



# MINING INDUSTRY ASSOCIATIONS OF SOUTHERN AFRICA (MIASA)

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Dear Mr Danielson

## COMMENTS ON THE MMSD DRAFT REPORT

### MEMBERS

Botswana Chamber of Mines

Chamber of Mines of Namibia

Chamber of Mines of South  
Africa

Chamber of Mines of Tanzania

Chamber of Mines of Zambia

Chamber of Mines of Zimbabwe

Federation of Swaziland  
Employers

### Preamble

The Mining Industry Associations of Southern Africa (MIASA) commend 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.

MIASA believes that the report provides a credible basis for further engagement between the mining industry and all stakeholders. Of major concern, however, 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. We also believe it to be important that specific recommendations are made in Chapter 16 so that the priority issues identified in the regional processes can be pursued.

Considering the size of the report, MIASA has chosen to limit its comments to substantive issues and matters of factual and principle policy nature. Our comments are provided under the headings Primary Comment, General Comments and Specific Comments. Factual corrections have been submitted to you by the Chamber of Mines of South Africa and are not repeated here.

### 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 that exist. MIASA strongly believes that differences need to be accommodated and action implemented first at 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, MIASA strongly advocates that the final report should clearly include the following:

- The declaration should contain a statement of the principles that are considered applicable in Order to remove ambiguity about what it is that the mining companies are jointly making a commitment to accepting, 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 local and regional variations. The framework or guidelines should be framed in a way that provides a basis for credible and independent verification and certification.

### **General Comments**

MIASA 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 ground, but rather to consolidate what has been done as a basis for identifying key challenges and for developing new insights. MIASA’s general comments are as follows:

- **Disproportionate focus on gold**  
In Chapter 5 there is a totally disproportionate focus on gold, while inadequate attention is given to other minerals. Chapter 4 includes value judgements on gold that are both flawed and inappropriate. Such judgements should be removed from the report as they are likely to prove to be counter-productive. The discussions about gold should 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.
- The following more specific comments require consideration:
- The argument that central bank holdings of gold stocks subsidise 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 dental and 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 and could be damaging. 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 if a secretariat of indigenous experts could be small and comparatively low-cost. Such a secretariat

would 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 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 southern 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 do not reflect existing initiatives adequately**
    - While adequate recognition is given in the main body of the report for current trends in the mining industry, MIASA believes that recent regulatory advances and practices are not adequately reflected in some of the recommendations.
    - The mining industry in the Southern African Development Community (SADC) 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 SADC, for example in ensuring that a proportion of the rents is invested in other forms of capital, such as trust funds, skills training, or social infrastructure.
  - **Responsibility of government to make decisions**
    - While participatory decision-making processes are important and must be advocated, 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 environment protection and economic development. Therefore, the ultimate responsibility for rational and reasonable decision-making should rest with the government regulatory authorities acting in accordance with the law.
    - 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 role of mining as the foundation for industrialisation and the different stages of industrialisation of countries**
    - The MMSD report does not sufficiently emphasise the role of mining as a foundation for growth, which can provide the critical mass for the development of power stations,

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. MIASA 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. The sections dealing with mineral prices in the MMSD Report tend to focus on prices as being determined on a cost plus basis and do not recognise the constellation of factors that drive these two fundamentally important considerations. Mineral producers generally find it difficult to pass on price increases to the final consumer. While many of these factors have been considered at various places in the document, they have not been brought together in a coherent way. Doing so 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 oversupply 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 level, and not the international level. An international complaints and dispute resolution mechanism could impinge on the sovereignty of countries and the responsibility of governments to make decisions. Dispute resolution mechanisms exist in many countries, including developing countries and should be covered in the framework document referred to earlier.

- **Sustainable Development Support Facility**

MIASA 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 the following:

- 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 an emergency response unit, and no more. As is mentioned there, capacity already exists in UNEP (with OCHA) for responding to environmental emergencies. We consider this to be adequate.

## Specific Comments

- 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 that 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”, 1<sup>st</sup> 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 Southern Africa, the process of adding value to minerals is known as “minerals beneficiation.” A table describing the four stages of beneficiation is being provided by the Chamber of Mines of South Africa. MIASA agrees that inclusion of this table would add value to the MMSD report.
- Page 5-27, under the heading “Factors affecting future coal use”, the report fails to capture the advances made in clean coal technologies. These enable 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 and 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.

I trust that these comments will be of value.

Yours sincerely

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