



Mining, Minerals and
Sustainable Development

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Part IV: Responses and Recommendations

Chapter 16 Agenda for Change



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The minerals sector is highly diverse. The many people and organizations – in business, government, civil society and elsewhere – who together constitute the minerals sector have differing roles, perspectives, and values. But there is more convergence than one would initially have expected. There is a broad acceptance that the various costs, benefits and impacts do not land equally on all. There is a very strong desire by most in the sector to move from where we are now to where there is improved performance, a better quality of life, and constructive engagement that produces results.

There is much frustration about how hard it is to make change. There are experienced and committed people throughout the sector, in government, labour unions, civil society organizations, companies and elsewhere with useful ideas and considerable energy. They too often feel it is excessively difficult to move those ideas and that energy into practice to produce concrete results.

Making changes has been difficult in part because there is a great deal of distrust. Another issue is the lack of a shared objective and a common vocabulary. This Agenda for Change focuses on the areas where, in the view of the MMSD Work Group, the shared objectives and common vocabulary are strongest. It does not repeat all of the best practice identified in the body of the Report, nor attempt to summarise and capture all of the ideas presented.

The hope is that sustainable development can provide a framework for this shared set of objectives and a vocabulary to discuss them. In all the discussion this Project has provoked, few quarrelled with the basic parameters of sustainable development derived from the 1987 definition by the Brundtland Commission. The Agenda for Change assumes this broad set of goals:

- the material and other needs for a better quality of life have to be fulfilled,
- for people of this generation,
- as equitably as possible,
- while respecting ecosystem limits, and
- building the basis on which future generations can meet their own needs.

This framework does two things. First, it requires that most decisions be made based on multiple rather than single criteria. Second, the need to maintain at least some respect for each of these parameters in every decision creates a set of limits, beyond which trade-offs do not go.

Precisely where the boundary is between the values/assets that can be traded for other kinds of benefits and the values/assets that cannot, is not always clear, and different stakeholders emphasize different priorities. This report is based on the belief that there are some values subscribed to by all, such as basic human rights or honest justice systems, that cannot be traded. The idea of ‘critical natural capital’ should join this list once it is more fully debated and widely understood.

Action requires recognizing that each group has its own limits to trade-offs. For example, development advocates would not agree to actions that make the poor worse off, nor companies on things that will put them out of business. Environmentalists and cultural rights activists may designate ‘no go’ areas for mining.

Effectively this puts decisions into several groups. Where there is a common vocabulary for discussion and an agreement on some first principles, decisions can be made that have the maximum chance of minimizing trade-offs among environmental, social, economic, and governance objectives, and maximizing win-win-wins – i.e. the integration of otherwise potentially conflicting goals. There is also a zone of trade-offs, where some objectives have to be weighed against others. The key question is how to create mechanisms for making those trade-offs in a way that will be accepted by other key stakeholders as open and fair.

Different people and organizations attach different importance to various objectives: the ‘triple bottom line’ for industry; poverty alleviation and equity for those in the development sphere; and ‘life support systems’ and their continued viability for environmentalists. Incentives need to encourage different actors to pursue their own objectives in ways that contribute to overall success.

What is appropriate for each to do will be based on responsibilities and abilities. For each, it is important that actions must:

- Be consistent with its organizational and sustainable development objectives;
- Build on its strengths;
- Be measurable – there must be some way to tell success from failure;

Box 16–1. Origins of the Agenda for Change

MMSD has tried to do three things: provide a means for *surfacing ideas and information*; offer some opportunity to *test those ideas* with diverse, knowledgeable audiences; and provide a ‘snapshot’ of *where this evolution of ideas* stands and what conclusions can be drawn.

The Project has surfaced ideas through working and engaging with organizations and individuals from different regions of the world. This has included:

- a review of existing knowledge;
- assimilation of suggestions submitted to MMSD by many organizations and individuals;
- research conducted by staff of the International Institute for Environment and Development;
- four regional processes that have, in turn, drawn on contributions from many researchers to produce regional reports; and
- the commissioning of 12 country baseline studies and more than 100 expert studies on a range of topics.

It has tested those ideas as widely as possible through:

- posting important documents on the MMSD website and asking for comment;
- Bulletins detailing MMSD progress and soliciting response sent to the MMSD database of over 5000 people;
- informal conversations with individuals and organizations working in the field;
- the responses that were received when these emerging ideas were presented at meetings and conferences throughout the world;
- regional consultations in four key mineral-producing and -consuming regions around the globe;
- national process of consultation in several countries;
- 23 global workshops on topics from biological diversity and corruption to managing mineral wealth and indigenous concerns about mineral development, attended by 600–700 diverse stakeholders and interested parties; and
- close work with a 25-member Project Assurance Group consisting of people from a broad spectrum of backgrounds and perspectives, including seven meetings as well as liaison between meetings.

The process of testing ideas is far from over. The comment period following the release of the Draft Report and Agenda for Change provides the broadest opportunity yet for testing the ideas identified to date and soliciting new ones. Both will be reviewed and modified for final publication based on those comments.

What Can Be Done Now

This section presents a summary of recommendations directed at specific actors or groups of actors in the minerals sector. They are not comprehensive and are intended to complement rather than reiterate Part III of the report. They lay out actions that are of high priority, can be immediately acted on, are consistent with the objectives of each organization, and build on existing strengths. Many of the suggestions need to be carried

out in collaboration with other actors. Some should be carried out at the global level and others at the level of the project site.

The Minerals Industry

In market-based economies, making a profit, and a competitive return on shareholder investment, is the primary object of corporate leadership. Doing this responsibly, and in ways that are more transparent and accountable, is important for establishing public credibility, but is also essential for assisting Boards of Directors and senior management to identify potential strategic and financial risks and opportunities for the enterprise. Through the whole value chain of the mining, minerals and metals industries, sustainable development will be useful to the degree that it helps to manage risks and increase business opportunities.

This Agenda for Change is focused not only on what the major multinational mining companies should do. Mining and the entire minerals industry is made up of diverse participants. A significant proportion of world mineral production comes from artisanal and small-scale miners. There are major companies in metal processing, manufacturing, and recycling who do no mining at all. And in some countries state enterprises are extremely important. Companies in every part of the industry can use sustainable development concepts to find better ways to meet their business objectives.

Individual Company Level

Some of the following suggestions can be applied by all companies along the value chain, others are directed more specifically at mining companies.

Develop and Adopt a Sustainable Development Policy

The first step for companies is to develop and adopt a sustainable development policy. This can be used to create internal change and to integrate sustainable development into mainstream company thinking in ways that add business value.

The sustainable development policy can incorporate other relevant company policies such as those on environmental issues, worker health and safety, employee integrity, community relations, reporting, and the like. It should enable the growing number of policies that companies have adopted to be brought together in a single coherent management system, which could be more effective and less costly.

The whole company should be engaged. A partial list of the possibilities might include:

- *Human resources* – recruiting and retaining good-quality staff, evaluation and compensation.
- *Legal departments* – permitting, contracts, managing liabilities, better due diligence, making clear that no corruption will be tolerated with enforcement.
- *Purchasing* – supply chain assurance, community development.
- *Accounting* – treatment of risks, costs and liabilities, accurate and informative reporting to senior management, Boards of Directors, and external audiences.

- *Boards of Directors and senior management*: identification of sources of risk and potential business opportunities.
- *Exploration and Property Acquisition* – better due diligence in identifying liabilities; more effective assessment of pros and cons on acquisitions and divestitures.
- *Health, Safety and Environment*: further progress in integrating programmes into employee consciousness; improved relations with regulators.
- *Site Management*: long-term planning; improved relations with local communities.
- *Marketing* – moving beyond selling commodities to more complex relationships with customers that are harder for competitors to match.
- *Corporate Strategy* – better planning of sustainable development policies in all future business opportunities.
- *Communications/External Relations* – improving communications and delivery of information to external stakeholders whether they be shareholders, surrounding communities or NGOs.

The policy should include mechanisms to evaluate progress in its implementation and to report findings to the executive management and key stakeholders in a credible manner.

Companies that already have a sustainable development policy should review the extent to which it has penetrated the company and consider whether there are more effective ways of integrating it into operations and deriving business value from them.

National or international industry associations have done some valuable work that should be recognized. They can help individual companies learn about sustainable development policies by providing a platform for companies to share experiences. Appropriate regional and national reports from the MMSD Project may be helpful in guiding the activities of these organizations.

Review End-of-life Plans at Existing Operations

At an operational level, companies should conduct a comprehensive review of existing plans for eventual closure of key facilities. There has to be a clear long-term objective within a framework to orient individual near-term decisions, and a clear vision of what things will look like when the project is over. Where the vision is clear but no one is sure who is responsible for supplying the key pieces to achieve it, this process can and should lead to serious discussion with other actors about how to fill those gaps.

As a starting point, companies should review end-of-life plans at existing operations. This review should focus on whether existing plans fully address what the results should be post-project – in terms of end-of-life environmental conditions, economic conditions of affected communities, opportunities for displaced workers, social conditions, impact on government at all levels, and other appropriate issues.

This process can be useful in surfacing potential future liabilities and managing them. The key question is whether the roles and responsibilities of the company, government, local institutions, and others are clearly spelled out and the measures are in place to ensure

that benefits achieved during the project life can be sustained, and negative impacts eliminated or minimized.

The long-term vision of the community's future is the business of all involved in a site. The review should therefore involve the key stakeholders with an interest in the future of the local community, including those with a right to determine the community's future. The company should facilitate discussions among principal actors in the community and local government. The aim is to develop a shared vision and to allocate and share responsibilities.

Collaboration is key. Sharing responsibilities and obligations requires sharing information and ideas. The better informed workers, government, communities and others are about results of operations and what will happen on the day when closure occurs, the better they will be able to plan their own economic futures, and the more responsibility they can and will take for the results. Closure plans should build on and supplement government planning processes and requirements.

Community Sustainable Development Plans

Establishing a Community Sustainable Development Plan (CSDP) is a step that needs to be evaluated on a case-by-case basis because it will be more valuable in some circumstances than others. In some areas, the existing government framework will provide most of the pieces. Elsewhere, company leadership will be needed if the local or regional government planning processes and capacities are inadequate. The role of the company should not be to replace government but to supplement it while attempting to build or improve local capacity in the process.

A company's investment in any community creates an opportunity for development. There should be a framework for enlisting other actors in the community to form a shared vision of where the community is going and to capitalize most effectively on that opportunity while avoiding some of the potential problems. This can be a mechanism for defining the boundaries and making the trade-offs necessary for sustainable development to occur.

A CSDP should be based on the community's concept of how the mine can best contribute to achieving its social, environmental and economic goals. It should be grounded in the willingness and ability of the company and appropriate levels of government to contribute to and support those goals. It should be designed through a process of consultation that (for new projects) begins during the permitting phase.

The CSDP should provide the fundamental framework for relationships among the company, the community, and the government (and any other parties) through the project life and into post-closure. It should identify the specific actions needed, and the respective roles and responsibilities, to achieve the vision. It could extend to creating some obligations, on all sides, for taking those steps. Independent mechanisms for monitoring and evaluation, including clear and agreed indicators of performance, need to be included. The plan will need to evolve and be amended over the life of the project to reflect changing priorities and capacities.

While a company should facilitate and promote the process, it should not lead the process. The leadership role belongs to local government to the extent it has the capacity and is

willing. In default of this, an NGO or development organization may be ideal for this role. The process could also become, for example, part of the forum for discussion between local and national government over revenue sharing and responsibility for services.

The practice of some companies is moving in this direction, and it would be helpful if these arrangements were formalized. A system for learning from other companies' experience in this or other sectors would also be valuable.

Joint Commitments – Industry

While an individual organization such as a company can benefit from pursuing policies consistent with sustainable development, higher levels of benefits can be achieved by working together. There is a variety of initiatives facilitated through national mining associations, commodity associations, or global bodies such as the re-constituted International Council on Mining & Metals (ICMM). This does not mean less competition. It means better competition. Better levels of competition require clearer rules, better marked boundaries, and better referees.

A Declaration on Sustainable Development Embodying a Commitment to a Sustainable Development Code

The Declaration and subsequent Code and guidelines are intended to complement, not to replace, other priorities and initiatives identified at other points in this Agenda. The proposal is designed to simplify the current multiple codes and sources of guidance by providing a way to bring these together over time into one document and one management system. It should build on the recently adopted Sustainable Development Charter of the ICMM, which could provide the starting point.

The process of developing a Declaration – and then a Code – for the sector could take place in three phases. Only the first phase is discussed in detail here.

Phase I – ICMM and other appropriate organizations would develop the Declaration.

While it would inform and consult key stakeholders in the process, the Declaration would be a unilateral action by industry. Companies would be encouraged to adopt and sign on to it. Industry might indicate its intent to develop the Declaration by the time of the World Summit on Sustainable Development in August–September 2002. Full study of all the elements proposed below would take longer than that; but industry should send a clear signal of where it is going.

Phase II – This phase would establish a fully articulated Sustainable Development Code through a process encouraged by ICMM, but managed in a way acceptable to principal constituencies, and which included them in appropriate roles. The goal of Phase II is to create the basis for an accepted verification system for *individual minerals facilities or projects*. This will require that there will be – over time – best-practice guidelines. It anticipates involvement of representatives of stakeholder groups in development of the elements of the Code, its verification process, and its dispute resolution mechanism. It could be a factor that lenders and insurers would choose to consider in their decisions.

Phase III – This phase is envisioned to be an expanded Code system under which companies could seek *company-wide certification or verification*. Interest group participation in management of the process would be deepened at this stage. Company certification or verification could be highly relevant to equity investors. Phase III also could, if the parties deem it appropriate, approach the question of product certification.

While ICMM might have a key role in developing the language of the Declaration and a subsequent Code, it should be absolutely clear that companies choosing not to join ICMM should be encouraged to adopt them on a basis of full equality with members. ICMM could eventually – as the Australian national association has – decide that membership requires adhering to the Code. But the Code should not require joining ICMM.

It is suggested that the Declaration call for an immediate set of commitments that could be adopted by individual companies, together with a commitment to a longer-term process of multistakeholder engagement to develop a more comprehensive code and guidelines for responsible management in the minerals industry. (See Box 16–2.)

Box 16–2. Basic Elements of the Declaration on Mining, Minerals, and Sustainable Development

Companies would commit to:

- Accept the applicable principles in a defined list of existing guidelines and conventions. A possible list is outlined below.
- Develop internal management procedures to familiarize employees with the meaning of these commitments and their importance as company policy, and alignment with business success.
- Develop reporting procedures that address the principles in the Declaration.
- Conduct, in a defined time, an independent audit by a reputable outside organization of the state of company compliance with the requirements of the Declaration.
- Agree to work with other companies, within a defined time, to establish a Sustainable Development Code, which should include best practice guidelines to deal with specific issues in minerals management. This would be done through a process acceptable to other principal stakeholders.
- Accept the complaints and dispute resolution mechanism to be established under the Declaration. In time, make a commitment to the full verification system envisioned for the Code.

The cornerstone of the Declaration is therefore a company’s statement that it accepts the principles of a number of the most prominent existing instruments that define requirements or good practice, and to apply them in its business decisions.

There are numerous guidelines, codes, conventions, and laws that could provide guidance for companies. While many candidate elements for this list have been proposed, there is a need to consider the practicality of achieving an initial commitment in a reasonable amount of time. The preliminary list of principles should be small enough in number, so that companies can understand and apply them. A limited number that best serve the purposes

of the Declaration are listed below. They are principles already contained in existing initiatives that:

- can be applied worldwide,
- have been developed through recognized international processes,
- preferably, have received a commitment from at least one minerals company,
- reflect an understanding of the need for a partnership approach,
- reflect a balance of industry-specific and general considerations, and
- relate to factors important to the way financial markets evaluate risk.

Based on these criteria, the substantive provisions found in several key initiatives may be the strongest candidates for inclusion in an initial declaration. (See Box 16–3.)

Box 16–3. Candidates for Initial Declaration Elements

- Rio Declaration
- The United Nations Global Compact
- Environmental, social, and economic guidelines on corporate reporting that have been developed within the Global Reporting Initiative
- OECD Guidelines for multinational enterprises (June 2000)
- World Bank Group’s Operational Guidelines, including, but not limited to, those on Environmental Assessment, Involuntary Resettlement, Indigenous Peoples, and Projects in Disputed Areas.
- OECD Convention on Combating Bribery of Foreign Officials
- ILO Convention 98 on the Right to Organize and Collective Bargaining (1948); ILO Convention 169 Concerning Indigenous and Tribal Peoples in Independent Countries; ILO Convention 176 on Safety and Health in Mines (1995) and ILO Recommendation 183, which accompanies it
- Voluntary Principles on Security and Human Rights

The Declaration should also provide for a company commitment to adopt and comply with national or regional industry codes of conduct where they exist. For example, companies operating in Australia should initially comply with the Australian Minerals Industry Code for Environmental Management, and companies in Canada with the Mining Association of Canada’s environmental policy.

There are some particular areas where the industry can, on its own, advance in implementing measures to address concerns such as those identified in Part III of this report. Guidelines could, for example, require adherence to the recently developed cyanide code or to APELL emergency planning principles.

A Complaints and Dispute Resolution Mechanism

Some of the sets of principles listed in Box 16–3 have already developed their own complaints or dispute resolution mechanisms (such as the system of national contact points under the OECD Guidelines), but others have not. If the Declaration is to be credible among the industry’s external stakeholders, and drive real changes in industry results and performance, it should be accompanied by a complaints and dispute resolution mechanism.

Companies should have a serious interest in endorsing fair, reasonable ways (through a form of mediation/conciliation system) for people with grievances to get the attention of management, and to seek some kind of solution. Lack of such a mechanism drives people with grievances to other measures, many of which can present much higher levels of risk.

Complaints and Dispute Resolution Mechanism

A dispute resolution mechanism should bring parties together, in a neutral forum, to work out a mutually acceptable facilitated settlement. The elements of the mechanism are envisioned as similar to the methods and procedures of an ombudsman such as the Compliance Advisor/Ombudsman of the International Finance Corporation, or the Mining Ombudsman Project that has been operated by Community Aid Abroad in Australia.

The principal elements might be as follows:

- Complaints could be brought where the complainant feels that a company has not conducted itself in conformance with the principles of the declaration. The focus would be on problem solving and getting the complaint addressed in a way satisfactory to the complainant and the company, not on adjudicating rights and wrongs.
- The overall rules for the complaints and dispute resolution mechanism would be set at the global level. The entire process should be managed in a transparent fashion. The mechanism would be guided by principles designed to avoid conflicts of interest.
- Actual handling of complaints would probably be handled better at a regional or national level. Until a centre capable of handling complaints is set up in each region, the function could be handled at the global level.
- The overall programme could be overseen by a multistakeholder Board. This Board should be balanced among a wide range of stakeholder values and opinions, in North and South.
- In each region or locality, an independent organization would be contracted to operate the complaints and dispute resolution mechanism.
- Complainants would have the option, should they request it, of having their complaints handled privately and in confidence.
- Participating companies would agree to cooperate with the process of dispute resolution, provide appropriate information as reasonably requested, and show a commitment to making the process work.
- The Board would periodically issue public reports of its activities and the overall process. It can establish rules for the conduct of the process, and amend them as necessary based on stakeholder feedback.

Develop a Programme for Integrated Materials Management and Product Stewardship

Industry needs to collaborate with regulatory authorities, downstream users, and other groups to develop sound, science-based means to ensure safe use, re-use, and eventual disposal of its products. A Product Stewardship Initiative could promote greater exchange of information and integration of views with the industry's principal customers and intermediary processors, recyclers, and others. This initiative could build on the work already undertaken by the Non-Ferrous Metals Consultative Forum on Sustainable

Development, which has indicated that further development of the stewardship concept needs to be done by selecting some real issues in real settings and working with companies and stakeholders on a pilot basis. The Product Stewardship Initiative would lead to improved understanding of:

- energy, water, land use, recycling, and re-use issues;
- life-cycle analysis as a management tool for sustainable development;
- appropriate recycling technology transfers to developing countries; and
- possible product certification schemes.

Take Leadership in the Development of a Sustainable Development Support Facility

There are many ways to develop this facility. It could be developed independent of industry, with industry participation simply as one stakeholder, and funded by aid agencies, an option explored later in this Agenda. Another option is for industry to take the lead – after appropriate consultation with others – in establishing the facility, and to encourage it to grow toward broader roles supported by others. If others are to take this forward, they will need to be involved from the outset in designing this entity. The principal advantage of industry initiation is that industry could provide the leadership to get started.

Preventing accidents is a high priority. When they occur, their impacts are immensely magnified when there is no effective capacity to deal with them promptly, decisively and effectively. Uncertainty, lack of knowledge, and inaccurate information may cause as much public concern as the accident itself.

An international facility, supported in part by industry, with appropriate involvement of other stakeholders, could play a significant role. It could mobilize world-class experts who could supplement government capacity to assess, respond, and control accidents and emergencies, or to make sure that threatened emergencies do not happen. This approach could assure the public that the best possible advice was available to responsible officials. Preventing, or just minimizing the impact of one incident, would be worth the basic cost of a few hundred thousand dollars per year.

A Support Facility might have no more than one or two permanent staff, and could be based in a number of places. It would build contacts with governments to raise awareness of what it could provide; maintain a register of experts who commit to respond at short notice; operate within guidelines established by a multistakeholder board, including provisions for avoiding conflicts of interest; and cooperate with the United Nations Environment Programme (UNEP), which has done much good work in the area of accidents and emergencies.

Once established, the Facility could seek funding from a variety of sources and consider additional roles in which it could add value. Among these might be to serve as requested:

- as an independent source of capacity building or advice to government on issues such as emergency planning or implementation of APELL-style emergency preparedness plans;
- as a supplement to government departments charged with technical tasks such as safety inspection of tailings dams; and
- to assist local governments, companies, or others in the development of the CSDP.

Labour

Workers at all levels are key stakeholders in the sector. The future of the industry depends in part on productive relationships between companies and workers and whether companies deal fairly and effectively with worker-related issues. There is a fundamental convergence of interests between companies and workers on some issues. At the same time, labour and management interests may diverge sharply on others. Workers generally, and organized labour in particular, could be the major advocates for many aspects of sustainable development such as community development, and health and safety. They have a special responsibility to implement best practice in safety and training.

An Agreement with Industry on Sustainable Development

There could be a global-level agreement between labour federations representing workers in the minerals sector and international organizations representing companies for broad cooperation in support of sustainable development. Organized labour could take the lead and suggest elements of that agreement.

Community-Level Cooperation

Mine workers have important roles in many instances as bridges between the factory or the mine and the community in or around it. Workers could therefore be central in the community-level processes: reviewing end-of-life plans and assisting in designs of community sustainable development plans. This could be in the context of an agreement. If there is no company leadership in initiating the processes, labour could consider taking a leadership role. International labour organizations can also play a helpful role in informing their national and local affiliates about the opportunities these processes could present, and how they might most effectively participate in them.

Governments

Differences in governments' perspectives on mineral development depend on a country's level of development, capacity, whether they are exports or imports dependent, and whether they represent the national or the local government. Various ministries within a government, which include mining, minerals or natural resources, finance, health and environment, may also have different perspectives and interests. Governments have many principal roles, and each of them needs to be strengthened for sustainable development based on minerals production processing and use. Among these are to:

- *enable development* – create enabling policy frameworks in which investment and economic and social development can occur;
- *provide services* – ensure that all citizens have access to services that fulfil basic needs such as water, food, shelter, education, and health care; and
- *define and enforce boundaries* – define conduct detrimental to society, establish clear rules to prevent transgression, and sanction violators.

Attracting investment is a necessary condition for development, but it is not sufficient on its own to produce the right incentives for enduring results. The reform of mining codes has created a climate for investment, but it needs to go further to ensure that investment leads

to sustainable development. This Agenda has proposed a review of end-of-life plans for major minerals facilities, and a planning exercise leading to Community Sustainable Development Plans. Governments of some countries have played major roles in setting up provisions for such efforts as they implement the findings of Rio. Elsewhere, governments have yet to assume this role for a number of reasons. They may lack the economic resources or capacity to lead these processes effectively, the regulatory framework or policies, or the political will.

There are a number of suggestions for effective sustainable development frameworks so that the opportunities presented by mineral investment can be transformed into sustainable development. The most important of which is the sustainable development plans required of the Rio process. MMSD only concentrates on aspects related to minerals.

Integrated Planning For Minerals

Integrated Closure Plans

A number of countries have legal requirements for developing closure plans for mines or other facilities. Most are, however, heavily oriented towards environmental concerns and may not address local economic development or social issues. If governments wish to establish a clear legal and regulatory framework for mine closure, post-project issues that should be addressed in the plan include environmental issues, economic conditions in affected communities, opportunities for displaced workers, social conditions, and other appropriate issues. It could also legally require mine closure planning to clarify the roles and responsibilities of the different actors.

Financial Surety

Most industrial economies recognize that some industries (such as power plants, chemical facilities, and mines) have the potential to leave behind large social costs. To ensure that they are not inheriting these costs, some governments insist that companies should undertake them to provide a kind of bond or guarantee that they will comply with closure plans. The company does not guarantee against anything that might happen, simply that the specific obligations in the closure plan will be carried out. The guarantee insures this can be done even if the company fails, as a number have. This insures internalization of costs and will promote economic efficiency. Knowing that it will need to comply is a powerful incentive to better industry performance.

Developing countries have mostly not followed this route for a number of reasons, not all of which apply everywhere. For example, small and medium companies are important employers in many countries, and they would find it difficult to provide a realistic guarantee. Governments may fear that higher costs due to surety would lead to closure and lose the employment they provide. In addition, some countries have just finished revising their laws and regulations to create incentives for investment, and expensive guarantees and additional procedures may be seen as a disincentive. In addition, many of them do not have the expert capacity. Finally, developing an effective plan requires flexibility, which implies discretionary authority. Discretionary authority implies delays, and presents opportunities for corruption.

MMSD has not developed a model of what to do but has identified that there is a need to find methods of capturing the benefits of financial surety that can also overcome these problems. Major companies, environmental organizations, governments and others that want to move forward on this issue share an interest in solving them. Some suggestions are to:

- Develop administrative procedures to develop plans within a reasonable amount of time, and ensure that guarantees would be ended when the plan is complied with. The World Bank and UNEP could be a source of advice on how to accommodate these concerns.
- Establish guarantees based on broad standards such as acres or hectares of land affected rather than detailed engineering calculations.
- Support by the proposed Sustainable Development Support Facility to supplement government capacity.
- Adopt a collective approach among countries through regional bodies such as CAMMA, APEC, and SADC, to take this issue out of the realm of competition for investment.
- Recognize that financial surety is not an effective way of managing artisanal miners and those at the very smallest scale of production. Different approaches should be developed for them, and the guarantee applied only to those above some cut-off point.

Sustainable Development Support Facility

A version of this facility – initiated and funded by industry – is discussed earlier in this Agenda. MMSD has found that in some groups’ opinion such a Facility should be completely independent of industry, in order to assure that it could give full value to government and others in strengthening their role in serving as an independent authority from industry, as part of the regulatory system of checks and balances. This is an attractive alternative. There are two issues with this vision. First, if industry is not to be involved in its creation, who will step forward to do the spadework to get it up and running? Second, is this idea sufficiently attractive to aid donors that they would provide it with the modest funding it would require?

In the industry model, providing technical advice is the chief function. In the non-industry funded model, other potential roles include:

- serving as requested as an independent source of capacity building or advice to government on such issues as emergency planning or implementation of APELL-style emergency preparedness plans;
- serving as requested as a supplement to government departments charged with technical tasks such as safety inspection of tailings dams; and
- assisting local governments, companies, or others in development of Community Sustainable Development Plans.

The ongoing legacy of mining and smelting operations that operated decades or centuries ago is a daunting issue. But improving conditions at abandoned sites can yield immense environmental and social benefits for a relatively small investment. Once it is clear that the

social or environmental problems at sites that are no longer operating is a public rather than a private responsibility then funding becomes a responsibility of governments. The other is to find funding for sites that are clearly public responsibilities. Finding the funding for such rehabilitation is an enormous challenge.

Abandoned Mineral Sites Facility

One proposal that could make a start is to create a process akin to but different from the Global Environment Facility to provide resources and technical support to governments to deal with abandoned mines. Governments with many abandoned mines but few resources could be given grants to determine priorities for the cases most urgently needing attention and to develop project proposals that could then be funded.

This facility/fund would approve applications, with priority being given to projects:

- where the rehabilitation of the environmental legacy will generate employment and be a source of livelihoods,
- where the environmental legacy has been identified as most dangerous and where clean-up will offer the greatest benefits,
- in low-income countries with significant abandoned mine legacy problems, or
- where there are particular social legacies of former mine sites or mining communities.

Mining companies could raise the profile of such a proposal by ensuring that it is discussed and debated at the Global Mining Initiative Toronto meeting in May 2002. At the World Summit on Sustainable Development, world leaders could take note of their presence in one of the world's most important mining countries with a legacy of abandoned mine problems, and use the opportunity to call for a full-scale feasibility study for an Abandoned Mineral Sites Facility. Establishing this fund would require a number of nations to commit together to a programme to make it viable for several years. In the current political climate poverty alleviation would have to be the primary goal.

Three options for finding funds for abandoned mines have surfaced. As with the Abandoned Mineral Sites Facility, none has been seized on by those concerned with these issues. Perhaps the challenge to those who dislike these ideas is to propose better ones.

An economically rational way to raise money for an abandoned mine fund – one that comes closest to internalization of costs that were not internalized at the time they were incurred – would be to put a tax or surcharge on all or some class of mineral products. Given the unpopularity of commodity wide ‘charges’ (e.g. climate levies) this has a small chance of being agreed.

A second possible alternative would be to encourage voluntary industry contributions to a fund. Industry associations are paid for in this fashion; there are various advertising and promotion systems which industry has also funded through such mechanisms. To be successful, any system would have to include a broad range of minerals and require widespread industry participation and a mechanism to deal with the ‘free rider’ problem. This too is an ambitious option but industry generally prefers voluntary systems to taxation; it might just find a way to make this work.

A third proposal is that the World Bank Group could consider its potential role in any Abandoned Mineral Sites Facility, as it has lent for similar activities in the past. It could review options for a Trust fund. A focused IBRD lending programme aimed at abandoned minerals facilities and their impacts might be a near-term way forward. The money borrowed for these purposes would have to be repaid. While it might generate significant benefits such as local employment and restoring natural capital, these might not produce an obvious stream of cash flow to repay the loans. Thus some voluntary funding is indicated.

The fourth option MMSD is not recommending, as it is not a matured concept. But in essence it has been suggested that a potential source of revenues could be derived from central bank gold sales. This proposal would be that the central banks who are parties to the Washington Agreement would voluntarily contribute some percentage – say 10% - of the proceeds of any of their sales of gold to a Fund. If sales increased, which would do harm to some gold dependent economies, so would the fund. The potential virtues of this proposal are that it might help stabilize the price of gold, since it could create a disincentive for central bank gold holders to sell. If they did sell there would be some compensation available to those who currently depend on the gold mining sector. This idea is simply advanced as a trial balloon to test reaction and is not based on a comprehensive analysis of central bank policies towards selling gold. A rigorous study of how such a proposal would affect everyone concerned should obviously be undertaken before there is any consideration of pursuing this option. A drawback of this specific commodity plan is that what is needed is a source of rehabilitation investment for all abandoned mines.

Government has a wide range of responsibilities – from protecting the national environmental patrimony to promoting and protecting the political and human rights of all people in its territory. Enacting laws to create a framework for attracting investment should be complemented by other legal changes to ensure that investment is translated into development. This includes reviewing legislation and regulations to ensure that they protect the interests of the poor, and that issues such as resettlement, compensation for land, and loss of livelihoods are dealt with in a clear and equitable framework. It also means that there has to be a system of sanctions adequate to prevent harmful activities from its citizens, and its environment. And it means that individual citizens or groups who feel they have been injured need access to justice. Most countries would rather provide this access through their own court systems rather than elsewhere. But unless these institutions are effective, the action will move elsewhere – the World Bank, litigation in the home country courts of multinationals, or private systems such as arbitration.

Review of Legal and Economic Framework for Sustainable Development

Countries with significant mineral development could consider a comprehensive review of their legal frameworks and their impacts on sustainable development. While the review should be respectful of the need for investment, it should focus on how to turn this investment into opportunities for sustainable development. This review would be most beneficial if it is not an internal process within government, but an open discussion that involves all of the key actors in industry, labour, and civil society.

Identifying Gaps in Capacity

The government bodies responsible for managing the impacts of minerals development – social, economic, and environmental – must have adequate resources. A complement to any

review of national legislation could be a review of the resources available to the various state departments charged with managing mineral wealth and turning investment into opportunities for long-term development. This will require analysis of the ability of government at all levels to utilize project revenues effectively for development purposes. This review could be carried out in a manner in which relevant stakeholders at the national level could forward their views.

Other Actors

The World Bank

The World Bank has a pivotal role in this sector. It has been effective in catalysing action, as evidenced by its leadership in promoting the reform of mining codes in many countries and its support for national sustainable development policies. This report has discussed the potential impact of tariff barriers on mineral dependent developing countries. There could also be further analysis of subsidies, which will be particularly relevant for low-income countries. The World Bank is also involved in reflection on its role in the sector through the independent Extractive Industries Review, the internal Operations Evaluation Group study, and internal reflection within its Mining Department. It could play a key role in furthering the sustainable development agenda because it has many strengths:

- *The World Bank has strong links with governments in both developing and industrial countries* – It has been effective in promoting the creation of appropriate legislative and policy frameworks for investment.
- *The World Bank has developed the standards that have become the norm for the industry* – The World Bank Operational Guidelines and safeguard policies were designed for the Bank's internal use, though by default they have become the platform on which commercial banks and other financial institutions evaluate projects and make decisions.
- *The World Bank has a dispute resolution mechanism* – A critical deficiency identified throughout this report is the lack of balanced and effective dispute resolution mechanisms at different levels. The CAO of the International Finance Corporation and the Inspection Panel are dispute resolution mechanisms to which a significant number of disputes have gravitated.
- *The World Bank is a leader in mineral finance.* – The Bank also has strong relationships with regional development banks, export credit agencies, investment guarantee departments, commercial lenders, equity investors, and insurers interested in the minerals sector. This makes it an effective convenor of these interests to solve common problems.

Success in assisting countries to develop legal, policy, and institutional reforms to encourage mining investment has created some problems of asymmetry. Better systems to demarcate mining claims, recognize mineral titles, and provide security of tenure in weak or uncertain legal systems have encouraged investment. But they have not always been sufficiently matched by corresponding reforms designed to take advantage of the opportunities created by that investment to promote sustainable development.

Support for National Reviews of Policy Framework

Countries could undertake review of the adequacy of their policy frameworks to ensure that investment is catalysing development effectively. The World Bank could provide loans or grants to governments to support these processes. Future efforts towards legal or institutional reform could be based on concepts emerging from these national reviews.

Benchmarks for Capacity Building

While the World Bank has been supporting capacity building in this sector, it would be helpful to develop a clearer picture of the kind of capacities needed and those that are already in place. The World Bank is well placed to work with member governments and others to develop a clear vision of what these capacities should be.

The Extractive Industries Review is a process launched by the World Bank Group to assess its future role in the extractive industries and produce a set of recommendations that will guide involvement of the World Bank Group in the oil, gas, and mining sectors. This has potential to help clarify the vision of how the minerals sector fits into the sustainable development paradigm.

Broader Engagement with Stakeholders

It is suggested the World Bank could clarify, in its submissions to the review body of the Extractive Industries Review, its willingness to look for broader engagement with all elements in the sector. The goal would be the development of a sector-specific supplement to the existing guidelines that would address some of the issues that relate specifically to mining projects. The World Bank could play a leadership and an expert advisory role in any steps towards this. The sector-specific supplement might well include the issue of financial surety for closure costs.

Surety for Closure Costs

The World Bank has done much thinking about the benefits of financial surety for environmental and social costs of closure in this sector, and how to incorporate such a requirement into its loans for mining ventures. A key problem is that progress might require some concerted action among the principal lenders in the sector. The World Bank could play an important role in convening discussions of the feasibility and desirability of an agreement among the major lenders in this area to establish a joint set of guidelines for guarantee of end-of-life obligations.

Communities and Small-Scale Mining Initiative (CASM)

Since the World Bank is experienced in community and national development processes, it could greatly assist in the artisanal mining issue through, for example, its continuing support of the Communities and Small-Scale Mining initiative.

Support for Sustainable Development Support Facility

The World Bank's support and collaboration could also be essential in the development of the Sustainable Development Support Facility and could help to develop an integrated model for mine closure planning. It could, for example, lend money to governments to assist them in taking advantage of services provided by this facility. The World Bank could

also provide advice on how it could be structured and the core activities that should be among its priorities.

Supporting Community Sustainable Development Plans

The World Bank could evaluate the usefulness of requiring or encouraging contractual Community Sustainable Development Plans in projects funded by the International Finance Corporation or other World Bank entities. These could clarify the roles and responsibilities of the community, the company, and the host government for sustainable development, extending through closure into the post-closure phase.

Commercial Lenders

Assure Availability of a Fair Dispute Resolution Mechanism

Commercial lenders could require that an effective dispute resolution mechanism be available to affected people and organizations as a condition of loans. Some countries have a high level of access to justice, with open court systems and procedures. Where there is no effective outlet for community economic, environmental, or social concerns, conflicts are likely to escalate and pose higher level of risk to projects. Where the World Bank entities are providing part of the loan, its ombudsman procedures could provide an outlet for complaints. Under the proposed industry Declaration described earlier, a complaints and dispute resolution mechanism would be established, available to companies adopting the Declaration.

Where none of these apply, banks could require review of available dispute resolution mechanisms for key problems that frequently lead to conflicts, such as land acquisition disputes, resettlement, loss of livelihoods, environmental problems, or alleged failure to meet company commitments to individuals or communities. The burden could be on the loan applicant to demonstrate that there is an open and accessible mechanism to resolve disputes. If none exists, the loan applicant could propose an appropriate solution such as an independent arbitration mechanism. Where none could be established, it may be inappropriate to make the loan. The interest of commercial lenders in assuring that this is an element of every loan package should be evident: where there is no way open to fair resolution of disputes, there will be an increasing pressure on banks to serve as judge and jury, a role most banks do not want and are not well qualified to fill.

Support Industry Sustainable Development Code

If the proposed industry Declaration and Code are adopted, commercial lenders could support it as a means to the better management of risk. It could be recognized appropriately in credit decisions. It could lead to easier approval processes, since some elements of assurance will already be present, or lead to more favourable interest or other terms.

Insurers

There are some opportunities that may be of interest to insurers. Insurers would benefit from risk reduction. If the level of risk is too high, there are some kinds of products that insurers cannot reasonably provide. Where the risk is better managed, insurers can make a broader range of insurance products available, or offer existing products to higher limits. If the level of risk is lowered, insurers could and would recognize this through preferential insurance rates.

Support Industry Code

The insurance industry could follow the development of the proposed industry Declaration and Code carefully – perhaps participating in its design – to maximize these business opportunities. If the Declaration and Code emerge as effective tools for managing risk, the insurance industry could recognize this appropriately in the products it offers to companies that adopt the Code, or in the rates it charges them.

Advice for the Sustainable Development Support Facility

In addition, the insurance industry is keen to prevent accidents and emergencies. Most insurance companies would like to see more frequent and effective inspections of key facilities such as tailings dams. The transaction costs to insurers of conducting these inspections themselves are high. The proposed functions of the Sustainable Development Support Facility could therefore be of significant interest to insurers. They could participate in the design of the facility and in defining its tasks to ensure maximum business benefits. They could consider whether these benefits are sufficient to merit financial support from the insurance industry, in the way that this industry has supported other collective risk-reduction organizations in the past.

Equity Investors

Equity investors may want to evaluate the extent to which company participation in the proposed Declaration and Code are likely to be relevant to investor risks and share value. The code is designed to begin with individual facilities but later become company-wide, much as the ISO system has in some companies in the past. As it does so, it increases in relevance to investors.

The United Nations Foundation and United Nations Organizations

The United Nations and several of its organizations have a great deal to offer in a transition to sustainable development in the minerals sector. Among the strengths from which it can lead, two stand out. First, the United Nations houses the Global Compact, a developing initiative for cooperation between the private sector and other interests in world society. The proposal for an industry Sustainable Development Code could explicitly link the minerals industries to the Global Compact. Second, the specialized organizations of the United Nations system, including the United Nations Development Programme, UNEP, the United Nations Conference on Trade and Development, and the International Labour Organization, have unparalleled contacts with UN member governments as well as expertise that can be very useful in developing government frameworks for sustainable development.

A strength – and a weakness – of different UN funds and agencies is that they have different networks, and different entry points of contact into government: finance ministries, labour ministries, environment ministries, and so on. This can create some fragmentation of effort, mirroring the fragmentation that exists in many governments at the national, provincial, and local levels. If a ‘joined up’ approach can be achieved among UN funds and agencies, this can help facilitate a more coherent approach from governments: policies for sustainable development that cut across ministries and departments. A second weakness of the United Nations system is its lack of resources.

If these two weaknesses could be addressed, the United Nations could play a central role in two vital tasks:

- While national governments have by and large achieved a framework that is capable of attracting mineral investment, many of them are yet to achieve an equally robust framework for turning that investment into sustainable development. This is the task of the next decade in this sector. It is clear in broad outline what some of the elements of that structure are; they are outlined in Chapter 14 of this report. But going from this conceptual outline to fleshing out the details, and turning that into legislation, regulations, and policies, will be a difficult task and will require a concerted effort. While the World Bank will have an influential role in this process, it and the UN need to be pushing in the same direction.
- Making this framework effective will require a concerted effort to identify areas where capacity is lacking in industry, civil society, and government. UN agencies could play a critical role in building capacity in governments to put the sustainable development framework into practice.

But these roles require both a degree of coordination among the United Nations agencies that has not yet been achieved, and the resources to make real this potential. A pivotal role in getting to the desired result could be played by the United Nations Foundation.

The UN Foundation could;

- convene the various UN organizations to agree on a ‘joined up’ UN approach to what sustainable development means for the minerals sector; and
- provide resources for the relevant UN funds and agencies to launch credible if modest programmes to assist the sector, which could attract support from other donors.

The Role of Non-Governmental Organizations

Civil society includes a varied set of actors – from individuals through to the panoply of NGOs that includes environmental and community-based groups, policy institutes, churches, and charities, among others. In terms of influence on the mineral sector, the most prominent NGOs have been campaigning organizations that focus on mining issues.

NGOs have at least five roles. They:

- Monitor the activities of governments, companies, and international organizations, and act as a check on social and environmental performance by alerting the rest of society to abuses.

- Advocate for particular groups in society, such as indigenous peoples or communities, and attempt to ensure that the views of these groups are heard in those political arenas that might not otherwise be accessible.
- Advocate and lobby for particular policy positions, often, though not always, mirroring the wishes of a broader constituency.
- Provide services that supplement those of governments, companies, or international organizations, or ensure that services provided by other actors are delivered more effectively and equitably.
- Initiate research and new ideas.

Traditionally, NGOs have fulfilled the invaluable function of providing alternative views by conducting research on policy issues and insuring its dissemination, helping to ensure balanced decision-making by lobbying legislative and administrative authorities, using litigation to vindicate public rights or the rights of those otherwise disenfranchised, and conducting campaigns to build pressure for or against actions of governments, international organizations, or companies. They act as one of several checks on the abuse of power in society.

Functioning as service providers, NGOs also feed, clothe, house, and educate people; provide health care; and build the capacity of individuals and communities to develop better futures. Governments all have limits to their resources and the ways in which these can be discharged. Therefore NGOs are important as a supplementary source of resources. Equally, NGOs do not suffer from the inertia often experienced by government working through the democratic process. The work of NGOs is critical in mediating between the broad uniformity with which government provides services and the enormous diversity of the people who need them.

Support for Sustainable Development

It is important that NGOs are supported and their capacity strengthened to contribute to sustainable development objectives. There is a greater likelihood that NGOs will advance the Agenda for Change if they can demonstrate that they have considered the values and views of other stakeholders. This does not mean diminishing the strength of their arguments, but it also involves demonstrating that views espoused and positions taken reflect a considered approach that respects the rights of other stakeholders. For example, proposed solutions will be more readily accepted if they come from a process that has clearly considered trade-offs.

NGOs as Advocates

Maximizing the ability to hold institutions to account or ensure that the rights of marginalized groups are respected requires that information be presented in the most credible way. The stronger the confidence of other actors that the information they receive from NGOs is correct, the more the information will motivate or pressure them to action.

The internet and the information revolution have opened up significant opportunities for more effective campaign work by NGOs, but they have also created challenges and risks. The challenges, among others, include pressure to digest ever increasing amounts of

information about issues arising halfway around the world and of which the organization has no direct knowledge. The need for rigorous research is clear.

Ensuring Credibility

An NGO can protect itself against misinformation by developing a clear policy of investigation and assurance that it will apply to data it uses.

In the long run, the ability of the NGO community to influence policy will be directly related to their credibility. They should conform to the same standards as they demand of others and be prepared to demonstrate that such performance standards are being met.

The effectiveness of one organization can be affected by the reputations of others in the same area of interest. As with any group of organizations, some NGOs perform better than others. The reputation of the best is affected by the worst, leading to criticism that is sometimes warranted, but sometimes not.

Maintaining Reputations

Just as the approach within the mining, minerals, and metals sector relies on leadership to raise the collective performance bar, while encouraging poor performers to adhere to higher standards, leadership is required within the NGO community to encourage a performance standard that is acceptable to broader society and can be verified. This requires collective action, but will enhance immeasurably the position of NGOs and their ability to influence key debates.

NGOs as Service Providers

NGOs have assumed essential roles in delivering service through developing strong expertise, growing from authentic roots in local communities and having an awareness of local knowledge, and maintaining flexibility in their scope of operations. As funding of development has shifted from government aid programmes to the search for foreign direct investment, the service provider NGOs have begun a process of evolution to adapt to this new reality.

If the world is to follow development strategies based on private investment, those interested in development must interact somehow with those investors. At the same time, the usefulness of NGOs is based on their independence, and there is a fear that interaction with the private sector will compromise that.

Internal Review

All NGO policies could be debated thoroughly within the organization and result in a critical examination of the extent to which current organizational priorities and objectives are supporting goals and respecting sustainable development objectives. The key challenge is to develop models that clearly preserve independence, while seeking a closer interaction with the organizations that, for better or worse, are the principal funders of economic development.

Educational and Research Institutions

Central to achieving the vision presented in this Agenda for Change is the need to move beyond a government framework oriented towards attracting minerals investment to one capable of using that investment as an effective catalyst for sustainable development and enforcement. If a new framework were to emerge, key issues would need to be sharpened. The research community is essential to that process. As a new framework emerges, it will need to be implemented by a generation of professionals that understand these issues better. Research and educational institutions have serious tasks ahead to meet this challenge.

There is a fundamental need to rethink how the curriculum for mining professionals can incorporate a solid grounding in the complex economic, social, environmental, and governance issues of sustainable development. This may include the creation of specialized courses in the subject, for both current students and those already in industry. To be effective in this educational mission, faculties will also have to ensure that sustainable development thinking can spread into the general curriculum. There is also a need to find ways to ensure that an informed approach to natural resource issues in general, and minerals issues in particular, can find its way more broadly into other areas of teaching.

Research institutions could examine the opportunities that sustainable development presents, and how to take advantage of them for the benefit of society. Thinking through the framework necessary to move from attracting investment to creating lasting benefits is a difficult task and worthy of the best researchers.

Research and curriculum development cannot be conducted without funding. Funders of research could review their approaches based on a vision of sustainable development with a key role played by the minerals sectors, and assess where the gaps are and how to implement that vision. While industry has a clear interest in investing in its own future, a 'go it alone' approach to this problem by companies will raise the usual doubts about the impartiality of the results. The best solution might be a conference of the principal donors, representatives of research and educational institutions with an interest in the field, and key industry representatives to discuss a coordinated approach to resourcing the necessary changes.

Specific Initiatives Involving Multiple Actors

An International Indigenous Organization

In the first workshop held by MMSD on indigenous people and mining, it was suggested that an international indigenous organization be established to advise strategically, direct, and monitor industry performance in the arena of indigenous relations. This organization could, with the help of governments and the international community, oversee the implementation of a set of core principles on relationships with indigenous people to feed into the Sustainable Development Code for the minerals sector. Government donors and the international community should support the establishment of this organization. At the second MMSD workshop on indigenous peoples, in Perth, this idea was endorsed and refined.

Protected Areas and Mining Initiative

Current systems of decision-making regarding mining and the conservation of protected areas could be improved. This requires governments, communities, conservation agencies and mining companies to work collaboratively to:

- develop a package of published ‘better-practice’ guidance on mining in IUCN protected areas Categories V and VI, mining near protected areas, and inherited mines in protected areas, as well as incorporating areas of known mineral potential into decision-making about new protected areas. This might be reviewed at the World Parks Congress in 2003 and other relevant forums;
- explore how to improve the consistency and strengthen the application of the IUCN protected areas’ categories;
- define an agreed set of principles and procedures that should be applied when it is proposed to de-designate a protected area, or adjust its boundaries;
- undertake a mapping exercise to identify the scale and extent of threats posed by mining to protected areas;
- engage in research and capacity-building partnerships on these issues with other sectors, notably oil and gas industry. These must ensure that local community interests are taken into account; and
- develop a series of case studies and best practice on innovative mechanisms in protected areas such as offsets or trade-offs.

Reporting Guidelines

A consistent system of reporting guidelines should ensure that key aspects of company practice are publicly reported to a standard that informs stakeholders about the performance of corporations and major projects. It requires the development of a system of reporting and performance indicators that allows for innovation and difference at the level of specifics. The system will only work well if there is trust in the transparency and accountability of those doing the reporting – in the systems devised, the mechanisms used to generate the information, and the process for reporting the data in a useable form to the target audience.

The system of reporting must have the support of a broad cross-spectrum of actors, who therefore must have a role in deciding its form. There has been a great deal of discussion about the need for and the form of a competent reporting system for the minerals sector. Many companies are already working to an internal set of reporting guidelines that reflect current thinking on sustainable development. What is required is the development of a harmonized reporting system.

To develop reporting guidelines for the minerals sector, the following are required:

- A major multilateral organization such as the World Bank could convene an experts group to draft a broad set of principles and operational guidelines for reporting. Organizations such as the World Bank and UNEP as well as minerals associations and minerals corporations should participate in developing the guidelines. Appropriate and meaningful NGO and community involvement is also key.

- In defining guidelines, the sector should work with organizations such as the Global Reporting Initiative and the International Standards Organization as a further step towards achieving comparability between sectors and to ensure the transfer of existing knowledge.
- Research into the identification and development of key indicators for public reporting needs to continue. Organizations such as MERN that have taken a lead in this field should continue to develop the understanding of indicators including the development of indicators, the ways in which indicators relate to each other, and the ways in which they fit into broader management systems. The eventual aim would be to construct a set of ‘must have’ generic yet sector-specific indicators at the project and corporate level, supported by a secondary set of indicators that may or may not be applicable at particular sites.
- The UN, the World Bank, and governments have a role to play in creating a feedback loop. UNEP in particular might be the repository of information and learning on indicators and experiences of their use. Equally, industry organizations such as ICMM and others have a role to play in ensuring that their members understand and adopt the standards specified in the principles, guidelines and public reporting criteria.

A Vision of What Can Be Achieved

There has been a mining and minerals industry for perhaps 8000 years, though it has changed considerably in that time. It is likely to be around a good deal longer, and it will continue to evolve. It is better for all if it evolves towards a framework that increases assurance that it will benefit the interests of those the sector affects. That framework needs to create a business environment for the company in which its interests become increasingly aligned with, and supportive of, the aspirations of others. It requires a world in which the rights and responsibilities of all actors are made clear. (See Table 16–1.)

A Scenario to Leave Behind	Sustainable Development Scenario
Mineral revenues that are spent outside the public view for the benefit of a few	Mineral wealth spent transparently and increasingly to support development
Long running disputes with landowners about compensation, with a legacy of bitterness	Disputes resolved efficiently in ways widely regarded as fair
Tariff and non-tariff barriers to developing countries establishing industries that add more value to mineral products	A level playing field
Mining as a threat to protected areas and biological diversity	Mineral development as a source of revenue to ensure stronger management and the protection of areas critical to biodiversity, and their expansion
Minerals projects setting their own rules in protected enclaves	A shared system of laws and rules that applies to everyone

Table 16–1. Towards a Sustainable Future (continued)	
Arbitrary decisions taken outside the public view based on unknown factors	Decisions taken publicly, after consultation with affected parties, based on clear criteria
Mining and recycling seeing each other as threats	An integrated approach to management of materials in use
Consumers who have no idea where the minerals they use come from	Consumers who know where the products they use come from and increasingly act on that knowledge
Turning on the television to be surprised by human rights or environmental abuse by suppliers	Knowledge of supply chains is used to manage risks proactively and minimise surprises
Mining as a threat to indigenous peoples cultures and societies	A minerals industry that works in partnership with indigenous peoples communities to provide a basis on which they have more control over their own future
Mining or minerals plants as dangerous and dirty threats to worker and public health	The minerals industries as a catalyst in promoting sustainable improvements in public health
Bitter animosity between companies and unions; increasing unemployment and disabled workers with no one to turn to	A safe, productive industry that takes care of the people it leaves behind
A legacy of ghost towns, poverty, and pollution	Integrated planning for sustainable post-closure environmental, social, and economic benefits
Short-lived, mainly accidental exchanges among some but not all stakeholders	Ongoing, intentional, and inclusive dialogue that involves widening circles of stakeholders

The Process from Here

The MMSD project actively encourages all interested people or organizations to comment on this Draft Report. The more thoroughly these ideas are tested, the better the results will be. Comments will be accepted up to 17 April 2002.

The project intends to finalize the text of the report and make it available on 1 May 2002, though the final published report will not be available until June. The project will formally go out of existence on that date. The report will be an attempt to portray the sustainable development debate in the minerals sector as of the time it is written and to draw possible conclusions from it. The dialogue existed long before MMSD and will continue long afterwards.

But the many challenges faced by the sector – obvious to all the parties in business, governments, and civil society – may overwhelm the discussion. The opportunities can be lost if there is no dynamic process that will help drive the debate forward to a better place for all. If there is one lesson of the past in this sector, it is that the discussion, left to itself and to chance, will often result in glacial progress or stagnation.

The upcoming Toronto conference has significant potential for driving the debate forward

in constructive directions. Where it goes depends on its participants. But it could achieve some of these goals:

- The Toronto conference could be a place for establishing priorities, not just for industry or government, but for a wide range of actors in the sector, to allow all of them to focus on a manageable number of things in the near term.
- It could set some guidelines for processes directed at specific issues, to give all concerned a greater confidence in their legitimacy and reduce the transaction costs in setting them up.
- It could define the next steps. This is important for giving all the participants confidence that there will be next steps. A concern of many has been that the current focus on sustainable development in the minerals sector would only be a 'one-off' exercise rather than the beginning of long-term commitment necessary for real progress.

Beyond Toronto, the World Summit for Sustainable Development will be an important upcoming opportunity. It will provide a focus for world attention on sustainable development, hosted by a country that is among the world's leading mineral economies, in a city that has been built on mineral development. There will be few better opportunities in our lifetime to raise the role of the mining, metals and minerals sector in sustainable development before a more interested audience. The opportunity should not be lost.

How to take advantage of this opportunity will of course be discussed internally within all stakeholder groups. This issue will also be discussed at the Toronto conference.

The World Summit is unlikely to achieve any definitive resolution of issues but can be an important step in setting a framework for driving the debate forward faster and better.

Is Something Missing?

There may yet be something missing to drive the debate forward. That is the difficulty of establishing an effective dialogue and maintaining it once established. Much of the dialogue to date has been partial: some people from one part of the sector talking to some people from another part of the sector. This has sometimes been productive. But it rarely has brought all the interests that have to be part of the solution together in one place. Where people have been excluded, by chance or design or their own choice, they tend to mistrust the process and try to block the results.

When interchanges between actors in conflict have occurred in the past, they have tended to be accidental, rather than deliberate. They have depended on chance: who has attended what meeting, or personal chemistry between people who meet there. They have tended to be short-lived: they last as long as the circumstances that led to the discussion, or as long as the individuals who sparked them have the time and focus to keep them going.

Many actors in the sector have felt there would be benefits in moving from a partial dialogue to an inclusive one with more of the people necessary to get decisions made and actions taken and to try to create an ongoing results-oriented dialogue that adds value.

There are a number of rationales for pursuing one or another of the steps put forth in this Agenda for Change. Among them are more effective and useful setting of priorities, moving more quickly to discussion on the merits, and lowering transaction costs.

Setting Priorities

The way forward is hampered by the difficulty of establishing and sticking to a set of priorities. There are many different agendas, and everyone wants to start with a different priority. During the course of this Project many serious issues have been raised. One conclusion of the Project is that few people deny the validity of any of these issues, even though they may phrase them differently, or see different solutions ahead, or distrust others' intentions in raising them.

It is impossible to deal with all the issues at once. Effective leadership could focus the agenda on a manageable number of issues. It would be helpful if leaders throughout the sector – in industry, government, NGOs, labour organizations, indigenous communities, and elsewhere – could attempt to achieve some convergence on a ranking of priorities. This would not mean that they agreed on what to do about those problems, but it could lead to a focused discussion on making progress on those priorities.

That kind of discussion requires a place where leaders from all elements of the sector can periodically talk about agenda setting. Opportunities to do that have been very rare and have generally involved only a few of the principal parties.

Talking about Ideas on Their Merits

Too many valuable ideas have died because some in the sector have immediately discounted them due to their source. Information from virtually no one is universally accepted or trusted. Good ideas should be discussed regardless of their origins; information in which more people have confidence could be developed.

A place where ideas can be discussed openly without excessive concern is needed. This requires a space that does not 'belong' to any of the actors – or better, that it 'belongs' to all of them as a group rather than any one of them. This does not mean seeking an 'objective' process, since no one can define or measure objectivity. It means fundamentally two things:

- a process that can stay in effective communication with all principal stakeholders and
- a process that is not controlled by any of them individually.

These criteria are relatively easy to define, and ways to measure and evaluate performance can fairly easily be derived from them.

Lowering Transaction Costs

There is a need to drive debate forward on contentious, complex issues in the interest of sustainable development. Where these issues are broad in scope and involve many stakeholders, a process of elimination drives those with this objective in a particular direction – to try to create a space for discussion that meets the preceding two criteria.

In the forest products industry, this has led to the creation of a Forest Stewardship Council. In the dam building sector, it led to the World Commission on Dams. In the minerals sector, it has been the model that has been pursued, with variants, for things such as the recent cyanide code, the White Horse Mining Initiative, and the MMSD Project.

Processes of this type seem to be able to create results that could not be created in any other way. Whatever anyone's view of the cyanide code, it is clearly a better and stronger product for having come from such a process. And however far MMSD has moved, it could not possibly have got there in this amount of time without substantial attention to process.

But setting up such an endeavour requires a significant amount of time, energy, and money. The World Commission on Dams, for example, spent an entire year establishing the rules under which the Commission would operate and selecting its members before it launched into its work programme. And maintaining the process required a continuing investment of energy and resources down to the Commission's last days.

The investment is not simply on the part of the management of the process and its sponsors but by everyone. All stakeholders have to invest in examining the process, setting the rules under which it will go forward, and developing confidence that it will not work to their disadvantage.

Forum on Minerals and Sustainable Development

This project has identified a number of issues that seem very ripe for forward progress: management of tailings and other large volume wastes, action against corruption, integrated planning for closure, community health and mining, and biodiversity and protected areas, to name just a few. But forward progress on any of them will require engagement of a variety of stakeholders. Effective engagement that produces results will require attention to process, which requires investment. There is no effective alternative.

Creating five separate processes of engagement to deal effectively with just these five issues would require a great deal of the time and attention of leaders of NGOs, government, international organizations, and companies. It will also cost a good deal of money. A less costly way of proceeding, and one that could yield better long-term results, would be to make the investment once, instead of every time an issue came up.

A Forum on Minerals and Sustainable Development could be established. This would not have to be a permanent bureaucracy. It could, for example, resemble the upcoming Toronto Conference, but in a more advanced version at some determined intervals in the future. It could be housed in any number of places.

This Forum could perhaps achieve these goals:

- *It could be a place for establishing priorities*, not just for industry or for government, but for a wide range of actors in the sector, so that each could focus on a manageable number of tasks in the near term.
- *It could set guidelines for processes directed at individual issues*, to give all concerned a greater confidence in their legitimacy, and reduce the transaction costs in setting them up.

- *It could endorse those processes* if they met those guidelines, adding to their legitimacy and increasing peoples' confidence in participating in them.
- *It could endorse the results of those processes*, giving them broader acceptance and ensuring that their principles are more quickly incorporated into company policy, industry codes, best practice guidelines, lending policies of banks, and laws and regulations.

These are examples of actions that could be done by a body of people who meet periodically, with a light logistical structure to plan the meetings.

Whatever the reaction to this suggestion, it does seem clear that getting to a better place will be easier if there is some kind of a structure than if there is no structure at all. If the mining and mineral sector returns to dialogues among some but not all key actors, happening more or less by accident, and fading as fast as they bloom, the sector will be going backward.

The goal might be summarized as in Figure 16–1:

Figure 16–1.	
FROM	TO
Partial dialogues among a few actors	Increasingly inclusive dialogue, that engages ever-broader circles
Accidental dialogues, that occur by chance	Intentional dialogues, deliberately planned and pursued
Short-term discussions that flourish but then die	Ongoing engagement for the long term

We hope that the MMSD project has been of some service. We look forward with great interest and anticipation to responses to this document.