World Mines Ministries Forum 2002

**Transparency and Governance in the Management of Mineral Wealth**

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**The Issue.**

The debate about whether natural resource industries in general, and mining in particular, are part of a sustainable future or a relic of a past industrial age has often been central to discussions about sustainable development and transparent governance, and probably will remain so. The critical question for these industries is: How are they performing in that debate? The answer is: Not too well. The economic consequences of this poor performance -- let alone the impacts on industry reputation -- have been shown to be significant enough to pose the next question with some urgency: What should be done to improve the situation?

When all is said and done, countries that have the greatest mineral resource endowments, tend to be seen as having also the highest levels of corruption. Natural resources, including mining industries are in no way passive observers of these developments; if anything, given their command of financial resources associated with the exploitation of such endowments, they are or seem to be important contributors to this state of affairs.

During the TI Annual General Meeting of 2000, some 50 people representing industry leaders and stakeholders got together to debate issues of common interest, and agreed that, although the matter was complex and shrouded in deep vested interests, distorted incentive structures, bad practices among many players, the issues merited further and more systematic review to generate corrective actions. More importantly, a consensus emerged that this was a critical issue for industry advocacy and that the industry needed to do much better, particularly in balancing of economic, transparency, environmental and social goals -- the essence of sustainable development.

The discussion that followed was facilitated by MMSD having incorporating within in its broad mandate the issue of transparency. In a meeting arranged jointly with TI, an open and frank discussion of the subject took place in Berlin last September, on which I am basing in good part these remarks.

**The Players.**

*(i) Civil Society*

Nothing would be more dangerous as considering the people directly or indirectly affected as a nuisance one must tolerate -- rather than the ultimate stakeholders and beneficiaries of mining activities. The public increasingly expects business to deliver the goods and services it desires not only at a price it can afford but also in a manner it finds acceptable. Furthermore, within the OECD, there is a public that is ageing rapidly. An ageing population is also more risk averse. Higher life expectancy and growing fatigue from international conflict have created higher and more discernible expectation from their multinational firms. The OECD Convention Against Corruption of Foreign Officials is an indication of this new stand, and exposes multi-national firms to new rules of the game that criminalize corruption, even if undertaken in third countries.

Those businesses that fail to meet the rising expectations of the public may well lose competitive position. Reputation is an increasingly important factor both to obtain influence over key public policies and to retain and enhance market share. The natural resource industry will not enter the new century well placed to compete economically and politically given its current reputation. In fact, mining has become a pejorative term in many circles. This reputation is a liability for the industry, and is deeply rooted in the public mind and is widely shared by opinion formers.

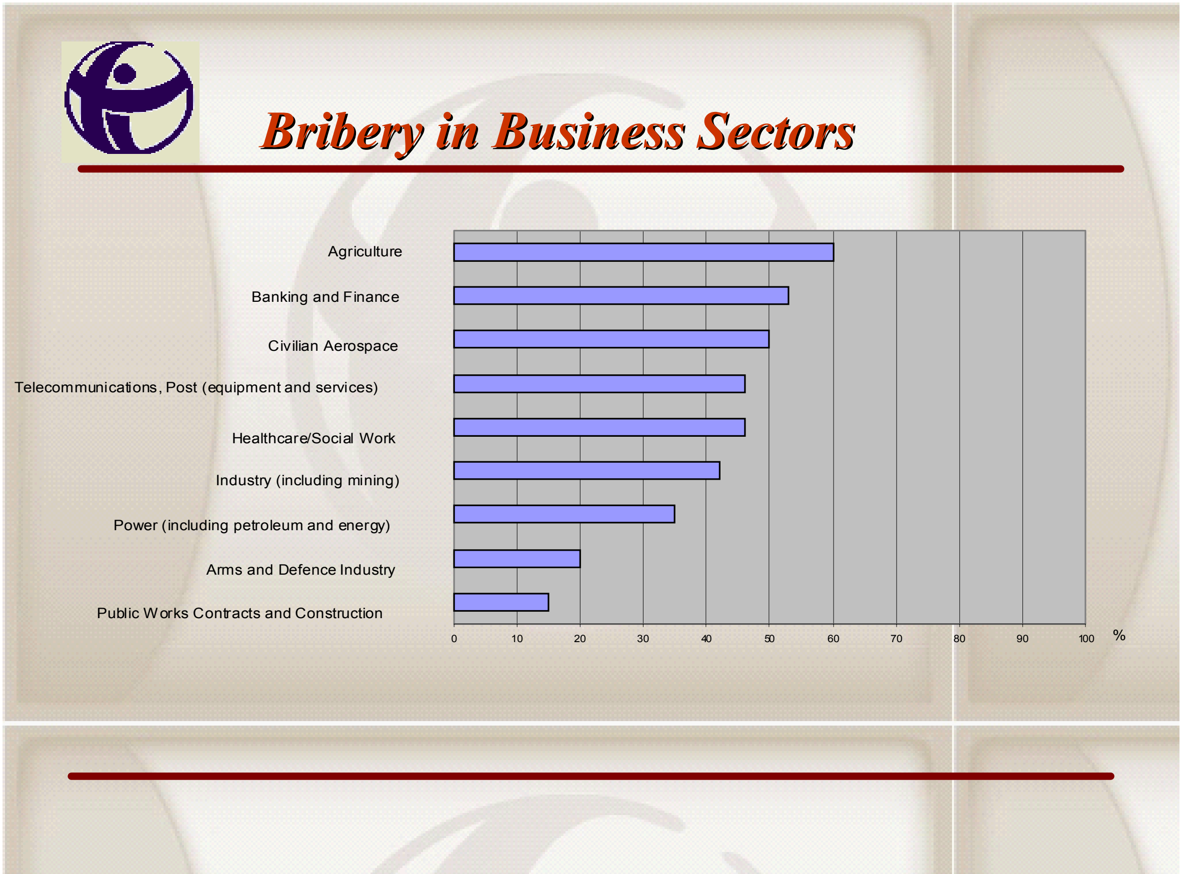
Greater transparency, accountability and scrutiny of mining firms is expected to continue, particularly in their dealings in countries from where they mine their raw materials. However, such monitoring cannot be expected to carry the necessary credibility if it is carried out by the mining industry itself. In fact, successful and modern enterprises welcome independent scrutiny, as a way to identifying problems areas and corrective action.

This will be particularly important in the mining industry, which still needs to build broader constituencies, and cannot approach it through do-it-alone approaches. In fact, since corruption is a collective problem for the industry, it requires a collective solution, including organizations outside the sector.

Cross-society coalitions are thus the best way to combat corruption in the sector. Collective action requires that mining companies become more proactive in "broadening the cohorts." National or local chambers of commerce and/or business associations in some countries could be a good place to start mobilizing interested parties. A broad coalition comprising mining companies, civil society groups (including the academic and labor elements) and companies from other sectors would give a broader representation across a variety of interests, if necessary to confront more effectively the Authorities that often times are the source of the problem.

*(ii) Mining Industry*.

More than most industries, mining relies on a high level of public consent in order to continue its activities since states tend to exercise a significant degree of control over access to and exploitation of mineral resources. In fact, mining companies must make significant progress to remove themselves from among the poorly rated industries in terms of generating bribes and other forms of corruption.




By now, leading companies have come to accept: the industry's continuing access to resources on viable terms --- its "license to operate" -- is dependent upon demonstrating that the industry has the will and the capability to operate within transparent and sustainable development principles. To this end, the industry needs: (i) improved anti-corruption standards on the part of all major players; (ii) better “intelligence” gathering, so that relevant developments in countries are better known to all concerned (e.g. risks associated with corruption, governance development, good practices being instituted around the world, etc); (iii) development of mutually agreed industry-specific principles, which are binding and commit all mining companies to some standards of behavior; and, as noted before (iv) commonly agreed monitoring arrangements.

Some initial steps have been taken in this directions, such as the beginning of debarment of corrupt companies in World Bank financed projects, the development of statistics on state of corruption in various countries, the broadening of ICMM’s and other global mining associations’ mandate to deal with sustainable development and governance issues – but much more concerted action is needed to make a dent on the issue. Granted, this is no easy task since mining companies face the dual problem of working in countries or geographical areas with scant rule of law and competition from newer junior mining companies. While mining companies have little choice but to go where there are the relevant natural resources, they have on the other hand a measure of control over their action – individually or collectively.

That being said, the key challenge to the mining industry in the 21st century is to operate in an increasingly globalized world. In it, the era of enclave projects to which the sector had grown accustomed has come to an end, and its activities are subjected to ever-closer scrutiny. This inevitably includes the handling of financial resources, and with it the impact of corruption on their business - which impairs the industry's reputation, increases shareholder risks, encourages poor and inefficient resource use, and in the worst-case scenario can lead to social unrest. We would encourage the sector to look into the practice of other surplus generating industries to find practical solutions, and the need to take leadership in addressing such concerns.

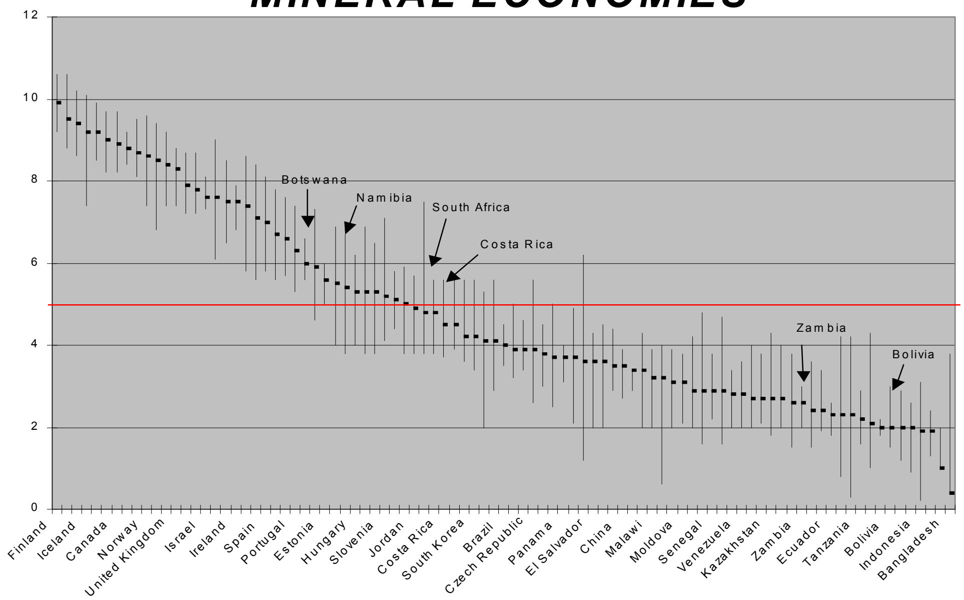
Operating in corrupted business environments, mining companies will have to take a more active responsibility for combating corruption. In countries where no formal or policed reporting structure exists (equivalent say to the UK Company House), it is up to the companies to be transparent about their payments to governments. To be effective, however, the go-it-alone practice that prevails in the sector will have to give way to developing alliances and the empowering of stakeholders.

*(iii) Governments*

Similarly, it is unlikely that there is just a coincidence that countries seen to have high levels of corruption tend to be mining producing economies. As noted in the graph below, with the exception of Namibia, all other countries have corruption perception indexes that straddle around, or are entirely below the 50% mark. More telling though, more than half of mining producing economies don't even figure in the index, because they don't have enough reliable surveys that are necessary for inclusion in such index, but where the limited surveys show them even below the rated levels of perceived corruption noted in the graph below. [1]

[1] Countries with less than three survey, and thus not included in the Corruption Perception Index, whose value added in mineral production is greater that 8% of GDP are: Dem. Rep. Congo (former Zaire), Sierra Leone, Suriname, Madagascar, Niger, Papua New Guinea, Sudan, Togo, and Jamaica

## CORRUPTION PERCEPTION INDEX AND MINERAL ECONOMIES




There is by now an ample body of evidence that shows that discretionary powers in public sectors are a major factor in creating conditions for corruption. As put by former Minister of Mines, José Piñera, the single most important measure for countries to consider is the removal of bureaucratic discretionary powers, which produce “saints in the courts who dispense favors based on all factors other than performance”. Coming such counsel from a Minister of Mines who lead one of the most wide-ranging sector reforms that produced a path-breaking increase of investments, fiscal and balance of payments revenues, such advise merits to be factored in future mining codes, taxation regimes, and associated mining sector policies.

The discretion that senior government officials have in allocating mining sector generated rewards, and lack of transparency and accountability that officials face for their decisions are in fact a temptation for corruption. There is a need to clearly and visibly establish the way and level of flows from the companies to governments (in the form of royalties, taxation, and other payments), and proper oversight and governance arrangements to limit the discretionary power for distributing these revenues.

With new efforts to support public sector reforms aimed at strengthen accountability and transparency more broadly, and the introduction of new diagnostic tools by the World Bank and others to measure and ultimately combat corruption, the environment is open to change fundamentally the incentives structure through increased transparency, competition, contestation and associated build-up of institutions. As corruption thrives in the dark and where there is a lack of accountability, these elements help in the end build control, enforcement – the rule of law.

At the broader level, 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 signed in 1997, by 34 states, and came into force in February 1999. Following the example of the US Foreign Corrupt Practices Act, the Convention criminalizes 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 cover "small" facilitation payments or payments to foreign political parties.

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. 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. All these could provide a basis for the sector to develop anti-corruption principles.

**The Way Forward.**

The above discussion shows that there are, indeed, important areas for action among all parties concerned. Most of the recommendations outlined in the above-mentioned MMSD/TI meeting thus revolved around partnerships at different levels, and the need to translate the thrust of international Conventions and policies into practical action within the sector, to deal with real, ground-level problems in areas where governance is often very weak, and where international arbitration can be hard to secure. These can be summarized as follows:

> At both national and global levels, *governments and international institutions*, including multi-lateral financial institutions must place mining sector issues much higher in their policy agenda, in view of their balance of payments and fiscal effects, the generation of surpluses for social investments and long-term development effects in the countries concerned. Chief among the concerns ought to concentrate on the removal of discretionary powers and establishment of clear and transparent "rules of the game", accountability and transparency for good resource management practices.
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> In the area of *individual company practice*, there is a need for guidance to emanate from corporate headquarters. Management would have to issue corporate guidelines or policies, and reinforce them with appropriate internal control arrangements and training on how to deal with corruption issues. 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 and/or “primers” 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 emphasized. The idea of the user-friendly “help-lines” can be powerful to enable staff to deal with concrete situations, as well as the establishment of investigation units available to any person with concrete complaints to seek corrective action

For companies working with other *companies and partners*, co-operation is bound to be 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 fostered into alliances to provide the appropriate critical checks and balances. The function of such partnerships are to: (i) share information on legislation, as well as networking and advice; (ii) 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.

To some extent such *partnerships* could then be replicated *at the global level*. With information being shared across the sector and inter-company learning maximized between the global players, crisis teams could be formed at both national and international levels. International arbitration should be sought and information about OECD regulations needed to be disseminated beyond those within the OECD. 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. Suggestions have also been made regarding ICMM/Transparency International working groups could be formed to develop common actions and mining industry principles.

In this way, the prospects are enhanced for overcoming existing and deep vested interests through the creation of a wider constituency for transparency and accountability.

*Toronto, March 14, 2002*