



Mining, Minerals and  
Sustainable Development

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# MMSD Draft Report for Comment 4 March 2002

## Part III: Challenges

# Chapter 12 Access to Information



International  
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## Chapter 12: Access to Information

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Information flow is essential in a sustainable stakeholder society. The central question is, to what extent is the concept of sustainable development affecting the production, access to, need for, and flow of information in association with the mining and metals sector? Further, if availability of information has increased and systems for its dissemination have multiplied, to what extent is this moving society towards more equitable, open, and effective negotiated solutions to problems in this sector? This chapter considers basic information needs in the sector and the challenges faced by those involved with or affected by mining.

## **Information's Key Role**

Noble laureate Amartya Sen has pointed out that famine has rarely taken place in a country with a democratic government and a free press.<sup>1</sup> This underlines the intrinsic value of information as an enabling tool within society. Access to information is broadly accepted as essential in a democracy. Information helps the different players in an economy perform efficiently and effectively, and it helps individuals and organizations establish, conform to, understand, and question policies, practices, and regulations and to communicate their needs and concerns. It can help people obtain and defend fundamental rights to resources. Equally, information is itself a core component and a driver of globalization. One facet of this is the growth in communications over the internet and the use of web-based methods for transmitting complex information.

Information is also important as a tool for education and empowerment. For example, employees need information both from governments and the private sector to be able to exercise their rights and to contribute safely and productively to the progress of the enterprise. Industry needs information to educate employees and management about changing trends, health, and safety and about constraints and opportunities within corporations. Industry also needs information from employees about work-place safety, improved efficiency, and many other areas of mutual interest.

Communities have particularly acute information needs relative to other stakeholders at all stages of the mining and processing life cycle because of the power imbalances that generally exist between communities and other actors. Communities, for example, find it difficult to press for change and accountability in the absence of reliable, valid, and timely information. Non-governmental organizations (NGOs) and civil society groups also need information in order to educate others about the activities of mining projects, companies, and governments. If campaigning organizations do not have access to good-quality information, their effectiveness can be reduced. It is important that mechanisms exist to ensure that such information is used in a way that reflects a valid picture of events.

The provision and use of information are not value-free. The production, disclosure, distribution, and use of information carry with them a series of political, economic, legal, and social implications and responsibilities – both for those who provide it and for those who use or need to use it. Further, information is not communication; communicating implies the provision of information in a format and manner that can be used by the recipient. Good communications depend on many factors, including the levels of education

and training of the recipient, attention to language differences, cultural beliefs and practices, and the financial constraints of both those who provide and those who receive information.

The ability to block access to information is also a powerful political and economic tool. Any discussion of the concepts and norms that might underpin the production, disclosure, and dissemination of information raises some fundamental questions that are important for the mining and minerals sector. As historian Howard Zinn noted: “The chief problem in historical [and journalistic] honesty is not outright lying. It is omission or de-emphasis of important data. The definition of “important” of course depend on one’s values.”<sup>2</sup>

The use (or abuse) of information based on ‘the facts’ is always value-dependent. Equally, individuals and organizations have vested interests in the outcomes set in play by the information they disclose. As pointed out by Sharon Beder, who writes on corporate communications and information in the global era and its use to influence the environmental debate:

There is no way around this. A [reporter] must have values, priorities (conscious or otherwise), must filter facts, must report subjectively.... The reality and the determined denial of reality surrounding the issue of media freedom, verges on the surreal and is easily as bizarre as any primitive religious dogma, belief in a flat earth or faith in a kindly Fuehrer plotting global conquest.<sup>3</sup>

Further, there is a lack of trust among the actors in this sector, which colours how they receive information. People have moved from the naivety of a ‘tell me’ world to one in which they ask not only to be told, but to be shown and to have the evidence verified. The constant demand for verification is one expression of a well-founded lack of trust.

Trust is sometimes said to be irrelevant to the process of reaching equitable decisions on resource development – agreement can be a mercenary transaction, and it is more important that the parties involved have fulfilled their objectives. Others involved in this process, however, may view trust as a form of social capital, believing that people may reach their objectives faster if there is trust in some measure.<sup>4</sup>

If society demands that corporations, governments, NGOs, and others disclose truthfully and to the fullest extent possible the detail of their activities, then there must be an understanding not only of what constitutes ‘truth’ for each actor (their value systems and principles), but also the details of their production, use, and dissemination of information – what, when, how, why, and to whom. And there must be a system of accountability to ensure that everyone is performing to the same standards.

Systems for the production, dissemination, use, and revision of information exist and new ones are being developed, but the systems are open to abuse. They must be rigorous and robust enough to ensure that abuse and misuse of information do not prevent or diminish the ability to build sustainable economies and livelihoods.

Clearly there is also a business case to be made for improved corporate disclosure within a sustainable development framework. Some companies are now finding that the move towards full disclosure, far from leaving them exposed to greater risk of negative interactions with stakeholders, has meant reduced transaction costs with such groups and a

more positive discussion of ways to resolve shortcomings.<sup>5</sup> There is certainly value to be had from listening, and often the involvement of stakeholders can increase the information base on key social issues in a cost-effective manner and in less time. The use, for example, of traditional ecological knowledge in the case of indigenous communities can provide companies with a sound knowledge about existing community environment relationships for baseline studies. Equally, secrecy does not build trust. Lack of trust can lead to expensive demands for information, which stakeholders feel that they need in order to confirm that a corporation is doing what it is supposed to in terms of environmental and social performance.

Governments, companies, and organizations are being held to ever-higher standards of accountability, transparency, and openness by citizens and shareholders. Increasingly, it is expected that other communities of interest, such as NGOs, will perform to the same standards of accountability, openness, and legitimacy demanded of governments, companies, and multilateral organizations. NGOs and other civil society organizations have exactly the same responsibilities to use information equitably and fairly as governments and companies – and this responsibility has not always been exercised.

There are few instances where quantifiable statements can be made with respect to information other than in the area of costs. Yet there is a strong business case to be made for free and open access to information. Once a company has established the fundamentals of improved sustainability performance, then increased trust, reduced transaction costs, better feedback, reduced risks, more effective resource use, and increased reputational value all arise through communicating this effectively to others. Leading-edge companies, already building and deepening their understanding of the role of the minerals sector in sustainable development, cannot hope to derive full value without an effective internal discourse about the value of information access that is enlightened by negotiation with other actors. These other actors must also accept the responsibilities that go with the transition from the current information age into the next.

## **Basic Information Needs**

Stakeholders in the minerals and metals sectors need information throughout the discovery, construction, exploitation, refining, processing, use, and disposal or recycling stages of operations. The requirement for information at all scales is immense. The exploration stage, for example, relies heavily on new technologies in satellite imagery and information technology for evaluation of deposits; equally, companies rely on constantly evolving databases and enhancements of the mining cadastre. Information needs fall into several main categories: technical, regulatory, financial, local environmental and social, and performance monitoring.

Production, for example, increasingly relies on sophisticated monitoring systems for technical processes and management systems information to regulate the operation of facilities with respect to labour, energy use, health and safety, and environmental considerations, particularly regarding hazardous chemicals release and the disposal and reuse of materials. Requirements for environmental information increasingly extend to cover understanding of local biodiversity.

States require information to establish the legal framework and regulations that set standards and norms, and to improve public policy decision-making processes. The maintenance of current databases on exploration activities, tenements, permitting, and closure planning is a key function of national and regional governments, while land use planning in general depends on the collection of key land use and other types of data. There is also a requirement to make the particular legal regime more explicit to others.

Economic and financial information is vital for the trading and marketing of minerals commodities and for information-based predictions about market behaviour and future commodity prices.

To complement the technical information directly related to finding, exploiting, using, and disposing of mineral resources, there is a vast and growing requirement for information on local environmental, social, and economic factors that may be affected by or have impacts on a project. There is also a vital need to provide communities with both the capacity and the information to participate knowledgeably in decision-making around mining projects, smelters, and other production and processing facilities. Triple bottom-line approaches anticipate that companies will report publicly on their environmental and social performance in a manner that is accountable and transparent and that allows for appropriate participation.

Information is also a key to monitoring performance of companies and states with regard to human rights, worker health and safety, and development. If communities and regions consent to mining, there must be ways to verify that the promised development benefits actually do materialize. Employees also need access to information in the work place that will help them monitor performance.

One thing is certain: changing technology will affect both society's ability to produce information and its ability to process, evaluate, and react to it. Web-based technologies will continue to evolve, increasing the quality and complexity of information that can be transmitted about a project. Software applications, for example, now allow 'walk-through' 3-D representations of complex architectures such as an open-pit mine and the surrounding facilities, giving communities a very real sense of what a proposed mine might look like. Such advances in technology will certainly enhance the ability of communities to comment on proposals that affect them and to be involved in decision-making. However, the digital divide means that many of these technologies are generally not available to stakeholders in the South. This may be one area where some fairly simple and cost-effective remedies, such as providing access to such technologies in the areas of proposed mines, would enhance the quality of participation for stakeholders in the South a great deal. Yet it is also clear that access to information in itself is not sufficient, that people must also be given the ability, through the political system, to use this information.

## **Key Challenges**

The challenge for all those associated with the minerals sector is to design and improve policies, procedures, processes, and institutions to deal effectively with societies' growing demand for information just when technology is providing more information than ever before, but often in a highly random and uncoordinated fashion. Equally, rational systems are needed that would allow the sector to operate effectively – not a system of excessive generation or duplication of information and the financial burden that this entails. Cost issues, although dismissed by many as irrelevant, are a central challenge to all the actors.

A related and equally important issue is the protection of the intellectual property of the private and public sectors, of communities, and of others. Additionally, confidentiality, when breached, can have costly financial and social implications, particularly where it provides or undermines corporate competitive advantage or when it threatens the personal and employment security of workers who report malpractice or other wrongdoing.

Shareholders, employees, and stakeholders all want to know more about how corporations conduct their business, and there is a growing recognition that reputation can no longer be maintained through a culture of secrecy.<sup>6</sup> Getting to grips with the information explosion and managing it to meet specific ends is a challenge for all. This section looks at seven key components of addressing this challenge.

### ***Building Trust and Balance***

Empowerment is key to building trust and yet it is often fraught with difficulties. In some jurisdictions, giving access to certain types of information can compromise the personal security of recipients. In others, governments do not want disclosure, and act to suppress information and control its flow. Corporations and employees may also seek to place unnecessary controls on information for a variety of reasons. As a consequence, mistrust among stakeholders is often widespread.

In any circumstance, information can be manufactured, misused, and concealed. Corporations may also complain that while they are held to the highest standards of accountability and performance with regard to disclosure of information, the same does not apply to some of their critics. There is a clear lack of trust in research that has been generated by industry, which is often regarded as partial and designed to highlight the benefits of a project while concealing or at least playing down any potential negative impacts. Independent verification by suitably designated bodies that include representatives of various stakeholder groups can go some way towards overcoming the lack of trust in this area.

Equally, claims to representativeness on all sides may not be legitimate. Some reports criticizing companies may not be verifiable, and their authors may not be held accountable. Last but not least, there is also a significant mistrust of globalization by some sections of society, which may in turn be reflected in attitudes towards large corporations in general.

## ***Dealing with Uncertainty and Risk***

Mistrust breeds uncertainty, which translates into risk in the market-place. Disclosure carries risks for corporations and other actors – from NGOs to communities – which need to take into account the legal and therefore financial implications when they release or comment on any information. The rights and power to litigate can be open to abuse. Sometimes even when information can be verified and accounted for, its dissemination can have unknown consequences. The provider of the information can quite easily stand accused of biased reporting, resulting in legal action.

The selective use of information is a problem that all sides encounter. Depending on the jurisdiction and the circumstances, the burden of proof in any situation may lie either with the informant or the objector. In either case, if there are no clear rules around the need to disclose information and the need to be accountable for objections to the substance of any disclosure, the consequences can be far-reaching and costly for all sides.

## ***Establishing Equity***

Communities and other civil society actors may feel that they lack power since they do not have the financial and political resources to produce information comparable to what corporations and the state can produce. Due to the power imbalance, it is important that the processes of information-gathering are transparent and that the rules are clear to all parties, along with the procedures for appeal. In terms of social justice, information gathered and disseminated in an equitable fashion enhances the rights of those involved or affected.

## ***Building Capacity***

The issue of capacity deficit and imbalance needs to be addressed. Civil society groups and individuals may lack the resources to address issues and participate meaningfully in protracted debates. Such groups may not have the resources to verify that information is correct or to act if it is incorrect. Similarly, people in developing countries may not have access to the internet or the means to pursue their rights, where they exist, with respect to information – the right to know and to prior informed consent. At the same time, small companies often argue that while they can be held to the same performance principles as the global giants, they cannot respond in the same way. They lack, for example, resources for communications campaigns. It is not just a case of building structural capacity, however, but also of building the cognitive capacity within society to process information in an increasingly information-rich world.

## ***Building Quality***

There is an important question of information quality that has to be addressed in the case of data around project proposals and operations. It is often said that while companies do a good job of covering issues relevant to a good environmental impact assessment (EIA)/social impact assessment (SIA) process, the quality of the material is often poor. The case for well-qualified third-party professionals supported by comprehensive scoping of community needs on information is clear. Companies and governments have to build capacity both internally and externally for improvements in the quality of assessment data.



This does not mean, however, that there has to be a number for everything – in some cases, for example, it might mean gathering good qualitative genealogical data through tribal stories.

### ***Building Effective Systems and Mechanisms***

Governance around information generation is often poor. Governments have been slow to implement the recommendations of such regional instruments as the 1998 Convention on Access to Information, Public Participation in Decision-making and Access to Justice (known as the Aarhus Convention), while international systems for information exchange and action around mining issues are few, although growing.<sup>7</sup> Clear mechanisms for the handling and transfer of information between stakeholders are often missing. Corporations complain that there are too many regulations and reporting requirements, as well as duplication, and they call for a rationalization of the reporting system. Civil society representatives complain about a lack of clarity and transparency on the part of companies and the state, and note that neither the state nor the private sector has the authority to decide for others how much information they should have – that NGOs and communities will decide for themselves what is useful to know.

There are weaknesses in current systems in the following areas:

- *Comparability* – Where regulation exists and is monitored, for example on corporate disclosure and reporting, it is difficult to compare reports and information effectively, and to distinguish leaders from laggards.
- *Verification* – In terms of information quality, many questions arise. Is the science good – that is, measurable, verifiable, repeatable, and relevant? Is the information timely, reliable, and targeted?
- *Cost* – While it is recognized that policies, systems, procedures, and institutions are required, the private sector is unlikely to be able to bear the full cost of improved systems alone.
- *Acknowledgement of leadership* – Industry leaders report and often do so to a decent standard, yet they are commonly singled out for verbal attacks because of their higher profile – while the laggards get off free. Leadership should not result in competitive and reputational disadvantage. It would help to have mechanisms in place to verify corporate performance.

### ***Addressing Stakeholder Concerns***

All these challenges pose significant obstacles to charting a transition to sustainable development in the mining and minerals sector based on stakeholder-inclusive concepts. (See Box 12–1.) While the extent to which business decisions should be informed by stakeholders in wider society is often hotly debated, failure to address stakeholder concerns has been costly to the mining industry, and individual companies have suffered significantly from stakeholder reaction to errant and ill-received operational and business practices.

### Box 12-1. Two MMSD Workshops on Information

Two MMSD workshops brought together people from the North and the South to discuss key issues in relation to information access in the minerals sector. A March 2001 meeting in Toronto was designed to construct a work plan that would allow MMSD to target some key areas in which baseline research could be commissioned. Themes that emerged during the discussion were civil society's lack of trust of the industry, the need for industry to have a rational and cost-effective system of public reporting, concerns by civil society that all of the information needed to comment on project proposals and be involved in decision-making was not being disclosed, and a concern by industry that civil society organizations often did not perform to the same standards of accountability as industry and governments. The attendees suggested that background papers be commissioned on systems for making information available to stakeholders, the role of governments in information dissemination, corporate communication standards, practices and issues, community information needs, and a gap analysis of current information practices.

In December 2001, a Vancouver workshop provided the opportunity to discuss these background papers and to scope mechanisms for pushing forward with an agenda for change in the way that information is currently viewed and handled by the sector. Recurrent themes were that information often fails to flow to communities in a timely and transparent fashion, that disclosure practices often fall short of current best practice, and that one-size-fits-all systems of public reporting or a global reporting standard would be an extremely difficult initiative to develop. The distinct nature of specific mines, projects, companies, locations, and communities means that a different mix of indicators, metrics, and evaluations is needed. One effective way of scoping the need for information around any project is to ask the community what they need to know in considering project proposals. Again the need to build trust, even if this involves industry owning up to past mistakes, came through strongly. It is because stakeholders, particularly in communities, do not trust companies and governments that they press for such a high volume of information and verification about projects.

## Existing Mechanisms, Standards, and Initiatives

### *Global Agreements*

An enormous number of recent initiatives in the area of information access have implications for the mining and minerals sector. Much of the current focus in the national and international policy arenas is a result of principle 10 of the Rio Declaration on Environment and Development, which among other things recognizes the need to facilitate access to information at the national level. Likewise, chapter 40 of *Agenda 21*, the blueprint for sustainability agreed to in Rio, emphasizes the need for establishing and coordinating networks to share information on sustainable development, particularly between non-governmental and private-sector actors.<sup>8</sup>

The most far-reaching and explicit refinement in this regard is the Aarhus Convention of the UN Economic Commission for Europe. Article 7 states that:

Each Party shall make appropriate practical and/or other provisions for the public to participate during the preparation of plans and programmes relating to the environment, within a transparent and fair framework, having provided the necessary information to the public.<sup>9</sup>

In brief, the convention binds states and public authorities to make environmental information publicly available within the framework determined by national legislation, within a specific period from the time a request is received, and without the need to state with what interest a request is made. It encourages parties to establish national inventories of inputs, releases, and transfers for a variety of substances, products, and processes, including resources, energy, and water use, along with the impacts of on-site and off-site treatment and disposal plants. In particular, the Aarhus Convention focuses on people affected by the environmental impacts of development and their right to information that will help them mitigate such impacts. The treaty has, however, been criticized for its many exceptions to the general rule to disclose information – exceptions that are based on issues of public security, national defence, and international relations.

### **Regional Agreements**

In 1996, the Council of the Organisation for Economic Co-operation and Development recommended that its member countries ‘take steps to establish, as appropriate, implement and make publicly available a pollutant release and transfer register (PRTR) system’ and that ‘the results of a PRTR should be made accessible to all affected and interested parties on a timely and regular basis’.<sup>10</sup> The actual implementation of this principle is the matter of further national legislation by individual states.

Other regional initiatives that seek to implement the information principles of the Rio Earth Summit include the Inter-American Strategy for the Promotion of Public Participation in Decision-making for Sustainable Development, by the members of the Organization of American States.<sup>11</sup>

Within the European Union (EU), an emphasis on environmental information is provided by Council Directive 313/90/EEC.<sup>12</sup> As a specific norm on environmental permitting, Council Directive 61/96/EC on Integrated Pollution Prevention and Control regulates access to environmental information in the course of the permitting process and during operation.<sup>13</sup> Further, EU Council Directive 337/85/EEC and its amendments, on EIA, refers to participation rights in decision-making regarding individual administrative procedures with respect to development consents within a group of listed activities.<sup>14</sup>

### **Multilateral Codes of Practice**

The World Bank Group requires environmental and social impact assessments of proposed projects, as well as Resettlement Plans and Indigenous Peoples Development Plans where appropriate. (These guidelines are currently the subject of the Bank’s Extractive Industries Review for the mining sector.) Under the current disclosure policy, the external release of some information may be precluded in individual cases when the content, wording, or timing of the disclosure is deemed detrimental to the interests of the World Bank Group, a member country, or its staff. The International Finance Corporation (IFC) has guidelines that presume in favour of disclosure, although there are numerous exceptions, especially where the information is deemed to be materially harmful to the business and competitive interests of IFC clients. IFC senior management also have discretionary power that is loosely defined, further enabling case-by-case non-disclosure of certain information.<sup>15</sup> The

International Bank for Reconstruction and Development and the International Development Association have similar conditions for information disclosure.

Under US law, all Executive Directors of US nationality at the World Bank and regional multilateral development banks are required to abstain or vote against any proposed action with significant impacts on human environment if it has not received an appropriate environmental assessment (and a Resettlement Plan and Indigenous Peoples Development Plan, as needed), or if the assessment has not been available to the Executive Directors and the public for 120 days before a vote.<sup>16</sup>

For the United Nations Environment Programme (UNEP), the United Nations Berlin Guidelines (of 1991) and the Environmental Guidelines for Mining Operations published in 1994 have information dissemination as a key component. The latter specifies that states, regulators, and companies should 'ensure that the decision maker(s) and the community are fully informed of the nature of the development, its impacts on the environment and the nature of the mitigating measure proposed as a component of good operational management'.<sup>17</sup> Further, UNEP's Awareness and Preparedness for Emergencies at the Local Level and the 1997 Benchmark Survey on company environmental reporting further extend the emphasis on information and disclosure.<sup>18</sup> And the Dublin Declaration of 16 October 2000 (through UNEP) commits to building a state-of-the-art environmental internet portal for public access.<sup>19</sup>

In many cases, international organizations set their own internal criteria for the dissemination and use of information, and these become by default the international standard. Examples include the World Bank's array of guidelines and the various standards set by the International Labour Organization, UNEP, and the European Commission, among others, which have implications for information access and use. It is noticeable that discussion of disclosure around environmental issues is far more advanced than that around social issues.

### **National Legislation**

Most national governments have statutory provisions for information access in several areas, particularly on the environment and increasingly with regard to social concerns through the SIA process. National environmental provisions are discussed here to illustrate government's role in the facilitation of access to information.

In Chile, environmental impact assessment is obligatory under the law, and there is a section on Community Participation in the Process of Evaluation of Environmental Impact under Regulation No. 30, enacted on 3 April 1997. An excerpt from the Environmental Impact Statement, including a description of the principal adverse environmental effects of the project, must be published in the Official Gazette and in a regional or national newspaper of general circulation within 10 business days following its submission to Conama (National Environmental Commission) or the corresponding Corema (Regional Environmental Commission). Community organizations and individuals directly affected by mining projects have 60 business days to submit their observations on the Environmental Impact Statement. Legal entities must consider these opinions when issuing a verdict on an application to develop a project.<sup>20</sup>

In the United States, the National Environmental Policy Act of 1969 (Section 4332) includes provisions for reporting on the environmental impacts and implications of a proposal. This is complemented by provisions to make such information available to the public under the relevant provisions of the Freedom of Information Act. The Emergency Planning and Community Right-to-Know Act passed in 1986 requires businesses and local governments to report to state and local governments the locations and quantities of chemicals stored on-site. This was followed by mandatory public disclosure through the Toxics Release Inventory (TRI), providing communities with information about potentially hazardous chemicals and their use.<sup>21</sup> In 1991, facilities were also required to indicate the amounts of chemicals that are recycled, used for energy recovery, and treated on-site.<sup>22</sup>

In May 1997, the US Environmental Protection Agency added seven new industry sectors to the TRI: metal mines, coal mines, electrical utilities that combust coal or oil, commercial hazardous waste treatment facilities, chemical wholesalers, petroleum bulk terminals and plants, and solvent recovery services.<sup>23</sup> These sectors need to report activities such as the release of toxic substances into the environment and their transfer off-site for treatment or disposal. (In May 1998, the National Mining Association filed a lawsuit challenging this ruling that added the mining industry to the universe of facilities subject to section 313 of the Emergency Planning and Community Right-to-Know Act; the case is still under review.)<sup>24</sup>

In Australia, the National Environmental Protection Measure contains provisions for a National Pollutant Inventory (NPI). There are also provisions for internet access to the NPI database; production of annual CD-ROMs to be circulated to local libraries, to universities and educational institutions, and to state, territory, and local governments; and publication of reports summarizing NPI information. The information is to be made freely available to the public in plain English and includes links to other relevant databases and users of the information.<sup>25</sup>

The Canadian Environmental Assessment Act of 1992, c. 37 55 (1), has a registry of environmental assessment reports and provisions for public access. This system shifts the burden of enforcing reporting obligations to the respective government agencies. Canada also has its own National Pollutant Release Inventory, which companies are obliged to report to under the Canadian Environmental Protection Act 1999.<sup>26</sup>

## **Voluntary Initiatives**

Several voluntary initiatives seek to standardize the way in which corporations disclose information, yet there is still some way to go within the sector before a harmonized and standardized set of reporting guidelines is available.

The Global Reporting Initiative (GRI) was convened in 1997 by the Coalition for Environmentally Responsible Economies and the United Nations 'to make sustainability reporting as routine and credible as financial reporting in terms of comparability, rigour and verifiability' through 'designing, disseminating and promoting standardized reporting practices, core measurements and customized sector specific measurements.'<sup>27</sup> GRI guidelines suggest reports should include a CEO statement, key indicators, a profile of the

reporting entity, policies, organization and management systems, management performance, operational and product performance, and a sustainability overview. MMSD's work with GRI aimed at building a picture of the necessary conditions for a set of sector-specific harmonized guidelines for the mining sector. (See Box 12–2.) GRI will become an independent international institution in 2002. Other systems, such as ISO 14001 from the International Organization for Standardization, have disclosure as an outcome of the auditing and management systems.

#### **Box 12–2. The Global Reporting Initiative's Work on Indicators**

MMSD has been working with the Global Reporting Initiative to address some questions about establishing a broad set of public reporting criteria, based on indicators. Indicators are clearly a source of information, and the selection and aggregation of indicators is a sensitive issue, yet a vital one in trying to set up a fair and open public reporting system.

During 2001, the GRI and MMSD jointly convened an advisory panel to determine a work plan and the issues that should be addressed. The first step was the establishment of a 'straw dog' – a surrogate set of reporting indicators designed to act as a stimulus for discussion of the issues and problems involved in trying to adapt generic reporting guidelines to the mining sector. The 'straw dog' was based on a scoping study of more than 15 corporate reports from the mining sector and the comments of the Advisory Panel.

The 'straw dog' indicators, posted on the GRI website, are not meant to be exhaustive but rather to provide a starting point for discussion. GRI is interested in determining whether such a 'list' approach accurately captures the key indicators of sustainability for the sector and if there are any significant gaps that need to be addressed in defining a public reporting standard. While standardization of indicators for public reporting is a common cry, the point has been made in MMSD-commissioned research that 'off the shelf' packages of indicators will fail to capture the kinds of information that communities want access to or the most important information about projects.

Source: Warhurst (2002) p.113.

Evolving out of the move towards improved environmental and social reporting are the notions of constructive obligations (wherein environmental obligations are derived from good business practice) and equitable obligations – the duty to use the same reporting criteria in developing and industrial countries even when domestic law does not require it.

Several organizations are compiling systems for measuring sustainability performance based on a rating index, including private concerns such as Sustainable Asset Management, based in Switzerland.<sup>28</sup> The Dow Jones Index seeks to chart sustainability performance in the belief that this is more than a way to simply manage environmental risk but is becoming a proxy for good management in the wider sense.<sup>29</sup> Such systems are still evolving, but hold promise.

The World Resources Institute, the Environmental Management and Law Association in Budapest, and Corporacion PARTICIPA in Santiago are also collaborating on an initiative to improve policy and decision-making processes by establishing common global practices for access to information, participation, and justice in environmental decision-making.<sup>30</sup> The initiative seeks to raise awareness of issues and to build the capacity of public interest groups to assert their rights to information.

## Corporate Best Practice

Corporate practice and behaviour on information access issues is evolving rapidly, and current best practice for the sector does indicate some ways forward. It includes the following approaches:<sup>31</sup>

- *Multi-Parameter Reporting* – This describes the company’s economic, environmental, and social performance, also known as triple bottom-line or sustainability reporting.
- *Independent Verification of Environmental Reports* – Since there are unresolved problems in measuring and verifying reports other than financial ones, a number of leading companies are experimenting with a process of independent verification.
- *Continuous Community Consultation* – This is an essential component in bridging the information and trust gap. A number of companies have adopted the policy and practice of continuous community consultation, from the first phase of exploration through to mine closure and beyond.
- *Community Involvement in Environmental Management and Community Development* – This can be accomplished through a community-based environmental or social development monitoring group that has access to and preferably participates in environmental sampling, review of results, and recommendations to improve measurement and management systems. Examples of this type of community-company collaboration include the northern Saskatchewan programme of Cameco in Canada and the community environmental group created around San Marcos by Antamina in Peru.<sup>32</sup>
- *Transparency of Feasibility Studies* – The EIA process is rapidly becoming substantially transparent in all jurisdictions, while the accompanying feasibility study remains largely company-confidential. Companies are under increasing pressure to ensure that local companies benefit from resource development. The experience of Diavik in Canada illustrates that disclosing the distribution of revenues can be a positive step to take to alleviate pressures.<sup>33</sup>
- *Open Book Reporting* – This can include areas still lagging behind in transparency, such as health, safety, and environmental reporting; closure and reclamation work reporting; and continuous reporting of not only positive aspects but also negative developments of a mine or project. A few large firms have started to use this ‘open book’ reporting of incidents to create corporate legitimacy.
- *The ‘Business Case’ for Best Practices in Information Disclosure* – Although many large companies have already integrated the argument for open communications into their programmes and policies, relatively few intermediate or small firms have followed suit.

Corporations are also guided in disclosure practice by the codes of their respective associations and governing bodies, such as the Sustainable Development Charter of the International Council on Mining & Metals or the Minerals Council of Australia’s Code for Environmental Management.<sup>34</sup>

## ***Initiatives by Other Private-Sector Actors***

Private-sector actors, such as the major software and hardware providers, have played a significant role in the establishment of information standards used in the industry and will continue to be key with regard to the evolution of information technology. Microsoft programs, for example, are the default international standard for the format of much information.

Equally, the rapidly evolving mobile phone and satellite communications industries have implications for the mining and metals sector, making it much easier to disseminate complex information in a timely manner. As the prices of such technology decrease, there is a greater likelihood that they will be available to an increasing number of actors, although the digital divide between the North and South is at present still highly conspicuous, putting the poorer actors in these regions at a disadvantage. Advancing technologies, including solar-powered radio communications and other devices, have considerable potential.

## **Challenges for Specific Components of the Mining Sector**

### ***National Governments and Regulators***

The processes for establishing the norms and standards of information generation and transfer, the regulatory system to ensure conformity to these standards, the opportunities for reaction in the public domain, and the freedom to participate without fear of reprisal are largely the responsibility of the state, with the cooperation of other actors.

Within many developing countries, liberalization of mining codes has often neglected the interaction between communities and companies. Equally, the state plays a conflicting role as regulator and facilitator and may be subject to competing demands from different stakeholders. Additionally, most governments – industrial and developing – are struggling to come to terms with a globalized economy, rapidly changing information technologies, a more enlightened and demanding citizenry, and competition for mobile foreign investment, among other pressures. Many lack the capacity to act as facilitator or regulator, while in some countries corruption is common in state agencies. (See Chapter 8.) All these factors affect and are affected by the flow of information.

Government's role in pursuing mining and minerals development as a viable development alternative – as described in earlier chapters – includes establishing an institutional framework for gaining access to mineral resources, setting up effective and efficient legal systems, levying appropriate taxes, and designing an environmental regulatory system to prevent and control environmental impacts from mining activities. All these elements rely on the provision and exchange of information if they are to be established within the boundary conditions for sustainable development.<sup>35</sup>

In addition, provision needs to be made for public participation in the decision-making processes around the development of the sector. The Inter-American Strategy for the Promotion of Public Participation in Decision-Making for Sustainable Development has



recognized the need for government to take a lead in providing the conditions for civil society to participate in resource use decision-making by providing adequate information and mechanisms at all levels of government.<sup>36</sup>

Public participation in planning and decision-making is a growing but still contested area of interaction between stakeholders around mining projects. This phenomenon - variously called 'public participation,' 'citizen involvement,' 'stakeholder engagement,' 'indigenous peoples' rights,' 'local community concerns,' 'NGO intervention,' 'access to information,' 'access to justice' - will probably become even more central to sustainable development of mineral economies in the 21<sup>st</sup> century.

The factors behind this public participation 'explosion' include democratization trends since 1989, the adoption of the new legal paradigm of 'sustainable development', the international environmental movement, international financial organization requirements, human rights regimes, organizations of indigenous peoples and local communities, and technology - particularly the information-exchange capabilities of the internet.

To develop a baseline and an analysis of this issue, the MMSD partnered with the Academic Advisory Group of the Section on Energy and Resources Law of the International Bar Association, the world's largest association of lawyers and legal associations. The AAG conducted a two-year study (1999-2001) of public participation in mining and resources development.<sup>37</sup> The MMSD and IBA/SERL workshop was held on 25-26 May 2001, at the Vermont Law School, South Royalton, Vermont, USA.

It was suggested at the workshop that legal instruments are growing in recognition as a key element of public participation and that there is a definite trend toward contractual or quasi-contractual arrangements to satisfy (if not control) public participation and public benefit interests.<sup>38</sup> In Canada, for example, participation law is changing the way Canadian mining and resources government agencies, companies, and stakeholders operate. But, with the exception of First Nations, the laws have only created a partial bridge to real empowerment so far. New international and national laws and practices are injecting this 'human dimension' into resources planning, financing, licensing, operating, and closure on a global scale.

The emerging issues in public participation include regulatory reform, the need for empirical and comparative studies, the unevenness of public participation in practice in different countries, and the extent to which it is more than 'just politics.'

New international and national laws and practices are injecting this 'human dimension' into resources planning, financing, licensing, operating, and closure on a global scale. Two areas exemplify this trend:

- *Indigenous peoples* - Expropriation of indigenous peoples' lands and resources for national development - often without their consent or even consultation - is a serious problem. International law now requires, at a minimum, indigenous participation in resources development on traditional lands.
- *Protected Areas* - There are a number of legal instruments relating to information and decision-making regarding protected areas. Three of the most important are: (1) the

1972 Convention for the Protection of the World Cultural and Natural Heritage (WHC), (2) the 1971 Ramsar Convention on Wetlands of International Importance (Ramsar), and (3) the 1992 Convention on Biological Diversity (CBD).

The mining and minerals industry's response to public participation should not be reactive or limited to government regulatory models. Companies have an interest in public participation processes that work, and if following the legal minimum will not create effective results, something more may be in order. Increasingly, the industry itself is creating new bilateral 'contract-based' arrangements that address the diverse social, economic, and environmental issues that arise in planning and developing new projects. These *private sector* models of public participation may be necessary to supplement the prevailing public regulatory models where those are not adequate to create a sound basis for company interaction with communities and other stakeholders.

Four examples are:

- 'Participation agreements' between a diamond mining company and Northwest Territories aboriginal peoples in Canada;
- 'Local agreements' between the Flambeau open pit mine and government and community representatives in the USA;
- 'Future act agreements' between Rio Tinto and aboriginal groups in Australia; and
- the 'Corporate social investment program' of Richards Bay Minerals with local community and cultural heritage interests in South Africa.

## **Corporations**

Information flows around the mining industry are complex and governed by the type of company, the stage in the mine cycle (exploration, feasibility, production, and so on), the location of the head office and the project, and the stakeholder group to which the information is directed.

For corporations, issues centre on obtaining information to enable effective economic and financial management of the business, including compliance with regulatory requirements. In addition to the regulations set out by the stock exchange and securities commissions regarding information disclosure, companies are also required to report on core corporate and head office functions. They also need to report to other authorities, such as environmental or fiscal bodies, where exploration or mine operations are located.

Increasingly, triple bottom-line thinking is encouraging companies to think more in terms of ethics and values, although regulation is still the primary motivation for corporate disclosure of information.<sup>39</sup> Other corporate information pathways involve communications between companies, among industry professionals, and with financial institutions. Without question, the most complete disclosure of a mine project comes with the presentation of an Environmental Impact Statement during the permitting process for new mines.

Differences exist between junior companies (which do exploration only) and the major companies that have operating mines. Regulatory disclosure is heavily influenced by the concept of materiality, which recognizes that anything likely to affect the value of decision-making around a project, prospect, or company is material and should be disclosed. The Toronto Stock Exchange acknowledges that materiality will vary with company size, since what is material to a small company will be insignificant to a large one. In the words of one corporate interviewee:

There is a dynamic there that exists between a group that sees a benefit in releasing as much info as possible (partly to be clear to their shareholders, but also to create excitement) and a group that sees information flow as only necessary to meet regulatory approval, or such material goods such that there is an upside in the Profits: Earnings relationships.<sup>40</sup>

The junior sector desperately wants stakeholders to understand that it faces a dilemma: the costs of being a public company in an era of heightened information, disclosure, and regulatory demands is, some complain, undermining the capacity to perform their core functions – the discovery and delineation of mineral resources. Equally, for other juniors, restricted financing may mean that there is less attention to information issues in favour of other expenditures, which may create problems in the future.

There is also considerable disagreement about what reporting and disclosure should look like, since there is an incredible variation in standards and depth among voluntary reporting initiatives. The Stratos Group in Canada recently surveyed 35 companies (including 5 mining and minerals companies and 2 aluminium and steel companies).<sup>41</sup> Company reports were rated in terms of numerous criteria grouped into 10 categories:

- context and coverage (2 criteria);
- leadership and direction (3 criteria);
- policies, organization, and management systems (9 criteria);
- stakeholder relations (2 criteria);
- environmental performance (10 criteria);
- economic performance (7 criteria);
- social performance (8 criteria);
- integrated performance indicators (3 criteria);
- extending influence up and downstream (5 criteria); and
- trust, accountability, and accessibility (3 criteria).

Mining company reports scored an average of 58 points out of 156 against an overall average score of 55 and a maximum of 68 points for all sectors. The most effective reports demonstrated clearly that ‘the reporting organization is managing its business using the performance indicators on which it reports’.<sup>42</sup>

Disclosure issues are particularly acute in the developing world, and here the mining sector faces its biggest test – applying the same standards of practice and performance, of ethics and behaviour, that would be applied in the corporation’s home country. There are also several key areas in which many companies have been reluctant to disclose information:

- Many exploration groups would prefer to say as little as possible about their activities in order to avoid attracting the attention of ‘anti-mining activists’.

- Among mine operators, there is wide concern that releasing information on environmental performance, particularly on water quality, air emissions, and solid wastes, would provide anti-mining groups with ammunition to use against the company, though this seems to be unfounded. In Canada, both Placer Dome and Noranda talk of labouring extensively over the decision to release all environmental data for their mines and anticipating negative comments.<sup>43</sup> Both companies report that to date, however, nothing untoward has happened. The only noticeable effect has been an end to requests from NGOs for such information. Yet for others this does not ring true – the posting of Toxic Release Inventory data on the internet in the US has brought widespread criticism of emissions practices, yet it is argued by some that this is because these data have been misunderstood and misrepresented by anti-mining entities.
- Companies are particularly concerned with maintaining competitive commercial advantage, which usually translates into keeping certain technical expertise and intellectual property confidential. Two areas most frequently mentioned in this regard are geological information that would allow the company to find new ore reserves and process technology that would improve the efficiency and/or profitability of mine operations.

Clearly this is a need to restrict some information that is fundamental to the competitive advantage of a company, but the nature of this information is an area for negotiation between corporate and other actors. Restricting information about practices that gain a competitive advantage but that would be unacceptable under broadly held standards of practice is untenable.

Equally, the costs of information production and dissemination are extremely high, and it is not enough for other actors simply to ask for more and more information with little regard for cost. Balancing costs with value is a responsibility for all actors.

Communities often seek information on payments by corporations to other entities and in particular to government. In the long run, public disclosure of such payments must lead to a harmonized system of taxes as everybody becomes aware of the negotiated settlements of tax and other liabilities between governments and corporations in each jurisdiction. In some respects, this could be regarded as eating into the competitive advantage of a country as others try to attract investment. Nevertheless, balancing this, it is recognized that there is also a clear need to have transparency in all transactions between corporations and states, and that a most effective way to achieve this is to make payments public knowledge.

Beyond these issues, there are some general principles about information disclosure that companies subscribe to:

- avoidance of disclosure during the reconnaissance phase of exploration and until a land position is firmly established;
- reluctance to engage the local community in full dialogue and consultation over the potential for a mine until late in the process of discovery and evaluation in order to avoid building false expectations, since most projects fail;

- confidentiality around the feasibility study, although all companies do not subscribe to this and, indeed, there is a measure of ambiguity about how the feasibility study is handled with financial analysts and others; and
- keeping detailed information on the production costs of operating mines confidential, as companies believe possible release of these data could affect their long-term contracts with suppliers.

## **Labour**

Labour has particular needs for information, as indicated, in terms of worker health and safety, other conditions of employment (including wages), opportunities for skills enhancement, and the options facing workers at mine closure, among other issues. There is clearly a need for a two-way process of access to information and a need for mechanisms that enable information to reach employers from workers.

The work force is the corporation's most valuable asset in achieving its productivity targets in a safe, sustainable, and appropriate manner. In this respect, workers must be ensured strong corporate management and ethics systems, whereby workers will not be victimized for calling attention to issues or practices the ending of which may adversely affect the bottom line in the short term but that in the long term are unsustainable.

## **Communities**

Communities need information to participate in making informed decisions about mining activities. Yet simply providing information does not ensure that a message will be understood in a community or that the information will be disseminated widely. People's comprehension of information may be affected by, among other things, how the information is communicated, an individual's ability to obtain and use information, and the prior relationship between industry and the community. Natural Resources Canada recognizes several rationales for responding to community information needs:<sup>44</sup>

- Community members who are informed and involved in a project can become project proponents, reducing the potential for future conflict and reducing the risk of investment.<sup>45</sup>
- If community members are informed, there is a greater likelihood that potential issues will be identified at an early stage in the mine life cycle, allowing the company to respond to concerns, provided that the original information is true and verifiable.
- When community members are informed of mining development, local needs and strengths can be identified. Strengths and information can be leveraged, and local opportunities for growth can be pursued.

Notwithstanding the capacity issues that relate to communities, it is also worth noting that communities, when treated with respect, openness, and fairness, should respond in kind, with timely transmission of agreed information to companies and others where this information has relevance to project decision-making. Communities and civil society in

general need access not only to public reports but also, on request, to the information that lies behind a report.

A number of factors will affect the way different members of the community understand or use information, such as gender (see Box 12–3), economic status, type of community, and literacy. Often there is a difference between expert and public assessments of risks and benefits. Community members may assess new developments or risks in the context of their everyday experiences, without necessarily being aware of specialized knowledge.<sup>46</sup>

### **Box 12–3. Information and Gender Considerations at Voisey’s Bay, Canada**

With the discovery of considerable mineral wealth in the Voisey’s Bay region of northern Labrador, the Voisey’s Bay Nickel Company (VBNC) set out to undertake an environmental impact assessment. At the outset of this process the VBNC asserted that the ‘proponent shall also explain how it has used feminist research to identify how the Undertaking will affect women differently than men’. The participation of women in the consultation was limited to the public processes.

After two years of consultation, the company failed to document how the mining development could potentially affect the lives of women in surrounding communities. The Tongamiut Inuit Annait Ad Hoc Committee on Aboriginal Women (TIA) responded by drafting gender equality provisions for the Labrador Inuit Association to include in its impact-and-benefits negotiations with VBNC. The TIA was later informed that the company had rejected their proposed provisions, but the committee had no sense of the dynamics surrounding the negotiations, nor any details on why these provisions were rejected. They were thus denied the opportunity to negotiate alternative wording or have some provisions included at the expense of others. In response, TIA noted:

As primary caregivers...women end up coping with the results and effects of development decisions made by men. They may, in fact, bear the brunt of these impacts. Limited and impoverished information gathering for the EIS will result in inadequate mitigative and monitoring programmes. Women and their organizations, which receive very little financial support from governments or industry, will be left to pick up the pieces. If there are to be positive changes for women in our communities, women must be able to voice their own perceptions...and demand full participation in the planning, decision-making and evaluating process of this development.

Source: Archibald and Carnkovich (1999); Tonamiut Inuit Annait Ad Hoc Committee on Aboriginal Women and Mining in Labrador (1997).

With regard to company interactions with communities, exploration groups in general feel comfortable talking to local stakeholders about the process of exploration and the economic benefits of mining.<sup>47</sup> An exploration team often feels that it has to ‘sell’ the positive aspects of mining to bring the local community on side with the company in support of the project. Of course, there is a fine balancing between ‘selling’ a project and falling prey to misunderstandings developed from unrealistic expectations.

During the later stages of exploration and feasibility studies, all companies describe a concerted effort to communicate the benefits and opportunities that a new mine might bring to the local community or surrounding district.<sup>48</sup> Many companies appear to approach this phase with an assumption that the mine will become a positive experience for all and that there is a need to inform and educate the local population about this reality. Others, though a minority in the ranks of both junior and major companies, take a more pragmatic

approach. They talk of the need to help the community understand what will happen if a mine is developed and the importance of identifying potential vulnerabilities, recognizing cultural sensitivities, and carefully matching expectations to the economic potential of the resource.

Indigenous communities have a particular need for the provision of good and timely information that is set in contexts that can be understood locally. Again, trust must be established at an early stage through open dialogue. A systematic approach based on advice from community members should be established so that technical information can be translated and communicated in an appropriate manner. Some companies are already leading with approaches that include participatory techniques for describing the minerals exploitation process and the local implications for indigenous communities. Local advice is essential if effective communications are to be established with indigenous communities.

Finally, it should also be remembered that companies and others collect information on communities. Again there is the need for well-established systems of governance that will protect sensitive information, particularly when community members speak in confidence on specific issues.

### **NGOs and Other Civil Society Actors**

NGOs vary widely in their approach to the mining and metals sector. Development NGOs have been more willing to work with companies and governments on issues relating to the siting and operation of mining and metals processing facilities in terms of social and environmental performance. Companies, NGOs, and communities have benefited from such collaborative approaches.

The role of advocacy NGOs and other civil society organizations involved with the sector, on the other hand, has often been ambivalent and contentious, as well as troublesome for the industry. Some NGOs are highly critical of the disclosure practices of mining companies, while companies are often highly dissatisfied that civil society organizations are not held to the same standards of accountability as companies. Equally, companies would argue for a rationalization of information disclosure systems and a reduction in the number required. NGOs, community-based organizations, and others argue that they need access to all the information and that they will then decide what is useful – indeed, that such decisions should not be left in the hands of corporations. The mining industry has often adopted a defensive stance when communicating with these actors. The NGO community has been extremely vocal and highly skilled when opposing aspects of particular mining projects or the industry in general. The industry is disillusioned by a seeming failure of governance and frustrated that regulators do not regulate the information flows from other stakeholders effectively.<sup>49</sup>

Despite their reservations, mining companies both large and small are coming to realize that they must engage broadly with these stakeholders. The reality is that not responding and not getting involved is damaging in and of itself. In an interview one industry respondent stated that ‘the catch 22 is exposed: if you don’t give out information, your silence is assumed to be some sort of guilt. If you do give out information, it is corrupted from its original spirit and used against you there too’.<sup>50</sup> Ultimately, NGOs and other groups can be

as bad at handling information as companies or anyone else; good information may be used ineffectively. On the other hand, civil society organizations may, for example, only reveal partial information about a project, company, or circumstance in order to make a political point, when standards of corporate disclosure would demand that all information is put on the table so that other stakeholders can make up their own minds.

There are obviously unresolved issues that currently interfere with proactive relations between mining companies and these stakeholders, not least of which are the counterproductive perceptions created by the entrenching of positions on the many sides of the ‘mining debate’.

## **The Way Forward**

There are some clear ways forward – some things that can be rectified immediately, and others that will take extensive and long-term negotiation within a framework that is trusted by all actors. The aim is to build trust and increase access to information for all actors. That requires a focus not just on what information people want, but the processes through which it is generated.

Frequently, those who have gone to great effort to gather and present information are deeply frustrated when others reject that information out of hand, or refuse to engage with it. But if the process of engagement does not start at the stage where the information is being gathered, this will too often be the result.

### **Governments**

Governments continue to be responsible for setting norms and standards and for regulating industry’s adherence to them. Regarding information, this means:

- All levels of government should create and put into practice legal and regulatory provisions permitting all citizens free access to any information in government possession, for which there is not a valid and publicly stated reason for nondisclosure. Mechanisms should be created and contact points established for the regular exchange of information with civil society. An example would be public information repositories in communities where mineral projects are proposed.
- Government agencies and civil society organizations should establish clear and agreed procedures for requesting, receiving, and disseminating information, including opportunities for the public to identify the information they need for effective and responsible participation in the decision-making process.
- Government agencies – after consulting civil society organizations – should develop performance indicators to measure the effectiveness of information and communications programmes. They should be responsive to user opinions about problems.
- Government proponents of projects should include a complete information and communication strategy for the various phases of the project. The strategy should



extend to monitoring, auditing, and reporting. Comments from the public should be sought and considered.

- Government and civil society should work to expand the availability of information technology to grassroots organizations and rural and remote communities and ensure that information arrives in the form appropriate to the intended recipients, at the appropriate time, and that it reaches all key intended recipients.
- Information should be used as a ‘levelling’ tool to ensure that all stakeholders have adequate knowledge and can participate on a basis of equality with decision-makers. The EIA/SIA process is the most widely used way of understanding and predicting the environmental, social, and economic implications of proposed projects. Here, in particular, it is essential to ensure that baseline information is accurate, science-based where appropriate, and verifiable. These data also need to reflect traditional knowledge perspectives where relevant, and must be available to communities and others as part of the process of verification.
- Government support for research on public participation in decision-making, access to information, and stakeholder rights is essential.
- Existing mechanisms should be used to build capacity in governments to help avoid the inertia and cost of lengthy delays resulting from inefficient government procedures and dispute resolution mechanisms.

## **Companies**

A number of steps can be taken at the international level to encourage corporate best practice in this area:

- Corporations should work with Global Reporting Initiative (GRI) or other international bodies to harmonize public reporting. In part the agenda for corporations must be about building trust with other stakeholders – one way of doing this is to increase the surety that what is reported in the public domain conforms to a broadly agreed set of reporting standards. The GRI is currently taking the lead with respect to compiling sector specific guidelines for public reporting and increased collaboration between the sector and GRI would be beneficial.
- In the Agenda for Change, this report suggests development of an industry Sustainable Development Code. Such a Code could, and probably should, establish benchmarks for public reporting practice based on verifiable criteria related to the degree to which information is effectively made available at the community level. This could draw on experience from other sectors.
- The private finance community should take a stronger role in encouraging best practice in public disclosure, since this reduces risk. This does not imply that the finance sector should police the minerals sector, but that lenders in particular, through rigorous attention to internationally accepted norms, should demand best-practice performance as part of the management of risk. Loan checklists, for example, should include the project’s information strategy.
- Corporations should work to create a culture that sees fair and equitable dissemination of information as desirable. To do this there needs to be a clear policy that distinguishes

proprietary information, which the company's commercial interest requires be confidential, from other types of information that should be publicly available. This requires a clear move away from systems in which all company information is presumed secret and multiple internal reviews and permissions are necessary to divulge anything.

- Public information strategies in such things as permitting and EIA processes must be based on achieving the company's goal for effective communication, not simply following legal requirements as a checklist. If the company wants to communicate effectively to local people, it must move beyond compliance to a strategy that is focused on broader objectives. For example, even where the law does not require it, information provided at the local level should be given in the language of those who are supposed to be its key beneficiaries. If there is significant local illiteracy, other tools appropriate to the community should be devised. Equally, the company needs to have a way to listen effectively to communications to it which are given in the local language.

## **Labour**

Workers have specific information rights and needs. Among labour concerns are likely to be plans and provisions for the eventual closure of any facility. There should be a mechanism for sharing of this information and a candid two-way dialogue on the subject.

- Companies need specific policies, consistent with emerging international norms, for providing information to workers and getting information from workers. Global agreements would be one mechanism to enable this. Organized labour has an important role to play in coordinating the establishment of standards with recognized industry bodies and governments, while also advising individual companies on appropriate policies.
- Labour agreements should address the exchange of information between workers and their organizations and companies.

## **Communities**

Communication goes both ways: it is about listening as much as it is about providing information. A few fundamental principles of community consultation seem clear:<sup>51</sup>

- Communities have the right to be informed of development before a project begins, indeed before any irrevocable commitment to that project has been made.
- Communities have the right to seek multiple sources of information. There is no single account of minerals development that is 'objective', as development often has many unintended consequences. People cannot foresee all eventualities, and all accounts provide a different lens on the foreseeable future.
- Communities operate on very different time scales for taking decisions. The communication process cannot be compressed by arbitrary time limits established by the company's decision deadlines or the government's legal requirements.
- Communities have the right to seek information from sources that they trust, at the same time as they evaluate information from those they do not. But systematic approaches to the production and use of information must be mindful of the potential

for unnecessary delay through unproductive duplication of information from multiple sources. No party is well served by pointless delays to the negotiation process

## **NGOs and Civil Society**

The recommendations on information disclosure and access are equally applicable to NGOs and other civil society groups in the minerals sector.

- NGOs and others should undertake to develop systems of governance that will ensure they can perform to the same standards of transparency, accountability, and legitimacy demanded of other stakeholders.
- Information is the currency with which many NGOs do their work. The more confidence there is in that currency, the more effective they will be. NGOs should have clear and understood procedures for evaluating information before they act on it.
- NGOs should work with other stakeholders to define best practice in public disclosure. It is not enough to simply ask for ‘all information’ to be made available in a public reporting format. Cost and efficiency considerations require that information production and dissemination is conducted in a rational manner. Information production also needs to pass the tests of usefulness, adequacy, timeliness, appropriateness, and effectiveness.
- NGOs must also recognize that they are in a unique position within society. Through their scrutiny, they provide a check on the excesses of governments and corporations. In turn, the work of NGOs is often viewed as altruistic and morally commendable, which means they are afforded considerable trust by civil society. They are obliged to ensure that this trust is not abused through the dissemination of information that cannot be substantiated or that is selective in its interpretation. Mechanisms should be developed by NGOs and other civil society groups to ensure that there is full and frank disclosure, even when the information does not support the message or the agenda.
- NGOs should develop a code of practice around information production and use. The integration of such a code would have several benefits, including the strengthening of trust in their own organizations by other stakeholders.

## **International and Multilateral Actions**

In the international arena, actions may include the following:

- Establishment of an international base of data on mining and minerals including data on several key areas where people want to learn from each others’ efforts; the information described in a fashion that does not assume expert knowledge, that respects the need for confidentiality in some areas and the intellectual property rights of others. The database might include information about:
  - legislation, regulations, policy, guidelines, and voluntary codes;
  - royalties and taxes;
  - payments made by companies to government;
  - payments received by governments from companies;
  - terms of impacts and benefits agreements;

- EIA and SIA guidelines and practice;
- corporate public reports and other relevant information; and
- consultation procedures.

Such a database is seen as a resource for communities, governments, companies, and others and could be established with the cooperation of existing government and university institutions as well as civil society organizations, could be housed with an intergovernmental body such as UNEP, and could be financed through a trust fund, through fees from users (graduated according to category), or through multilateral donor and industry support.

- Establishment (through a body such as the GRI) of criteria for a harmonized public reporting system that would include verification, which is agreed to by a multistakeholder process. Such a system would of necessity be voluntary, as no international legal mechanisms exist to enforce it.
- Development of a wide-ranging and binding set of principles on reporting to communities at mine sites, in particular during and after accidents.
- Establishment of an international multistakeholder panel to address the implications of instruments such as the Aarhus Convention and mechanisms for implementation at an industry level.
- An international focus on systems for financing improved access to information and in particular to look at questions of capacity versus needs and North/South issues of information access.
- Creation of mechanisms for greater collaboration among corporations, governments, and civil society on access issues that facilitate capacity building for governments and communities.
- Development of systems of accountability that ensure that principles and practices aimed at high environmental and social performance and outlined in corporate reports are consistent with the principles by which a company is managed.

## Endnotes

- <sup>1</sup> Amartya Sen as cited in Lash (2001) p.586.
- <sup>2</sup> Howard Zinn as quoted in Beder (1997) p.288.
- <sup>3</sup> Beder (1997).
- <sup>4</sup> See, for example Fukuyama (1996).
- <sup>5</sup> Anecdotal evidence based on informal discussions with corporate sustainability leaders. Work needs to be done to confirm these general reflections.
- <sup>6</sup> Zadek et al. (1997) p.239.
- <sup>7</sup> United Nations Environment and Human Settlement Division (1998).
- <sup>8</sup> Fulop and Kiss (2001) p.45.
- <sup>9</sup> United Nations Environment and Human Settlement Division (1998).
- <sup>10</sup> OECD (1996).
- <sup>11</sup> [[Inter-American Strategy]]
- <sup>12</sup> The EU Directive on freedom of access to information on the environment. See <http://europa.eu.int/servlet/portail/RenderServlet?search=DocNumber&lg=en&nb>
- <sup>13</sup> The EU Directive on pollution prevention and control. See <http://europa.eu.int/servlet/portail/RenderServlet?search=DocNumber&lg=en&nb>
- <sup>14</sup> The EU Directive on the assessment of the effects of certain public and private projects on the environment. See <http://europa.eu.int/servlet/portail/RenderServlet?search=DocNumber&lg=en&nb>
- <sup>15</sup> Fulop and Kiss (2001) p.45.
- <sup>16</sup> [[US law]]
- <sup>17</sup> UNEP-UNDESA (1994) p.19.
- <sup>18</sup> [[APELL and 97 Benchmark Survey]]
- <sup>19</sup> United Nations Environment Programme-Infoterra Network (2000).
- <sup>20</sup> Government of Chile (1997).
- <sup>21</sup> [[TRI beginnings]]
- <sup>22</sup> [[TRI expanded in 91]]
- <sup>23</sup> [[TRI expanded in 97]]
- <sup>24</sup> See Fulop and Kiss (2001) for a discussion of the legal challenge mounted by the NMA.
- <sup>25</sup> See Environment Australia-National Pollutant Inventory website, <http://www.npi.gov.au/>
- <sup>26</sup> See Environment Canada-National Pollutant Release Inventory website, <http://www.ec.gc.ca/pdb/npri/>
- <sup>27</sup> Global Reporting Initiative (1999).
- <sup>28</sup> See Sustainable Asset Management website, <http://www.sam-group.com/>
- <sup>29</sup> See Dow Jones Sustainability Indexes website, <http://www.sustainability-index.com/>
- <sup>30</sup> World Resource Institute (2001) p.4.
- <sup>31</sup> Thomson and MacDonald (2001).
- <sup>32</sup> COMECO (2001); Compania Minera Antamina (2001).
- <sup>33</sup> Diavik-Diamonds Mines Inc. (2000).
- <sup>34</sup> See ICMM (2001).
- <sup>35</sup> Rosenfeld and Clark (2000).
- <sup>36</sup> [[Inter-American Strategy]]
- <sup>37</sup> Zillman, Lucas and Pring (2002, in press)
- <sup>38</sup> Pring R. 2001. The Law of Public Participation In Mining and Resources Development. Commissioned Study for the Mining Minerals and Sustainable Development Report. London, p 22
- <sup>39</sup> Elkington (1998) p.407; Thomson and MacDonald (2001) p.32.
- <sup>40</sup> [[direct quote from a corporate interviewee]]
- <sup>41</sup> Stratos Inc. (2002) p.4.
- <sup>42</sup> Stratos Inc. (2002) p.iii.
- <sup>43</sup> Thomson and MacDonald (2001).
- <sup>44</sup> Natural Resources Canada (1996).
- <sup>45</sup> Rosenfeld and Clark (2000).
- <sup>46</sup> Powell and Leiss (1997).
- <sup>47</sup> Thomson and MacDonald (2001).

<sup>48</sup> Ibid.

<sup>49</sup> Ibid.

<sup>50</sup> Ibid.

<sup>51</sup> Gibson (2001), p.18.