COMMENTS ON THE MMSD DRAFT REPORT

Preamble

The Chamber of Mines of South Africa commends the IIED and the WBCSD for the efforts that have gone into the preparation of the draft report, and welcomes the opportunity to comment on the report.
However, the Chamber considers it unfortunate that two of the objectives intended to enhance the credibility of the MMSD Project were not entirely realised.

- A distinct group of NGOs chose not to take part in the MMSD process and indeed campaigned for others not to participate.
- The targeted funding ratio from non-industry sources was not achieved, hence weakening the symbolic guarantee of the project independence.

Also of major concern to the Chamber is the fact that some significant recommendations emanating from the regional processes are not adequately captured in the report. Many of these recommendations have international significance. It is important that chapter 16 contains specific recommendations that will enable the priority issues identified in the regional processes to be pursued.

Notwithstanding the above concerns, the Chamber believes that the report provides a credible basis for further engagement between the mining industry and stakeholders, including those NGOs that chose not to participate in the MMSD project.

Considering the size of the report, the Chamber has chosen to limit its comments to substantive issues and matters of factual and principle policy nature. Chamber comments are therefore provided in four main sections – a primary comment, followed by general comments, specific comments and factual corrections.

Primary Comment

The major aspect of the MMSD report is that it seeks to provide a framework for improved performance of the mining and minerals industry, thereby enhancing its contribution to sustainable development.

Regulating and implementing best practice on an international scale is extremely difficult, because of the many different situations which exist. The Chamber strongly believes that differences need to be accommodated and action implemented first at the company level, then nationally and finally internationally. Attention should be focussed on achieving as much as possible at the lowest level as this will in general prove to be most effective.

Accordingly, in regard to the proposed declaration by mining companies to jointly accept the applicable principles in a list of existing guidelines and conventions, and to commit to developing a sustainable development code, the Chamber strongly advocates that the final report should clearly include the following:

- The declaration should contain a statement of the principles considered applicable to mining companies, extracted from the above-mentioned candidate list so as to remove ambiguity about what it is that the mining companies are jointly making a commitment to accept, and
- The proposed sustainable development "code" should be renamed as either a "framework" or "guidelines" that would give effect to the principles, and form the basis for developing national and location-specific codes. This would allow sufficient flexibility to accommodate variations, where appropriate. The framework or guidelines should be framed in a way which provides a basis for credible and independent verification and certification.

<u>General Comments</u>

The Chamber of Mines recognises that there are many good ideas in the draft report and understands the premises that the MMSD Project was never intended to break new grounds but rather a consolidation of what has been done as a basis for identifying key challenges and for developing new insights.

The Chamber's general comments are as follows:

- **<u>Disproportionate focus on gold</u>**
  In chapter 5 there is a totally disproportionate focus on gold, and chapter 4 includes value judgements on gold which are both flawed and inappropriate. Such judgements should be removed from the report as they will prove to be counter-productive. The discussions about gold should rather focus on environmental, social and economic impacts, both positive and negative, and the balancing of these in the context of sustainable development. The gold case study in chapter 5 should be given this focus, and reduced in size and scope to a level consistent with the other case studies considered in the chapter.

  Apart from factual corrections, which are given later, the following more specific comments require consideration:
  - The argument that central bank holdings of gold stocks subsidises large scale mining and environmental degradation is not credible and should be removed (p 4-4).
  - On p 5-18, it is stated that gold is seldom used for industrial purposes. This is misleading. It is frequently used in electronic applications and according to Gold Fields Minerals Services (GFMS), some 15 per cent of gold fabrication is for industrial purposes. This is not an insignificant use.
  - On pp 5-21 –22, the section on central bank gold policies puts forward the concept of banks selling off their gold stocks. This is hypothetical and extremely unlikely, and should be eliminated from the report, as it borders on the verge of irresponsible speculation. This is particularly so in view of the status of the report, the volatility of the gold market, and the potential impact of sentiment on the market.

- **Inappropriate generalisation of "indigenous peoples"**
  - The implications of mining for indigenous groups cannot be dealt with effectively at a global level because of the diverse nature and needs of indigenous groups. It is doubtful f a secretariat of indigenous experts could be small and comparatively low-cost. Such a secretariat will have to reflect regional and cultural balance. Moreover, a globally agreed set of criteria to determine who qualifies as an indigenous expert might be very problematic. A better approach would be to recommend that each national mining jurisdiction develop a

mechanism for dealing with the implications of mining for indigenous peoples and any other affected local communities and cultural groups. The distinctions relating to "indigenous peoples" on p 7-18 under the section on Land, Mining, and Indigenous Peoples will apply to many tribal communities in Africa.

- The global debate on issues relating to "indigenous peoples" is not confined to the mining sector. However, in attempting to address these issues, as they relate to the mining industry, it is inappropriate to propose a global solution for what is essentially a national or local problem.
- The overwhelming majority of Africa's peoples can be regarded as indigenous, in the dictionary meaning of the word, but not in the sense in which this term is presumably intended to be applied in the draft report. In Africa, most tribal groups would consider it more dignifying if all their needs were addressed by laws applicable to all citizens. The sensitivities are such that special provisions would be regarded negatively. This principle is applied in South Africa, with the result that there is no need to extend special rights to groups merely by virtue of their indigenous status.
- Where indigenous peoples have an equal right of access to the political process of the State, which exercises sovereignty over them, it is the function of the political process ultimately to properly address the implications of mining for indigenous peoples, local people and the country as a whole.

- **Some recommendations not reflecting adequately current existing initiatives**
  - While adequate recognition is given in the main body of the report for current trends in the mining industry, the Chamber believes that recent regulatory advances and practices are not adequately reflected in some of the recommendations.
  - The South African mining industry has made some advances that are noteworthy in areas such as: social plans and corporate responsibility programmes, empowerment by share and business ventures and procurement opportunities for previously disadvantaged groups in the mining communities.
  - Presenting some of these recommendations in futuristic terms could undermine the objective of building trust between the stakeholders engaged in the mining and minerals sector.
  - Some of the actions listed under Community Development (page 1-17) are already advanced in South Africa – such as, ensuring that a proportion of the rents is invested in other forms of capital, such as trust funds, skills training, or social infrastructure. Some specific examples from the South African mining industry include:
    - In South Africa, a 1% skills levy (amounting to R221 m annually) is paid to the National Skills Fund, whereby 80% of the 1% is utilised by the industry, through the Mining Qualifications Authority, for training purposes and the remainder is used for targeted projects – such as the provision of infrastructure through to special training needs.
    - Annually, the industry spends some R250 m on corporate social investment programmes on a voluntary basis.
    - Annually the industry, in terms of approved environmental management programmes puts aside approximately R200 m annually into environmental trust funds.
    - Since 1994 some R5 billion worth of black economic empowerment deals have been concluded and all of these are still operating.
    - On an annual basis some R4 billion is spent by mining companies on procurement from historically disadvantaged businesses. This promotes the beneficial inclusion of all sectors of South African society in the minerals economy.

- **Responsibility of government to make decisions**
  – Participatory decision-making process is very important and must be advocated, but the government, at the appropriate level, has a role of ensuring that the pressure of public opinion should never result in an inappropriate balance being struck between the needs of environmental protection and economic development. Therefore, ultimate responsibility for rational and reasonable decision making should rest with government regulatory authorities acting in accordance with existing laws.
  – Some of the proposals relating to participatory decision making, while they appear laudable, undermine this state responsibility.
  – For example, the third bullet under the section on the control, use and management of land (page 1-16) suggests that a ‘no go’ decision should be based on a premise where mining would impose unacceptable loss in the view of those it is being imposed on. This premise could be problematic because the view of affected communities is often not very homogeneous.

- **Recognising the important “foundation” industry role of mining in the industrialisation process and the different stages of industralisation for different countries**
  - The MMSD report does not sufficiently emphasise the role of mining as a foundation industry – which can provide the critical mass for the development of power station’s, infrastructure, stock markets, etc. and then all the multiplier effects that feed through to other industries.
  - The MMSD report is considered to overplay the impact of “Dutch Disease” on mineral dependant economies in terms of the currency appreciation impacting on traditional export industries. The Chamber believes that this may not be true of most developing countries where no traditional industries exist and where mining can galvanise development and industrialisation.

- **The effect of increasing mineral supply on prices, and the internalisation of costs**
  Two important issues that run through the report are that of low mineral prices and the need to internalise social and environmental costs. These two effects work together against the long term contribution of mining to sustainable development. There is a constellation of factors which drive these two fundamentally important considerations. While many of these factors have been considered at various places in the document, they have not been brought together in a coherent way. This would help in the identification of other important factors, such as “use it or lose it” policies, of governments anxious for economic development in the short term. These and other short term imperatives bring with them the unintended consequences of over supply and low mineral prices. While some of the proposals in the report will contribute to averting these problems, the collective effect of the various proposals which have such potential have also not been brought together in a coherent action statement. The report should include such considerations, to the extent currently possible, and then suggest further work as necessary.

- **Sustainable Development Policy**
  The development and adoption of a Sustainable Development Policy is supported. The experiences that companies have acquired in developing Environmental or SHE policies are vital in moving towards a more holistic Sustainable Development Policy.

- **Complaints and Dispute Resolution Mechanism**
  The proposed “Complaints and Dispute Resolution Mechanism” (p 16-11) is another institution that belongs at the national or local, and not the international, level. Dispute resolution

mechanisms exist in many countries, including developing countries and should be covered in the framework document referred to in our primary comment.

- **Sustainable Development Support Facility**

  The Chamber is opposed to a global sustainable development support facility (p 16-12). We understand the need to build capacity, but do not believe that a global facility is the best means of addressing this. The need for such facilities is at the national level, and that is where they should be developed, where appropriate. The reasons for our opposition are as follows:
  - Industry's active involvement could be misconstrued by cynics as an attempt to buy influence.
  - Possible detraction from meeting local and national sustainable community development needs as an unintended consequence of possible diversion of resources.
  - The potential to create and nourish global bureaucratic institutions. We do not believe that the size of the facility could be confined to one or two people and it would quickly mushroom in size and cost. New institutions should only be created as a last resort; wherever possible, existing institutions and capacities should be drawn upon.

  The concept described in the MMSD report is, however, an emergency response unit, and no more. As is mentioned there, capacity already exists in UNEP (with OCHA) for responding to <u>environmental</u> emergencies. We consider this to be adequate. There is not a need for another institution in this field.

<u>Specific Comments</u>

- On pp 1-15 -17, the conceptualisation of "democracy" should be spelt out because the understanding of the term has a significant bearing on the outcome of "democratic processes". In all these issues, factors which result in undermining project economics or excessively raising investment hurdle rates, should be carefully considered.

- The concept of "prior informed consent" (p 1-15) has a specific legal meaning in some jurisdictions and the Convention on Prior Informed Consent. In this context, the term has been used inappropriately in the report.

- Page 1-18, under the heading "The use of minerals", 1st bullet point, starting "the basic needs of individuals and communities for mineral products should be met." The real question here is how? Because access to minerals is related to income levels and ability to pay as well as the availability of minerals in a particular location. This statement is therefore a bit vague. It is suggested that the following sentence be added: "*Practical considerations such as income levels and mineral availability are important issues and go to the heart of the development debate on how to reduce poverty in developing countries*".

- Page 1-18, final bullet point, starting "in their use of non-renewable resources the present generation needs to consider the needs of future societies, " a point that is missed in this regard is that the human species is remarkably adaptable and that technological advancements in response to change will also play a considerable role in meeting the needs of future generations. It is suggested that the following sentence be added: "*Society is remarkably adaptable and regularly comes up with technological advances. It is reasonable to expect that such* *advances will not only prove up new reserves but also supersede existing products, such as fuel cells overtaking crude oil."*

- Page 2-9, under the heading "Process and Fabrication", in South Africa, the process of adding value to minerals is known as "minerals beneficiation". A table describing the four stages of the beneficiation process appears below. It is considered that inclusion of this table would add value to the MMSD report.

Diagram: The four stages of the minerals beneficiation process

Stage	Mineral beneficiation process category	Process flow-chart	Labour intensity	Capital intensity
1	The action of mining and producing an ore or concentrate (primary product)	Run-of-mine ores → Washed & sized concentrates	High	High
2	The action of converting a concentrate into a bulk tonnage intermediate product (such as a metal or alloy)	Mattes/slags/ bulk chemicals → Ferro alloys/ pure metals	Low	High
3	The action of converting the intermediate goods into a refined product suitable for purchase by both small & sophisticated industries (semis)	Steel/ alloys → Worked shapes & forms	Low	High
4	The action of manufacturing a final product for sale	Worked shapes & forms → Worked shapes & forms	Medium to high	Medium to high

Source: Chamber of Mines of South Africa

- Page 2-21, Table 2-5, under coal, another use, the production of liquid fuels, should be included.

- Page 5-25, under the heading "Coal", the document does not capture the fact that coal is also used to produce liquid fuels, chemicals, polymers and plastics which are also essential for modern life. In South Africa, the petrochemical company Sasol, produces a low sulphur, environmentally friendly diesel and gasoline, and has been a global leader in this technology. In South Africa's case over 30 per cent of the country's total liquid fuel requirements are produced by Sasol from coal.

- Page 5-27, under the heading "Factors affecting future coal use", the report fails to capture the advances made in clean coal technologies. These are enabling power stations to burn coal much more efficiently, and capturing sulphur and other pollutants that were previously emitted. In the longer term, technological advances could include practical means for carbon sequestration, as a means of addressing the global warming issues associated with coal.

- Page 8-13, fourth paragraph, starting "although corporate taxes …" the section should include other hidden taxes and business costs included in the cross-subsidisation in other services in prices charged by parastatals for example.

- Page 11-23, Box 11-7, "Regulating Chemicals in the European Union". It should be noted that industrialised countries are becoming much more innovative in their application of non-tariff barriers to imported products from the developing world, this constitutes an increasing barrier to trade and investment in developing countries. This issue is of critical importance to developing countries. It is essential for sustainable development in such countries that markets are not removed for their products by such non-tariff barriers.

- In the paragraph under box 16-3, it is suggested that another example be added: national guidelines, such as those on tailings management.

- The use of "North" and "South" throughout the document (e.g. on p 16-11) should be replaced by "developed" and "developing", which are more accurate.

- Given their importance, in the last paragraph on p 16-11, it is suggested that the scientific community be added to the list of groups with which the industry should collaborate.

- Page 16-15, first paragraph: add industry associations to the list of groups that want to solve the problem.

- The second bullet on p 16-15 (guarantees based on area) is better than nothing but is scientifically meaningless and therefore not supported (and could be counter-productive).

- Page 16-16, under the heading "Abandoned mineral sites facility", the suggestion that a tax or surcharge on mineral products be imposed is in principle wrong, inequitable and unacceptable. Why should companies that pay due cognisance towards environmental and social costs be forced to pay for the inappropriate practices of other mining companies (past and present)? In addition, such taxes tend to be distortionary, reduce recoverable ore reserves and will undermine the national patrimony for many developing countries.

- Page 16-17, second paragraph, starting "The fourth option MMSD is not recommending …" around the idea of a 10 per cent levy on central bank gold sales is astounding and should be completely removed from the MMSD document. Penalising the holders of a reserve asset for selling their own assets will simply undermine the incentive for other central banks to hold gold and will negatively impact on price. To penalise existing gold holders for the responsibilities of totally divorced actors is implausible, impractical and totally rejected. The issue does not warrant further investigation and should be scrapped. Furthermore, a single commodity tax would be inappropriate for a cross-industry problem.

Factual Corrections

- Page 2-13, figure 2-7, entitled "Changes in employment, mining and mineral processing", the statement that the data for South Africa is gold-specific is incorrect. The numbers shown in the table relate to employment in the total mining sector.

- Page 3-4, the market capitalisation of the top 10 mining companies in figure 3-1 does not tie up with figure 3-2 on page 3-6, where the market capitalisation is about US$136 billion. A similar data source should be used.

- Page 5-18, under the heading "Availability and Demand", first paragraph, in the sentence stating "In 2000, mine production amounted to 2,574 tonnes, which represented 78 per cent of gold consumption", is factually incorrect. According to GFMS, Gold Survey 2001, mine production amounted to 65 per cent of total gold consumption. In addition, the statement that "in the last 6,000 years, well over 100,000 tonnes of gold have been mined" is only partially correct. According to GFMS, some 142,600 tonnes of gold were recorded as being the total above ground stocks of gold as at the end of 2000. Of this, 70 000 tonnes are held in form of jewellery, and some 30 000 tonnes are held in official institutions.

- Page 5-21, under the heading "Central Bank Gold Policy", the statement that "central banks … together hold close to a third of the gold still in use", does not match the GFMS data set. According to GFMS central banks hold only 21 per cent of above ground gold stocks. While central bank policy is important to the gold market, it is not the only driving factor of price.

- Page 5-21, fourth paragraph, starting "the US holds …". According to the IMF, at current market prices, the international average of gold holdings to total reserves is 11.3 per cent as at March 2002, compared to the 16 per cent stated in the MMSD document.

- Page 5-21, last paragraph, starting "Net central banks gold sales…", the numbers are again different to GFMS numbers. According to GFMS, net central bank gold sales peaked at 622 tonnes in 1992, declined to 167 tonnes in 1995 and were 471 tonnes in 2000. On average, net central bank sales over the last ten years were only 340 tonnes per annum, which is nearly half of the average 638 tonnes per annum supply of gold scrap coming onto the market. The sales of gold by Belgium, The Netherlands, the Swiss National Bank and the Bank of England are all related to reducing their high levels of gold reserves to norms more in line with European levels. The proposed sale of gold by the IMF to fund the heavily indebted poorest countries (HIPC Initiative), was changed to a non-gold market transaction on the realisation by the IMF that such gold sales would harm many gold producing HIPC countries (the very countries they were trying to help).