listed⁴⁷ species;
- charismatic species, such as elephants, or spectacular landforms, such as mountain ranges;
- critical environmental services, such as watershed protection, or evolutionary functions, such as high rates of speciation;
- exceptionally high species diversity;
- fragile habitats, e.g. arid lands or wetlands;
- indigenous peoples, pursuing ‘traditional’ lifestyles;
- other cultural and heritage assets, such as archaeological remains, sacred sites etc.

Most cultures have protected sensitive areas throughout history, but there is growing concern over the increasing threats posed to these areas by food production, timber, fossil fuel and mineral extraction. Pressures to extract the economically valuable resources held with these areas are undermining the effectiveness of these ‘protective’ initiatives.

How to gain access to and manage sensitive areas sustainably has been the focus of much controversial debate. Until recently, access had been granted quite freely but this has led to the progressive deterioration of sensitive areas’ other values. For instance, pollution and habitat destruction has destroyed other locally valuable resources, resulting in resource-intensive compensation claims, violent conflicts or severe poverty among such communities.

While the risks associated with significant alteration of sensitive areas are high, knowledge of the specific location of the world’s most critically sensitive areas remains incomplete. Not all extractive activities, or sections of the industry yield the same impacts and yet, while knowledge of risk and threats is crucial for making effective decisions over access and management, such analytical information is not always a principal feature of decision-making.

Many conservation NGOs have responded with demands to restrict access to all extractive activities within sensitive areas, and have advocated ‘no-go’ areas. These demands were captured by a Resolution passed in 2002 at the IUCN World Conservation Congress, prohibiting all forms of mining from all protected areas falling within the World Conservation Union’s (IUCN) Protected Area Categories I–IV⁴⁸. While most responsible companies agree, in principle, that there are some areas where extraction is inconsistent with the protection of ecological, cultural and landscape values, they have reservations over whether such areas necessarily coincide with IUCN Protected Areas

⁴⁶ This part of the Paper was written by **Izabella Koziell** (i-koziell@dfid.gov.uk). She was formerly at International Institute for International Development, and is now an Environment Adviser for the UK Department for International Development, in Nairobi, Kenya.

⁴⁷ See www.redlist.org.

⁴⁸ See <http://www.iucn.org/amman/content/resolutions/index.html> for more information.

Management Categories I-IV. Restricting extractive industries from accessing these areas is also no guarantee of protection, as there are many other threats.

Uncompromising 'go' or 'no-go' demands leave no room to manoeuvre, no chance for negotiation. In a world full of uncertainty and exceptions, such stances do not always achieve the desired results.

Maintaining the life-sustaining values held within sensitive areas first requires a commitment to collaborative, open and well-informed dialogue by all stakeholders: governments, the extractive industry, the finance and insurance sectors, civil society organizations and local communities. Different groups – whether these include 'interested' or 'affected' stakeholders – should learn to better understand and accept one another's motives. Only then can they embark on a process of building trust. Some parts of the extractive industry and the conservation community have already begun to engage in various partnerships, but financiers and insurers of fossil fuel and mineral extraction projects are still lagging on social and environmental responsibility. According to an Ernst & Young study, 67 finance and insurance companies are among the world's 250 largest global corporations. Yet fewer than 20 produce responsibility reports.⁴⁹ Governments have responded in a piecemeal fashion, with some excellent initiatives but worrying inconsistency in other areas.

The following sections will look into what needs to be in place to generate more equitable and appropriate access regimes to sensitive areas, and possible 'next step' actions. For those unfamiliar with the general policy context of the protection of sensitive areas, the current initiatives at the international, national and company levels are outlined in an appendix to this paper. The information presented is drawn mainly from views expressed at the workshop on 'Sustainable Relationships: Financing and Monitoring Responsibilities', held at RIIA on 10-11 October 2002, and in part from the MMSD Mining and Biodiversity debates.⁵⁰

What might constitute better practice?

The checks and balances that encourage 'good governance' practice are not functioning smoothly in many countries which are rich in fossil fuel and/or minerals, and where many of the world's remaining sensitive areas are located. The lack of good governance – e.g. a weak legal system, an ineffective civil service, democratic deficiency – makes it hard for the extractive industry, and other commercial activities, to operate in an ethical way; it more often encourages 'bad' practice. The lack of good governance should not be used as an excuse but, in such countries, contracts can be more easily awarded to 'rogue' companies willing to twist the rules. Corrupt governments are more likely to channel revenues away from 'ethical' causes and make participatory approaches that are hard to implement.

The more enlightened sections of the extractive industry could do much more towards encouraging good governance reforms, although given the extractive sectors' and OECD countries' somewhat murky past (and present!), this has to be done with some humility. More 'good governance' advocacy could also be undertaken in collaboration with other sectors, such as agricultural and forestry interests, donor agencies or development NGOs. Demanding improved transparency and accountability, stronger democratic capacity and reduced corruption is essential if suitable resolutions on access and management within and around sensitive areas are to be jointly identified and adhered to. Without

⁴⁹ Business Week Online, 28 August 2002, 'What is Corporate Responsibility?', by Kimberly Weisul in New York. http://www.businessweek.com/bwdaily/dnflash/aug2002/nf20020828_7734.htm.

⁵⁰ See <http://www.iiied.org/mmsd> for more information.

such an enabling environment efforts are likely to be piecemeal and their sustainability will remain fragile.

Adoption of better practice still presents many challenges (the concept of ‘better’ rather than ‘best’ is used as it reflects a process of continuous learning; ‘best’ implies a *fait accompli*). While much has been learnt, wider understanding of how to implement ethical principles efficiently and cost-effectively remains incomplete, and some key players still remain unconvinced. The business case for better practice is, however, growing in importance; many of the larger companies now recognize that a poor reputation has detrimental impacts on business. For instance, a company with a poor reputation cannot attract good employees – recent surveys have demonstrated that an increasing proportion of graduates are prepared to accept a lower salary to work in a responsible organization. It can also affect a company’s relationship with its regulators and principal investors, the big investors being too conservative to want to be associated with risky investments.

The ascendancy of civil society groups, increasing press freedoms and a growing tendency towards ethical consumerism also mean that the terms of gaining a ‘licence to operate’ are being redefined. It is no longer only governments which are in control – perhaps with the exception of some developing countries where governments are still making every effort to maintain control of land access decisions. There are also many ‘rogue’ companies and investors only too willing to overlook social and environmental damage in return for rapid financial benefits, or to move in where more responsible companies have moved out for ethical reasons. That said, it is very likely that, in the future, access to resources and to markets may only be granted to ‘better practice’ companies.

3.1 Establishing Agreements

Establishing legitimate new roles and responsibilities

The legitimacy of the new and sometimes very powerful roles in which key stakeholder groups can find themselves needs to be continually reviewed. For instance, the increasing emphasis on ethical investment means that banks and investment houses are beginning to act as ‘judge and jury’ on financing decisions. Whether or not this is a legitimate role for the finance community to play has been questioned, as the financial community first needs to be brought into line with the latest technical thinking and developments in this area.

Large international NGOs are often the most easily accessible and tend to be the first port of call for many multinational companies. They are often best equipped to engage in international conferences, or to advocate on issues of concern. However, international NGOs are not always able to represent the diversity of local-level concerns. At the project level, there is a critical need to engage respected Southern and local NGOs and networks, and not to rely solely on international NGO opinion and expertise.

A coherent set of prioritized action-oriented guidelines

There has been a proliferation of best practice guidance documents (of varying quality) produced by companies, NGOs and governments. Despite the many documents in circulation, implementation of their various provisions is not widespread. This is because many of the guidelines are so general; they espouse laudable principles but show little insight as to how to put them into practice and there is no system of prioritization. Few address trade-offs, others are too uncompromising and many cannot cope with changing demands and technologies. An overall effort to bring together the various

guidelines and use them to codify universal better practice in some order or priority that is practical and able to cope with diversity, might help create a more level playing field. However, the focus of attention must also be on facilitating implementation. This will involve creating the incentives that will encourage more widespread uptake, and strengthening the capacity of all partners to engage.

Such an exercise would be very useful for the financial community, as it would make it easier for this sector to ensure clients adopt better practice.

Transparent, inclusive decision-making processes

All parties engaged in influencing rules for access to and management of sensitive areas, whether governments, companies, NGOs or communities, have been guilty of lack of transparency or accountability for actions relating to these areas. For instance, the process for identifying protected area categories has not always been consistently applied; many of these categories were established at a time when there was less advanced scientific understanding of which areas were most valuable. At the same time, the extractive industry has been known to put considerable pressure on governments, in rather non-transparent ways, to gain access to resource-rich sensitive areas.

As science and the knowledge it generates evolve continually, so does our understanding of which are the most valuable sensitive areas, and which are most under threat. The identification of these areas, and decisions over how they are to be managed, need to be regularly informed by these scientific advances. However, there are few effective channels for feeding new knowledge into policy- and decision-making and so it tends to happen in an ad hoc manner. Furthermore, the decline in public funding for scientific research – especially taxonomy – has severely constrained these disciplines and is hampering field identification of biologically valuable areas. Not that a return to the ‘stamp-collecting’ attitudes of former taxonomists should be supported, but maintaining the skills to generate information necessary for more rigorous decisions on land use is of critical importance.

Information generated by scientific research can provide partial answers. However, when it comes to complex and dynamic human–environment relationships, where most decisions involve trade-offs, e.g. over access to sensitive areas and extraction, wider stakeholder involvement in decision-making is a critical component of land use decision-making. This is especially the case with regard to ‘go and no-go’ decisions and identifying areas most in need of protection at a micro-level. Such processes can be lengthy and time-consuming but can yield more equitable and sustainable solutions. The challenge lies in getting the balance right, especially where democracy is weak or undeveloped.

Better systems for identifying the most critically valuable areas

There are many excellent information databases regarding sensitive areas held in different institutions across the world; however, few are linked in any meaningful way, so accessing this information can be very time-consuming and key information sources can be easily overlooked. Much of the available information is not geo-referenced or too low-resolution to be meaningful for land use decisions at a specific site, e.g. in the design of environmental impact mitigation measures.

There are also many different prioritization systems, e.g. Conservation International’s ‘Hotspots’, Birdlife International’s Endemic Bird Areas, WWF Global Network 2000, World Heritage Sites etc., not to mention countries’ own priorities often expressed in National Biodiversity Action Plans, or Conservation Strategies. Not all ‘prioritization’ systems coincide, and it has not been possible to establish an order of priority among them. This leads to confusion over which criteria within which system are most important and should be used. More detailed guidance is necessary.

Adopting the concept of ‘net benefit’ rather than ‘net loss’

The concept of offsets is contentious, but with the right safeguards there is potential for the extractive industry to create biodiversity benefits that may ultimately outweigh the losses. Extraction disturbs the ground, so biodiversity loss is inevitable, but, if the often extensive lands owned, leased or managed by the mining company are actively managed for biodiversity objectives, the gains can be significant. For instance, the Roxby Downs Recovery Project in South Australia has been promoting conservation with the local communities, and ecological research.⁵¹ Mining companies can also have other direct influences on sensitive area protection – baseline surveys of biota can add significantly to the knowledge of biodiversity which would otherwise have remained inaccessible owing to lack of public funds for such activity. Support to protected area agencies, or investment in local sustainable use activities, such as eco-tourism, are all alternative ways of moving towards ‘net benefit’ away from ‘net loss’.

Policy, planning and legislation that harmonize land use

The coordination of policy changes across government departments has often been weak. There have been incidents where mining concessions have been granted, and the passing of new legislation has restricted access to these areas. This can lead to very serious disputes. In Indonesia, for example, the enactment of the Forestry Law No 41 prohibited any open-pit mining activity in any forest reserve. This has instigated streams of complaints, both from developers who had already invested capital for exploration and from regional governments who suffered significant losses in revenue. While a team has been established to try to resolve the dispute, and extraction may now proceed within 22 working areas, the debate has become extremely controversial not just in Indonesia but internationally, and has raised many questions over sovereignty, compensation and equity.

Where there was close collaboration between the Mining and Marine and Fishery Ministries (in the same country), the same controversy has not arisen. Whereas mining is now prohibited in small islands, before the ban several working areas for mining were identified and permitted, on the condition that sensitive areas would be protected, compensation claims resolved and an equitable benefit-sharing arrangement put in place.

This example highlights the need to maintain close cross-sectoral collaboration during the formulation or adaptation of policy and legislation, and to introduce collaborative processes that assist and support proper land use planning rather than exacerbating conflict.

Consistent application of standards

National export credit agencies (ECAs) are believed to be the ‘quiet giants’ of mining finance; however, they have somehow managed to remain outside the public debate⁵² and avoid vociferous NGO lobbying. But ECAs have remained generally unaccountable for the environmental and social consequences of their finance. Unlike other institutions, such as the International Finance Corporation (IFC), the World Bank, and some of the larger investors, they have failed to develop social and environmental guidelines – exceptions include the US, Canadian, UK and Australian agencies.⁵³ Of

⁵¹ See <http://www.ruralnet.net.au/~aridrp/>.

⁵² MMSD p. 135.

⁵³ See www.edc.ca/corpinfo/csr/disclosure/enhanced_e.htm#3 or www.ecgd.gov.uk or www.efic.gov.au/environment/environstd.asp or www.opic.gov.

greatest concern is that the level of finance channelled through ECAs can be very significant – for instance the high-profile Antamina copper and zinc mine Peru was 51% funded by ECAs, which also guaranteed a further 8% and were part of a consortium guaranteeing 25%.⁵⁴

It is essential that ECAs begin to adhere to the same social and environmental standards as other financing bodies. Why should private investors adhere to environmental and social standards, if public finance is not subjecting itself to the same rigour? It is also not enough to claim that World Bank or IFC standards are ‘being adhered to’; companies and financiers should identify which specific standards are being met. Only then can proper follow-up be conducted.

3.2 Implementing Agreements

Engaging in equitable and diverse partnerships

Conservation NGOs and mining and energy companies form an unlikely alliance as they can hold widely differing agendas – the former focus on the conservation of biodiversity; the latter seek a healthy return on their capital investment. However, companies now need to know how they can minimize impacts on sensitive areas, but they do not always know what is out there, what is valuable and what is a priority, nor how to implement an effective conservation project. On the other hand, conservation organizations do not know what is being affected until it is too late. They also do not have access to the area of funds to implement conservation strategies. Clearly neither NGOs nor companies are able to manage impacts on sensitive areas alone – it is best done in partnership.

Partnerships between institutions with divergent interests are not easy when levels of mistrust are running high, and where reputations can be called into question. What is crucial is finding areas of common interest and value. The ability to manage reputation and maintain independence is also very important. Partnerships should encompass all actors; for instance, other sectors, governments, financiers and insurers should not be overlooked as key contributors. Efforts should also be made to set up partnerships with a variety of conservation NGOs.

A risk-based approach to impact assessment

There has been a tendency to label all extractive activities as environmentally damaging yet different means and methods of extraction have varying levels of impact, and the resilience qualities of different ecosystems also vary. The decision whether or not to permit extraction within a sensitive area should be based on a detailed assessment of the threats that the extractive activity in question might present, at different stages of its life cycle, in the specific area in question, and the concomitant levels of risk presented to existing and future values of the sensitive area.

Risk-based assessments might help resolve some of the difficult dilemmas and trade-offs faced over extraction vs. preservation. Information generated should provide a deeper insight into the pros and cons of extraction within a particular area. It could be argued that a thorough and high-quality environmental impact assessment should provide such information; however, the concept of risk does not feature much in EIAs, which have their own constraints (see section 4.3). The UNESCO ‘Man and

⁵⁴ UNEP and Standard Bank (2002), *The Role of Financial Institutes in Sustainable Mineral Development*. Paris, UNEP/Standard Bank.

Biosphere' approach (see Appendix, section 1.2) encompasses the concept of risk by establishing three zones within which different activities are allowed, depending on the levels of risk presented.

More rigour and independence in environmental impact assessments

Environmental impact assessments are now mandatory for most development projects, but the quality of many EIA reports is disappointing, and not all can claim impartiality and independence. Some information has been plagiarized, and not cross-checked for accuracy, many reports are not read by the project managers, and proposed mitigation measures are not always put in place. Another core problem is that the international community has yet to set firm technical standards, on e.g. gathering baseline hydrological data, assessing archaeological remains or identifying key flora and fauna. This allows EIAs to drift towards the lowest common denominator and discourages professional excellence. Reputable consultants who insist on sound methodologies find it hard to compete with others who are willing to take short cuts – especially if regulators are not sufficiently well informed to be able to reject substandard work.⁵⁵

Environmental and social assessment tools should also be combined to enable a transition to integrated impact assessment. This information could then contribute to the development of the Sustainable Development Plan – which should be standard requirement for each mine site. The Seven Questions framework developed by MMSD North America provides a useful example of an integrated assessment framework.

3.3 Conclusion: options for 'next step' actions

Many of the issues listed below are not necessarily new. However, they serve to re-emphasize what has been discussed in other fora. The workshop did, however, stress that protecting sensitive area values has the greatest chance of success if all stakeholders work together for more productive outcomes. The workshop also emphasized the need for the oil and gas and mining industries to work more together, and in partnership with other sectors, governments and a diverse group of NGOs.

Addressing access and management issues around sensitive areas is an important part of the agenda, but it is also essential that we avoid unnecessary and irreversible harm to biodiversity in the wider landscape.

Some possible next step actions include:

Engage actively in key international conference processes and intergovernmental fora

There are several forthcoming conferences – those led by conservation interests, which would benefit from participation by the extractive sector, and others led by the oil, gas or mining industry, which would benefit from conservation and development inputs. It is also important to link issues arising and lessons learnt by the extractive industry into key global fora. Some of these include:

- The World Parks Congress, Durban, September 2003. There will be a workshop on biodiversity, extraction and protected areas during this conference. This workshop provides an excellent

⁵⁵ MMSD p. 248

opportunity for companies to present credible case studies (not just PR material) and innovative ideas, and further discussion between mining and protected area interests.

- The 8th Conference of the Parties of the UN Convention on Biological Diversity, Kuala Lumpur, October 2004. There are also opportunities for feeding technical information into the SBSTAA bodies that meet regularly in the interim periods.
- The World Petroleum Congress, Johannesburg, September 2005: presents a real opportunity for organized inputs on the oil and gas sector and sensitive areas.
- Society of Petroleum Engineers, Calgary, 2004. A biannual conference.
- The next IUCN World Conservation Congress. This offers an opportunity to work towards refining the Amman resolution on mining and protected areas to better reflect recent debates and emerging insights.
- Annual meeting of National Contact Points of the OECD and associated corporate responsibility roundtable.
- UNEP Governing Council. Since this is an intergovernmental forum, issues surrounding good governance and ethical business practice could possibly be raised here.

Smaller workshops, such as those run by RIIA or MMSD, should seek more government participation, especially from Southern governments.

Build trust through relevant and effective partnerships

- The oil and gas and mining industry need to start working together to lobby and advocate on key issues of mutual concern. Joint participation in workshops addressing these issues is one way forward – sharing information on relevant best practice is another.
- Companies should be working with local NGOs as much as with international ones. Reputable local NGOs may understand local concerns better than international ones, and can help lead to the identification of more balanced outcomes. Accessing such NGOs is not always easy, as many have serious concerns about working with the extractive industry. Suitable local NGO partners can be accessed through NGO Councils, or simply by word of mouth, e.g. through locally based donor agencies or other international organizations.
- The finance sector (including the insurers!) needs to be brought up to speed on best practice with regard to sensitive areas – one way forward would be to establish a Mining and Finance Initiative along similar lines to the Energy and Biodiversity Initiative.
- More active technical partnerships should be established at all stages of the life cycle, from ‘cradle to grave’ for instance:
- pre-bid – biodiversity assessment and database review
 - exploration – threats and opportunities assessments
 - development and operations – monitoring systems
 - decommissioning – monitoring and rehabilitation
- More secondments need to be supported between conservation organizations and oil, gas and mining companies.
- Information needs to be fed into and to link with other relevant (but non-extractive industry) technical and global fora, e.g. the multi-donor Poverty and Environment Partnership, convened by UNDP.

Work towards developing more effective land use planning systems

- This might include developing frameworks for consultation, benefit sharing, conflict and dispute resolution, and instituting the principle of free, prior, informed consent in land use decision-making. While there have been some successes emerging from Canada and Australia, effective

and sustainable land use planning presents huge challenges in developing countries where land tenure and rights issues are hotbeds of contention and land is highly politicized. There is a need to explore how planning can realistically become more inclusive and transparent in such contexts. It is particularly important to learn from past ‘bad’ practice – there have been too many land use planning failures over the last few decades constantly repeating the same mistakes.⁵⁶

- Given decentralization trends, priority might be given to capacity-building at the local level in land use planning, although this should not be done at the expense of creating enabling framework at higher levels.
- There is also value in investigating how to incorporate innovative concepts, such as offsets, which attempt a move from ‘net loss’ to ‘net benefit’ in land use planning. Such tools could help formalize extractive industry’s contribution to conservation of sensitive areas.

Make an inventory, ‘codify’ and disseminate best practice and standards

- An inventory and compendium of all existing relevant best practice documents, guidelines and standards, partnership experiences could be usefully brought together in some sort of easily accessible clearing-house type arrangement.
- This information could be used to conduct a gap analysis, which could help identify a suitable focus for further work on the development of guidelines.
- It is particularly important not to ‘reinvent the wheel’ in further development of guidelines, but to focus on incentives for implementation.
- Codifying the material held within the range of guideline documents might help create objective, measurable and useable criteria and indicators for monitoring purposes that are cost- and time-effective and that could then be used more broadly to raise performance.

Establish a credible and independent mechanism that guarantees consistent application of standards

- One way forward would be to establish a supranational body to vet/approve extractive industry projects with respect to corporate responsibility – a sort of international ombudsman – that could help maintain consistency.
- OECD governments must continue work on ensuring that Export Credit Agreements adopt better practice.
- There is also a real need to ensure that those commissioning, conducting and reviewing environmental impact assessments make significant improvements in the quality and usefulness of this process.
- The bigger, more visible companies are often those under most scrutiny – whereas some of the smaller, state-owned or ‘rogue’ companies slip through the net. Equal effort needs to be placed on monitoring these less ‘visible’ players.

Continue reviewing and improving protected area classification systems

- There is a need to be able to assess existing protected areas on the basis of their current and future values, quality and levels of active management.

⁵⁶ B. Dalal-Clayton and D. Dent (2001) *Knowledge of the Land: land resources information and its use in rural development* Oxford: Oxford University Press

- More inclusive decision-making processes over protected area selection and listing should be instituted. Particular attention needs to be paid to who is actually included where democracy is weak and where powerful interests are likely to usurp the interests of local people.

Improve guidance on priority areas

- Further support should be provided to improve the existing information base – linking key datasets, and locating others, so that existing information feeds into real-world decision-making.
- A workshop should be organized on ‘information and priority setting’ for conservation, targeted initially at the extractive sector. Such a workshop could help identify what to do about issues such as data accessibility, coherence and standardization, resolution and priorities. It could build on the work being carried out under the Energy and Biodiversity Initiative,⁵⁷ convened by Conservation International, on biodiversity metrics, but not limit itself to biodiversity issues alone; rather, it could address other criteria relevant to sensitive areas, such as the interests of indigenous peoples.

⁵⁷ See <http://www.celb.org/ebi.html>.

Appendix: Existing Governance Structures and Initiatives on Protecting Sensitive Areas

International Level

Efforts to protect sensitive areas have occurred at all levels and have been a feature of cultures around the world throughout history, whether for environmental, religious or aesthetic purposes. What protection actually entails, and which areas warrant the greatest protection, has always been subject to widely differing interpretations, because as yet there is imperfect understanding of what is ‘best’, ranging from exclusion of all forms of human activity to approaches that allow certain levels of interaction. The following policies, laws and agreements display some of these contradictions, which are, perhaps, for now a necessary evil, given the prevailing uncertainty on what is ‘best’ and the huge operational complexities.

UNESCO World Heritage Sites

There has also been a strong push to call for a moratorium on extraction within World Heritage Sites – classified under the Convention concerning the Protection of the World Cultural and Natural Heritage (1972). It is argued that these are both natural and cultural sites that are of ‘outstanding universal value’, subjected to critical evaluation against internationally agreed criteria. Given this rigorous process, there are claims that these are areas of such absolute value that they should be protected above all other areas. As WHS cover less than 1% of the Earth’s surface (138 natural sites and 23 mixed natural and cultural sites), with many falling under increasing threat, it is argued that this should not be too great a commitment for the extractive industry to make – except, of course, where a World Heritage Site is the only known source for a valuable mineral!

UNESCO’s Man and Biosphere approach

The UNESCO Man and Biosphere Programme recognizes that conservation and sustainable development can only succeed if they express the ‘social, cultural and economic needs of society and are also based on sound science’.⁵⁸ Over the last thirty years MAB has established a network of Biosphere Reserves, which all aim to promote a balanced relationship between people and nature. There are now 393 sites located in 94 countries. They are governed by a statutory framework, which is ‘soft’ law. The governing Council has not specifically broached the issue of mining within biosphere reserve. Many of them, however, include extractive activities of some sort, provided that mining follows ‘best practice’ and does not impinge on the ‘core area’ which is devoted to long-term protection, according to the conservation objective of the biosphere reserve.

The UN Convention on Biological Diversity

The CBD is legally binding, and over 175 countries have now ratified it. It takes a broader approach to biodiversity and also encompasses indigenous peoples’ issues. It has three overall objectives: conservation, sustainable use, and fair and equitable sharing of the benefits derived therefrom. It calls for the development of biodiversity action plans that aim to incorporate all three objectives into

⁵⁸ See www.unesco.org/mab.

activity. Any extractive operation integrating the three objectives and other relevant articles of the convention into its strategies and action would, if implemented correctly, be taking sufficient precautions for protecting sensitive areas. Some groups have argued that if an oil/gas or mining company mainstreams the CBD properly, this will provide a suitable safeguard for sensitive areas.

Other international conventions influencing access and management of sensitive areas

- The Ramsar Convention on Wetlands of International Importance, especially as Waterfowl Habitat, 1971. Amended 1982, 1987.
- Convention on International Trade in Endangered Species of Wild Fauna and Flora. (CITES) 1973. Amended 1979, 1983.
- Convention on the Conservation of Migratory Species of Wild Animals, 1979. Amended 1985 and 1988 (Bonn Convention).
- The Montreal Protocol on Substances that Deplete the Ozone Layer, 1987.
- The UN Framework Convention on Climate Change 1994, and Kyoto Protocol, 1997.
- UN Convention to Combat Desertification, 1994
- Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal, 1989 (Basel Convention).
- International Convention on Oil Pollution Preparedness, Response and Cooperation, 1990.
- Convention on Environmental Impact Assessment in a Transboundary Context, 1991.
- Convention on the Protection and Use of Transboundary Watercourses and International Lakes, 1992.
- Convention on the Transboundary Effects of Industrial Accidents, 1992.

Indigenous peoples' conventions

With regard to protecting indigenous peoples' homelands, the Convention concerning Indigenous and Tribal Peoples in Independent Countries, 1989 provides basic rights for indigenous and tribal peoples, including respect for their traditions and property. The Aarhus Convention, 1998 establishes rights to information, public participation in decision-making, and access to justice.

NGO-led initiatives

Possibly one of the more contentious recent agreements was that formulated at the IUCN World Conservation Congress in Amman, Jordan in 2000. This agreement recommended that: '*IUCN's State members ... prohibit by law all exploration and extraction of mineral resources in protected areas corresponding to IUCN Protected Area Management Categories I-IV.*' This recommendation is not legally binding, but holds a fair degree of political clout. The conservation community has been pressing major oil/gas and mining companies to come out in support of this recommendation, though without much success. There is considerable concern that focusing on Categories I-IV will mean that other valuable sensitive areas which fall outside these categories will be overlooked.

Indeed, many Category I–IV protected areas were established when decision-making on priority areas for conservation was less advanced, and decisions were often made with disregard for local needs and priorities. Furthermore, the lack of management resources for these areas has led to the deterioration of their original values, whereas other important areas remain unprotected. To add to this, the categories system has been interpreted differently in different countries – hence what might be considered a Category II area in one country may be a Category V area in another. This does not provide a level playing field.

Industry initiatives

The International Petroleum Industry Environment Conservation Association (IPIECA) and the Oil Industry International Exploration and Production Forum (E & P Forum) have produced a number of environmental guidelines in collaboration with other international organizations. The International Council on Mining and Metals (ICMM) produced the Toronto declaration in May 2002 – which has committed all members to working with others to address mining and PA issues.

Partnerships

The Energy and Biodiversity Initiative, convened by Conservation International and involving BP, Chevron Texaco, Shell, Statoil, IUCN, and Fauna and Flora International is bringing together better practice guidance for the oil and gas industries in key areas such as information or protected areas.⁵⁹

The ICMM is now coordinating a group on Natural Resources Conservation, which will work closely with IUCN on protected areas, land use planning and governance issues.⁶⁰ Many of the issues that this group will deal with were raised by the MMSD project.⁶¹

‘Sharing a Common Language’, led by Cardiff University, IUCN and Equilibrium Consultants is a research project to assess the ways in which the IUCN Protected Area Management categories can be used to further conservation action on the ground.

There is also an ongoing process to look into management effectiveness certification for protected areas, a collaboration between IUCN, the World Commission on Protected Areas, UNESCO, World Heritage and WWF. In addition, an initiative exploring the possibility of categories certification has been set up with IUCN and Equilibrium.

There have been many other industry–NGO partnerships. For instance, Fauna and Flora International has been working closely with the Community and Business Forum in Kyrgyzstan.⁶²

The financial community

The various guidelines, policies and directives used by the World Bank have been widely adopted by the financial community – as yet they have few of their own. Some private lenders have used social

⁵⁹ ⁵⁹ See <http://www.celb.org/ebi.html>

⁶⁰ See www.icmm.org and http://www.iucn.org/info_and_news/press/miningbiodivstat.pdf.

⁶¹ See www.iiied.org/mmsd/.

⁶² For more detail see <http://www.kyrgyzstan-cbf.org/reports/newsletter2.pdf>

and environmental /criteria in assessing the risk related to a potential loan. Some have gone further and are starting to explore the utility of more comprehensive sustainable development-related risk factors.

Many of the international banks now require environmental impact assessments to be carried out and the development of environmental management plans. However, as mentioned previously, these are sometimes of dubious quality. National banks and funding agencies may not have such requirements, or if they do they may be less strict.

Socially responsible investment (SRI), which includes ethical investment and ethical banking, has been established specifically to consider investments in terms of their social and environmental as well as financial performance. SRI looks for commitment to continuous improvement, responsibility for such issues from board level down and integration of social and environmental criteria into core management systems. Investors tend to adopt other international instruments as baseline standards, so that there is a level playing field, e.g. if access to the Arctic National Wildlife Reserve in Alaska were resumed, it is unlikely that an investor would continue restrict access to its clients as this would create unfair advantage.

Company - and Organization - specific Initiatives

Companies, conservation organizations and governments have also written their own best practice documents and guidelines. Some of these are listed below as examples, but there are many more:

- *To Dig or Not to Dig: Criteria for Determining the Suitability or Acceptability of Mineral Exploration, Extraction and Transport from Ecological and Social Perspectives*. A Discussion Paper for WWF by Nigel Dudley and Sue Stolton. February 2002.
- *Reinventing the Well: Approaches to Minimizing the Environmental and Social Impacts of Oil Development in the Tropics*. By Amy Rosenfeld, Debra Gordon and Marianne Guerin-McManus. Conservation International. 1997.
- *Protected Areas and Oil/Gas Operations: An Explanation of IUCN Categories and Advice on Best Practice*. Part of the Energy and Biodiversity Initiative. Prepared by IUCN.
- *Environmental Sustainability Guidelines on Mining and Petroleum Extraction Activities in Arid and Semi-Arid Zones*. Prepared for IUCN and the Convention to Combat Desertification by Peter-John Meynell and Ruth Golombok. November 2000.
- *Biodiversity and Opencast Coal Mining. A Good Practice Guide*. Scottish Natural Heritage and RSPB.
- *Biodiversity and Minerals. Extracting the Benefits for Wildlife. A Guide to Planning, Operating, Restoring and Managing Mineral Sites for Biodiversity*. English Nature, SAMSA and Quarry Products Association. 1999.
- *Rehabilitation and Revegetation. Best Practice Environmental Management in Mining*. Environmental Protection Agency, Commonwealth of Australia. June 1995.
- *APELL for Mining. Guidance for the Mining Industry in Raising Awareness and Preparedness for Emergencies at the Local Level*. Technical Report No. 41. UNEP. 2001.
- *The Oil and Gas Industry. From Rio to Johannesburg and Beyond. Contributing to Sustainable Development*. International Association of Oil and Gas Producers, International Petroleum Industry Conservation Association (IPEICA). 2002.
- *Biodiversity and the Petroleum Industry. A Guide to Biodiversity Negotiations*. IPEICA. 2000.

Some companies, such as Rio Tinto, have also established an internal process for mainstreaming biodiversity.

National Level Initiatives

In most countries, there are numerous sectoral policies, legislation and action plans that govern access to, or the management of, sensitive areas at national level. It is normal to find that many of these overlap, or are outdated or unable to cope with new or rapidly changing scenarios. Protected Areas legislation defines areas for conservation e.g. national parks, and activities allowed or prohibited therein. In most developing countries it has proved increasingly difficult to monitor and enforce protected areas legislation given the intense pressures on land and politicization of the natural resource. Furthermore, legislation governing extraction and mining – such as **Minerals and Mining Acts** – are usually more powerful than conservation legislation. National **Environmental Protection and Management Acts**, which include requirements and guidelines for Environmental Impact Assessment, could play a more significant role in minimizing mining impacts within sensitive areas. However, this tool has not always been suitably applied. Where good mitigation measures have been proposed, governments have not always had the capacity to ensure that these mitigation measures are put into place.

Other relevant laws and agreements at national level

- **Biodiversity action plans.** Under the CBD, each country is required to have a BAP, which identifies key issues and necessary activities.
- **Land use planning acts** which identify the procedures and authorities for controlling changes in land use.
- **Land Tenure legislation** determining the rights of land ownership.
Community/traditional rights legislation including rights of access for cultural reasons and for the collection of wild products.
- **Water resource acts**, including the regulation of water resource use, groundwater abstraction, water pollution laws and effluent standards.
- **Clean air acts** including air pollution and emission standards.
- **Natural resource legislation**, including agriculture, livestock and forestry acts. Conservation of soils and prevention of erosion may also be covered.

Some countries, for instance Canada and Australia, have had some success in instituting integrated land use planning exercises to resolve conflicts of interest between the extractive industry and sensitive areas. One example being tested by the Government of Manitoba in Canada through the Land Access Action Plan, is aimed at improving the coordination of land use policy and regulatory proposals. The action plan aims to minimize the overlap of incompatible land use allocations, e.g. by early settlement of First Nations land claims.⁶³ Such approaches are, however, less likely to work where governance is weak, such as in remote areas or in many developing countries. In such areas, the

⁶³ Government of Manitoba (2000), *Land Access and Sustainable Development: Land Access Action Plan*. Mineral Resource Division – Mines Branch (Regulation), 23 and 26 October. Province of Manitoba <http://www.gov.mb.ca/itm/mrd/index.html>.

challenge of instituting sustainable land use regimes, which will deliver fairer and more equitable costs and benefits, remains.

Governments could do more to establish the right policy and institutional frameworks, build consensus and facilitate appropriate partnerships that might be necessary to encourage best practice around sensitive areas. However, government (especially at local level) is often the weakest link, especially in poorer countries where the incentive is often lacking. There is a real need to strengthen government's capacity and will to engage by creating the necessary incentives, and equipping governments with effective policy, planning and decision-making tools and mechanisms.