



Sustainable Development

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Meeting Minutes

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Attendees

Assurance Group

Jacqueline Aloisi, Richard Baldes, Patricia Caswell, Anna Cederstav, Mick Dodson, Cholpon Dyikanova, Colin Filer, Douglas Fraser, Reg Green, Gerard Holden, Namakau Kaingu, Antonio La Vina, Kathryn McPhail, Daniel Meilan, Glen Miller, Duma Nkosi (Chair), Manuel Pulgar-Vidal, Leon Rajaobelina, Charles Secrett, John Stewart, Helmut Weidner, Doug Yearley, Senzeni Zokwana.

Work Group

Juan Carlos Altamirano, Guy Collis, Luke Danielson, Caroline Digby, Gabriela Flores, Bruce Howard, Bernice Lee, Frank McShane, Hannah Reid, Ben Sandbrook, Richard Sandbrook, Tonia Savage, Andrea Steel, Libby Wood.

Others

Josh Bishop, Lilian Chatterjee, Nigel Cross, Peter Eggleston, Wanda Hoskin, Izabella Koziell, James Mayer, Linda Starke, Halina Ward.

Apologies

Maria Ligia Noronha

Comments on Draft Report

The AG suggested the need for:

- A glossary or an index;
- Greater emphasis on successful initiatives and programmes;
- A well-defined business case;
- Integration of the Report to avoid inconsistencies and minimise duplication;
- An Agenda for Change that is clear and tackles the most important issues, by saying more about roles, actions, timescales, responsibilities etc., including a summary of recommendations from the different chapters;
- An Executive Summary;
- A Policy Summary as a stand-alone document, based particularly on the recommendations and Action Plan, to increase the impact of the report;
- Availability of the Report in different languages;
- Language that is not paternalistic and recommendations that do not reduce the ability of developing countries to deal with their own issues; and
- Improvements on the appearance and presentation of the document.

Overall, comments on the quality of the draft report were positive – it was seen as a considerable improvement on the previous draft and a fair reflection of all the work and

activities that have gone into the project. Some found it difficult to see how the numerous recommendations coming out of the Report could be operationalised and suggested that focusing on improving the Agenda for Change was the priority.

More specifically, the AG provided the following comments:

- Lack of 'metals' – always 'minerals';
- The role of government was underplayed;
- Concern over creation of new bureaucracies in the form of multistakeholder processes with not enough reference to existing ones. Need to consider how these organisations will be funded and who will have ownership/ responsibility for outcomes;
- The disparity between rich-poor nations is not adequately represented. Where are the best practice examples? Sometimes there is a false impression about developing country capacity to make good policy decisions;
- Cost internalisation is important and is possibly mishandled in the report;
- Lack of clarity on economic trends. What are the investment trends? Some are implied but do not concur;
- Need to look at minerals sector vis-à-vis other sectors. What are the potential contributions this sector can make;
- Accountability to workshop participants. There is an expectation that the recommendations proposed at the workshops are clearly reflected in the Report;
- Concern over length of Report; and
- Best practice issues are difficult to secure agreement on. At a minimum, it would be useful for MMSD to say what best practice is and communicate its understanding on how to identify best practice.

Agenda for Change

Having previously been called 'Action Plan', the chapter was renamed 'Agenda for Change', to reflect the importance of a procedural rather than a prescriptive approach to change. Need to think about the roles of different actors pragmatically, and not necessarily in terms of desirable outcomes. The principal aim is to focus on doables – mechanisms and structures - that can be implemented and measured within clear timeframes, emphasising change for all stakeholders.

It was suggested that the principles of sustainable development outlined in Table 1.1 of the Sustainable Development Chapter could provide the framework for considering the required actions and roles of different stakeholders. These principles could be cascaded downwards to think about how they can be applied and what this means in terms of choices and trade-offs. It could also provide the rationale needed to bolster the business and political case for sustainable development, and serve as a benchmark for measuring what is being done and whether goals are being achieved. This analysis could be applied not just to the Agenda for Change but to each chapter to define best practice, implementing mechanisms and to assess the roles of relevant actors (labour, industry, governments, agencies, NGOs, civil society). In

this way, the Chapters could ensure that different views are reflected not reconciled, and the recommendations from each Chapter could provide the basis for examining what needs to be included in the Agenda for Change. More specifically, the recommendations from each Chapter would need to be categorised by:

- Short, medium and long-term actions;
- Relevance at the global, national and local level; and
- Roles of actors and implications for organisations and other key players.

Examining the roles of actors would lead to a more rational assessment of who will provide funding and also how to organise and target political levers of influence to implement the recommendations.

Needed to ensure that MMSD enters the consultation phase not assuming it had all the answers, but that it had clear ideas about where the debate had to go. It is also important to note that it is a global report, with attention very much focused on global solutions and priorities. It does not presume to offer advice for specific communities and should not attempt to overreach itself.

Sustainable Development

It was suggested that the definition of sustainable development needed to include financial considerations, and that the issue of financial sustainability needed to come through more in the Report. This chapter also needed to capture a better sense of tolerance limits and critical natural capital.

Producing and Selling Minerals

It was felt that the issue of substitutability between materials required further consideration, particularly as it relates to sustainable development.

A Profile of the Minerals Sector

The section on legal frameworks was thought to require further discussion of liability and what to do when things go wrong, reflecting some of the wider trends already taking place e.g. OECD. This would need to take into account the joint and individual responsibilities of both governments and industry, and pay greater attention to the role of governments. The role of shareholders would also need to be included in this assessment.

Need and Availability

It was suggested that this chapter should focus on trends, rather than just factors that may affect availability, the meaning of substitutable/recycling stock needs to be made clearer, and the business case developed.

Case Studies on Minerals

Gold case study was seen as being too long and descriptive, with insufficient analysis of its historical legacy or consideration of how contentious an industry the gold mining industry really is. It was felt that arguments needed to be more balanced in terms of both the positive and negative aspects of gold. Issues of compensation and arguments for compensation were regarded as being unrealistic.

Viability

It was felt that the business case needed to be better constructed if the case for sustainable development was to be made. The issue of internalising costs was also raised and seen as critical to the discussion on sustainable development.

The Report should come up with more case studies and clearer examples of ways of engaging people and convincing investors of the merits of ethical investment. The need to look at ways of integrating sustainability criteria for all investments, not solely as a discussion on ethical funding was emphasised. New regulations in the UK for example, point to a new trend where governments are beginning to take the lead on this issue. Discussion would need to consider whether or not there is in fact a business case to be made. It was suggested that a number of cases of managing environmental risk could provide business justification at the corporate and operational level, and that other sectors could also provide positive examples of this.

More emphasis was considered to be needed on the effects of a 'bad' mine on companies with good reputations and how to differentiate between good and bad practice.

Calls for more funds for technological development needed to be made more positive, for example by emphasising the importance of this for recycling, and minimising the impacts of mining on the environment.

Land

Members of the AG emphasised issues associated with mining and land use planning:

- Not knowing where minerals are located;
- Variation in titles for ownership and ways in which land is used;
- Security of tenure of land. Arguments as to why land is seen as more secure in some instances than others were regarded as being flawed;
- Payments for use of subsurface minerals – how is this worked out;
- Critical issues surrounding land rights and indigenous peoples. Many peoples don't have legal title – how to manage this? The issue of who has rights to land is complex, and national governments are often unclear on this issue. It was also felt that the question of who receives benefits from land/mineral resource use and how this revenue is distributed needed to be fully considered as part of this debate;
- Resettlement vs. voluntary displacement. Conflict often arises out of failure to acknowledge traditional land use, but at the same time also need to define the conditions

under which this can occur. Need to highlight complexity of resettlement, including issues relating to compensation, relocation, restoration of incomes and how to minimise resettlement; and

- Problem of mines in protected areas, particularly sites of cultural and archaeological interest. Need to be clear on recommendations over trade-offs.

The AG stressed the need to consider issues of multiple land use planning and post-closure. It was also felt that there was a need to highlight more examples of best practice, particularly where industry is prepared to do more than the government e.g. Australia.

The recommendation for a land database and arbitration system was considered to be useful for local level decision making, but was queried in terms of whether this was to be a global or a local level initiative. One suggestion was that it might be better to address this at the national level, although national governments may not always be best placed to deal with such issues.

It was commented that for indigenous peoples, databases for land use are secondary to ensuring that their rights are respected and agreements are upheld and enforced. This is why they regard the creation of an international indigenous body as essential to protecting their interests. For example, there are no requirements to seek the 'free and prior informed consent' of indigenous peoples with regards to proposed mine development. There is a need for more emphasis on local right to say no - if look at best practice examples of negotiation, can see cases where right to say no has been important. The need for best practice recommendations with regards to the environment and community rights would be a major outcome of the MMSD process. Such recommendations would include the need for a rapid decision-making process with full public participation, compensation, and the need for negotiation to embrace trade-offs.

Mineral and Economies Development

This chapter was seen to focus on the macroeconomic benefits of mining rather than community benefits, limiting the scope of discussion. In particular, it was felt that the following issues required further analysis:

- Distribution of revenue and what local communities receive.
- Community/local and provincial government capacity for managing revenue.
- Corruption issues acting as a constraint to development.
- The role of trade unions and labour.
- Post-mining legacies.

The disparity between N-S was highlighted as an important starting-point for discussion, and something that needed to be introduced up-front to contextualise the benefits mineral development can bring to developing countries. It was also suggested that while in some countries mining may be the only route to development, need to consider what alternatives there are as well.

Need to come up with more rounded conclusions as to why some countries are able to use mineral wealth in a more beneficial way than other countries. The fact that mining can make a positive contribution when there is good governance needs to be made explicit, making the connection between the economic and governance sections more tangible. How and why companies can/should assist could be emphasised.

Another key issue that surfaced was how to shape boundary conditions of the global market through international linkages between states: effects of unsustainable practice aggregate globally, but resource control remains at sovereign national level and until new ways are found of how to resolve this conflict at the global level this kind of tension will always exist.

It was suggested that the fact that corruption has two sides - corrupted and corruptor - needed to be considered to assist in determining what measures of control are needed. On the one hand, a company code of ethics can assist in dealing with corruption. On the other hand, since the need to attract investment makes countries particularly susceptible to corruption, there is a need to ensure that governments do not relax their standards.

Communities and Mines

It was felt that the meaning of the 'sovereign status of a cultural group' was not made clear in the chapter and that since this was a much-contested concept it required a fuller explanation. It was also suggested that more needed to be said about the right to self-determination.

It was suggested that the social impact section should emphasis the move towards sustainable development planning and away from impact mitigation.

It was pointed out that in spite of being mentioned throughout the chapter, gender received no explicit mention in the Way Forward.

Other points discussed included; whether in fact mining projects create new communities; access to natural resources and water; and the relative benefits to communities of developing tourism or mining.

Environment

It was commented that the aim of this Chapter was to come up with a framework to see what the most pressing environmental issues are through a sustainable development lens. In this context, critical issues were seen as those that reduce natural capital stocks, whose impacts are significant, long-term and hard to reverse once they have occurred.

While it was felt there was lots of good analysis, the conclusions were considered to fall short. It was felt that the framework needed to be tightened throughout the Chapter to demonstrate best practice recommendations for each of the core group of actors in the context of environmental, economic, social and governance factors.

The Chapter was seen to contain good discussion on the relationship between mining and ecosystems but that it was important to highlight the success of the environmental movement in bringing these issues to the fore, and to position the sector within this discussion.

The broad spectrum of civil society roles was considered to need more emphasis in the chapter, including in helping to build community capacity, advocacy, policy involvement, ensuring participation from people outside the industry, volunteers etc.

It was felt that the Chapter could be strengthened on issues of compliance and monitoring, for example, by considering the extent to which governments are equipped and willing to monitor or sanction non-compliance of EIAs. The creation of an industry advisory panel for providing advice and direction was offered as one suggestion for dealing with this.

Disappointment was expressed with the discussion on financing improvements, as no concrete recommendations emerged - an environmental tax on metal for addressing the issue re metal sales/producers/ consumers is one of the biggest challenges coming out of the environmental legacy and need to think about ways of doing this.

It was felt that the recommendations were too diffuse, and needed to be tighter and more action-oriented, taking into account the N-S dimension as well as making clear what is expected of best practice recommendations.

Other comments:

- The role of regulation, was felt to be missing from some of this analysis, including an assessment of developing countries having fewer regulations;
- The suggestion that costs should be internalised in order to ensure environmental and social issues are properly addressed needed to be supported. To internalise costs in all cases may not be relevant to the developing world;
- From an industry point of view, this Chapter seemed to be focused on telling industry what to do, but did not pay sufficient attention to other stakeholders. Did not seem to give credit to new initiatives underway by industry either; and
- Insufficient mention of issues related to water use including those relating to the watering of pits, recycling of tailings dams, arid climates.

Information

Discussion of social reporting was felt to be lacking, particularly given that in the future it is likely to become as important as financial and environmental reporting. Information on particular mine sites and the environmental and social studies that inform this level of reporting also need to be understood, since they are critical to public understanding about mining impacts. It was also felt that information about workers and labour needed to be dealt with more clearly.

Some of the material in this Chapter was seen as being too descriptive, and examples needed to be more relevant and case specific and point to the Way Forward. Consideration of how information and access to information relates to corporate risk management was raised as part

of discussion on the need to structure a good business case. The role different actors play in open and transparent reporting also needs to be emphasised. The translation of information into different languages was another issue which it was felt needed to be underscored in the recommendations.

Governance

Overall, the Chapter was seen as needing more work, particularly on the following issues:

- The issue of mutuality – shared problems and shared solutions – needs to be teased out;
- A number of best practice examples of governance were put forward for inclusion;
- Need to ensure that minimum requirements for a sustainable development policy framework are dealt with here, in a way which provides the basis for analysis in the Agenda for Change;
- Too much emphasis on voluntary industry activities and not enough attention paid to the role of governments and regulation including mechanisms used by governments for monitoring mining activities. The limitations of regulatory frameworks and their failure to address N-S inequalities also needs to be dealt with;
- Need to include a section on the relationship between corporations and civil society as part of the discussion on voluntary regulation; and
- The role of development agencies in capacity building should be emphasised.

Agenda for Change

The recommendation for a sustainable development Code was welcomed, though needed to emphasise: that it was a voluntary code and use more definitive language (i.e. should it be called a declaration, Code of conduct or Code of practice?).

It also required more detailed explanation of the various elements seen to comprise the Code, including: responsibilities for providing advice and direction to the industry on the code-making process; proposed timetable for development; whether targets would be set and how to ensure these are met including and incentives and transparent reporting mechanisms. It was also suggested that codes of conduct for other stakeholders might be necessary to ensure balance.

The proposal for a Complaints and Dispute Resolution Mechanism was regarded as an important recommendation. Since disputes can arise at different levels – local, government, company and global – it was suggested that the need for mechanisms at different levels be emphasised.

The recommendation for a Sustainable Development Support Facility was also well received, though concerns were raised over how it would be funded and who would be monitoring/auditing this body for technical ability and expertise. It was suggested that this process could be strengthened by opting for a multistakeholder approach involving governments and linking it to other networks. In this way it would fulfil 2 key roles: as a provider of external and independent technical support, and as a capacity building facility. It was suggested that the

facility could be development aid funded and linked to capacity building efforts already underway in producer countries. However, because of a lack of development resources, funding from other sources would be needed as well e.g. industry Trust Fund.

Other comments:

- Need clear mechanisms for accountability and responsibility, not solely for industry but at the local, regional, national and international level;
- The business and political case for change needs to be more positive and relevant for all actors; and
- The issue of effective public participation needs to be strongly emphasised and increased, particularly at the global level.

GMI Conference

Peter Eggleston provided AG members with an update of planning for the GMI conference.

Discussion of GMI/Comment Period/Way Forward

The proposed MMSD consultation phase was discussed and the following dates agreed upon:

- Draft Report made available to the public - March 4th
- Deadline for comments – April 17th
- Final Report complete – May 1st
- Assurance group follow-up meeting – May 12th

It was agreed that the consultation phase would run for 6^{1/2} weeks (6 weeks for non-English speakers) and the report completed by May 1st in order to ensure it was available ahead of the GMI Meeting in Toronto. Guidelines for providing comment and a system for ensuring a clear line of accountability for the receipt and consideration of comments was confirmed as being in place by the Work Group. The process of turning the final text of the report into a book ahead of the GMI Conference in Toronto and the WSSD was also discussed.

In response to concerns raised by AG Members over the shortened consultation period, it was emphasised that consultation around key sections of the report had already been considerable and more substantial than other comparable consultation exercises e.g. World Commission on Dams. It was also considered essential that the Report should be ready for Toronto, since the thrust of the GMI Conference was on responding to the MMSD report.

Concerns over the translation of the Draft Report were also raised. While plans had been made for translated versions of the Executive Summary in Spanish and Portuguese, and for key chapters of the Report ahead of the consultation process in Latin America, lack of availability of the full report in other languages was seen as a weakness. However, because of the timeframe it was recognised as impossible to have translated final versions of the Draft Report.

In view of its limitations, it was decided that the public consultation phase should be referred to as a comment period. The process would aim to ensure that as far as possible, comments received were absorbed into the content of the main report. It was agreed that all comments received would be published on the website and would be contained in the CD accompanying the report.