

Corporate Accountability and the Mining Industry

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Introduction

This paper was written as input to the deliberations of the 1998 session of the UN Commission on Sustainable Development (CSD) on the role of industry in sustainable development. It is based upon two existing reports: “Mining in Tropical Regions”, by S. van Bennekom, published in December 1996 by the Netherlands Committee for IUCN,² and “Minding Our Business, The Role of Corporate Accountability in Sustainable Development”, by the NGO Task Force on Business and Industry (TOBI), published in March 1997 by the Integrative Strategies Forum.

“Minding Our Business” is an independent assessment which was specifically prepared for the CSD by a large coalition of NGOs working on issues related to the role of industry in sustainable development. It includes a statement signed by a large group of NGOs from all over the world. This statement emphasized that both corporate accountability and corporate responsibility are essential elements of sustainable development. Corporate accountability is more comprehensive than corporate responsibility, though. Whereas corporate responsibility implies companies recognizing their own interests within the framework of sustainable development, and consequently committing themselves to “do the right thing”, corporate accountability refers to the legal obligation of a company to do the right thing. The aim of corporate accountability is to be sure a company's products and operations are in the interest of society and are not harmful.

The mining industry was chosen as a case study because of the magnitude of the environmental and social problems associated with this industry. A number of specific characteristics of the mining industry contribute to these problems. Choices of locations are not flexible, so often mining takes place in ecologically sensitive areas. Particularly in those cases the damage tends to be irreversible. By definition, the products of this industry are non-

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¹ Netherlands Committee for IUCN, December 8, 1997.

² A copy of the report “Mining in Tropical Regions”, by S. van Bennekom, published in December 1996 by the Netherlands Committee for IUCN, can be requested from the Netherlands Committee for IUCN, email: mail@nciucn.nl.

renewable. Another characteristic of the mining companies is that they tend to have a strong influence upon governmental policy making, due to the fact that the mining industry is seen as an economically strategic sector. This implies a risk in terms of corporate accountability.

The paper reemphasizes the need to recognize corporate accountability as a major policy challenge for governments within the framework of sustainable economic development, social development AND environmental protection. It also reemphasizes the need for the establishment of an institutional framework within the UN to strengthen local, national and corporate accountability as the most important policy challenge for the international community at the moment.

Lastly, this paper also links up to the four topics which are on the agenda for the CSD 1998 industry segment. The relationship between corporate responsibility and corporate accountability is mentioned above. The impact of the mining industry on freshwater resources is highlighted, inter alia, through a few short case studies, including the Omai Mine disaster in Guyana. The paper will briefly address the importance of environmental management tools in relation to the mining industry. And lastly, the need for technology transfer between mining companies is stressed and special reference is made to the role of corporate accountability in ensuring that the commitments made at the United Nations Conference on Environment and Development are implemented in this respect.

It should be emphasized that corporate accountability is a goal which reaches beyond the official agenda of CSD 6. The above-mentioned TOBI-statement elaborates upon 7 concrete steps to achieve corporate accountability at local, national and international levels. This paper will briefly touch upon each of these seven steps and explain why these steps form essential tools to ensure the corporate accountability of the mining industry.

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Economic, social and environmental aspects of the mining industry

Many countries regard the mining industry as essential for economic development and henceforth, the mining sector is awarded many privileges. Particularly in developing countries, large-scale mining operations are often carried out as a separate entity within the country. This has far-reaching consequences. Mining companies contract foreign specialists rather than local labor. Furthermore the size of the operations often forces developing countries to attract foreign capital for investment in desired mining projects, and regularly lead to contracts which are more beneficial for the foreign investors than for the host country. Lastly, the sheer size of most mining operations implies a lengthy process of preparation. Often, more than a decade may pass between the initial geological explorations and the actual start-up of the construction phase. Mining projects are usually developed when market prices are expected to be favorable. When the price of a mineral improves, the company often expresses an urgency to complete the

process of construction and to obtain the necessary permits. Thus there tends to be little or no time to undertake serious environmental, social and economic evaluations and impact assessments of the entire mining operation.

As stated, there is a tendency of mining companies to attract foreign specialists in stead of local personnel, particularly in developing countries. Other social impacts of mining include both the health of the miners and the health and quality of life of the people surrounding the mines. Bad labor conditions of mine workers are often related to environmental problems. In the Netherlands, retired coal miners are still trying to receive compensation for health problems caused by exposure to mine dust. The impact of mines upon the health and quality of life of surrounding populations was well described in the case study on the Freeport McMoRan mine in Irian Jaya in the Minding Our Business assessment.

In terms of environmental impacts, the extraction of the earth's minerals is one of the most obvious examples of our current unsustainable behavior. The products of mining are non-renewable. Mines and smelters use up to a tenth of all the energy used on earth. Thus the mining industry can be seen as a substantial contributor to climate change. Mines also bring about a quantity of waste which dwarfs the world's accumulation of more familiar kinds of waste, such as municipal garbage. This waste is often used to "fill" exhausted mines, but the fact that the waste has been exposed to air, water and other substances can create severe degradation of the soil quality after the refill. Because of the crushing and grinding during the concentrating process of ore, elements which were bound up in solid rock, such as lead, zinc, copper, cadmium and arsenic can be exposed to water and disperse into ground water and streams. Oxidation can also create highly toxic elements. Mines also create air pollution problems, such as dust and acid rain, with major negative impacts upon human health and the environment, particularly near the location of the mine.

Another specific characteristic of mining operations is that the locations are inflexible. Thus mining operations are often planned in ecologically sensitive areas such as primary forests (e.g. the Amazon) and wetlands (e.g. the Waddensea). The damage caused is often irreversible, particularly in the case of open pit mines. Whereas reclamation of the site after exhaustion of the mine tends to be an important element of contracts between mining companies and governments nowadays, it should be emphasized that the reclamation and restoration of ecosystems like primary rainforests is out of the question. Restoration of the original environment is impossible in such vulnerable ecosystems with low self-generating capacity, highly complex food chains and abundant biological diversity, including many unknown species.

Underground mines cause relatively less deforestation and other environmental damage. It is important, however, that not only the environmental damage caused by the mine itself, but also the environmental

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damage caused by the entire infrastructure needed to operate the mine is taken into account; sites for waste storage, electricity plants, smelting or processing industries, infrastructure for transport and general facilities to house the miners. Moreover, particularly in tropical forests, the disclosure of the area and resulting fragmentation of ecosystems has considerable additional ecological impacts.

Impacts of mining on freshwater resources: the Omai case

Specialists on the environmental impacts of mining tend to emphasize the effects on water quality. Waste dumping, run-off water, spills of mercury and alterations in watersheds have over the years resulted in substantial damage to marine and river ecosystems. Mining also has strong impacts upon the water quantity of nearby rivers and ground water. Large amounts of water are required for processing, transport and dust control. This is likely to affect the supply of water to downstream users. Especially in countries where water is scarce, the water used by the mining industry limits the availability of freshwater for man and nature. Conflicts between mining companies and other water users are already widespread. For example, the water extraction by the Toquelapa and Cuajono copper mines in Peru has caused pastures in the high Andes to dry up, the natural drainage of the waters of the basin has been interrupted and the pollution of waters has increased. Consequently agricultural and animal husbandry activities in the coastal valleys were endangered, as well as the health of the population consuming this water.

Yet, the most severe environmental problems are associated with water pollution caused by dumping of residues and processes which require water. The major pollutants are suspended solids, acid discharges, heavy metals and processing chemicals. Well-known are the disastrous ecological consequences of the spillage of mercury by small-scale gold miners in the Amazon basin. In 1990, goldminers in Brazil released at least 168 tonnes of mercury into the environment. Mercury pollution severely affects ecosystems. High concentrations of mercury were detected in fish as far as 800 km downstream from mining areas. Local people suffered from mercury poisoning, sometimes fatal. Once their natural environment was destroyed, indigenous peoples were often forced to leave their homelands due to lack of food.

One of the largest environmental disasters in terms of water pollution took place in August 1995 at the Omai Mine in Guyana. The Omai mine was opened in 1993, as a joint venture between two Canadian mining companies and the Guyanese government. The mine was controversial since its opening because of the unequal way in which the profits of the mine were distributed. The mine uses cyanide to extract gold from ore. Cyanide contaminated waste slurry was stored in clay tanks under tropical rainforest conditions, while this type of storage had never been tried under such conditions. Seepage from the ponds already led the mine company in the

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first years of opening to issue warnings to local people not to drink local creek water because of possible cyanide contamination.

On the night of August 19th, 1995, a dam breached, releasing 4 billion liters of cyanide effluent into the Omai river. From there it flowed into Guyana's largest river, the Essequibo. Within days, the area had been declared an environmental disaster zone. Residents of riverine communities were warned not to use the Essequibo's water for any domestic purposes and the small Omai river became a mortuary for dead fish and wildlife.

The Dam Review Committee studying on the causes of the accident concluded that the breach was not caused (as the Omai mine company stated) by extreme weather conditions but that the dam was bound to fail because of structural construction failures. They stated that the dam breach had happened because of "inadequate application and execution of sound practice for design, construction, supervision and inspection that are well understood in current embankment dam and tailings dam technology". The case also proved that Western companies sometimes use every way possible to avoid environmental regulations. Mr. David Fagin of the Golden Star mining company, one of the two Canadian investors, stated last year that his company 'had looked increasingly at the Guyana Shield because of the increased pressure by environmentalists and the government in the USA'.

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Strengthening corporate accountability at an international scale

The Omai Mine case illustrates the urgency of addressing the issue of corporate accountability at an international level. The dramatic growth of foreign direct investment over the last years (from US\$ 88 billion in 1992 to US\$ 460 billion in 1997), has made small countries increasingly vulnerable for bad practices as the ones described above. Corporate accountability is especially relevant to the current situation of increasing economic globalization and the unique position of transnational corporations, which in many cases are legally accountable to no one. Thus, the NGOs which signed the statement on corporate accountability in 1997 urged their government representatives and the CSD Secretariat to acknowledge the essential role of corporate accountability in sustainable development and to address the challenge of ensuring this accountability. They made the following seven general recommendations to meet this international, national and local policy challenge:

1. Acknowledge the importance of corporate accountability.

As the specific example of the mining industry highlights, there is a need to develop or improve governmental and citizen-based mechanism designed to ensure greater accountability of a powerful industry like the mining industry.

2. Establish mechanisms to monitor and assess corporate practices.

No central body yet exists to review the various claims of best and worst practices by business and industry. Such a body is of particular importance with regard to the mining industry, considering the powerful position of the industry in many countries and the international nature of its production chains. It was recommended that an institutional mechanism is created within the UN system, involving participation by governmental, non-governmental and industry representatives, to examine and define the range of government responsibilities necessary to ensure accountability by business and industry, especially by multinational corporations, and to delineate the proper role of government and the appropriate international instruments and mechanisms that are needed.

Moreover, as illustrated by the Omai case, there should be a revived process of clarifying the obligations of TNCs to host countries and to social, economic and environmental sustainability.

3. Strengthen Public Access to Information

While NGOs like Minewatch and Project Underground have been gathering information on the mining industry for several years, there is a clear need for instruments like Community Right-to-Know legislation and laws requiring regular company reports on their releases, use and storage of potentially dangerous substances. Moreover, TNCs should be obliged to make public the same information as required in their home country to those countries in which they are operating or investing. There should also be more openness about the direct and indirect support the mining industry receives from governments.

4. Send the right message: reform unsustainable subsidies and tax-breaks; make wrong-doers liable.

As stated above, the mining industry is often seen as a very strategic economic sector by governments. Thus, they tend to receive very favorable treatment in terms of "corporate welfare", free infrastructure, subsidies for energy use and other direct and indirect support. It was recommended by TOBI, in this respect, that subsidies, tax breaks and other forms of government incentives to corporations which are undeserved, ineffective or otherwise unsustainable should be identified and eliminated.

Probably even more important in relation to the mining industry was the recommendation to develop and enforce appropriate liability laws. Due to the fact that the damage of many mining operations is irreversible, strong liability laws are the only manner in which specific mining companies can be hold legally accountable for their actions. Evidence shows that companies are more likely to prevent and solve environmental and other problems where liability claims are high. Considering the known risks related to mining operations, it is recommended that governments impose strict liability on companies - extending to every country in which they invest or operate - for personal injury or loss of life, property damage, and

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damage to the environment. Corporate polluters should be held liable for environmental damage and transboundary pollution whether or not this damage or pollution results from negligence. Corporations guilty of past damage, even going back one or two decades, should also be held liable for their actions. Citizens and communities should be provided the legal resources where this is needed.

5. Empower local communities, not TNCs

The case of the mining industry demonstrates how the economic playing field is being unfairly stacked against small local businesses and farmers and the economies of local communities in favor of greater power and advantages to large transnational corporations. Thus it was recommended by TOBI that international agreements and mechanisms are put in place which protect local communities from what might be called "corporate blackmail". Such corporate blackmail is a specific problem in the mining industry where many developing countries depend on the capital and technology of foreign TNCs to exploit their mineral resources.

Additionally, it was recommended that companies provide for a meaningful dialogue with the local communities surrounding the location of operations and public participation in company decisions that could impact the community's health and well-being.

6. Make clean production the required standard

Since society should expect companies to engage in clean production processes, government and civil society need mechanisms to resolve questions as to what kind of production is clean and ecologically sustainable. Thus it was recommended that the Precautionary Principle was adopted as part of industrial policy, putting the burden of proof of safety on potential polluters instead of communities having to prove otherwise. This recommendation is particularly relevant for the mining industry considering the profound environmental risks which are inherent to mining operations.

It was also recommended to implement the Preventive Approach, regulating and evaluating company practices with an emphasis on clean processes and products rather than end-of pipe clean-up technologies. Furthermore, of particular importance for the mining industry was the recommendation to adopt and implement the principle of Extended Producer Responsibility, in which producers are from the start held accountable for the environmental and health impacts of their products throughout the product life-cycle. This principle is very relevant for mining companies which produce potentially hazardous metals and minerals.

Also, it was recommended that legislation instituting industry- and company-wide targets to reduce pollution, toxic use and energy consumption was established, as well as an obligation to produce annual,

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independently verified reports from all companies regarding their progress towards clean production goals.

7. Reduce political influence of corporations on government

This recommendation implies a major challenge in respect to the mining industry. As stated before, the mining industry is often seen as a strategic economic sector and thus its influence upon governmental policy is very large. It was recommended by TOBI that the mechanisms by which corporations, including TNCs, possess and exercise undue political influence over government policy and decision-making were reformed, especially in cases where corporate sovereignty and well-being is given higher priority than the health and well-being of local communities and their environment. Specific recommendations were made to set up an institutional framework under the UN to examine the global political influence of TNCs on government policy-making.

Best practices versus worst practices

This report, like the TOBI report, has paid a lot of attention to the “worst practices” of the mining industry. It should be emphasized that quite a number of companies have made substantial efforts to improve their operations and make them more environmentally, socially and economically sound. Nowadays, the mining industry is more concerned with environmental matters. This has, e.g. resulted in an environmental network, the International Council on Metals and the Environment. This network can play a useful role by transferring the knowledge about environmental practices. But, on the other hand, to protect their own interests they also play a political role by persuading governments to abstain from rough regulations.

The implementation of effective tools for environmentally sound management plays a crucial role in the prevention of environmental damage from mining operations. Environmental impact assessments are one of those tools. It should be ensured though, that these assessment take into account all the activities related to the operation of a mine, including waste storage and the development of roads and other infrastructure and the indirect impact of such activities.

Another promising tool could be the development of an integrated land management plan for the site of the mine and its surroundings. Such a plan was developed for the Mount Nimba, a site on the border of Liberia and Guinea, recognized as a World Heritage Site by the UN for its unique flora and fauna. Global pressure to preserve this area from the unregulated impacts of large-scale mining resulted in 1993 in a joint mission by all major stakeholders and a subsequent management plan to combine mining with nature conservation, sustainable agriculture and housing. The investing consortium will pay an annual amount of US\$ 500.000 to monitor the implementation of the plan.

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Modern technology has provided solutions for many of the environmental problems associated with mining. However, practice often lags well behind the best available technology and many corporations still practice double standards, i.e. different environmental practices in different countries. Using the best available technology should be seen as an inherent part of corporate responsibility and corporate accountability. This is particularly true for TNCs operating in countries with relatively lower environmental and social standards. Moreover, it should be emphasized that technology transfer plays a major role in improving the sustainability of mining operations worldwide. Such technology transfer should not only take place between the various companies of one TNC, but also between industries which do not have any relationship with one another, or which can be seen as potential competitors. Building partnerships between such industries in terms of transferring the best available environmentally sound technology and implementing the recommendations of Agenda 21 in this respect, is first and foremost a responsibility of the mining sector itself. Yet, also here, effective governmental incentives and regulations are needed to ensure corporate accountability.