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Sustainable Development

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Meeting Report on Corruption Issues in the Mining and Minerals Sector

Berlin, 7 September 2001

Co-hosted by Transparency International

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International
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World Business Council for
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Contents

Introduction 2

Issues and Dilemmas 3

The Role of Government Policies 7

The OECD Convention and Corporate Codes of Conduct 8

Credibility & Monitoring: Collective Action & the Role of Civil Society 10

The Way Forward 12

Annex I: Agenda 14

Annex II: List of Participants 15

Annex III: Meeting Objectives 16

Introduction

An experts' meeting on *Corruption Issues in the Mining and Minerals Sector* was held at the Berlin offices of Transparency International (TI) on 7 September 2001. Co-hosted by TI and the Mining, Minerals and Sustainable Development (MMSD) Project, the meeting followed earlier events hosted in London by MMSD and the International Institute for Strategic Studies on *Armed Conflict and Natural Resources*, and in Berlin by MMSD on *Human Rights Issues in the Mining & Minerals Sector*. These three meetings focused on issues that relate to the sector's 'social licence to operate.' Over twenty experts attended the meeting, representing mining companies, non-governmental organisations and the academic world. Participants came from as far afield as Australia, South Africa and Argentina. Ian Marshall of TI Canada, provided the background paper, and presentations at the meeting focused on corruption issues in the mining sector, case studies from individual mining companies, and the role of governments.

As TI's chairman Peter Eigen suggested, many goals of sustainable development could not be achieved without a systematic attack on corruption. Many mineral-rich or resource-rich countries feature heavily at the bottom of Transparency International's Corruption Perceptions Index. TI's Annual General Meeting in 2000 also singled out the mining, petroleum and forestry sectors for particular attention. It seems that natural resource-based industries do have a common set of issues, and dialogues on corrective action have begun in the petroleum and mining sectors.

As other TI participants pointed out, in a globalising world the era of enclave projects has come to an end, and the activities of mining companies are subjected to ever-closer scrutiny. Company representatives at the meeting were also keen to demonstrate the industry's increased awareness of the impact of corruption on their business – it impairs their reputation, increases shareholder risks, encourages poor and inefficient resource use, and, in

the worst-case scenario, can lead to social unrest. The industry needs to demonstrate collectively that it has the will and the ability to operate with transparency and towards sustainable development. Mr Eigen hoped that the mining sector could discover the kind of solutions that other sectors had in certain parts of the world, especially the other natural resource sectors.

The meeting highlighted the need to gain empirical evidence for measuring corruption in the mining sector. As one participant suggested, however, the sector was lagging behind in its attempts to gather such information, and proposed that it should start by learning from best practice in other sectors.

A serious challenge lies ahead for the mining sector to act collectively – and seek to build proper alliances with actors beyond the sector itself – to prevent corruption. Whichever path is chosen, one thing is certain – moral leadership, collective action and consistency will be of paramount importance. As M. Schloss, Executive Director of TI, pointed out, for lasting solutions to emerge, "*corruption needs to become an issue owned by the industry itself, brought higher in the policy agenda of multilateral organizations, such as the World Bank, and developed with a better strategic alliance of stakeholders and relevant NGOs.*"

Issues and Dilemmas

At the meeting, the opening presentation described corruption in the public sector as "a function of the size of the rewards under a public official's control, the discretion that official has in allocating those rewards, and the accountability that official faces for his or her decisions." In the mining sector, large sums of money flow from the companies to governments (in the form of royalties, taxation, and other payments), and great discretionary power lies in the hands of those responsible for collecting and distributing these revenues, as well as those who grant the licence and monitor the operations at both the permitting and the operational phase. TI and other institutions' analyses show that the greater governmental discretion, the greater the temptations for corruption. Where governance structures and institutions are also weak, it is not easy for civil society (if it exists in an organizational structure at all) to hold corrupted officials to account. In these circumstances, corruption is likely to thrive.

Before examining international conventions or codes of conduct as possible drivers for change, the meeting attempted to elucidate the issues and dilemmas associated with governmental policy and, firstly, the companies themselves. In this area, discussions evolved around how companies should act – alone or otherwise; boundary issues – in terms of revenue distribution and inadvertent corrupting influences; capacity dilemmas; and mine cycle and closure issues.

There was lively debate at the meeting about what "foreign mining companies could do to assist anti-corruption efforts in mining countries." One participant attempted to answer this question by suggesting that the Coffee Fund in Colombia could provide a positive example. Coffee producers in Colombia established a board where the producers could monitor the collection of taxes. They also have a say in the allocation and distribution of taxes. In other words, the producers have taken a 'stake' in these issues.

The Colombian example may not, however, be totally applicable to the mining industry, not least because, unlike the coffee producers in Colombia who are native to that country, mining companies are often investors in foreign countries. This is the crux of the problem: as foreign investors and producers, mining companies cannot be seen to infringe upon host countries' national sovereignty. That said, the experience in Colombia shows the potential of developing and involving stakeholders in a manner that creates greater transparency and accountability, and, more importantly, contestability in resource mobilization and allocation.

Where they find themselves having to operate in corrupted business environments, mining companies may find themselves more exposed than they would wish in taking or advocating measures to combat corruption. One participant suggested, however, that mining companies needed to take the lead responsibility for combating corruption. Although companies may not always find it as easy as they would wish to be transparent about their payments to governments, he suggested that in countries where no formal or policed reporting structure exists – equivalent say to UK Company House, where regulators and customers can get easy access to company records – it is up to the companies to be transparent about their payments to governments.

Another participant pointed out that to be effective, the go-it-alone practice that prevails in the sector would have to give way to developing alliances and the empowering of other stakeholders. Attempts by mining companies to bring transparency into their operations have, in the past, brought conflicts with governments. One example of this was Newmont's experience in Indonesia.

Newmont, an American mining company, unilaterally decided to disclose (via advertisements and press releases) the amount of royalties and other payments it made to the national government of Indonesia in Jakarta. When it became clear that the government had not forwarded money on to the province, Newmont found itself in conflict with both the central and the regional governments. Even though Newmont helped to expose the fact that money was not making its way back to the communities, the disclosure also had the effect of shifting the focus onto the company itself. It generated a perception of Newmont as a rich "cash cow", and demands for large payments rocketed from other groups, such as the military. The process of decentralisation/regionalisation in Indonesia, that began in 2001, also created new sets of problems. Given that local government institutions had weak (or non-existent) financial controls and corruption prevention procedures, they were ill equipped to deal with the funds so dispersed. Instead of increasing the local share of mineral revenues and investments, corrupt practices were "dispersed to the local level." As another attendee pointed out, governments are not necessarily unified or monolithic entities.

An attendee suggested that Newmont's action was naive – one could not expect to improve the situation by trying to be unilaterally honest in a dishonest world; the company was too isolated and needed partners. Even though Corruption Watch operates in Indonesia, there is no civil society to work with Newmont in the local area. The company has tried to build capacity in the local community through technology and skills transfers, including holding a number of seminars on taxation, law and finance. But capacity building is a long-term project, and difficult to achieve within the lifetime of the mine's operation. Despite the

fireworks, Newmont continues to regard transparency as a viable long-term strategy. Its experience in Indonesia affirms the need for coalitions in anti-corruption efforts.

Another issue much debated at the meeting concerned the spheres of influence of multinationals and the boundaries of responsibilities. Even though, for example, the use and distribution of revenues by host governments is not directly a corporate issue, corporations are affected by it. A mining company attendee confirmed that this is a pressing issue for the sector. The industry needs to demonstrate its ability to make a net contribution to the economy of the host countries and to the communities in which it operates. This applies not only to the mining sector, but also to oil and gas.

How can companies make sure that their payments to central governments get back to the communities and that the revenues generated from a country's natural resources will flow back into that country?

In many countries the flow of revenues from central government to local areas hardly ever materialises - often due to corruption. When the distribution of mineral revenues appears unjust and corrupted, it may lead to insurrections, as illustrated by the Bougainville conflict in Papua New Guinea. An end to corruption is thus important for companies because it helps to "prevent social violence." After Bougainville (and actually in response to suggestions by the Porgera Joint Venture to help cure a social problem at the Porgera Mine in the Highlands of New Guinea), the Papua New Guinean government set up an infrastructure tax credit programme, and a percentage of tax has since been kept aside for local investments.

Many companies use trust funds or foundations to secure benefits for the local communities. It was pointed out that in so doing, mining companies are "directly challenging the prerogatives of governments." Issues such as revenue distribution and transparency, "go right to the heart of debates about sovereignty."

There was a heated argument about the effects of company-funded facilities or developments for local communities. An industry representative reflected that while companies took pride in building schools or hospitals for local communities, in the longer-term their investments could prove counter-productive, by allowing corrupted governments to circumvent their own obligations to provide such basic public services for its people. Knowing that mining companies would be footing the bill, governments are less likely to provide the money themselves. Have mining companies been inadvertently "helping corrupt governments to avoid fulfilling their obligations?"

Companies can indeed be caught in 'vicious circles' creating situations that perpetuate the governance or capacity deficit. In areas where governments failed to fund or provide public services, local communities would expect mining companies to fill the void. 'Double taxation' is effectively the norm: local representatives said, "forget about the tax, what is the company really going to do for us?" Some companies reported having received requests (in writing) to ignore the mineral contract and just "give us the money."

One NGO representative noted that, as in any "vicious circle or chicken-and-egg" problem, one starts with the chicken or with the egg, but one must start somewhere. Just as in the

early days of Western United States, where governance structures were weak or non-existent, mining companies must relearn to find a way of involving civil society and making them stakeholders in the success of mining companies. They will then have the necessary support from NGOs or the societies in which they operate for the appropriate use of the resources generated by mining activities.

Another NGO attendee highlighted the need for companies operating in remote areas with a governance deficit to watch out for unintended consequences. In Sudan and Indonesia, for example, companies became "part of the very problem they were trying to solve". He argued that a number of multinationals were inadvertently guilty of aiding state-led human rights abuses when the governments used schools or hospitals built by multinational companies to torture their own population.

As one participant contested, whilst it was important to look at the issue of sustainable development with a long-term perspective, many short-term or immediate considerations should not be ignored. Different countries have "different time horizons" and capacities to achieve sustainable development. The example of Zambia was cited, where the government has little capacity to provide the desired level of action or money. In such a case, linking the company-funded building of schools and hospitals for their local communities with aiding or exacerbating corruption was a somewhat extreme point of view. "Governments were not always guilty of withdrawing from public service provision," he said. "In many countries in Southern Africa, the cash was simply just not available to fund any public service or 'development' before the mineral industry arrived. In any case it is fair enough that the local communities should be compensated upfront – they have to bear the brunt of the impact of mining."

The above example reveals the heart of the issue: in addition to being created by weak institutions and other factors, corruption can also be poverty-driven and one cannot address the issue of corruption in isolation from the economic situation of the area in question. In this context, poverty eradication should be a key component of any policy of sustainable development.

Participants at the meeting agreed on the need for mining companies to provide viable closure strategies. When a large oil company showered an enormous amount of money on local communities in Africa, it greatly worsened corruption. The opportunity for making money would disappear once the company left the area, so why would one not enrich oneself "while the cash cow is around?" Mine closure produces similar problems: how can local infrastructures be maintained after the mining company and its money has gone? Exit strategies need to be built into mining company operations, otherwise corrupt practices will only increase in quantity and scale.

There was considerable disagreement on where corruption was most likely to occur in the mining cycle. One group argued that the most serious incidents of corruption, in the form of bribery and corruption, take place during the acquisition stage or when the development permit is to be obtained. Others maintained that once the investment has been made, and is upfront and substantial, mining companies are more likely to face demands and extortion, especially from corrupted officials in cohorts with a corrupted judiciary.

One participant cited an example from a country in Central Asia. Despite the fact that a mining company obtained a written Direction to Pay into a specified bank account from the Minister of Finance and had that Direction reviewed by the Governor of the Central Bank, it was alleged that the mining company unwittingly paid over thirty million dollars to the private bank account of the President of that country. While the company, pursuant to its agreement with the country, did eventually recover most of its money from the government in question, the attendee citing this case pleaded the need to gather and share intelligence. This point was further emphasised by another participant, who claimed that increasing sophistication in the way corruption takes place in recent times also points to the need for better information and intelligence about potentially corrupt officials and organisations to be circulated amongst key players in the sector.

The Role of Government Policies

As mentioned earlier, research shows that discretionary powers in government are a major factor in creating conditions for corruption. This was a view acknowledged by nearly all participants. An attendee suggested that accountability could be ensured through the IMF or World Bank, since many of their diagnostic tools could be used as a means of measuring and ultimately fighting corruption. Another participant argued, however, that there may be conflicts of interest, since many of these institutions' member countries are often a part of the problem themselves. It was noted, though, that this issue notwithstanding, the World Bank has started to address some of the systemic issues that generate corruption.

Following on from this debate, a speaker discussed the use of legal and tax reform in the mining sector as a tool for combating corruption.

What should be in any mining codes: would governments go along with the setting of specific taxation rules within their general tax codes, or should these rules be set in distinct legislative instruments? Does the bureaucracy associated with mining codes mean that a mining agreement is a better instrument of reform? Whatever tool is used in the mining code, "it has to be both stable and flexible." The ultimate goal is to minimise the scope of administrative intervention. This involves limiting the number of administrative entities involved in decision-making and in the dealing of the investor with the authorities, as well as limiting the number of administrative decisions. To minimise discretion, the code needs to establish clear and objective criteria upon which decisions are made – regarding the granting and renewal of title, the treatment of subcontractors, and international accounting standards. The mining code should also establish access to information regarding titles and available surfaces. In any event, mining codes and associated legislations should be tailored to the enforcement capacity of the countries concerned, and bolstered by legal and other acts that help bring about greater transparency to assist in bringing corruption to light.

The issue of earmarking company payments to central governments for the local communities was discussed at length. Such arrangements could be hard to sustain in the eyes of the International Monetary Fund (IMF), since earmarking violates the general principles of fiscal management. A number of World Bank projects that attempted to set up tax systems for direct transfer of revenues to the affected communities could be at odds with

IMF-advocated policy because they contravene specific budgetary laws. In mining code reform, lateral transfer may violate the agreed set-up with the IMF.

Mining companies were aware of cases where there was only a very slim chance of their royalty payments to central governments providing a fair return to local communities. A compromise that involved some tax going to central government and the rest being paid direct locally was suggested. As a participant remarked, however, "while such a system may be supported by mining companies and the World Bank, it is less likely to be endorsed by most central governments or the IMF."

Even with an excellent regulatory framework in place, compliance does not necessarily follow. To encourage the application and enforcement of these laws, there should also be access to administrative recourse, to an independent judiciary and to international arbitration. An attendee emphasised that MMSD should cover the need for a major judiciary review in its final report. Given the complexities of legal reforms around the world, considerations should also be given to alternative methods for resolving disputes, such as arbitration, mediation and other methods short of full-fledged reforms that can also make a major impact.

The OECD Convention and Corporate Codes of Conduct

As a speaker made clear, "corruption thrives in the dark and where there is a lack of accountability." Any attempts to combat corruption would be useless without "accountability, control, enforcement" – the rule of law.

The OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions is a useful intergovernmental vehicle to combat corruption and ensure accountability. It was originally signed in 1997 and came into force in February 1999; it has now secured the signatures of 34 states and has been implemented in 29 of them. Following the example of the US Foreign Corrupt Practices Act (FCPA), the Convention criminalises the offering or the giving of any advantage, directly or through intermediaries, to a foreign public official, in order to obtain or retain business, or other improper advantage in the conduct of international business. It does not, however, cover 'small' facilitation payments or payments to foreign political parties, and has only limited jurisdiction when it comes to foreign subsidiaries.

The Convention's provisions include sanctions, enforcement, accounting and auditing standards, mutual legal assistance and extradition, as well as monitoring and follow-up; jurisdiction under the Convention would be extra-territorial where possible. Crucial implementing legislation still needs to be put in place at the national level. In addition to the OECD Convention, there are also other inter-governmental and national tools and vehicles, global business codes, and sectoral codes for lawyers, accountants and consulting engineers. These could provide a basis for the sector to develop anti-corruption principles that could be extended beyond the remit of merely the OECD countries.

Many individual companies have drawn up codes of conduct for the company's staff and agents to combat corruption internally. Especially since the passage of implementing

legislation in the OECD countries, the national law of most corporation's home countries now requires that, when operating in foreign countries, their employees must at least meet the anti-corruption requirements of the OECD Convention with respect to bribery of foreign public officials.

Despite the adoption of these codes, problems persist. Firstly, for these codes of conduct to work, they "need to have some moral authority" or leadership from the top level of the company. Whether codes of conduct can control or affect corporate behaviour also depends on the compliance programme the company uses. A number of lingering grey areas may also continue to cause confusion. As mentioned above, the OECD Convention does not cover what are known as 'facilitation payments.'

Helplines for employees and the public to call to report cases of corruption have been used by a number of companies to check and/or deter internal corruption. Participants generally greeted this idea with interest; one adding that an oil company in Nigeria had also opened such a line and received 80 calls in its first year of operation, 50% of which were corroborated.

One speaker, however, questioned, "what happens to the information when it comes into the helpline?" If the incoming information was critical of heads of department at the company itself, "how could those who were part of the problem be expected to solve it?" As one participant pointed out, most of these problems arise at the operational level, and reporting to one's superior is not really an option if one suspects he or she is involved. Certain corporations have specified in their Code of Business Conduct that employees who find themselves in this situation should contact a person not in the operations side of the business, such as the legal counsel for the Region. This provides quick knowledgeable advice which is independent of the operational chain of command. In general, however, the consensus of the meeting seemed to be that more independent monitoring systems were required; and this might be something that TI could set up in the future.

As an alternative form of internal monitoring, one mining company is currently using ethics forms for employees to report irregularities (and to sign off). An outside auditing firm has been employed to monitor the process. If any irregularities are reported, an Audit Committee will discuss them in closed session of the Board.

An attendee emphasised that the use of helplines or other internal ethics statements would have a limited impact unless they were backed up by a sector-wide monitoring strategy. It would also help if there were a global database of cases armed with the necessary information; a 'stick and carrot' approach could be used to ensure company participation in the strategy. Such an approach might help to tackle "the sector's inability to monitor itself."

The shape of any action taken should be practical and applicable to the field. A participant was concerned that decisions made in Toronto or London could not easily be applied to different situations in Latin America or Africa. Similarly, whilst the OECD Convention might provide a framework for action, he doubted its applicability to the real world of developing countries. On the other hand, experience with countries with such regulations suggests that the sheer existence of legislation criminalizing corruption, and the associated

risks that they generate for the management of enterprises, helps in creating the necessary incentives for proper and effective self-regulating codes of conduct.

Credibility & Monitoring: Collective Action & the Role of Civil Society

Throughout the day, questions were raised regarding the credibility of the sector's attempts to be transparent. In South Africa, for example, highly regulated codes of conduct already exist in both the public and the private sectors. As more than one speaker suggested, however, as long as the mining industry insisted on monitoring its own compliance with such regulations, confidence in the sector's transparency would be increasingly undermined.

Transparency, suggested a participant, "is only effective when the people believe in the speaker." In Peru, for example, even though a mining company has disclosed its payments to the central government (as a long-term method of combating corruption), regional government and civil society, due to their customary distrust of corporations, may still "not believe that these payments were actually made."

As mentioned earlier, there was much discussion about public disclosure of revenues. Global Witness, an NGO based in London, has been encouraging companies in Angola to "publish what you pay." An MMSD participant asked whether mining "royalty payments could be made publicly available in one centralised place." One company representative did not think his company would have a problem with this and pointed out that yearly information on a country-specific basis had already been made available to the public. Another participant mentioned that his company already published business-by-business reports for its operations in South Africa. As other participants pointed out, however, company willingness to disclose transactions in this way was not always sufficient, because in some of the country examples cited, governments claimed that such disclosure contravened Official Secrets Acts.

Such problems emphasise the need for alliances both within the sector and in cooperation with other sectors. As one participant stressed, "Because corruption is a collective problem for the industry, it requires a collective solution." To begin with the mining industry itself, any collective action against corruption needs to engage different parts of the industry. The need to distinguish between "juniors and majors" was stressed, as were the differences between the exploration-only juniors and the juniors with actual mining operations.

For the exploration-only juniors, the time horizons of their involvement were more short-term compared to majors or to operating juniors. Their comparative advantage over the majors is that they may operate on a shoestring and be less risk averse. As such they are also less likely to be constrained by the threat of indemnity payments for past misdemeanours. By the time any problems surface to haunt the operators, the juniors are long gone or the people behind them have taken out virtually all the company's assets and left a shell that is judgement-proof. Certification, under such circumstances, may not be the best form of progress.

A speaker suggested that the best way forward might be to "start with the majors and then move to the 'second tier' [operating] juniors, go to financial institutions, and then this might reach the more maverick ones." The same participant questioned whether the International Council on Mining & Metals (ICMM) – an industry association formerly known as the International Council on Metals and the Environment (ICME) – would be the appropriate mechanism for moving the industry forward, since "some juniors regarded ICMM as merely a vehicle for the major companies."

Cross-society coalitions, suggested a number of attendees, are the best way to combat corruption in the sector. Collective action requires that mining companies become more proactive in "broadening the cohorts." A participant suggested that national or local chambers of commerce and/or business associations in some countries could be a good place to start mobilising interested parties. A broad coalition comprising mining companies, civil society groups (including the academic and labour elements) and companies from other sectors would give a broader representation across a variety of interests. It would also minimise the risk of one or other party being victimised by governments, and it would give corporations, and others, an opportunity to join anti-corruption efforts without directly confronting government.

A point that was re-emphasised in subsequent break-out discussions was the need for such coalitions to be broadened still further to incorporate cross-sector alliances. It was generally agreed that many of the corruption-related problems facing the mining industry were shared by other resource-based industries (oil, gas and forestry), and sometimes also by other major foreign direct investors. Some participants therefore concluded that the most fruitful or necessary partnerships would have to cross individual sector boundaries.

An industry participant reflected that, from an operational point of view, the idea of broad, far-reaching alliances was "very idealistic." Most of the time, companies were only struggling to make the best out of bad situations; trying to create enclaves or "islands of integrity" was perhaps all that could be achieved. [To address such a situation, TI has created a system of Integrity Pacts that are in force on an experimental basis in a number of projects.]

Most participants agreed on the important role for civil society to play in ensuring the accountability of both companies and governments. As one attendee pointed out, since governance is weak in many mining countries, civil society can help to "demand more action from government." In addition, NGOs on the ground could be a crucial part of any independent monitoring system. One TI participant suggested that if companies agreed to disclose all of their payments to governments, civil society groups could use this information to campaign against corrupted governments.

TI also urged the sector to accept a role as an agent of positive change, and to seek cross-examination from other stakeholders on such issues as the implementation of their codes of conduct and their investments in local communities. With or without support from the mining industry, NGOs will continue to undertake the monitoring of the mining sector. It thus makes sense for mining companies to seek and endorse constructive association and coalitions with civil society. In the short term, some companies may fear that such an approach would endanger their relations with the governments, and erode their competitive

advantages. In the longer-term, however, there is no doubt that companies will benefit from operating in more transparent settings.

Ultimately, it was agreed that there were limits to working with governments that were not transparent. Even though the Colombian coffee fund example (as referred to earlier) is not a perfect template for the mining industry, "it shows what can be achieved if industry can get the key stakeholders on board," either by involving them in decision-making or giving them joint-ownership of the process. Could something similar be established in the mining and minerals sector? The answer may lie in the ability of the industry "to achieve genuine buy-in, not merely in terms of good PR, but in the shape of a real stakeholder process."

On this issue, the industry could, however, find itself confronted with a major problem that extends well beyond the debate about corruption issues: how does one involve civil society if there is none? In many mining areas in Indonesia or parts of Africa, "where there is little civil society to speak of", it may be difficult for companies to find local counterparts to assist in combating governmental corruption. Repressive government policies also stand in the way. Civil society groups in Angola, for example, find it hard to hold the government to account since there is no free press, which limits the ability of NGOs to access and distribute key information. There is no shortcut to solutions – again, capacity building (and patience) is the answer.

The Way Forward

The workshop concluded with reports from three break-out groups, convened with the task of identifying 'best bets' for action that should be taken by each of three different constituencies: companies alone; companies working with other companies and partners at the national level; and companies working with other companies and partners at the global level. There was a large amount of crossover between the three groups and a broad consensus emerged around a number of key themes. It was particularly heartening that a number of concrete deliverables emerged in each area.

In the area of *company practice*, the groups stressed the need for guidance to emanate from corporate headquarters. Management would need training on how to deal with corruption issues and should, in turn, be responsible for ensuring staff at all levels were similarly educated. Key amongst the different strata of the company is the field level at the 'sharp end' of the industry. The knowledge gap on how to cope with corruption issues needs to be addressed and not just within the company – this needs to be extended to partners as well. Codes of conduct need to be as explicit as possible and applied to the global picture as well; again, the importance of the codes filtering down to the field level was emphasised. The idea of the corruption 'helpline' was a popular one with all groups, but for this to really work it would require staff training and careful implementation to be sufficiently user-friendly.

For companies working with other *companies and partners*, co-operation was lauded as the only way to cope with the complexity and sensitivity of individual cases of corruption; companies would gain very little success trying to act unilaterally. In terms of the identity of such partners, local academia could provide a balance with objective reasoned analysis,

local/national TI chapters might be able to provide the requisite local expertise, and the media and NGOs should be co-opted into alliances to provide the appropriate critical checks and balances. The function of such partnerships was manifold: firstly to share information on legislation, as well as networking and advice; secondly to develop scrutiny vehicles of sectoral financial flows (currently just at the pilot level), which can ultimately act as a means of ensuring a more equitable allocation of funds for social and other investments; and finally to promote reforms aimed at reducing discretion and other incentives that generate (demand side) corruption.

To some extent, such *partnerships* could then be replicated *at the global level*. With information being shared across the sector and inter-company learning maximised between the global players, "crisis teams" could be formed at both national and international levels. "International arbitration should be sought," and information about OECD's regulations needed to be disseminated beyond those within the OECD. What scope was there for involving the World Bank, IMF or UNIDO in such partnerships? Additionally, international recording mechanisms, such as global databases of financial flows, could provide an invaluable way of monitoring and comparing incidents of corruption within the sector. ICMM/ Transparency International working groups could be formed to develop common actions and mining industry principles. Alternatively, common action could be fostered by more organic linkages with good governance initiatives, such as those associated with OECD or other Convention implications within industry.

As an initial step, the meeting usefully highlighted the level of complexity related to corruption issues within the mining and minerals sector. Identifying problems and areas of concern is relatively straight forward, but the means for eradicating them requires much more attention. The industry faces practical ground-level problems in areas where governance is often very weak, and where guaranteeing an equitable distribution of mining company investment can be hamstrung by international budgetary law. As a first phase, such a meeting was extremely productive in that it allowed various different players to discuss the potential for future collaboration, but it was also clear that greater analysis and action was required. Suggestions for progress revolved primarily around partnerships at different levels (whether within the industry or in national and international alliances with civil society), and the need to translate the spirit of international Conventions into practical action within the sector.

The meeting was a promising beginning and the level of frankness highly encouraging for tackling the tasks that lie ahead. The constructive criticism and suggestions of NGOs that mining companies should play a leading role, coupled with candid and pertinent case studies from participants, showed that a number of actionable ideas could be pursued, albeit with imagination and flexibility.

Annex I: Agenda

Coffee and Welcoming Remarks: 9:00 am

Miguel Schloss (Transparency International) and Richard Sandbrook (MMSD)

Session One: 9:15 am - 10:45 am

An Overview: Corruption Issues in the Mineral Sector

Speaker: Ian Marshall
Discussant: Miguel Schloss (TI)

Coffee

Session Two: 11:00 am – 12: 30pm

Case Studies from the Companies' Perspectives

Speakers: Gary MacDonald (Newmont) on Newmont's experience in Indonesia

Representatives from mining companies including Rio Tinto, Placer Dome, Freeport-McMoran, BHP Billiton, etc will be asked to contribute.

Lunch

Session Three: 2:00pm – 3:30 pm

The Role of Governments

Speakers: Peter Rooke (Transparency International, Australia) on the OECD Guidelines

Natalie Stevens (Herbert Smith) on the use of legal tax reform as a tool to fight corruption

Coffee

Session Four: 3:45 pm- 5:30pm

The Way Forward

Panel Discussion led by Richard Sandbrook (MMSD)

Annex II: List of Participants

	Name	Affiliation
1.	**Colm Allan**	Rhodes University, Grahamstown, South Africa
2.	**Bela Arora**	Warwick University, UK
3.	**Deanna Coles**	BHP Billiton, Australia
4.	**Guy Collis**	MMSD
5.	**Jim Cooney**	Placer Dome, Canada
6.	**Sir Brian Fall**	(representing) Rio Tinto, UK
7.	**Harriet Fletcher**	International Business Leaders' Forum, London
8.	**Gabriela Flores-Zavala**	MMSD
9.	**Simon Handelsman**	independent consultant, New York
10.	**Bernice Lee**	MMSD
11.	**Daniel Limpitlaw**	Wits University & MMSD Southern Africa
12.	**Daniel Litvin**	independent consultant, London
13.	**David Lowry**	Freeport-McMoran, USA
14.	**Gary MacDonald**	Newmont, USA
15.	**Ian Marshall**	Transparency International, Canada
16.	**Luis Moreno-Ocampo**	Moreno Ocampo Abogados & Consultores / TI Latin America, Argentina
17.	**Victor Ricco**	Centro de Derechos Humanos y Medio Ambiente, Córdoba, Argentina
18.	**Peter Rooke**	Transparency International, Australia
19.	**Richard Sandbrook**	MMSD
20.	**Miguel Schloss**	Transparency International
21.	**Natalie Stevens**	Herbert Smith, Paris
22.	**Margarida Trinidade**	Global Witness, London
23.	**Salil Tripathi**	Amnesty International

Annex III: Meeting Objectives

This experts meeting, co-hosted by the Mining, Minerals and Sustainable Development (MMSD) project of the International Institute for Environment and Development (IIED) and Transparency International in Berlin on September 7 2001, aims to identify the critical issues relating to corruption in the minerals sector and to provide suggestions on policy options. The meeting is bringing together experts from companies, research institutions, non-governmental organisations and governments. There will be a series of presentations at the meeting followed by discussions. The written output from the meeting will feed into MMSD's final report, scheduled for March 2002.

Specific objectives of the meeting are to:

- Understand the range of perspectives and interests on issues related to corruption in the mining and minerals sector;
- Identify existing initiatives at policy level and in practice, and the policy options;
- Identify further research and information needs, and potential follow up activities.