MMSD

Mining, Minerals and Sustainable Development

May 2001 | No. 217

Report of the MMSD Preparatory Workshop on Indigenous Peoples and Relationships with the Mining Sector

Quito, 27–28 September 2001

MMSD

Co-hosted by Mining Policy Research Initiative (MPRI/IDRC) and Ambiente y Sociedad (Quito)

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1 Background

The MMSD Project is a two-year endeavour, of participatory research and consultation designed to look at the role of the mining, minerals and metals sector in societies change to sustainable development. Based at the International Institute for Environment and Development (IIED), a development NGO with over thirty years experience of promoting environmental and social change, the project is charged with producing a report which is built on a process of interaction with a wide range of actors and on a great number of commissioned background papers.

MMSD's final report is intended to highlight avenues for change; a way forward for an industrial sector which, while vital to society has been extensively criticised and is not trusted by many. The Report will highlight the challenges facing the sector (meaning all actors associated with mining, minerals and metals development, processing and end use not just the industry) in the change to a sustainable world economy and the array of potential responses from industry and other actors in making these changes. It will also focus on some 'best bet' opportunities that could be initiated in the short-term and the longer-term more difficult challenges, which must be resolved through extensive negotiation with wider society.

MMSD works primarily at two levels: the 'global' (which in this sense means the overall coordinating secretariat); and the 'regional', which is comprised of existing organisations working in partnership with MMSD, taking on the work of research and the building of relationships that are necessary to surface key opinions at a more local level.

At the level of the global project, in each case where a challenge to the sector has been identified, an attempt has been made to place the main issues inherent in that challenge in front of a knowledgeable and experienced audience at workshops, scoping meetings and conferences. One of the serious issues facing the sector has been the adversarial relationship that has developed with many indigenous communities around the world. Indigenous cultures and communities have been marginalized, exploited and excluded from decision-making around issues of exploitation of natural resource extraction including minerals and metals on their lands. MMSD has commissioned baseline research at the global and regional level to scope these issues.

Participants attending MMSD workshops are not regarded as representing any group (unless specifically mandated to do so), but invited to attend as individuals to speak to a wide range of experiences and knowledge on these issues.

2 Summary Of Outcomes

The workshop in Quito was convened to discuss MMSD's background work in this area and to provide a forum for indigenous participants to comment, surface other key issues and suggest courses for action which would move the sector forward on the sensitive issues surrounding its relationship with indigenous peoples. The workshop was not a multi-stakeholder event, but designed instead to provide a space for indigenous peoples to dialogue with each other and others working on these issues. The outcomes of this workshop will be carried forward to a second meeting in Australia, which will also be attended by government and industry stakeholders

The workshop objectives were to:

- Analyse and discuss the issues related to sustainable development and the mining sector from an indigenous perspective. More specifically, to identify and prioritise critical issues at the global level from both a national and a regional standpoint.

- Identify the achievements and progress already made in strengthening indigenous peoples relationship with the mining sector;

- Identify mechanisms for dialogue that would document the specific concerns of indigenous peoples and the mining sector for presentation in forums with key stakeholders including governments, NGOs and the mining industry.

To achieve these objectives, the workshop was structured to enable indigenous participants provide an assessment of the nature of the relationship between indigenous peoples and the mining sector and the effects of mining in their respective countries, including an identification of the role and achievements of indigenous peoples in this process. Presentations of individual case study experiences came from Australia, Chile, Ecuador, Kyrgyzstan, Panama, Papua New Guinea and the Philippines.

The exchange of experiences revealed important differences in the treatment of indigenous peoples and their relationship with the mining sector around the world. Particular emphasis was given to issues concerned with promoting indigenous peoples rights and interests over land, territory, use and management of natural resources. The right to be treated as active stakeholders in the development process was identified as a key priority by indigenous participants and essential to maintaining their cultural, economic and social well-being. It was also seen as preventing them from becoming increasingly poorer and marginalized from the rest of society. Furthermore, support for the right of indigenous peoples to participate in decision-making processes would recognise their autonomy and ability to make decisions about their own future.

However, the terms and basis of indigenous peoples engagement with the mining sector generated different viewpoints from around the table, based on different country experiences. In the case of Australia for example, indigenous peoples are already seen to have won legal recognition for their citizenship and land rights, defining their struggle as one that has become signposted by legal challenges through the courts and state governments. This position differs to that of indigenous communities in the Philippines and Latin America, who are still working hard to gain legal recognition so that they can

begin to assert their rights and compel mining companies to seek their consent before mining takes place.

The absence of clear guidelines surrounding the issue of informed consent was identified as a key point of debate, because it emphasises the lack of political and economic influence indigenous peoples have in negotiations and underlines the weakness of their position. The right to say no was thus regarded as a defining characteristic of indigenous peoples ability to participate in the development process as equals and to ensure that their wishes are respected. Ultimately, where this right is not enshrined in law, it means that indigenous peoples are unable to seek legal recourse to protect or defend their interests. However, on this point it was repeatedly affirmed that indigenous peoples are not against mining development per se, but believe that in its present form it fails to meet their social, cultural and economic aspirations, and fear the loss of their land, cultural heritage and identity.

The need to understand how governments, companies and communities enter into relations and the impact this has on the treatment of indigenous peoples in their relationship with the mining sector was highlighted as another main area of discussion. Specifically, this was looked at in terms of the legal, political, economic and social underpinnings structuring these relations according to the following factors:

- the level of relationship i.e. whether at the local, regional, national or global level;

- the type of legal framework in place including use of legal and political instruments;

- the degree of recognition for indigenous rights;

- historical processes of development; and

- political and social advances taking place within a shifting global policy environment.

This framework of analysis emphasised the extent of the exclusion of indigenous peoples participation from new forms of enquiry and their contribution to a future based on more equitable outcomes. However, it also revealed authentic spaces of opportunity that could enable indigenous peoples to strategically determine their own development, and raised the following questions: is it possible to initiate change towards a new set of norms and standards with regard to the equitable treatment of indigenous peoples in their relationships with the mining sector? And how can this be encouraged?

Drawing on participants' commentary and analysis from the plenary and breakout group sessions, potential mechanisms for change were considered. The rationale behind these sessions was to build on the main issues raised during the first day, and suggest ways of moving towards defining a strategy that would enable indigenous participants make explicit their own agenda for change at the international, regional and local level (see Appendix 1).

Key issues that emerged focused on the recognition of rights of indigenous peoples in relation to land rights and resource management; their right to political representation and involvement with national and regional decision-making processes; their right to obtain a fair share of resources from mining projects and respect and understanding for indigenous identity and the diversity that exists in indigenous communities. It was believed that establishing a set of principles to provide a framework that would guide stakeholder

interaction with indigenous peoples, would lead to practices that would improve the sector's relationship with indigenous peoples at the international, national and local level (see Appendix 2).

Affirming the need to recognise indigenous identity and understand and respect the basic rights of indigenous peoples, including their cultural and spiritual connection to land was regarded by all participants as an important starting point. Indigenous peoples want their rights to be legally respected and see this as essential to their development. Calls for the ratification of ILO Convention 169 and the incorporation of criteria on indigenous peoples issues in ISO norms provided the means that would guarantee their cultural, social and economic status.

The plenary agreed that an international indigenous organisation providing advice, direction and strategic monitoring of the sector's performance on indigenous peoples issues, and also oversee the implementation of this set of principles, would be a desirable outcome of the MMSD process. An international framework and standards to regulate mining activities at the local, regional and national levels was also emphasised as a necessary objective.

Governments were perceived as needing to develop legislative processes that simultaneously support the interests of the mining sector and indigenous peoples. They would also need to commit to working jointly with both parties to ensure tangible and sustainable results to protect the rights of indigenous peoples.

Companies were seen as needing to contribute more fully to the economic and social development of indigenous peoples through adopting a 'corporate indigenous approach'; standardising their policies and practices across the globe; contributing to the capacity building of indigenous peoples by creating employment and training opportunities, and underlining their commitment for building partnerships with indigenous peoples based on trust, mutual respect and open and transparent dealings.

3 Next Steps

The need to consider funding opportunities and the possibility of setting-up an indigenous body dedicated to addressing these issues was discussed. However, it was agreed that a strategic vision would firstly need to be developed in terms of the norms, structure, operating guidelines and function of this organisation. The idea of setting-up a pilot group to assess the possibilities for this new organisation – requiring no commitment on the part of individuals or organisations to attend – was suggested as a possible way forward.

It was also agreed that support and recognition for this body would need to be generated both internally and externally. Internally, amongst indigenous peoples themselves, and externally so that wider technical assistance could be drawn upon to support the aims and needs of indigenous peoples. This would create the basis for a new framework that would facilitate strategic and productive alliances between all stakeholders, based on the full recognition of the aspirations and rights of indigenous peoples, including principles of autonomy and self-determination. Recognition of these values and compliance with other international covenants would lead to an enhanced respect for indigenous rights, and

improve indigenous peoples political leverage. All stakeholders would be required to observe this.

4 Conclusions

The strength of the workshop was seen to lie in the exchange of ideas and the ability of indigenous peoples to recognise and learn from one another's experiences in spite of their differences. It also served to demonstrate their capacity to take leadership on all of these issues. As one participant noted, 'this holds the most promise for change – change in the way governments have not been able to make, and change in the way the industry has not been able to make'.

5 Workshop Proceedings

5.1 Introduction

The meeting was opened by the Director of Ambiente Sociedad who underlined the importance of examining the concept of sustainable development from a broad range of perspectives. Ecuador is culturally and socially diverse offering a myriad of views on this issue, though for its indigenous population of 3 million people one of the main concerns in Ecuador centres on the issue of collective rights. Assessing sustainable development from an indigenous perspective was seen to facilitate a broader analysis of what it means from both a conceptual and practical standpoint.

Keynote Speaker: *Sebastiao Manchinery, General Coordinator, Coordinadora de Organizaciones Indígenas de la Cuenca Amazónica (COICA)*

Indigenous peoples are characterised by their will to live differently. They want to be able to control and participate in decisions that affect their livelihoods and see power over these decisions as essential to preserving their way of life.

Many projects are currently planned with a disregard of the need for benefits to flow to indigenous peoples; mining and forestry projects were offered as examples of this type. It is important that indigenous peoples have a share in these projects and the decision-making processes that surround these to prevent them from becoming increasingly poorer and more marginalized than they are now. They need to be treated as active stakeholders not just spectators, and their participation in project planning processes has to be seen as equal to that of governments, NGOs and the mining industry. They are not against development, but demand respect for their rights, traditions, beliefs and acceptance of their peoples.

One of the reasons why indigenous peoples have been excluded from the planning of large-scale projects is because of the degree of professionalisation required. However, capacity building efforts designed to redress this imbalance usually only last for 2 or 3 days, and are insufficient to equip indigenous peoples with the skills that are needed.

Indigenous peoples want systematic change that strengthens their organisational capacity at the institutional level, as well as undergoing training that will enable them to continue living

and working in their own territories. If the will to help indigenous peoples exists, then development projects need to be directed towards achieving these objectives.

Governments also need to be held responsible for the treatment of their people, territory and use of natural resources. They need to be made representative and accountable, to ensure that any benefits accrued to the government are to the advantage of the people and the country as a whole. Indigenous peoples do not want to be treated as an instrument for political ends, rather maintain their autonomy in terms of their culture, language, identity and knowledge. They want to live peacefully while at the same time learn how to participate and be active stakeholders in their own futures.

Relationships in a sustainable world: The MMSD project and indigenous peoples consultation - *Frank McShane, MMSD, Project Coordinator*

For MMSD, meetings such as this have helped inform the project's research efforts and enabled them to incorporate as broad a range of stakeholder views as possible.

Indigenous peoples are one of the most marginalized groups to have been impacted by mining development, and the issue of sustainability cannot be discussed in isolation to this fact. There is no one group more influential in enriching our understanding of society, and it was hoped that during the workshop a number of important issues would be raised to help pave the way towards ensuring a more equitable path of development for indigenous peoples.

MMSD has some fairly ambitious objectives. It is designed to surface the options which face the mining sector as society moves to operationalise the concept of sustainable development. The mining sector's 'social license to operate' is under threat, not least because communities worldwide are rejecting mining based on its past disregard of environmental and social well-being in those areas in which mining projects were based. Indigenous communities in particular, have been marginalized and exploited in the name of progress and by the desire of others to exploit extractive resources found on the lands of indigenous peoples. MMSD through its two workshops, the regional processes and background research reports which have been commissioned, hopes at the very least to highlight all the issues which surround indigenous peoples relationships with the sector (well known though these may be), including the need for the recognition of past injustices. Hopefully, going beyond this, will lead to a discussion of the ways in which the performance bar can be raised with respect to indigenous peoples and mining.

5.2   Brief Overview and Current Status of the MMSD Project and Work Associated with Indigenous Peoples at the Global and Regional Level

Relationship between indigenous peoples and the minerals sector: Brief background to MMSD project - Frank McShane

This project was borne out of the idea that mining as a form of development in many parts of the world was being undertaken without a 'social license to operate', i.e. the need to work closely with host communities and treat them as partners and beneficiaries of mining. Mining is seen to pose real problems for communities, however it is also recognised as

providing opportunities for development as well. A broader negotiation with stakeholders is necessary to creating a more equitable relationship and sustainable future for communities impacted by mining and minerals development.

The MMSD project is the product of industry collaboration and also receives funding from government and bilateral organisations. Fundamentally, this project is a synthesis of the current body of knowledge that exists in the mining and minerals sector and its relationship with societies, economies and the environment. A key element of this project is to engage the interest of stakeholders at the global, regional and local level. An Assurance Group, comprised of independent members representing diverse areas of expertise from key stakeholder groups in the mining and minerals sector, have been brought together to review the work of MMSD. There is a workgroup based in London and MMSD also works closely with its regional partners in Australia, North America, South America and South Africa. More importantly, a number of other key stakeholders have been involved with the project in a variety of ways, including organisations such as the World Bank and the United Nations Environment Program.

The four pillars of sustainable development which guide the project's policy orientation are:

- Economic development

- Social and cultural development

- Environmental protection

- Governance structures

The MMSD project is charged with producing a Final Report for public dissemination ahead of the Earth Summit +10 in 2002.Consequently, there is a large volume of information that falls under each of these areas and will be dealt with in this report.

One way the project has chosen to manage this process is to look at issues surrounding mining and minerals development in the form of eight challenges. Three of these are particularly relevant to indigenous peoples:

- How can more effective ways of resolving conflicts over the use, control and management of land be achieved?

- To what extent can the industry support sustainable social and economic development in the localities in which it operates, given trends at project sites towards:
  – smaller and more specialised labour forces
  – less spending in local communities
  – human rights issues

- How can the information necessary for the industry to support sustainable development be identified, developed and communicated more effectively?
  – this is a particular source of conflict

Where does MMSD stand and where is it heading?
The Final Report will be presented at the United Nations World Summit on Sustainable Development in 2002. At the regional level, MMSD is trying to build platforms for

continued discussion in this area. The MMSD project is under no illusion that the problems surrounding these issues are extremely complex. The role of MMSD is to principally complement the work already being carried out at the regional level with the aim of ensuring a self-sustaining regional process. It is an ambitious project, drawing on participation at the global, national, regional and local levels, paying attention to key issues that question the continuing role of mining and minerals development.

MMSD seeks to outline a modern, contemporary role for the industry, with governance issues as a central concern. MMSD will present its stakeholder findings to industry leaders and governments, in an attempt to influence the way mining development works and also monitor its future progress.

The regional perspective from Latin America - Cristina Echavarria, Director of the Mining Policy Research Initiative (MPRI) of the International Development Research Centre (IDRC)

In terms of what has been achieved in Latin America at the regional level, this can be measured on two fronts: one focused on research the other on participation. Both components have been carefully coordinated with the aim of producing a final regional report that addresses a research agenda supported by a participatory process.

The regional process in Latin America was initiated in November 2000 through an invitation to stakeholders to form an advisory group and serve as representatives for the MMSD project. This group was established to help MMSD define the key issues for the project in 5 countries – Bolivia, Brazil, Chile, Ecuador and Peru. Some of the topics under investigation include:

- Public management

- Civil society participation

- Access and use of information in mining

- Land and mining in protected territories/indigenous peoples

- Use of revenues by central government, and

- Wealth distribution

Stakeholders were identified through establishing a contacts database, and surveys were carried out to find out how different groups prioritised certain issues, which created the space to identify new issues. A series of workshops targeting all the main stakeholders complemented this work and enabled the different stakeholder groups to independently focus on their main areas of concern. This helped establish patterns of consensus and conflict and also identify where changes needed to occur in public policy. A total of 40 workshops have since been held with this information feeding into the MMSD project.

For MMSD South America, their main concern was in retaining a national perspective on each issue while building this into a broader regional agenda that accurately reflects the Latin American vision. Their biggest worry was that the global process would overlook local concerns, however, they feel they have been successful in situating the key topics identified

for investigation at the regional level within the global context. The results of their findings are available on the MMSD website.

MMSD Australia - Bren Sheehy, Coordinator, Australian Minerals and Energy Environment Foundation (AMEEF)

In broad terms, the Australian perspective at the regional level has similar goals and objectives to those of MMSD at the global level. However, the remit here is much narrower and concerned solely with the mining industry in Australia.

Mining tends to be concentrated in the more remote regions of Australia, operating alongside some of the most dislocated and marginalized communities in the country. One of the effects of this is that mainstream Australian opinion on sustainable development has been mainly driven by stakeholder concerns over land and environmental management issues. It is only recently, through participation with the MMSD project, that broader sustainable development issues have begun to be addressed, particularly social development issues. However, the Australian government has shown itself to be hostile to indigenous concerns, in spite of its stated commitment towards the equitable restitution of Aborigines. This process of reconciliation is proving to be one of the most significant and divisive political issues in Australia today.

Against this background, it is important to situate the role of the Australian minerals industry and its relationship with indigenous peoples. While also traditionally renowned for its opposition to indigenous concerns, the Australian minerals industry has, in recent years, made some progress in addressing indigenous rights issues though this has yet to become a key element of management strategy and decision-making.

The research agenda for MMSD Australia is extensive and the main regional research priorities that have been identified include:

- Biodiversity conservation

- Management of Australian mineral wealth

- Industry-based initiatives in sustainable development, and

- Stakeholder engagement – how to mobilise and support engagement of critical groups with issues of sustainable development.

Regional baseline assessments and research reports have been commissioned, and incorporating an indigenous perspective as a crosscutting theme in all its work is integral to the success of the project in Australia. In terms of outcomes, the aim is to establish widespread consensus on what the mining industry needs to do to ensure development is sustainable. Specifically, the project hopes to build relationships between stakeholder groups that will enable them to participate in the development process on an equal basis.

Finally, it is worth mentioning that the critical problems identified here will not be resolved by May 2002. Rather, such efforts are expected to lay the foundation for continued work in this area and enhance the processes for achieving sustainability. The need to engage with legislative and political mechanisms is of particular concern to the Australian process and

research is currently underway to identify examples of best practice in relation to impact and benefit agreements between mining companies and indigenous peoples. See Paper on: 'Agreements Between Mining Companies and Indigenous Communities', Ian Satchwell.

5.2.1 Discussion Points

- Topics identified for investigation at the regional level have been decided by MMSD's regional partners. In the case of Australia, they decided to focus on the industry impacts of Australian companies operating solely within Australia. While accepting the limitations of this approach, the reasons for deciding not to widen their analysis to include overseas corporate activities was because they felt they would not be able to accurately relay the diverse concerns and issues of each country.

- On this point it is important to recognise that the mining industry is extremely diverse. Some corporate actors are trying to do the right thing, although other corporations are less concerned with behaving sustainably. MMSD is trying to come up with some operational criteria that can be used to differentiate between such companies. At the global level, background work is currently underway in the field of human rights and armed conflict.

5.3 Exchange of Experiences

5.3.1 Chile

Manuel Avila, President of Atacaman Village Council

The biggest copper-producing region in Chile is found in the Atacama Desert, where there are 8 mining companies and 22 different indigenous communities. This includes the Atacameña, who have gained legal status under Chile's Law for Indigenous People. A precise figure for the local indigenous population however has never been established since a full census has never been carried out.

One of the main causes of concern for indigenous peoples in this area is the lack of recognition of their rights to land, territory and natural resources. In a desert region where the availability of water is extremely scarce, the use of and access to water is essential for their basic survival. However, water is considered to be a subsurface resource whose ownership resides with the state[1].

Mining companies, through government legislation, have been granted unlimited use of this resource, while indigenous requests for extra water provision are frequently denied. Although indigenous peoples have been seeking reform in water legislation, they are often excluded from discussions between the government and the mining industry, and are underrepresented within government itself. They fear that the use of water by mining

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[1] Under Latin American legal frameworks subsurface resource rights can never be negotiated away or privately owned.

companies will dry up their lands and their rivers, forcing them to leave their homes and migrate to the city, signalling a loss of their identity and cultural heritage.

A recent development in the region has been the negotiation with mining companies over land use and rights of access through indigenous lands. With the support of external actors such as CONADI, the National Corporation for Indigenous Development (an umbrella organisation for indigenous groups throughout Chile), and the government Ministry for Mining, the local Atacaman indigenous community were able to reach an agreement with a mining company that needed to secure a pathway through indigenous territory between the plant and its mine.

The mining company had initially proposed that the area be divided in two, with the state retaining landholding rights over one of these zones. From their perspective, this would provide them with unrestricted access through indigenous lands. However, the community rejected this proposal, and voted instead to retain stewardship over a unified land area. Under the provisions of the Law for Indigenous Peoples, the *Atacameña* are recognised as having legal land rights, which enables them to control negotiations. As the cost of finding alternative routes proved much greater to the company, it was forced to negotiate and reach a settlement with the local community.

The company has since been granted access through Atacaman territory for a period of 10 years, subject to renewal, and the local indigenous population have also benefited from this initiative. They now have electricity and the company has also taken measures to protect the local community and their village – now designated a national cultural heritage site, from the influx of outsiders.

It is the first time that the rights of indigenous peoples have been discussed in this region, and for mining companies has become an issue of strategic importance. Indigenous peoples however, remain cautious over reaching settlements with mining companies and recognise how difficult these are to conclude, since short-term business objectives can often conflict with local concerns. This problem is exacerbated for those indigenous communities whose legal status is not recognised in Chilean Law.

5.3.2   *Panama*

Isidro Acosta, Professor, University of Panama

Panama has strong historical and political ties to both Central and South America. Historical links derive from the discovery of vast quantities of gold during the era of Columbus, and politically, because its unique geographical location has created indelible ties with other South American countries. Mining policy is important in Panama, and there are a number of key institutions which regulate mining policy legislation for the private sector and indigenous peoples.

In terms of its mineral resources Panama produces gold, copper and manganese as well as other non-metallic minerals. It has a population of approximately 3 million people, 10% of whom are indigenous. There are 6 main indigenous groups, all of whom have been

officially recognised in national surveys conducted throughout the 1990s. Ethnicity and not geographical origin is the key determinant of indigenous identity in Panama.

Land is the main cause of concern for indigenous peoples in Panama, with much of the land they live on belonging to the state. A number of measures have been taken at the political level to try and change this and transfer land ownership from the state to the community. This has been achieved through the identification and legal recognition of Comarcas[2] (since 1990 three have been established, with another two currently under review). As more than half of Panamanian territory is populated by indigenous peoples, the designation of comarcas represents a significant move in providing indigenous communities with secure land rights, and also recognising indigenous rights of autonomy and self-determination[3], including their right to traditional and political representation.

Such changes have essentially come about since 1990, following a period of increased tension between mining companies and indigenous communities, which led to the withdrawal of mining investment from Panama. Prior to this, the state had freely issued mining companies with licences to operate on indigenous lands without the consent of indigenous communities.

Since 1994 no new mining concessions have been granted. The introduction of legislation to guarantee the participation of indigenous peoples in policy decisions relating to the exploration and extraction of renewable and non-renewable natural resources in 1998 has further reinforced the recognition of indigenous rights. The Panamanian Mining Code, which is now obsolete, is in the process of being revised but will need to clearly define the regulatory framework that governs the relationship between the state, mining companies and indigenous peoples. Such legislation however, falls short of investing indigenous peoples with full land rights, and the Panamanian government has yet to ratify ILO Convention 169 for fear of losing two-thirds of its territory.

5.3.3   Ecuador

Patricio Zingri, ECUARANARI

The experience from Ecuador echoes similar concerns to those raised elsewhere in Latin America. In the Andean region where he comes from, large mining companies are allowed to operate freely and indigenous peoples suffer mistreatment and exploitation at the hands of both industry and government.

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[2] *Comarcas* are legal jurisdictions that recognise the collective rights of indigenous peoples to govern themselves within their own territories. *Comarcas* do not operate in isolation to other political jurisdictions but include local government structures that are linked directly to central government. In this way, indigenous political representation is assured both through existing governance structures where indigenous representatives through legal processes defined by the state have the right to participate, and internally within their own indigenous communities.

[3] In Panama, autonomy is broadly taken to refer to the power each *comarcas* has in electing its own authorities with the same recognition given to local rule as that of any other formalised governing body. Self-determination refers to the freedom to pursue any political economic social or cultural activity that will benefit the entire community without requiring the presence of government.

An enormous amount of mineral wealth is located in indigenous territories, buried deep within their 'pachamama' (Mother Earth). Since Spanish times, indigenous peoples have had to endure this struggle over their natural resources, though today's struggle is not just a question of defending their interests but one of asserting their rights.

To mobilise themselves effectively around these issues, indigenous peoples have had to organise themselves and from strategic alliances. While the Ecuadorian Constitution appears to support and respect their collective rights, indigenous peoples are continually excluded from decisions directly affecting them. They are however beginning to make their voices heard and busy strengthening their organisational capacity, particularly at the national level. This is an important achievement for them and a relatively recent development.

Between 40-45% of the population is indigenous, with 26 different groups struggling to defend their ancient values, traditions and languages. The largest single group is Quichua, which in turn consists of about 13 different peoples. Historically they have never been in conflict with each other, though this partly stems from being widely dispersed and not having a sense of the diversity that exists between them. National level activities have been instrumental in bringing groups from the Amazon region, the Sierra and the Coast closer together, and a defining characteristic of indigenous peoples in Ecuador lies in the strength of their organisation which has enabled them to overcome any differences. However, internal division within communities is a problem where individual 'consciences' are being bought by large interests.

When looking at the role of government and its support for indigenous rights, indigenous peoples want their rights to be legally respected and have been fighting for greater political representation in Congress. In a country where 85% of the population live below the poverty line, lobbying the government for change has become a key objective, particularly since 1990. However, in pressuring for change the voting out of successive governments has led to political instability and is a situation indigenous peoples are seeking to avoid as well. Recognising these constraints within the system is one of the reasons why they are pushing for substantive large-scale reform.

Discussion

Legal mechanisms

- Although Ecuador has ratified ILO Convention 169, there are no clear guidelines which mining companies have to observe when seeking the informed consent of communities before mining activities begin. The lack of rigorous application of this Convention has led to conflict between mining companies and indigenous communities.

- Linked to this is the problem where mining concessions have been granted before this Convention was signed. Under this arrangement, the state takes a different view to the question of ownership of subsurface resources, though for indigenous peoples, the ownership of surface and subsurface rights are indivisible. Currently, the Shuar population in Ecuador and the mining company operating in their region are locked in this type of disagreement.

- Problems concerning the impact of small-scale mining in Ecuador were also highlighted. There are no mechanisms in place which allow the state to monitor and control the social and environmental impacts of mining. Even where land is protected, reports of land being exploited for mineral resources by small-scale miners are widespread. In each case the state has been powerless to act.

Political representation

- The need to look at wider issues concerning the representation of indigenous interests within government was also raised, particularly in cases where government appointments place industry representatives in key decision-making roles. For example, in Ecuador the Minister of Energy and Mines is a former industry representative. Who do indigenous peoples turn to in defending their interests?

- In Ecuador, the drive for change is not simply a question of gaining legal recognition of indigenous rights at the national or international level, it is about recognising indigenous peoples ability and capacity to mobilise themselves and make their voices heard. It is through their organisation that they are able to promote respect for indigenous rights and defend their interests when faced with opposition and legal challenges from both the government and mining company.

- Parallels can be drawn in Australia, where the government talks about economic prosperity and social justice for all, but demonstrates an imbalance in its treatment and recognition of indigenous Australians vis-à-vis company interests. It is up to indigenous peoples to expose their governments on what they do, and also on what they fail to do.

5.3.4   Australia

Clinton Wolf, Consultant

Aboriginal people are the poorest people in Australia, comprising 2% of the population but 12% of the homeless population and 30% of the prison population. The imprisonment rate for adults is 14 times higher than that of non-Aborigines, while 40% of all children in corrective institutions are of Aboriginal descent. The unemployment rate for Aborigines is three times higher than for non-Aborigines, with unemployment in some rural communities reaching 100%.

In 1967, indigenous Australians were awarded full citizenship rights in a national referendum to change the Australian Constitution. Although the referendum was returned by an overwhelming majority, it was white Australians who were asked to vote on whether indigenous Australians could have rights in their own land. At the time, it was hailed as a significant milestone in sealing the relationship between indigenous and non-indigenous Australians, but struggle over land rights is still an ongoing concern for indigenous peoples, with native title claims being contested by powerful non-indigenous interest groups, including mining companies.

A key point of qualification used by the courts to determine native title in Australia, is whether Aborigines today are still practising the same laws and traditions as they were when first 'discovered' by white settlers. If this cannot be proven, then native title claims are

rejected. This is the hidden subtext to legislation that appears to support the rights of Aboriginal people. Thus the first suggestion made to the plenary is not to trade rights. It is argued that the potential for the exploitation of indigenous peoples is high when entering into agreements with mining companies, and that as far as sustainable development is concerned, mining companies will do as little as possible to get a deal signed. Therefore it is important that indigenous peoples do not cede their rights and that they are cautious when negotiating and signing agreements with mining companies.

On the issue of sustainability – once something is removed from the ground it cannot be replaced. Mining therefore cannot be regarded as sustainable. Need to consider what the term sustainable development means from an indigenous perspective. For example, a company with a good record on sustainable development in Australia e.g. BHP Billiton, can go elsewhere and behave unsustainably to devastating effect, e.g. OK Tedi in Papua New Guinea.

Mining companies are in the unique position of being compelled to do the right thing, not necessarily because they want to but because they have no choice. How then to ensure that companies behave appropriately? This is a key issue that needs to be surfaced. On this point, it is important that indigenous communities are united amongst themselves, to prevent mining companies from signing deals with individuals that can weaken the interests of an entire community. Carriers of traditional knowledge are less likely to surrender their cultural interests, which is why their involvement in the consultative process is essential. Based on the Australian experience, caution is urged with regards to written legislation and mining, because of its long-term impact for future generations.

Grant Sarra, Director Consultant, Common Ground

Is experienced in working with government, and also with indigenous communities in negotiations with mining companies.

For companies working with indigenous peoples, it is important they understand the history of such communities and see their anger and mistrust as the result of a process that has sought to systematically marginalize and exclude indigenous ways of knowing. Every piece of legislation and every operational/ institutional process in place in Australia today, accounts for only a small part of Australian history. Aboriginal parents have had their children forcibly removed and 'adopted', sustained by paternalistic and racist policies and legislation. Historical notions of dispossession and its impact on indigenous peoples sense of identity needs to be understood from this perspective.

In the life cycle of a mining project there are a number of clearly defined stages. While a visible timeline can be traced from the exploration phase through to mine closure, indigenous peoples also need to be able to record their own sense of history and development within this process by defining the outcomes they want to see.

When a company decides to mine, both the government and company need to identify indigenous views in relation to the environment, labour, employment, education etc. By working with industry and communities, the government can help to create job opportunities and conduct skills audits to determine what levels of skills are required. The

ultimate goal should be one of creating stable and permanent employment opportunities not just traineeships. This is an issue that also needs to be seen within the context of self-determination. The training of Aboriginal people in Australia is a heavily subsidised area of government policy, but trainees tend to occupy a lower socio-economic status in society.

Companies need to commit to cross-cultural training at the local level and employ indigenous peoples at senior management levels who can understand both the corporate and indigenous perspective. This is possible, in spite of internal resistance. Where communities are divided and played off against one another, companies have a key role to play in bringing them together.

Governments can help meet these objectives by funding mining exploration and creating subsidised training opportunities for indigenous peoples. They also need to introduce legislation that creates a win-win situation for all. For example, land title claims in Australia have been especially problematic, particularly in cases where Aborigines have been forced to leave their lands and are unable to demonstrate uninterrupted connection to their lands. There is a need to establish recognition of indigenous spirituality in Western Law without setting limits to how far back in time a claim can reach, while also recognising how alienation from cultural lands has torn apart the material connection between indigenous peoples and their beliefs, values and traditions.

At the same time, indigenous peoples need to develop a sense of how they can solve their problems under their own leadership, and seek to elaborate a strategic vision of their future. They need to establish their own framework and encourage the industry to work to these guidelines. Astute companies will adopt these practices. Ultimately, mining companies need to listen to what indigenous peoples say and adopt a 'corporate indigenous approach'.

Underlying principles for the treatment of indigenous peoples

- Respect for indigenous peoples cultural and spiritual connection to land and a commitment to recognise the diversity of indigenous communities;

- A commitment to the preservation and identification of cultural heritage sites; and

- A commitment to enhancing employment opportunities for indigenous peoples in the communities where they operate.

Discussion

Engagement with the mining sector

- To avoid being misled by mining companies, indigenous groups in Australia decided to approach the industry directly before scaling-up their concerns. This proved to be an effective course of action, however, establishing consensus between all the different groups was difficult to achieve. Some groups were more successful than others in maintaining their unity, which they found strengthened their bargaining position. From this experience, mining companies tend to be more receptive to indigenous issues when faced with united communities. Whole communities can suffer where groups are divided and where these differences are exploited.

- Aborigines have their own traditional laws and beliefs. Maintaining cultural ties is an important part of this process, and is why indigenous peoples must unite. They need to ensure they do not negotiate away their rights while pressing mining companies to do what they say they will do. Deals must never be done on handshakes.

Employment

- When an individual occupies a low level of status in society their opportunities are extremely limited. Indigenous peoples need to insist that companies commit to training and maintaining minimum quota levels of employment. Once these employment targets have been reached, attention should then focus on providing career development and promotion opportunities.

- Companies also need to respect cultural ties e.g. death of a community member which could result in the loss of employment for an indigenous person fulfilling his/her community obligation.

- In terms of salaries, differences exist in the wages that company workers and indigenous peoples earn. In Australia for example, while mining companies may pay all workers the same wage they do not pay site allowance or remote living allowance to indigenous peoples. Quite often this results in an indigenous person being paid less than their non-indigenous counterparts. Indigenous peoples need to insist that they are entitled to more rights than non-indigenous peoples.

New role for the mining sector?

- Mining companies are run as private enterprises in Australia. There is a national body to oversee the running of their operations, but it has tended to side with company interests over community interests. What indigenous peoples in Australia would like to see is:
  – the introduction of a national framework to monitor how their issues are dealt with;
  – the establishment of minimum practice standards that mining companies need to comply with before being given a license to operate.

- However, in the case of Australia a level of respect for indigenous peoples' rights has already been won, particularly with regards to the land question and in terms of the use and control of resources. In the Philippines, it is a very different scenario where the idea of forcing mining companies to become more accountable and responsible for their mining practices is hard to achieve. Basic indigenous rights are not respected here and their views not taken into account, even though they are invited to participate in negotiations with the government and mining companies. Alternative approaches need to be considered as well.

- One way of doing this may be to think about using global indigenous peoples organisations to broadcast examples of good and bad mining practice around the world. Pressure can enact change. Guidelines that establish how mining companies need to interact with indigenous peoples could be outlined in this forum. Indigenous peoples need to establish the rules that they want mining companies to adhere to, which would also force governments to act.

5.3.5   Papua New Guinea

Timothy Andambo, Mining Engineer/ Porgera Mine LMP Land Owners Chairman

The speaker is a mining engineer and also a member of an indigenous community, and has been involved with chairing agreements between mining companies and indigenous communities, one of which is widely acclaimed to have received the endorsement of all parties. However, it was acknowledged that the follow-through with this agreement has been problematic.

Papua New Guinea (PNG) has a population of approximately 5 million people. Land ownership in PNG lies almost entirely in the hands of indigenous peoples, who own approximately 99% of the land. This is inherited mainly through patrilineal, but also matrilineal chains. There are 700 different groups and languages, representing an extremely diverse population. However, education levels are very low with up to 90% of the population described as uneducated.

Enga Province where the Porgera mine is located, is a region that has an abundance of natural resources, though communities here have been unable to reap the benefits of their land. As a landowner (the speaker) appreciates mining companies wanting to exploit the land for development purposes, but speaking from the perspective of an indigenous community representative, argues that it is hard to know whether or not a mining company is acting illegally. Although PNG is a democratic country, the issue of power is key to understanding how national resources and wealth are managed. Some mining companies behave responsibly, however the general lack of education weakens the bargaining power of communities in their negotiations with them.

The agreement referred to as having been widely endorsed by all stakeholders, is one that aims to provide additional business opportunities (such as the establishment of coffee-growing areas) to ensure the sustainability of the regional economy once the mine closes. The Porgera mine is due to close in 2006, however, many people have negotiated away their land rights and may also lose out on future development opportunities. In order for sustainable development to become a reality, there is a need to ensure that plans are in place for community involvement before mining operations begin. If indigenous peoples are able to occupy a central role in discussions and negotiations, or given the opportunity to purchase shares in a company, this may be one way of contributing to the enhanced sustainability of the region and enable them to safeguard their futures.

The need to raise education levels so that indigenous communities are able to relate to mining companies on an equal basis is a key concern in PNG. Educating young people to assume a lead role in indigenous affairs would mean that a level of trust exists in the way indigenous interests are represented at the community level. Mining companies and the government would also benefit from this approach in their negotiations with local communities, and could assist with this process by funding scholarships.

Indigenous peoples approached by mining companies who want to mine on their lands, are advised to bide their time before signing any agreement to ensure they do not lose out on

any of the potential benefits. They should also research the history and the background of the mining company (see agreement for further information). However, indigenous peoples are frequently unable to afford the costs of legal representation, which can lead to a weakened bargaining position. In PNG, one way of overcoming this limitation was to ensure that all agreements and papers were phrased in a way that could be easily understood by all, and in the language of choice for any single indigenous group.

Eduard Mangili, Vice Chairperson, Cordillera Peoples Alliance

Begins his presentation with a quote from a tribal leader who was slain defending his land: 'land is life, it is sacred and it is the duty of every indigenous person to defend and protect it'. This is a view that reflects the current position of the Philippines. The Philippines is located in a volcanic 'ring of fire' with rich mineral deposits and a long tradition of mining. Mining however, is considered to be one of the most destructive industries.

Mangili grew up in a local town and worked as a small-scale miner. The river systems, water tables and forests have all been severely affected in his region because of prolonged mining operations. 75% of the Philippine's population live below the poverty line, the majority of whom are indigenous peoples, and are the ones to have been most affected by mining development. As the industry has continued to modernise and refine its techniques for maximising the exploitation of minerals, the shedding of human labour and accelerated environmental degradation have been the inevitable outcome of this process.

Indigenous peoples in the Philippines have attempted to rally against the destruction of their lands in a number of ways. For example, using political and legal means, protests and human barricades, as well as forming strategic coalitions with other indigenous groups through the Cordillera People's Alliance (CPA), an umbrella organisation for indigenous peoples in that region. They are also actively campaigning at the national and international level.

Since the 1900s, during the era of American colonisation, mining legislation in the Philippines was developed in line with commercial interests. These laws are still in use today, and under the Mining Act of 1995 the mining industry has become fully liberalised. Mining companies are invested with full land, water and timber rights, provided with extended leases and given guaranteed incentive rights such as the non-payment of taxes, which for indigenous peoples, effectively amounts to the sale of their national patrimony and sovereignty. The Philippines consists of some 300, 000 sq. km, with almost 50% of the land being applied for by mining companies. In the Cordillera region, the rights and guarantees to almost all of their land now lies with mining companies.

Indigenous peoples in the Philippines are not anti-mining per se, they also recognise the importance of mining. However, in its present form it does not address their economic, environmental, social and cultural needs, which is the reason for their opposition. Neither does it address their need for agricultural development. As far as they are concerned, the mining industry exists only to maximise its own gain, leaving indigenous peoples as effective squatters on their own lands. CPA is working with indigenous peoples nationwide, not only on mining issues, but also on the issue of control over land and resources. It is important to highlight that their fear stems from the loss of their indigenous social and political systems

as well. People have lost their lives in defence of their land and have already learnt from past experience the devastating health and environmental impacts that mining can cause.

Discussion

Land

- Land in the Philippines is state-owned. Indigenous peoples believe in ancestral rights to land ownership, which is not respected by the government. Without proof of ownership of land or clear land titles, the issue of compensation has been difficult for them to negotiate. A way to address this would be to introduce a system that reviews all native land title throughout the world and monitor how this is enshrined and respected by law.

- However, it is equally worth recognising that indigenous peoples do not necessarily need to gain land title in order to be compensated. For more than 20 years, even if no clear legal definition to land can be proved, the World Bank has established mechanisms in place to support such claims.

Stakeholder engagement

- Public consultation in the Philippines is not a transparent process; communities are usually only brought in once the decision to mine has been taken. Indigenous peoples are working hard to assert their rights and force companies to seek the informed consent of indigenous peoples before mining takes place, and are currently contesting the legality of the system.

- On the basis of this example, it is important to consider how mining companies are able to contribute to sustainable development when a country or a region does not have a model or framework for achieving sustainability. Building capacity at the level of civil society and limiting mining activities until such frameworks are in place was raised as one possible solution.

Financing of mining projects

- Indigenous peoples may be able to exact leverage over the way mining projects are financed, usually through a number of different investors. The financing of a mining project is contingent on the dominant policy of a lender, whose withdrawal would create uncertainty among the other lenders and raise questions about the financial viability of such a project. Targeting investors such as the World Bank for example, which has strong environmental and social policies, may be one way of bringing pressure to bear on mining companies.

- However, where companies do not need to rely on external financing to support their activities the issue becomes more complex. There are many types of finance, and mining investment is a complex mix. World Bank guidelines have been strongly criticised as being weak on protecting indigenous rights. A more appropriate strategy may be to target some of these financial mechanisms and set global standards to protect indigenous peoples rights.

5.3.6   Kyrgyzstan

Cholpon Dyikanova, National Manager, Community and Business Forum (CBF), and MMSD Assurance Group Member

Like other soviet republics, Kyrgyzstan secured its independence in 1991. It has a population of approximately 5 million people, 65% of whom live in rural areas. There are over 80 different nationalities, and approximately 60% of the population live below the poverty line. Kyrgyzstan is renowned internationally for its concentration of bio-diversity resources, which includes 86 natural protected areas. The potential for economic growth through mining, oil and gas, hydroelectricity, agriculture and tourism is now widely recognised.

Following a massive cyanide spill in 1997, the World Bank decided to fund a project to develop cross-sectoral collaboration between business and communities, and encourage sustainable social, economic and environmental development. The Community and Business Forum (CBF) was established with these objectives in mind, and to achieve the following goals:

- At the local level, to facilitate informed stakeholder dialogue for communities affected by business activities, to enable them to share in sustainable social, economic and environmental benefits;

- At the national level, to facilitate informed stakeholder dialogue that would promote sustainable economic and social development in Kyrgyzstan; and

- To develop models of effective partnership between business and communities.

Achieving these objectives needs to be seen within a changing global, regional and local context. During the Soviet era the people of Kyrgyzstan were well protected socially, but most of the country's resources were used by Russia. In rural areas, more than 70% of the local population are now unemployed because many factories are no longer used, and since the collapse of the former Soviet Union most of the former mining works are no longer in operation either.

Mining operates in some of the harshest climatic conditions in Kyrgyzstan, and also in some of the most deprived regions. The Kumtor mining company was established in 1992 and by 1998 was providing 9% of Kyrgyzstan's GDP. It works with local communities, including 10 villages of different sizes and between 25-30 local NGOs. Only 2-3 mining operations are currently active in Kyrgyzstan.

There are almost 700 NGOs registered in Kyrgyzstan, but not all of them are effective. Only 100 deal with environmental issues for example, and village NGOs are a new phenomenon. In light of all these changes, the system of government is undergoing massive restructuring, and is finding this extremely difficult given the changing relationship between government, the private sector and non-governmental sector.

As mining closure looms, there is an obvious need to consider what employment opportunities can be created and how mining companies can help develop small businesses. All these issues are currently being looked at by CBF.

The output of CBF activities can be measured in terms of:

- Information – access, credibility and assessment of business impacts;

- Dialogue – community involvement, understanding of needs and between different stakeholders;

- Business-community partnership issues – sustainability, support for small business, social investment and models of good practice.

This is an example of the CBF model and their approach to addressing the impacts of mining in Kyrgyzstan. Participatory mechanisms are a central element of this process.

5.4 The Relevance of International Conventions and Charters

5.4.1 The UN draft declaration on the rights of indigenous and tribal peoples

Carmen Yamberla, President, Federación Indígena Campesina de Imbabura (FICI)

Background
Following a period of extensive consultation with delegations of indigenous peoples and contributions from specialists on indigenous rights issues, a document has been produced that has taken over 12 years to complete. Carmen Yamberla has actively collaborated with this process It is intended to be used as an international juridical instrument, but has become a highly politicised and controversial exercise, particularly on the issue of self-determination.

This document has been lodged with the United Nations for 19 years. The final outcome is still unknown, but it does represent the mandate of, and for, indigenous peoples. What is clear is that the power to turn it into a resolution lies with the United Nations. Since 1998, indigenous peoples have begun to actively debate the mechanisms needed to implement this document as an international Declaration. However, it is still perceived by governments as a draft international standard of little political influence.

The Articles and their implications for mining
Article 3 on the question of self-determination that allows indigenous peoples to:

'freely determine their political status and freely pursue their economic, social and cultural development'

is viewed by indigenous peoples in Ecuador as an inalienable right and fundamental to their existence.

The issue of collective rights is one that goes hand in hand with the International Labour Organisation's (ILO) Convention169 and the Ecuadorian constitution. When in Article 7 it states that:

> 'indigenous peoples have the collective and individual right not to be subject to ethnocide and cultural genocide, including the prevention of and redress for....any action which has the aim or effect of dispossessing indigenous peoples of their lands, territories or resources',

This is regarded as an unassailable collective right and not a property rights issue. Indigenous peoples should not be forcefully displaced from their lands. The introduction of these international legal instruments are meant to prevent this from happening, but in the case of mining it frequently does. The Declaration also contains a clause which recognises the right of indigenous peoples to a just and fair compensation. However indigenous peoples lack political and economic influence in negotiations, though the right to consent is possibly their strongest bargaining tool.

Under Article 13:

> 'indigenous peoples have the right to manifest, practice, develop and teach their spiritual and religious traditions, customs and ceremonies; the right to maintain, protect and have access in privacy to their religious and cultural sites; the right to use and control of ceremonial objects; and the right to repatriation of human remains'.

For mining companies, their main concern is with making a return on their investment; for indigenous peoples it is about supporting their communities and ensuring there is a future for their children. Religious sites need to be respected by mining companies.

On the subject of cultural rights, this takes into account the use and reporting of information, and the issue of informed consent. In many cases, indigenous peoples only become aware of measures which affect their rights when this information appears in the press, which is not always readily accessible to indigenous communities. Language has to be recognised as an important barrier to the participation of indigenous peoples. When looking at ways of keeping indigenous peoples informed, cultural differences are an important determinant.

Articles 19 and 20, concerning the right of indigenous peoples to fully participate in the decision-making process, raise many questions for indigenous peoples. If referring to their participation as equals, the implications for mining companies are clear. They will need to learn how to engage with the traditions of indigenous peoples.

The Sixth part of the Declaration is concerned with land, territory and resources. In this section, indigenous peoples are entitled to the restitution of their land if this was 'confiscated, occupied, used or damaged without their free and informed consent'. This has far-reaching implications for mining over the use and storage of chemical products, which may affect the environment and may have already destroyed valuable ecosystems. Companies need to look at this and modify their environmental policy and environmental impact assessments accordingly. Linked to this is Article 29 which refers to the:

> 'recognition of the full ownership, control and protection of their cultural and intellectual property'

Which is important to indigenous peoples in terms of enabling them to control the knowledge inherited from their ancestors e.g. plants and herbal medicines.

The Seventh part of the Declaration addresses the issue of autonomy. Article 31 describes indigenous peoples as having the:

> 'right to autonomy or self-government in matters relating to their internal and local affairs, including culture, religion, education, information, media, health, housing, employment, social welfare, economic activities, land and resource management, and environment'.

Indigenous peoples can also decide whether or not to allow outsiders into their communities, and those wishing to carry out activities in their communities are only able to do so with their consent.

For indigenous peoples, the implementation of this Declaration is a moral commitment which needs to be met at the international level. The UN needs to assume responsibility for carrying this through if it is to honour its commitment and respect for indigenous rights. It would set a historical precedent if indigenous peoples were recognised as proper subjects of international law with their own collective rights. This Declaration however, is only a minimal reflection of their hopes and aspirations. It is a starting point, but does not embody the full recognition of indigenous self-determination.

In terms of the framework it provides for the roles and responsibilities of mining companies and the state and their relationship with indigenous communities, it is important they take these norms into account. They may be all encompassing, but they do still provide guidelines which allow for the particularities of different indigenous groups.

Discussion:

- Achieving consensus is the guiding principle that will make this draft Declaration legal and binding. In 1995 the Commission on Human Rights formed a Working Group to look at ways of achieving this by determining which Articles would need further amendment. So far, only 3 Articles have been approved including Article 5 which states that 'every indigenous person has the right to belong to a nationality'. However, for indigenous peoples, this is meaningless if Article 3, which deals with the question of self-determination and the autonomy of indigenous peoples to make decisions about their own future, is not approved.

- Since the approval of the draft Declaration by the UN Sub-Commission – acting on the recommendations of the Working Group – is contingent on the goodwill of governments, which may never come to pass, it was suggested that an alternative approach might be needed.

- On the issue of autonomy, the point was made that this varies according to the particular circumstances of indigenous peoples, and that this needs to be legally endorsed to guarantee the livelihoods of indigenous peoples. This is happening in some Latin American countries. At the international level it is important to have this instrument to safeguard indigenous interests, as not all groups are protected in the same way. It is also worth recognising that some governments have amended their constitutions and legislation to take into account some of the Articles contained in this declaration. For example in Ecuador, dialogue between the armed forces, right-wing political parties and

other groups who exerted political pressure in favour of adopting ILO 169 did actually take place.

5.4.2 Empowerment or Impoverishment

Ted Downing, Research Professor, University of Arizona and Ian McIntosh, Manager Director, Cultural Survival

When examining the relationship between indigenous peoples and the mining sector, it is important to analyse the strategic issues that mining companies and indigenous peoples have to seek agreement on for development to be sustainable. Without embracing change and learning from past mistakes, the implications of rising costs, conflict and uncertainty will be experienced by all stakeholders.

Key factors of critical importance to this discussion include:

- Culture

- Self-determination

- Sovereignty

- Economic and political context

The case for mining
Mining is seen to promote indigenous lifestyles and livelihoods through:

- Creating opportunities for the realisation of community goals

- Alleviating poverty and providing social infrastructure and key services

- Providing employment and training opportunities

- Negotiated agreements affirming the sovereign status of a cultural group

The case against mining
Mining threatens indigenous lifestyles and livelihoods in a number of ways, for example:

- Project hazards – e.g. accidents, sexual abuse and prostitution, drinking and associated violence, loss of assets related to construction, local price inflation

- Project-related impoverishment risks – e.g. resettlement issues

- Disruption of social and cultural reproduction – e.g. where the participation of indigenous peoples in negotiations with mining companies places excessive demands on the capacity of local people and their traditional leaders to engage in community activities. In some cases, this may even lead to increased rivalry between individuals and groups.

- Environmental damage

- Desecration of sacred sites

- Destabilising of sovereign claims

- Undermining of civil and human rights

If mining leads to social dislocation, resettlement or displacement, the risk of impoverishment becomes extremely high. Past experience demonstrates that few cultural groups have survived forced relocation, and is why the World Bank now has specific policies for dealing with this issue.

Another source of contention is the issue of compensation. In spite of short-term gains and increases in income, if a project takes more than it gives back to a community, the end result is a mining project that is effectively subsidised by the poor. This is a cause for concern for both indigenous peoples and financiers.

The way forward is to identify strategic issues of significance to all parties by listening to people and learning from past experiences. There are few examples of successful mining projects, but finding out where the main points of agreement and contention lie means that indigenous peoples in their negotiations with mining companies will be able to raise the issues they feel need to be addressed before any mutually satisfactory deal can be reached. This includes the decision to agree not to deal as well.

Before heading to the negotiating table, there are a number of important questions that can help identify the strategic issues in any given circumstance:

1. Whose future and whose time?

2. Whose plan and whose development?
   Answering this question will mean adopting one of two positions:
   Plan A – unequivocal resistance or support for mining endeavours
   Plan B – a negotiated outcome based on a vision developed by indigenous peoples.

   This in turn will be based on:
   - Economic and legal examination of the proposed venture

   - Full assessment of risks and benefits over time, in terms of both direct and indirect impact. There is always a constant debate on these issues, but what underlines this discussion is the issue of liability.

   - Identifying and mitigating all risks

   - Determining how the venture fits within a people's cultural vision

   - Establishing institutional and financial arrangements to ensure that everyone shares in the benefits of the venture, i.e. how is payment transferred from the project to group and how is this shared internally? Allowing mining companies to decide how benefits are distributed within a community undermines the self-determination and autonomy of indigenous peoples. Such decisions need to be taken by the community.

   - Drawing up binding and sustainable agreements – need to ensure that legal agreements are written down. There is no reason for them to be complicated.

3. Rights, responsibilities and accountability – who executes the plan, who pays for it and who is responsible if things go wrong. And they always do. Mining companies are not in the business of indigenous development, nor in many cases are governments, or environmental NGOs or community relations specialists.

4. Ground rules for dialogue and negotiation:

   - Prior informed consent

   - Participation

   - Transparency

   - Financing based on risk assessment and development needs

   - Long-term institutional arrangements (external and internal)

   - Why is information gathering unidirectional? The flow of information and dialogue is normally only one-way. On a negotiated agenda need to discuss both sides.

5. Why are companies not adhering to the basic demands of indigenous peoples in terms of consultation, consent and compensation?

6. Why is it necessary for indigenous peoples to negotiate their sovereignty with a private company in exchange for protection from mining risks or sharing in project benefits?

7. What incentives are needed for mining and its financiers to ensure that strategic interventions are the rule not the exception?

8. Is there a win-win situation?

9. What can indigenous peoples do to compel mining companies to do the right thing?

Discussion

Culture

- When examining the possible impacts of mining activities on indigenous communities, need to consider what sustainability means beyond looking at resettlement issues, environmental impacts and claims for compensation. Cultural impacts are equally as important, particularly in terms of how indigenous culture is affected with the arrival of a mining company. Using the above strategy may be one way of identifying where culture may be in danger and provide a framework for negotiating with mining companies. However, adopting this position assumes that the community is willing to broker a deal.

Financing of mining projects

- When a company decides to mine, it needs to borrow money. Generally, no single financial institution is prepared to act as the sole lender, preferring instead to spread its risk amongst a host of other financiers. This group (of financiers) has to agree a policy in relation to indigenous peoples and if one of the financiers has an indigenous policy that is very strict, this will dominate the way in which the group operates. The World Bank for example, with as little as 2% of the controlling rights in some cases, has the strongest leverage in these discussions, because without its support the financial viability of entire projects could be undermined. Perhaps if the World Bank had a policy on mining in relation to the rights of indigenous peoples, this would create a stronger bargaining base for indigenous peoples.

- While this approach may exact some leverage over the financing of mining projects, it is equally as important to recognise that even where it can be proven that a mine will cause negative impacts on the environment, mining companies still manage to draw funds from somewhere. One way of stopping bad mining is by putting companies under pressure so that they feel they run the risk of losing money. There is plenty of evidence from around the world to suggest that financiers are extremely nervous about investing money in areas that could generate social unrest, and instead prefer to opt for safer mining ventures.

- Putting pressure on governments cannot necessarily be relied upon, since they are often weak and sign agreements at the international level that fall outside national frameworks. In cases where financial accountability is not clear, ultimately the money is accountable. If money cannot be raised, mining will not take place.

Informed consent

- The focus of this presentation is mainly at the project specific level. In their research, MMSD have come across examples where indigenous peoples have through informed consent, decided that they do not want mining but their voices have still been ignored. Companies have access to alternative means that enables them to drive forward their own agenda, which disempowered indigenous peoples do not have. The sector (meaning all actors and not just the industry) needs to look at wider linkages, so that if an indigenous group decides not to allow mining within their territory their wishes are respected and they are not pressurised into accepting a disadvantageous deal.

- Possible means for resisting mining development could include negative publicity, and putting pressure on companies in their home countries.

Indigenous strategies for action

- Governments are the ultimate arbiters of policy. If indigenous peoples want to keep mining out, ultimately they have no legal recourse because their rights are not enshrined in law. There is no international standard or framework to advise companies on how to do the right thing by communities, which ought to be a priority. The idea of forming an international indigenous body to oversee these issues may be one solution, which would not interfere or dictate the terms of reference for negotiation in other countries, rather exert pressure on companies internationally to consult with people at the local level. This is one international standard that could be implemented.

- In terms of information gathering, this international body would be able to identify examples of best practice, and share and seek advice on how to veto mining in communities where indigenous peoples decide they do not want it. They could also have their own list of approved mining companies and benefit from being in a stronger bargaining position by forming their own committees, tabling the proposals/ changes they would like to see. The indigenous perspective is key to the whole debate on sustainable development.

- However, this approach has its advantages and disadvantages. On the one hand, it could be an empowering and positive experience for indigenous peoples in terms of how indigenous peoples can expect to be treated, which would give them some leverage over governments to make international declarations and disclose experiences elsewhere. On the other hand, what if the international body disagreed with indigenous groups at the local level, particularly in areas where they resolutely refuse to accept mining? If members of a local community do not participate in the planning of their future, ultimately they will lose out.

5.4.3 Reflection and Overview of Presentations

Hernan Correa, Editor and Researcher for Centre of Studies of Colombian Reality (CEREC)

The relationship between government, civil society and the private sector needs to be examined within the context of this discussion. This relationship is based on the assumption that each actor has a specific role to play, but the circumstances under which governments, communities and companies enter into these relations needs to be clearly understood.

In the past, stakeholders were viewed as 'fixed' and bounded categories, with little appreciation of the subtle dynamics that shape their organisation. For example, indigenous peoples in Colombia used to be thought of as remote and disparate communities but are now recognised as a social class in their own right. This abstract notion of indigenousness had profound implications in the way indigenous peoples were treated politically, economically and socially. Ten years ago in Latin America, discussion of indigenous rights centred mainly on the issue of land, now it's regarded as a much broader concept, rooted in a discussion of territory.[4]

In terms of the role of government, almost all governments in the Third World have undergone massive restructuring. This is particularly evident on the question of their sovereignty and how this has been transformed under globalisation. Evidence of these wider policy shifts can be seen in the drive towards sustainable development. For mining companies, sustainable development is now regarded as a key business priority and while

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[4] In the Latin American context territory is regarded by indigenous peoples as a key criteria of their cultural identity and understood in terms of their autonomy, self-determination and ancestral heritage, of which land is but one aspect.

not all mining companies have responded to these changes, their role has nevertheless changed. Within the context of the relationship between the government, mining company and community, their relationship will vary according to the following factors:

1. The level of relationship, i.e. whether at the local, regional, national or global level. In each case, the nature of this relationship will have already been determined according to the roles and responsibilities of each actor, their level of influence and participation and in the case of companies, their decision-making structure and whether this operates at the regional or international level.

2. The type of legal framework in place which determines how these relations are structured. This will vary between countries and according to different legal traditions. For example, countries with an Anglo-Saxon legal tradition regard all rights as being negotiable, while under Roman Law certain rights are seen to be fundamentally inalienable. The framework for negotiation here will be much narrower than under Anglo-Saxon law, particularly on the issue of collective rights, which indigenous peoples define as being unassailable.

   Linked to these frameworks are the legal and political instruments used at the national and international level e.g. ILO Convention 169, the UN Draft Declaration of Indigenous Rights, World Bank directives etc. Their application is symbolic of changes taking place at the global level, and relevant to the discussion on the reconstitution of legal and political boundaries. For multinationals, this shift towards legal pluralism has enabled them to adopt their own system of legal recourse, which also has the power to transcend national sovereignty.

3. Level of recognition of indigenous rights. Prior consultation has been enshrined in Colombian Law and is recognised as a fundamental collective right of indigenous peoples that guarantees their cultural social and economic integrity. The legal recognition of indigenous peoples in the Colombian constitution has had a much greater impact in shaping the relationship between the government, community and the mining sector than would otherwise occur through participatory mechanisms.

4. Historical processes of development. History tends to be thought of as a narrative, rather than the result of an informed decision-making process designed to generate specific outcomes. In terms of the political challenges and the relationships that are faced during the development phase, 4 different models can be identified:
   – Unilateral intervention of the industry – this is an old model but still seen in the case of the Philippines;
   – Model of negotiated settlement – the company decides who to negotiate with, either bilaterally (business and community) or trilaterally (industry, community and government);
   – Confrontation and social and institutional transactions – this is where negotiated settlement breaks down and companies are forced to make deals when on the verge of conflict;
   – Agreements negotiated within a legal framework, according to how the mining sector operates at the regional and national level. This is a model comprised of complex elements, but one decided by each of the 3 main actors.

5. Finally, building relationships between the government, mining company and community can also be seen in terms of political and social advances generated by:
    – An awareness of social hostilities that could result in conflict with the arrival of a mining company. These need to be identified and understood to avoid reproducing similar tensions and patterns of inequality.
    – Social processes of participation through NGOs etc. This can radically alter the relationship between governments and businesses (as in the case of Kyrgyzstan).
    – National level legal and political frameworks. This constitutes the basis of participation and provides the underlying context that determines how mining companies, the government and indigenous peoples interact with each other.
    – It is important that these political and social advances are seen as part of a global process initiated at the local and regional level.

In terms of the discussion of indigenous rights and the debate on sustainable development, there are two main points of consideration that need to be examined:

• How the rights of indigenous peoples will shape and determine the relationship between the different actors;

• What the effects of exercising these rights will be, and what impact this will have on the political influence of indigenous peoples at the regional and national level.

Taking both these factors into account will help to create new models of development that will challenge current ways of thinking. Cultural diversity is a key factor in building new relationships and is integral to understanding the changing dynamics that are taking place between mining companies, indigenous peoples and governments.

The aim of this discussion has been to highlight from a legal standpoint, the extent of the exclusion of indigenous rights, and their participation. The effects of not respecting indigenous rights and their claims for adequate compensation, and not creating authentic spaces for agreement, excludes indigenous peoples from the contribution they are able to make to building a positive future. The re-centring of indigenous identities makes this a possibility.

Appendix 1- Results from Work Groups: Report to Plenary

Spanish Speaking Group

1. Firstly, governments should ratify ILO Convention 169. Only 12 countries have approved this and it could be a useful tool for indigenous peoples in defending their land and territories.

2. Exchange of experiences with other indigenous peoples to formulate a more generalised debate.

3. Create a network of information exchange about mining

4. Recommend that the ISO incorporates criteria about indigenous peoples

English Speaking Group

Principles
–   Companies must be committed to enhancing the social, cultural and economic development of indigenous communities through the provision of employment, business and community development opportunities
–   All stakeholders must understand and respect indigenous peoples fundamental rights, and historical cultural and spiritual connections to the land and embrace their aspirations for a sustainable future

Company practice
–   Develop an international framework and standards to ensure that consistent approaches are adopted by industry at local, regional and national levels
–   Support the establishment of an international indigenous governing body to strategically advise, direct and monitor industry performance in the arena of indigenous relations

Government practice
–   Governments must develop a legislative process that mutually supports the rights and interests of indigenous communities and industry
–   Governments commit to working in collaboration with industry and indigenous communities to enhance the achievement of tangible and sustainable outcomes

Appendix 2 - Towards sustainable development in mining for indigenous peoples

Indigenous Principles	Role of International Community	Role of Governments	Role of Companies	Role of Indigenous Communities
Recognise/ promote indigenous identity in relation to: • Land rights • Respect for indigenous peoples territory • Right to participate in resource management decisions	• To ratify international norms protecting the rights of indigenous peoples	• To ratify international covenants for the protection of indigenous peoples rights • To create and implement laws that promote and safeguard indigenous rights and interests • Ensure mechanisms are in place to periodically monitor the progress of developments by mining companies and monitor the effectiveness of agreements entered into by all parties • Work in collaboration with companies and communities to ensure that negotiated outcomes between stakeholders are adhered to.	• All companies must develop an indigenous policy for negotiating with indigenous communities • To adhere to a framework that recognises indigenous peoples rights over the ownership, use and control of indigenous land and resources • To recognise and accept indigenous peoples spiritual and cultural ties to land • To commit to upholding and standardising their policies and practices around the world. The industry needs to introduce mechanisms of accountability, and also be able to monitor and punish poor performance.	• To establish an international indigenous organisation to oversee the implementation of indigenous principles, and to provide advice, direction and strategic monitoring of the sector's performance on indigenous peoples issues
Democratic representation • Recognise indigenous rights to political and cultural autonomy • Recognise indigenous rights to self-determination • Recognise indigenous rights to participate in decisions affecting them/ informed consent	• To recognise indigenous socio-political systems and their right to self-determination • To respect indigenous peoples right to be recognised as different peoples, and the will to live as a people with their own values and priorities	• To guarantee the rights of indigenous peoples and their political representation • To promote equal rights for participation in public affairs free from discrimination • To respect the identity of indigenous peoples and their representatives, authorities and	• To recognise and support indigenous communities and their right to participate in mining projects • To contribute to the capacity building of indigenous peoples by: – creating employment, skills development and promotion opportunities; – contributing to the development of indigenous peoples education, health and	• To establish cross-sectoral partnerships

		organisations • To recognise that the development policy of indigenous peoples operates within a community context, not at the individual level as implicitly assumed by government policy • To provide the means for indigenous peoples to access independent legal advice • To set minimum standards which companies have to adhere to when consulting/ negotiating with indigenous peoples. These standards must be approved by indigenous peoples.	housing • To ensure that indigenous peoples have access to independent legal advice, not only during negotiations, but also during the entire life cycle of a mining project.	
Economic justice • Recognise indigenous rights to participate and benefit from fair share of resources • Ensure development does not compromise the social economic and cultural aspirations of indigenous peoples • Fair and just recognition of indigenous rights to compensation		• To acknowledge that while economic prosperity is important, human prosperity is paramount • To ensure that tax is redistributed fairly to indigenous communities • To provide/ facilitate micro-credit schemes for indigenous communities	• To commit to building partnerships with indigenous peoples based on trust, mutual respect and open and honest dealings. • To ensure that agreements are based on a mutual understanding of the terms and conditions involved	
Understanding and respect • Recognition of the diversity that exists within indigenous communities • Respect for indigenous communities with their own traditions and history	• To recognise social, cultural and political equality of indigenous peoples	• To carry out full assessments of indigenous needs and make every attempt to listen to the voices of indigenous peoples living in close proximity to a mine site, in order to understand how indigenous peoples are being affected	• To respect the traditions and rights of indigenous peoples, including a respect for their collective rights • To ensure that all company employees including senior management participate in indigenous cultural awareness raising programmes	• Based on the principle of mutual respect, indigenous communities must also learn to respect mining company principles

			• To respect indigenous peoples organisations (and other NGOs), the practice of public consultation and the right to say no.	
Transparency	• To introduce basic international guidelines which mining companies have to observe (also for other industries) where the livelihoods of indigenous peoples may be affected or under threat.	• To ensure fair and just government and a commitment to anti-corruption policies • To ensure legal systems protect the rights of indigenous peoples • To undertake a commitment and encourage wider civil society recognition and respect for indigenous peoples way of life • To ensure that before granting concessions to mining companies, governments consult with indigenous communities likely to be affected.	• To ensure company decision-making processes are transparent and that there is an equal sharing of benefits • To ensure that mining is accountable, responsible and friendly everywhere companies operate.	

Appendix 3 - Agenda

Thursday 27th September: Theme One – Relationships in Context

Rationale: Circumstances and issues are identified on a context specific basis by the participants and with a view to framing questions about the relationships between indigenous peoples and the mining sector. The focus sessions serve to organise the multitude of issues into thematic domains. These domains then provide the basis for breakout group discussions on the morning of day 2.

09:00   Opening of the workshop
Welcome to Quito and the MMSD Indigenous Peoples Workshop from hosts Ambiente y Sociedad. Also housekeeping and introduction of the meeting facilitator Lourdes Barragán.

09:15   Keynote Speaker
Sebastiao Manchinery, General Coordinator, Coordinadora de Organizaciones Indígenas de la Cuenca Amazónica (COICA)

09:25   Relationships in a Sustainable World: The MMSD Project and indigenous peoples consultation
Brief background and current status of the MMSD project and work associated with Indigenous Peoples from Frank McShane (MMSD, London), Cristina Echavarria (MPRI and MMSD Latin America) and Bren Sheehy (Australian Minerals, Energy and Environment Association) on the regional perspective.

09:50   Participant Introductions
Each participant is invited to introduce themselves to the meeting and to state both what they are hoping to get from the meeting and what they believe the meeting can achieve.

10:15   Framing the Challenge:
Core presentations from attendees on key regional/local issues and the relationships between indigenous peoples and the mining sector.

Presentations from Latin America: Chile, Ecuador and Panama.

Presentations from Australia, Kyrgyzstan, Papua New Guinea and the Philippines.

12:30   The MMSD Project Baseline Study.
Presentation of the MMSD Baseline Study by Dr Ted Downing, Research Professor of Social Development, University of Arizona, United States.

13:00   Lunch

Theme Two: Local relationships in a globalised world

Rationale: In the morning, situations and common issues were identified at the local/project scale. During the afternoon the participants works on prioritising the main issues embedded at other scales. This discussion forms the backdrop to the second part of the breakout group work on day 2 and again the focus is on improving relationships for the more equitable inclusion of indigenous peoples in decision-making.

15:30 **The relevance of international conventions and charters**
Discussion of ILO 169/ World Bank Guidelines/ UN Draft Declaration on the Rights Of Indigenous and Tribal Peoples

What are the principles upon which international conventions concerning indigenous peoples are based?
What bearing do these have for indigenous peoples addressing issues related to mining and minerals development?

Speaker: The UN draft declaration on the rights of indigenous and tribal peoples – Carmen Yamberla, President, Federación Indígena Campesina de Imbabura (FICI)

Speaker: Reflection and Overview of Presentations – Hernan Correa, Editor and Researcher for Centre of Studies of Colombian Reality (CEREC)

Meeting close

Day 2: Friday 28th September: Breakout Group Work

Rationale: Building on the presentations made during Day 1, breakout groups will work on the main issues associated with building sustainable communities in the local context and mining's potential role in this vision. The work is conducted with reference to the issues raised during day 1 in the presentations.

09:00 **Organisation session for Breakout Groups.**
Confirmation of key topics for discussion

09:30 **Breakout Group Session 1**
The presentations and discussion of the previous morning's session focussed on key issues of concern that arise for the meeting participants. This breakout session builds on this theme by asking what practices need to be embedded at the local/ project specific levels to improve relationships with indigenous peoples. Discussions may include, for example, reference to legacy issues and indigenous peoples rights, guidelines for prior consultation, conditions for indigenous participation in EIA and SIA, resettlement issues, and/or others as agreed by participants.

11:00   Refreshments

11:30 **Breakout Group Summary of Work**

Groups summarise their work internally

12:00 Outcomes session led by Facilitator with Discussant Panel
This session will bring together the work of the breakout groups and identify those mechanisms, which might be applied to drive relationships with indigenous peoples at the local level to more equitable outcomes

13:00   Lunch

14:30   Breakout Group Session 2
The breakout sessions aims to define a strategy to implement change in the international, regional and local arena and in particular in the area of public policy. What are the principles that need to be imbedded in policy at all levels to ensure equitable consideration of indigenous peoples.

16 00 Refreshments

16:30 Breakout Group Summary of Work
Groups summarise their work internally

17:00   Outcomes session: Presentation of the breakout group work
The breakout sessions move towards a strategy for the definition and implementation of mechanisms to allow indigenous peoples to move forward with an agenda which drives change in the international, regional and local arena and in particular in the area of public policy.

Is it possible to initiate change towards a new set of norms and standards with regard to the equitable treatment of indigenous peoples in their relationships with the mining sector? How can this be encouraged?

18:00   Conclusion
Election of a caucus from the Quito conference to take outcomes to the Australia multistakeholder meeting

Close Meeting

Appendix 4 - List of Participants

NAME	ORGANISATION	COUNTRY	E-MAIL
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