E-DISCUSSION

ADVANCING SUSTAINABLE DEVELOPMENT: THE CASE OF EX extractive industries

Summary of e-Discussion

Regional Initiative on Management of Natural Resources for Equity and Sustainability: Extractive Industries in Asia and the Pacific
UNDP Asia-Pacific Regional Centre
Bangkok, Thailand
The Asia-Pacific Inclusive Growth and Development (AP-IGD) Network aims to promote exchange of
knowledge, experience on issues related to poverty reduction, inclusive growth and development. The
network provides a platform to discuss emerging development priorities of common interest to countries in
the region. It provides an interactive space for collaboration among UNDP staff at the global, regional and
country level; development practitioners from different UN agencies; civil society, academics and experts to
share practical country experiences, specific issues and concerns as well as policy options to address common
challenges. The Asia Pacific region can potentially offer significant insights, policy pointers as well as benefit
to other regions, while strengthening south-south cooperation.
I. Contributions on “Revenue Generation: Planning for Inclusive Growth”

The AP-IGD network received responses with thanks from:
Rui Gomes, *Timor-Leste’s Petroleum Fund*
Carl Bruch, *Question on checks and balances of Petroleum Fund withdrawals*
Rui Gomes, *Checks and balances are not a guarantee*
Taimur Khilji, *Addressing macro concerns?*
Glenn Banks, *Revenue stabilization, regulatory frameworks and capacity: Some observations of the Papua New Guinea case*
Yanchun Zhang, *Natural resource revenue collection in the context of increasing commodity price volatility*
Satoru Araki, *Follow up on using market-based risk management instruments to hedge against price swings*
Amarendra Das, *Investment in human capital and community participation in monitoring mining activities*
Dorji Choden, *Strong regulation and enforcement mechanisms to maximize environmental sustainability and social benefit*
Kishan Khoday, *Social accountability pivotal to achieving inclusive, green growth in the extractive sector*
Robert Goodland, *The sustainability issue in EI*
Robert Goodland, *The sustainability issue in EI*
Glenn Banks, *Poverty reduction at Porgera mining site, Papua New Guinea*
Robert Goodland, *Poverty often increased at mining site*
Bishwa Nath Tiwari, *Revenue generation from natural resource extraction for development*
Matthew Genasci and Katarina Kuai, *Designing fiscal policy to ensure resilience against political and economic volatility*
Francesca Viliani, *Thoughts on sustainability of the interventions*
Saurabh Singh, *Utilizing extractive industry revenues for sustained economic development*
Kishan Khoday, *IMF Topical Trust Fund on managing natural resource wealth*
Dr. Eugene H. Shannon, *Managing expectations of benefits to be accrued from the extractive industry*

II. Contributions on “Revenue utilization: Prioritizing the present or the future?”

*Opening Message*: Revenue utilization: Prioritizing the present or the future?

The AP-IGD network received responses with thanks from:
Kieren Moffat, *Investing mining revenues for the future: Australian experiences*
Jennifer Horning, *Leveraging the power of the market to encourage better development and sharing of resources with the most vulnerable people impacted by mining*
Francesca Viliani, *Partnership central to sustainable development with focus on service provision*
Bryn Gay, *How does revenue from mining companies go into community development initiatives?*
Francesca Viliani, *Thoughts on sustainability of the interventions*
Saurabh Singh, *Utilizing extractive industry revenues for sustained economic development*
Kishan Khoday, *IMF Topical Trust Fund on managing natural resource wealth*
Dr. Eugene H. Shannon, *Managing expectations of benefits to be accrued from the extractive industry*
III. Contributions on “Implementation challenges and impact management”

Opening message: Impact management and implementation challenges

The AP-IGD network received responses with thanks from:
Blake Ratner, Extractive industries and the governance of common pool resources
Päivi Lujala and Carl Bruch, Extractive industries, contracts, and post-conflict peace building
Bryn Gay, Considerations for NRM in post-conflict settings?
Abbi Buxton, The Mining, Minerals and Sustainable Development (MMSD) agenda: 10 years on
Robert Goodland, Benefits allocation and FFIC
Arturo Requesens and Fiorella Arenas, Addressing indigenous peoples’ concerns with extractive industries (EI)
Dave Sawyer, Implementation challenges and impact management: Canada’s oil and gas GHG challenge
Saleem H. Ali, Ecological economics as a planning tool for extractive industry projects
J.E., The need to recognize indigenous communities right to say “No” to extractive industry projects
Leah S. Horowitz, Communities, not politics?: Corporate Social Responsibility and the micropolitics of recognition
Leah S. Horowitz, Contractual violence: Corporate Social Responsibility, environmental harm, and the manipulation of power inequalities in New Caledonia
Emy Perez, Challenges and impact management in EI sector in East Asia and the Pacific
Emy Perez, Community Scorecards Initiative in Timor-Leste and the Philippines
Catherine Coumans, Risks that contribute to mining related development deficits
Amarendra Das, Need to strengthen enforcement of environmental laws in India
Daniel Franks, Policy innovation for better governance of the social impacts of mining
Brian Kohler, Extractive industries and sustainable development
Gul Najam Jamy, Pakistan case study on gas exploration in Kirthar National Park
Emma Wilson, Social issues management and the Sakhalin-2 project in the Russian Far East
Yumiko Yamamoto, Human development impact assessment tool of trade policy: An application to extractive industries
Varsha Venugopal, Resource revenue sharing with subnational governments: Opportunities and challenges
Glenn Banks, Caution with ‘best practice models’
Juan Pablo Soler Villamizar, Indigenous communities’ participation essential in decision-making that affects their territories
Leisa Perch, The Benefit-sharing challenge: More than a matter of revenue

Resources
INTRODUCTION

Due to the increasing demand for fossil fuels and minerals, Asia-Pacific countries have been developing their extractive industries (EI) at a rapid pace. Some countries have already exhausted their finite resources and are looking to develop renewables (or harvestables). Others have recently discovered their natural resource wealth and are now looking at options to explore and extract. Yet poor management of natural resources can increase poverty, exacerbate inequalities, induce conflicts, and degrade the environment. Extractive industries provide entry points for addressing sustainable and inclusive growth, poverty reduction, inequalities, conflict prevention and recovery, environmental conservation, human rights, indigenous peoples’ issues, transparency and accountability, among many development challenges.

Therefore, it is topical and timely that the UNDP Asia-Pacific Regional Centre launched the e-discussion to: (a) enhance the understanding of the economic, environmental, and social implications of EI from a human development perspective, and (b) examine ways in which EI can be managed and revenue utilized for sustainable development.

The Inclusive Growth and Poverty Reduction unit is responsible for the Asia-Pacific Inclusive Growth and Development Network (AP-IGD Network), a knowledge sharing network that exchanges experiences and good practices on priority issues among a wide audience of development practitioners and other stakeholders (398 members). The virtual moderated discussion on extractive industries, over the course of 7 weeks (6 August-20 September 2012), focused on 3 sub-themes covering issues related to revenue generation; revenue utilization for sustainable development; policy implementation challenges and impact management from extractive industries.

The discussion featured 59 posted contributions many (32 percent) of which were received from contributors based in Asia-Pacific. A large number of contributions (20 contributions or 34 percent) were submitted by individual working for agencies of the UN System; of these 10 were shared by UNDP COs (Bhutan, Mongolia, Pakistan, Saudi Arabia, and Timor-Leste). Overall, the discussion offered a multiplicity of analytical perspectives on the potential challenges and advantages of EI practices.

The synthesis succinctly presents the main highlights which emerged from the discussion. A compilation of contributions for the respective sub-themes is provided in the consolidated reply.
EXECUTIVE SUMMARY

Growing demand for non-renewable natural resources, such as oil, gas, and minerals, parallel to their increasingly difficult accessibility, has pushed extractive industries to explore reserves in Asia-Pacific countries. Some countries have already exhausted their finite resources and are looking to develop renewables. In both scenarios poor management of natural resources can increase poverty, exacerbate inequalities, trigger conflicts, and degrade the environment. While many countries in the region are rich in resources, they are poor in energy access for their populations, which are also growing at a rapid pace.

Governments weighing options to extract non-renewables must consider the immense consequences in the wake of rising carbon emissions and global warming. Intensified exploitation of fossil fuels without strategic and coherent policies for their production and use could undermine efforts to keep global temperatures below 2 degrees Celsius, a goal that includes curbing carbon emissions. Following the successful Rio +20 dialogues and the shaping of the post-2015 agenda to envision a more sustainable future for our planet, the emergence of extractive industries in Asia-Pacific countries cannot follow short-term economic development. Rather, pursuit of greener growth, which could harness mining to play a role to help countries transition to cleaner energy sources, could be a more integrated, sustainable approach to development. To do so, governments would need to strengthen their capacities to develop, manage, regulate, and monitor these industries. Strong and effective institutional and policy frameworks for the extractive sector that include appropriate safeguards and community engagement, could maximize social as well as economic benefits while reduce negative human and environmental impacts.

The UNDP Asia-Pacific Regional Centre launched an e-discussion among international development practitioners, government, civil society, and industry counterparts to explore policy solutions regarding extractive industries in light of emerging frameworks on sustainable development. The aim was to: i) enhance the understanding of the economic, environmental, and social implications of extractive industries from a human development perspective, and ii) examine ways in which they can be managed and revenue utilized for sustainable development. The three sub-themes focused on the planning, institutional, and policy measures to generate revenue, possible ways to utilize revenue towards sustainable development initiatives, and comparative examples for managing impacts from extractive industries and overcoming policy implementation challenges.

Generating revenue from extractive industries to plan for inclusive growth

The requirements for the sound macroeconomic management of extractive industries have come under closer scrutiny as a potential means to generate national wealth. Developing countries in the region face opportunities and risks depending on the policy and institutional frameworks established to manage this newfound, accumulative wealth. Developing countries can take measures to avoid the ‘resource curse’, such as capturing revenue through taxes and translating it into other forms of capital, skills, employment, and technology transfer, which could, in turn, establish steady revenue streams to put into funds for future generations.

Reviewing countries’ institutional, fiscal, and regulatory environments for good governance of the revenue generated includes strengthening the national, provincial and local capacities to manage and
distribute revenue flows, while encouraging reinvestment into long-term capital and social programmes for future generations. A good economic model for resource funds must be further contextualized within the larger economic and political trends within countries.

To overcome macroeconomic challenges, such as commodity price volatility, facing hydrocarbon and mineral producers in the Asia-Pacific requires balancing power between negotiating as well as mining-affected stakeholders. This could be accomplished through information sharing about the volume, value, duration, technical and capital requirements for the resources among governments, companies, and affected communities. Furthermore, equalizing the power imbalances also requires that these stakeholders understand the costs of the extractive practices on the environment and biodiversity, and provisions for ensuring inclusive, participatory prior, informed consent, consultations, and dispute resolution processes have been employed.

The first sub-theme raised the following key points when considering developing extractive industries to generate national revenue:

- Capturing wealth from extractive industry-related revenue through levying and collecting taxes is an immense challenge for resource-rich developing countries, but flexible fiscal tools can help yield benefits.
- Flexible fiscal policy, which includes risk management instruments, can offset potential losses from commodity price fluctuations.
- Contextualized, prudent investment strategies and regulatory frameworks can help effectively, transparently, and responsibly manage EI-related revenues, while balancing social and environmental concerns.
- Legislation may not have traction with safeguarding sustainable practices on the ground therefore policies should be linked to the extractive companies’ social accountability frameworks.
- Any consideration to explore natural resource wealth must weigh social and environmental impacts from extractive activities, while upholding legal frameworks that address indigenous peoples’ concerns.
- Measures to ensure public participation and access to information, environmental sustainability, human capital development, and South-South cooperation should be integrated into inclusive, green growth strategies regarding extractive industries.

Using revenue utilization to meet present needs while planning for future sustainable development

A large part of development policies have centred on fiscal regimes and ways to stabilize commodity prices yet the public management of generated revenue is interconnected with political processes and power dynamics for control over this wealth. Furthermore, expectations of automatic wealth can lead to over spending in the short-term, which can short change countries when needing to reconcile longer-term environmental, health and social costs.

There is a menu of options and policy frameworks for countries to choose how to best prioritize revenues in order to avoid the ‘resource curse.’ Countries can establish sovereign wealth funds, including stabilization funds, to help save and mitigate detrimental impacts of revenue flow volatility, and/or savings funds to save revenue for future generations. Countries can invest revenues in
immediate spending initiatives, such as in public services, infrastructure and human capital which would help in pursuing long-term growth. Countries can also distribute cash transfers to citizens or share revenues with sub-national governments (to decentralize fiscal expenditures).

By tapping into finite, non-renewable resources, countries must consider options that pivot away from dependence on resource-related industries. Rather, building up other forms of capital and sectors, that respect environmental concerns, can generate economic activity and contribute to overall human well-being for future generations to benefit. These efforts might include focusing extraction in order to develop energy needs locally as well as putting revenue towards local community development. Protective measures, such as local content, proactive taxation that favour the host country, and economic diversification policies would require providing incentives to companies.

The second sub-theme raised the following key points when considering how to use revenue generated from extractive to meet sustainable development initiatives:

- Countries can choose to save, spend, or distribute revenues to align with their national development goals.
- When setting up financial and institutional frameworks countries should require good governance of revenues and allocate sufficient compensation for affected peoples.
- Transparent and accountable revenue management must give serious attention to economic diversification policies and social/employment programmes that target the most vulnerable and impoverished people, who bear the highest social costs yet receive the fewest benefits.
- Social policy plays a role in capturing mineral rents that could be strategically used to recalibrate power imbalances towards societal equalities and environmental sustainability.
- Redistribution of revenues at the subnational level could help with countries’ absorptive capacity, but countries should consider the particular challenges at the local levels.
- Contracts with extractive industries should have built-in protections and adequate compensation for environmental, social and economic losses attributed to their impacts.
- A number of market-based initiatives could help mitigate the inequitable distribution of benefits from resource wealth.

Managing impacts from extractive industries and overcoming policy implementation challenges

There are key elements for the global governance of natural resources, which must involve integrated, cross-sectoral approaches. The measures to help mitigate negative impacts involve the inclusive participation and representation of affected people, notably the most marginalized, vulnerable and impoverished, in decision-making processes; measures of accountability; and strengthened institutional capacity to ensure empowerment, engagement and adaptability of different stakeholders. These components could help governments, communities, as well as private sector to minimize risks, such as deteriorating peace and stability that can arise.

Extractive industries could exacerbate existing inequalities or create new ones if governments and the industry do not adopt inclusive, participatory, consultation, and benefit-sharing processes. Comprehensive impact and risk assessments, disclosure of revenue expenditures at subnational levels, established grievance mechanisms, as well as clearer understandings of cultural contexts and local power dynamics in representation and decision-making could help mitigate the negative consequences from extraction. National policies might require the recognition of local land ownership
of natural resources, respecting customary systems of decision-making and administrating justice, particularly among indigenous and ethnic minorities, and finding solutions which are better suited to the concepts of nature, land rights, and self-determination within local communities.

The final sub-theme raised a number of comparative example and the following key points regarding the management of impacts from extractive industries and overcoming policy implementation challenges:

- Natural resources could translate into wealth for developing countries to be utilized towards peace building efforts, but are also major risk factors for conflict.
- There are often risks not always considered at the inception of a project and countries can take particular precautions to avoid them.
- Legislation that outlines benefit sharing and dispute resolution mechanisms while ensuring the inclusion of local communities in the decision-making and natural resource management processes can help address structural inequalities within the extractive industry sector.
- The extractive sector should include community engagement within its corporate social responsibility/accountability policies and participatory consultation processes can prevent the risks and protect fundamental human rights, particularly among indigenous peoples.
- Community monitoring of industry compliance to environmental, labour, health, and other laws can be an effective way for communities to access information and share grievances about impacts from extractive activities.
- Tools and methods for assessing the impacts should engage communities and examine the gender dimensions of extractive activities.
- Innovative policy solutions for transitioning into more sustainable industries that deliver fair and equitable benefits need to be on the immediate agenda to tackle climate change and scarcity of natural resources.

The e-discussion has shown the immense complexity of the global extractive industry sector and natural resource management. The industry poses both the opportunities and challenges for developing countries in the region. It is clear that governments and communities require strengthened capacity to understand the sector, its impacts, and to improve strategies for investment, taxation, good governance, environmental protection, community engagement, and informed decision-making at the local levels.
SYNTHESIS

SUMMARY: SUB-THEME 1 REVENUE GENERATION: PLANNING FOR INCLUSIVE GROWTH

Growing demand for non-renewable natural resources (NR), such as oil, gas, and minerals, parallel to their increasingly difficult accessibility, has pushed extractive industries to explore reserves in Asia-Pacific countries. The requirements for sound macroeconomic management of NR have come under closer scrutiny as a potential means to generate national wealth for countries in the region. Developing countries can take measures to avoid the ‘resource curse’, such as capturing revenue through taxes and translating it into other forms of capital, skills, employment, and technology transfer.

Capturing wealth from EI-related revenue through levying and collecting taxes is an immense challenge for resource-rich developing countries, but flexible fiscal tools can help yield benefits.

A “one-size-fits-all” approach is not applicable to fiscal design; rather Matthew Genasci and Katarina Kuai offer core features. Fiscal tools (e.g. royalty types) should be flexible to changing political and economic realities. These tools can ensure that countries benefit from the value of their resources and provide a baseline of stable revenue flows. The mining sector in the Philippines shows that well-designed fiscal regimes are necessary to improve the capacity of resource-rich countries to collect revenue via taxes. Countries can use standard form agreements and rely on ‘generally-applicable legislation’ instead of ad hoc contracts to improve tax collection. Mineral exporting countries can also employ a number of mining taxes (e.g. a windfall profits tax implemented by Mongolia, as noted by Yanchun Zhang) to benefit from a commodity price boom and ensure resilience against commodity price volatility (CPV).

Flexible fiscal policy, which includes risk management instruments, can offset potential losses from commodity price fluctuations.

Yanchun Zhang points to the problems of limited fiscal space, weak taxation policies, and over-dependence on the commodity-producing sectors that make countries more susceptible to CPV. Well-designed and flexible fiscal policy, including using risk management instruments like contracts, futures, and options, can help governments offset potential losses in their commodity export earnings by transferring risk to others. Mexico used put options to offset a drop in oil prices, but Satoru Araki raises concerns about the efficacy or safety of hedging derivative transactions. When considering these transactions, it is important to compare their performance over several years. Yanchun Zhang agrees that Mexico’s losses could have worsened if oil prices had climbed. But, countries can make use of market-based risk management instruments to their benefit, bet in the right direction, and avoid economic disruptions created by CPV. Countries can decide whether passive or active management of transactions will optimize returns for them*. A well-designed fiscal system (with a windfall profits tax as a short-term instrument) can smooth countries’ revenue flows.
Contextualized, prudent investment strategies and regulatory frameworks can help effectively, transparently, and responsibly manage EI-related revenues, while balancing social and environmental concerns.

Timor-Leste’s Petroleum Fund, as outlined by Rui Gomes, is a type of sovereign wealth fund (SWF) in which investments abroad and state expenditures are subject to checks and balances by the governing bodies with clearly defined roles and responsibilities. The Fund has good features: limits and regulations placed on withdrawals from the state budget account; the Government must specify to Parliament the ‘estimated sustainable income (ESI)’ and obtain certification by an independent auditor; and the Central Bank and Government must fully disclose the activities of the Fund, which highlights the commitment to transparency of expenditures. However, Carl Bruch raises concerns about the sustainability and oversight of Timor-Leste’s revenues. Public concern has grown that withdrawals exceeded the ESI and contributed to a ten-fold increase in the national budget, while existing reserves could diminish over the next decade. Rui Gomes offers examples where the Government converted a portion of revenues into other productive assets, such as diversifying into global equities. This prudent measure can build up sufficient liquidity for sustainable spending when revenues decline -- helping to avoid the Dutch disease** and its fall-out effects. Timor-Leste’s current strategy is to balance expenditures in development programmes that value the present as well as future generations, yet it remains to be seen once the natural resources are depleted.

In the case of Papua New Guinea (PNG)’s Mineral Resources Stabilization Fund, Glenn Banks describes limited capacity in some governments to manage revenue flows. Often governments prioritize funds to pay external debt, exceed fiscal targets, and face problems for guaranteeing transparency and accountability of the revenue management, with adverse environmental and social effects. A Sustainable Policy and Planning Framework in PNG’s mining sector identified Provincial Government revenues with the most “direct developmental potential”, which requires capacity strengthening on revenue oversight at the local and provincial levels.

Dorji Choden offers insight on Bhutan’s initiatives to nationalize its EI sector, such as in quarrying, in order to prudently extract its limited and non-renewable minerals, help stabilize prices, and meet increasing demand.*** Its Mineral Development Policy looks at ways to put funds into environmental restoration and community development, and the Government mandates Environment Impact Assessments (EIAs) to minimize adverse impacts on forest coverage, agriculture and wildlife. The Natural Resource Charter, as a global platform, and India’s Sustainable Development Framework (SDF) are examples for addressing sustainability and social accountability in the EI sector. India’s framework and mining legislation aim to improve profit-sharing from EI taxes/royalties to the State, and their accountable management. Mining firms would be required to specify local Sustainable Development Plans in each region where they operate. Amandera Das describes the innovative step to redistribute revenue into area development and programmes that meet the needs of the local population.

Legislation may not have traction with safeguarding sustainable practices on the ground therefore policies should be linked to the EI companies’ social accountability frameworks.

Robert Goodland points to cases in El Salvador and Guatemala, among many, where extractive industries have exerted enormous power and influence in the establishment of mining regulations, indicating the asymmetrical bargaining power among the industry, impacted communities, and developing countries with weak governance structures, political instability or underlying conflicts. To
address these risks and ensure compliance with sustainable development frameworks, **Kishan Khoday** recommends integrating social accountability mechanisms into policy interventions on EI (e.g. those related to regulation and planning; indigenous rights; corporate citizenship; and South-South cooperation) for advancing transparency, accountability, and participatory governance of natural assets. Efforts to reign in the corporate citizenship of multinational and domestic EI companies include: the [Ruggie Protect, Respect and Remedy Framework](https://www.business-humanrights.org/en/what-we-do/key-documents/the-protection-respect-and-remedy-framework) (endorsed by the UN Human Rights Council in 2011), the UN-backed [Principles for Responsible Investment](http://www.unpri.org/), and the [Extractive Industry Transparency Initiative](http://www.eitransparency.org/), which aim to integrate environmental, social and governance principles into investments.

**Taimur Khilji** also mentions that several legal cases have generally favoured companies at the expense of vulnerable ethnic minorities, workers and biodiversity. To resolve differential bargaining power that results in human rights violations, poorly negotiated contracts, immense corruption, and limited transparency and accountability, a macro-level independent dispute resolution body could protect weaker parties and encourage the fair negotiation of contracts with EI. Revisiting and refining dispute resolution approaches, such as at the WTO or World Bank International Centre for Settlement of Investment Disputes (ICSID), but that do not favour rich countries and use the overarching objectives of the International Court of Justice (ICJ), could yield more equal exchanges among stakeholders.

Any consideration to explore natural resource wealth must weigh social and environmental impacts from EI activities, while upholding legal frameworks that address indigenous peoples’ concerns.

Among several Asian examples, **Kishan Khoday** looks at India’s Tribal Forest Dwellers Rights Act (2007) and Indonesia’s Special Autonomy Act for Papua (2001) because they attempt to address indigenous peoples’ and ethnic minorities’ unique histories and experiences of injustices, their customary rights of ownership, and use and access to natural resources. However, they have seen serious implementation challenges. To overcome these challenges, other regimes for indigenous empowerment in Bolivia, Brazil, Chile and Peru and the innovative Constitutional provision on the Rights of Nature in Ecuador could offer insight as documented in the [Environmental Justice for Inclusive Growth](http://policypapers.net/) policy brief.

Measures to ensure public participation and access to information, environmental sustainability, human capital development, and South-South cooperation should be integrated into inclusive, green growth strategies regarding EI.

While countries can examine how their fiscal measures better account for EI revenue and reduce overseas capital flight, it is plausible to integrate myriad measures within sustainable development frameworks: the valuation of the sustainability of ecosystems, as well as policies that increase the public’s access to information, participation and justice. For example, **Kishan Khoday** indicates that China opted for its Regulation for Public Participation in Environmental Matters to provide a consultative mechanism that includes potentially affected communities in Environmental Impact Assessment processes.

EI activities have enormous impacts on water usage, seepage of chemical by-products into groundwater sources that then resurface and are used by nearby residing communities, air pollution,
and disruption to other plant and animal life. Although EIAs can calculate and expose many environmental effects, they are not always comprehensive or inclusive of the long-term impacts. **Robert Goodland** maintains that, from an environmental sustainability perspective, “mining can never be fully sustainable” as it inherently depletes natural stocks.*** The mining industry as a driver for sustainable development tends to see economic benefits outweighing social and environmental costs and mining revenues reinvested in building sustainable industries and productive capacities. This approach is a form of ‘weak sustainability’ because it views different forms of capital as substitutable. By not diminishing the overall stock of capital, mining could contribute to sustainable development if it produces long-term benefits that are “equal or exceed the values that existed prior to exploitation”. Social, environmental and all external costs (the net costs) should be subtracted from any benefits accrued from EI activities.

South-South cooperation is another angle for coherence with EI to meet sustainable development goals. **Kishan Khoday** shows that Asia has seen an increase in outward direct investment (ODI) and Official Development Assistance (ODA) into resource-rich but less developed countries. Therefore, countries, with support from UN agencies, notably UNDP, could benefit from analyzing how to integrate inclusive, green growth approaches into ODI flows, as raised by the July 2012 Forum on China-Africa Cooperation.

In comparison to **Rui Gomes**’ description of Timor-Leste’s investment in US Dollar-denominated bonds, **Amarendra Das** instead promotes developing human capital as a way to substitute reliance on limited NR industries. Human capital investment includes prioritizing health, education, training, research and development, as well as building up hospitals, roads, energy, schools, etc. Skill building focused on local community participation and monitoring in the mineral management can help counter illicit mining operations, ensure profit-sharing goes back into community development thereby giving communities a sense of ownership, and offset impacts due to loss of community property/resources and environmental destruction.

**Bishwa Nath Tiwari** promotes a “holistic approach” to overcome the challenges of asymmetry of information and bargaining power, and effective, prudent management of revenue earned from extractives. Such a holistic approach that optimizes resilience against CPV, include policy measures that concentrate on discovery and innovation, macroeconomic stability, and prudent fiscal policy.

This theme looked at ways to generate revenue from NR to translate into inclusive, green growth and sustainable development by emphasizing the need to review countries’ institutional, fiscal, and regulatory environments for good governance of the revenue generated. This includes strengthening the national, provincial and local capacity to manage and distribute revenue flows, while encouraging reinvestment into long-term capital and social programmes for future generations. To overcome the macroeconomic challenges facing hydrocarbon and mineral producers in Asia-Pacific developing countries require balancing power among negotiating and mining-affected stakeholders through information sharing, understanding the costs on the environment and its biodiversity, and ensuring inclusive, participatory prior, informed consent, consultation, and dispute resolution processes. What might be a good economic model for resource funds must be further contextualized within the larger economic and political trends within countries. Furthermore, countries opting to exploit natural mineral wealth need to carefully consider how to extract the finite resources as a short-term plan while transitioning into efforts that develop renewable energy sources.
SUMMARY: SUB-THEME 2: REVENUE UTILIZATION: PRIORITIZING THE PRESENT OR THE FUTURE?

A large part of development policies have centred on fiscal regimes and ways to stabilize commodity prices yet the public management of generated revenue is interconnected with political processes and power dynamics for control over this wealth. Furthermore, expectations of automatic wealth can lead to over spending in the short-term, which can short change countries when needing to reconcile longer-term environmental, health and social costs.

There is a menu of options and policy frameworks for countries to choose how to best prioritize revenues in order to avoid the ‘resource curse.’

Saurabh Sinha looks at three options. To save: countries can establish SWFs, including stabilization funds, to mitigate detrimental impacts of revenue flow volatility, and/or savings funds to save revenue for future generations. To spend: countries can invest revenues in immediate initiatives, such as in public services, infrastructure and human capital which would help in pursuing long-term growth. To distribute: countries can distribute cash transfers to citizens or share revenues with sub-national governments (to decentralize fiscal expenditures). Botswana, Chile, Indonesia, Malaysia and Peru avoided the impacts from revenue mismanagement by adopting one or more of these options. Botswana is notable for reinvesting its diamond revenues in infrastructure and human capital according to its national development plans.

Timor-Leste chose to transfer oil revenue to the state budget for immediate use. Rui Gomes warns that huge expenditures in a national electricity programme could be unsustainable due to high costs to maintain the infrastructure. Other investments, such as conditional cash transfers, could be short-term options because they have multiplying effects on the domestic economy when recipients spend on imported goods and services. Rather, measures to diversify the economy and generate sustainable employment could help protect the domestic economy from influx of resource revenues.

Kishan Khoday looks at Saudi Arabia’s efforts to use its oil revenue to fund 80 percent of all public revenues, which has translated into significant human development gains as well as helped fund Official Development Assistance (ODA) to over 87 countries. Declining oil reserves (due to increasing worldwide demand) has shifted attention to strategies for translating oil wealth into more sustainable development for future generations. The government is planning to reinvest oil revenues for a low-carbon future -- in energy efficiency and renewable energy solutions. In addition, the government is working on forecasting oil reserves to help with economic diversification initiatives to help address youth unemployment and socially excluded people.

Chile also has generated significant revenues from its copper industry by building structural balance in the central government. Katja Hujo explains that, with its Fiscal Responsibility Law, Chile isolated its national budget from cyclical variations of three variables that impact government revenues: the potential gross domestic product (GDP); the copper benchmark price; and the Molybdenum (or by-product of copper extraction) price. The structural balance pursues a surplus target of 1 percent of GDP to maintain future fiscal responsibilities, including pensions. Specific taxes on mining have helped increased contributions to initiatives that help with economic diversification and expanding social pensions. While the revenue flows can be maintained when copper prices are booming, there could be many challenges for Chile to continue its achievements, such as balancing the increased
domestic spending on prices and exchange rates to avoid inflation and currency overvaluation and guaranteeing fair and transparent budget processes for using revenues.

Andrew Bauer-Gador raises caution about looking at countries’ ways to manage revenue as ‘best practice models’, emphasizing the importance of contextualizing domestic institutions, indicators of good performance, absorptive capacity to manage revenues, and social rate of return in domestic investment (e.g. infrastructure, human capital). Timor-Leste and Norway are quite different in their respective capital shocks; Timor-Leste has limited infrastructure and human capital that generally facilitate self-sustaining growth in global North countries. He argues, “saving petroleum revenues and investing them in assets outside the country is not a development strategy.” Instead, given many resource-rich developing countries’ absorptive capacity differences, it is important to pay attention to the gradual increase of government spending to permit time to adjust, manage larger revenues, and avoid “wasteful over-spending”.

When setting up financial and institutional frameworks countries should require good governance of revenues and allocate sufficient compensation for affected peoples.

Kishan Khoday suggests the IMF Topical Trust Fund on Managing Natural Resource Wealth, as a mechanism to scale up technical assistance to LDCs and lower-middle-income countries for effectively using resource revenues. The Fund supports the EI fiscal regime, EI revenue administration, fiscal policies and public financial management in resource-rich countries, NR-related financial asset and liability management, and statistics for NR.

Katarina Kuai and Erica Westenberg compare countries’ experiences with the Extractive Industries Transparency Initiative (EITI), which is growing into an international industry standard to help with issues on national oversight of EI revenue. Among the current 36 EITI-compliant countries there has been closer public scrutiny over discrepancies between revenue shared between EI and governments. Yet there are challenges for citizens to become better informed about how the revenue is used, particularly between the central and sub-national governments. Jean Chapman observes the centralized management of EI exploration licenses as Cambodia’s way of earning revenue. It is not yet compliant with EITI, therefore, it is not clear how revenue from EI will be used to diversify the economy or invest in programmes according to the National Strategic Development Plan. Rather, civil society groups such as Cambodians for Resource Revenue Transparency (CRRT) have played the role of monitoring transparency and accountability in the EI sector. The NGO holds public hearings and advocates for inclusive participation in the EI management and expenditure. Liberia has taken notable steps against corruption in the EI sector, by granting public access to data on revenue management; discrepancies are publicly discussed among diverse stakeholders and the failure to report revenues is subject to criminal proceedings.

There are a few innovations in the EITI reporting among other countries are: tracking these flows (e.g. Mongolia); monitoring funding activities through CSR or company donations (e.g. Liberia, Mongolia, Peru); and documenting state investments as an equity partner in EI operations (e.g. Democratic Republic of Congo (DCR), Nigeria, Tanzania). Mongolia has reviewed ways to use EITI to monitor its Development Bank and Human Development Fund, financed by EI revenues.

Rui Gomes describes Timor-Leste’s efforts for ensuring transparent and accountable management of revenue. In its EITI reports a special fiscal instrument documents the amounts channeled to
infrastructure projects, education or inter-generational savings, which permits the public to compare what the fund received vis-à-vis its rules on expenditures towards these projects. UNDP has provided technical assistance in establishing transparency and accountability mechanisms relating to the EI sector, particularly strengthening parliamentary, judiciary and civil services institutions. However, enhanced transparency of the Petroleum Fund has not automatically resulted in economic governance. UNDP can contribute in areas such as local governance, right to information, strengthening capacities in auditing and oversight agencies, as well as support to the Anti-Corruption Commission (CAC). Strengthening the governance and legal framework around the EI sector would require multi-stakeholder partnerships and contextualized initiatives.

Transparent and accountable revenue management must give serious attention to economic diversification policies and social/employment programmes that target the most vulnerable and impoverished people, who bear the highest social costs yet receive the fewest benefits.

Among many initiatives, Dr. Eugene H. Shannon suggests reinvesting revenue into women and youth empowerment programmes, small to medium scale enterprises (SMEs) development, as well as support for research and development. ‘Total accountability’ to the people that shows marked improvement in social services could help post-conflict countries maintain peace and security. It is important that EI revenue catalyze other sectors, including agriculture, forestry, fisheries, tourism, and sustainable, renewable energy sources (aimed at zero or low carbon emission as defined in the Clean Development Mechanism (CDM)) which can create employment and generate additional revenue.

The development of a skilled workforce and continuity between resource-rich communities and EI can help countries overcome some institutional challenges for diversifying their economies (as raised by Jean Chapman). Including small-scale artisanal miners as stakeholders in the extraction decision-making processes could help empower local communities while preserving their traditional small-scale mining knowledge, perhaps which is more respectful of the environment than large-scale operations. In LDCs there may be limited skilled, higher-educated workers and expertise in geology/minerals. To overcome these limitations, the Royal Government in Cambodia has plans to fund short-term training in the country, scholarships for higher education abroad, and reopen the school for geology/minerals.

Social policy plays a role in capturing mineral rents that could be strategically used to recalibrate power imbalances towards societal equalities and environmental sustainability.

Katja Hujo details that some social policies have shown positive impacts on growth, employment, social cohesion and political legitimacy because they are not as financially constrained. When governments have the capacity to capture the mineral rents, social programmes can be more sustainably funded. Argentina, Bolivia, Ecuador, Peru, and Venezuela have successfully redistributed their mineral rents into social policies, such as child benefits, social pensions or social assistance.

Mongolia has adopted sound fiscal policies to help manage revenues sustainably and translate into sustainable human development, including:
- creating a Development Bank to finance large infrastructure projects (e.g. railways, energy sector);
- proposing an Integrated Budget Law to transfer ‘block grants’ to sub-national levels, as part of a fiscal decentralization plan;
- redistributing revenue through citizen cash transfers (first a targeted programme for children in poor households but discontinued due to downturn of copper prices in 2007-08, then a universal, monthly cash handout to all citizens until election period in 2012).

Direct cash transfers have been seen as effective in reducing poverty in some cases. Nienke Raap introduces Alaska’s Permanent Fund Dividend, which receives 25 percent of its revenue from the state’s EI, provides a dividend to all citizens residing at least one year. It creates a guaranteed sum of cash, which could serve as an income buffer. Alaska’s case has prompted the exploration of contextualized, universal cash transfers in other resource-rich countries (under the oil-to-cash initiative). It is argued that taxing the generated income will create a strong public demand for the government to be more transparent and accountable, creating overall benefits in the long-term.

However, for resource-rich developing countries, donors are supporting citizen cash transfer initiatives that are poverty-targeted. Indonesia distributes part of its resource rents through targeted cash transfers to vulnerable and poor households, including the Bantuan Langsung Tunai (BLT) and Program Keluarga Harapan (PKH) programmes. The Indonesian Government aimed to create a more equitable distribution of resources. The BLT programme involves unconditional cash transfers to impoverished citizens (covering about 19 million households) to help them cope with the adverse effects of fuel price hikes due to reduced fuel subsidies. The PKH programme has conditions to encourage provide a safety net for some of the poorest citizens, often there are difficulties mapping the poverty trends in countries without comparable surveys and efforts to prevent leakages could improve.

Australia has established a complex taxation and royalty system, involving both federal and state governments. During boom times, the Australian government has chosen to directly reinvest revenue in several large, forward-looking, ‘nation-building’ initiatives. Kieren Moffat highlights its reinvestment into programmes to benefit marginalized peoples, including aged pensioners and rural/remote communities. The Royalties for Regions scheme shares state-based mining with regional communities whereby local governments build infrastructure (e.g. roads, parks) and services (e.g. health programmes, subsidized fuel cards for the elderly). Large-scale regional infrastructure projects (e.g. increasing irrigation areas to support agriculture growth) and building new cities also have been developed to support local industry workforces.

Australia’s advantages are attributed to its long experiences with the mining sector and ‘sophisticated legislative frameworks’ for well-managed resource wealth. Like many developing countries, it tackles challenges of transparency. Challenges for capturing and utilizing the resource revenue for social programmes in global South countries could relate to their stage of development and stability of revenue flows. Saurabh Sinha notes two possible factors: (i) highly uncertain estimates of the volume and values of proven and potential resource reserves (linking to future prices; cost of and rates of return on exploration); and (ii) balancing of fiscal priorities (e.g. how to smooth public expenditure from commodity price fluctuations; how to ensure inter-generational equity; whether and how much to allocate for investing in improving public services).
Peru redistributes to the sub-national level the 50 percent royalties it receives from mining companies which pay to exploit silver, gold, zinc, and tin. By law, the central government must transfer revenue to regional and local governments (using a detailed distribution scheme) in order to finance infrastructure projects. **Graciela Arrieta Guevara** describes that despite attempts to return ‘mining benefits’ to the mineral-producing regions, local communities and civil society perceive the mining industry as a threat due its huge social and environmental impacts and little contribution to community development. There are mechanisms for the public to access information regarding the sub-national transfers for local projects, yet impoverished and illiterate people have not been able to access this information. Initiatives that address this information asymmetry and foster transparency and accountability must be done at the regional and local level, especially in consultation with the local communities. Moreover, **Francesca Viliani** raises concerns that there are often no mechanisms to track the distribution of revenue from central governments to the local level. Clear legislative frameworks, strengthened monitoring capacities, broad participation by communities, and transparency of revenue management could ensure revenue is used to benefit communities and compensate people affected by the mining activities.

Contracts with EI should have built-in protections and adequate compensation for environmental, social and economic losses attributed to their impacts.

**Amarendra Das** asserts that aside from physical infrastructure and social services, revenues should be channeled into community initiatives to mitigate losses caused by deforestation, death of a number of flora and fauna or loss of biodiversity, and thus disproportionately negatively affect indigenous communities, who are often forcibly relocated and dependent on their surroundings for sustaining their traditional livelihoods.

The Indian government has made efforts in this way by proposing to create a Mineral Development Fund in every district, by collecting additional revenue from the mining firms. Yet so far it is not clearly defined how revenue collected through royalties can be transferred to local communities affected by the mining projects. **Sharmistha Bose** and **Lucy Dubochet** further explore India’s recent Mines and Minerals (Development and Regulation) Bill of 2011 that aims to give a “26 percent share of net profit for coal and lignite industries, and an amount equivalent to the annual royalty for all other major minerals” to people affected by extractive operations.

The mining industry has opposed the Indian bill, claiming that it threatened foreign direct investments (FDI) and preferred to offer ‘fair settlement’ and determine the share of royalties. Yet similar norms for compensating local communities already exist in Australia, Canada, Papua New Guinea, and South Africa.

A number of market-based initiatives could help mitigate the inequitable distribution of benefits from resource wealth.

The **Mining, Minerals, and Sustainable Development** (MMSD) initiative led to developments to link CSR in the mining industry with and sustainable development. Due to consumer pressure and new regulations (such as **Dodd-Frank in the U.S.**) over sources of minerals and metals, there are some EI
voluntarily taking steps to reduce risks of harmful working environments along the supply chain. **Jennifer Horning** points out initiatives (e.g. by Organisation for Economic Co-operation and Development (OECD), the World Gold Council, the London Bullion Market Association, and the **Electronic Industry Citizenship Coalition (EICC)** and the **Global e-Sustainability Initiative (GeSI)**) to help buyers better understand the risks. The **Fairtrade and Fairmined standard (FTFM)** has become an opportunity for people in the informal economy, such as artisanal and small-scale miners, in developing countries to formalize their operations and adopt social and environmental safeguards. The fairtrade premium received by the mining association must be reinvested in community development, such as water access or schooling. This market-based approach empowers the miners themselves to reinvest EI revenues into their own communities as they best see fit. This practice is generally applied to precious metals and gems, but worth exploring for other sectors.

A number of private companies have partnered with government authorities to help provide social services, such as healthcare facilities. **Bryn Gay** questions the sustainability of mining industries’ provisions of social services, particularly when non-renewable resources are depleted. **Katja Hujo** also mentions cases, such as in **Zambia**, when public mining companies closed or privatized the governments could not expand or afford to maintain the services. **Francesca Viliani** points out that — term planning for the social services they provide. For the sustainability of interventions to occur, EI must identify, avoid and minimize all negative impacts. A comprehensive impact assessment of the mining operations that include the environmental, social, and health consequences would ensure negative impacts are appropriately managed and compensated and positive impacts optimized.

By tapping into finite, non-renewable resources, countries must consider options that pivot away from dependence on resource-related industries. Rather, building up other forms of capital and sectors, that are respectful of environmental concerns, can generate economic activity and contribute to overall human well-being for future generations to benefit.

**SUMMARY: SUB-THEME 3: IMPLEMENTATION CHALLENGES AND IMPACT MANAGEMENT**

There are key elements for the global governance of natural resources, which must go beyond the establishment of legislation and monitoring efforts in compartmentalized sectors. The human and environmental dimensions are too great and linking development goals with natural resource management must involve integrated, cross-sectoral approaches. The measures to ensure good natural resource management to mitigate negative impacts that surfaced in the discussion involve: the inclusive participation and representation of affected people, notably the most marginalized, vulnerable and impoverished, in decision-making processes; measures of accountability; and strengthened institutional capacity to ensure empowerment, engagement and adaptability of different stakeholders. These components could help governments, communities, as well as private sector to minimize risks, such as deteriorating peace and stability that can arise.

Natural resources could translate into wealth for developing countries to be utilized towards peace building efforts, but are also major risk factors for conflict.

High-valued NR could contribute to countries relapse into conflict, depending on decisions on security, provisions to meet basic needs, rebuilding livelihoods, and implementation of sound economic policies. Tensions rise over the commodification and privatization of these resources and
how this affects local livelihoods and food security, often escalating to conflicts over land rights, forests, minerals, and water. Cambodia has seen numerous conflicts with local communities over their forestry and fisheries despite its extensive legal framework for supporting community-based NRM. Some reforms to address tensions have targeted efforts to decentralize and balance authority among the government, private sector, and civil society regarding NRM decision-making.

Post-conflict countries can minimize risks of destabilizing their peace and prosperity by putting in place measures to encourage transparency and CSR of extractive industries in their operating licenses and concessions, review of pre-war contracts, legitimization and strengthening of transitional governments, and effective governance of revenues generated and shared. Päivi Lujala and Carl Bruch examine NR-related contracts in post-conflict countries, noting the risks of huge revenues that can exacerbate corruption and encourage the hasty approval of concessions. This rush to grant exploration or exploitation rights — at cheaper rents -- can cause overexploitation and irreversible environmental damages. Moreover, transition governments in post-conflict contexts may not have established accountable mechanisms until elections take place, and NR revenues could be used to finance political parties or build political power for the elections. In its post-conflict period, Liberia imposed a temporary moratorium on new contracts and concessions until appropriate institutions, legislation, and oversight were in place. National regulatory bodies, with third-party support, conducted the review of previous contracts with EI by both Liberia and DRC. Countries may need to review and strengthen their NRM legal framework to monitor and enforce contractual requirements, which could benefit from appropriate financial assistance and training of local law enforcement officials or judicial authorities.

Bryn Gay looks at the recent issuing of Private Use Permits in Liberia and asks whether these kinds of permits could undermine governments’ reform efforts and extensive forestry laws, as well as forest-dwellers’ rights to continue their traditional livelihoods. It is key for governments and investors in post-conflict settings to understand how they can respect countries’ conflict resolution frameworks and integrate human rights approaches into contracts when considering EI operations. Catherine Coumans asserts that to avoid further social conflicts, local governments or communities should have the right to reject an extractive project; national governments should uphold local governments’ decisions to place mining moratoria (such as in the Philippines case when Executive Order 79 removed local powers in this regard).

There are often risks not always considered at the inception of a project and countries can take particular precautions to avoid them.

In the experienced Canadian mining sector, Dave Sawyer and Catherine Coumans raise a couple prominent risks. The costs of closing a mine have been under-estimated in risk assessments; one recommendation for governments in the Asia-Pacific is to demand realizable bonds that are set at the full estimated costs for restoration to the environment. Lengthy tax holidays, concessions (e.g. breaks on import and export duties), and transfer pricing provisions (i.e. resulting in outward flowing revenues to tax havens) can reduce revenue for the host government which may be necessary for social programmes, maintaining infrastructure, and repairing environmental damages after the finite resource is depleted.

Further, Canada’s rapidly expanding oil and gas sector contributes to increased greenhouse gas (GHG) emissions, forecasted to rise 50 percent by 2020 over the 2005 levels, posing significant challenges for
reducing emissions at the current rate of production. This has massive implications for countering climate change; countries can balance economic and environmental outcomes with innovative and flexible climate policies.

However, Amarendra Das states that the weak enforcement of mining laws in India is a massive challenge for mitigating environmental impacts. Understaffing, lack of resources (e.g., vehicles), inconsistent inspections of mine sites, and the influence of powerful people have attributed to the lenient approaches and non-compliance with environmental laws. Hence, providing additional training and staff, more stringent regulation by authorities, and more severe penalties could avoid the risks of further environmental degradation by EI.

Legislation that outlines benefit sharing and dispute resolution mechanisms while ensuring the inclusion of local communities in the decision-making and NRM processes can help address structural inequalities within the EI sector.

Benefit sharing needs to go beyond financial remuneration. Leisa Perch shows that among several Asia-Pacific countries, China, India, Indonesia, and Mongolia have made legal reforms to improve transparency, share resource revenues, and tackle pollution, which bring benefits to wider segments of the population. In Chad and Zimbabwe a portion of resource revenues have been assigned for poverty reduction and community development initiatives. In order to balance common and individual benefits, particularly among marginalized groups, policies could use the Nagoya Protocol to better define benefits along economic, political, social, and justice lines, while ensuring the fair and equitable sharing of the benefits. When local communities participate in the management of natural resources, such as local sustainable forest management in Cameroon, they can ensure that benefits like local infrastructure and schools accumulate to them.

Varsha Venugopal expands on sharing of revenues between central and local governments through a transparent national and subnational regulatory framework, which helps minimize mismanagement or wasteful spending. When citizens and civil society organizations have access to expenditure data they know whether revenues from companies and the national governments deliver to meet local needs and can make claims for the benefits to which they are entitled. Given that the exposure of revenue expenditures may create grievances and conflicts among stakeholders, a system for resolving disputes must be established with the EI sector. Daniel Franks mentions a number of company initiatives, including a grievance handling process and community strategic planning processes (in collaboration with the local government) to mitigate disputes.

The EI sector should include community engagement within its CSR policies and participatory consultation processes can prevent the risks and protect fundamental human rights, particularly among indigenous peoples.

Among good standards for the mining industry are EITI, International Finance Corporation (IFC) Performance Standards, and the Natural Resources Charter. Abbi Buxton points out that implementing these standards has difficulties and limitations, especially concerning the community dimensions. Engaging with communities should include information sharing about the impacts and benefits among multiple stakeholders, but too often groups are excluded at the local levels.
Leah S. Horowitz provides evidence from New Caledonia, in which CSR policies (which may contain safeguards) are dependent on and may exacerbate power inequalities within a community in order to obtain consent for a project. An indigenous Kanak group, Rhéébù Nùù, entered into an Impact and Benefit Agreement (IBA) with a nickel mining company, but the power and negotiating asymmetries were quite apparent. Divisions arose within the community whether or not to accept the project. Meanwhile, community members (mostly women and youth) less favourable to mining activities -- due to their pollution on the mangroves and marine life -- were excluded from the negotiations. Their exclusion, while a social norm within customary laws, raises issues of perpetuating structural violence against more marginalized members. These members were not present to negotiate benefits or compensation therefore they may not realize any gains, such as employment, measures to protect cultural heritage, compensation for damages to water sources and their livelihoods from the mining activities. Representation of all community sectors and balanced power dynamics among communities, government, and companies may yield greater and more sustainable benefits.

The UN Permanent Forum on Indigenous Issues (UNPFII) noted several successful participatory consultation processes, such as between the Bolivian Ministry of Hydrocarbons and Energy and the Guarani Peoples Assembly, which documented community consent prior to the initiation of exploitation activities. J.E. notes that when communities themselves (including women, youth, and elders) are involved in determining the process for consultation they can ensure there are adequate spaces for addressing grievances, which can help raise awareness among non-indigenous actors about indigenous needs, cultural contexts, and unique histories with colonialism. For fairer or more equitable consultations to take place, an indigenous community needs to be able to say ‘no’ to extractive projects in their territory at any time during the consultation and decision-making processes, and have their standpoint upheld.

Fiorella Arenas, Catherine Coumans, J.E., Robert Goodland, Arturo Requesens, and Juan Pablo Soler Villamizar elaborate on free, prior and informed consent (FPIC) as an obligation under the UN’s Declaration on the Rights of Indigenous Peoples, mandatory for International Financial Cooperation (IFC) projects, and also could be seen as a safeguard with other potential mining-affected communities. As part of the industry’s approach for earning acceptance by a community to operate a mine, it could build FPIC into its CSR policies. This would involve comprehensive documentation and reference to communities’ values, beliefs, and meaningful participation in environmental and social impact assessment (ESIA) processes, including when the project is first proposed, how the community consents and accepts it, as well as during exploration, operation, closure and restoration.

There are very specific considerations for respecting the rights of indigenous peoples when negotiating for EI projects. Consultation processes -- established through national and localized mechanisms -- with indigenous peoples must respect their practices, customs, methods, and decision-making procedures, and exchange information in indigenous languages. For engaging with non-indigenous actors and determining FPIC, indigenous peoples may require increased strengthening of capacity for understanding their rights under international/national legislation, how proposed projects will affect their self-determination, the guarantees, benefits and compensations proposed to address impacts, and comprehensive evaluation of the social and environmental impacts on the surrounding biodiversity, water sources, and their livelihoods. Once indigenous communities understand these aspects it is more likely that they will effectively participate in EI-related negotiation processes; their inclusion can help minimize conflicts. While FPIC, participatory consultations and
other mechanisms can better benefit groups it is possible that these mechanisms become only a formality for the industry and governments to expedite their extractive activities. The Lubicon Lake Cree (Neheyiwak) Nation in Canada maintains this claim that their input did not substantively affect government and industry plans.

Community monitoring of compliance can be an effective way for communities to access information and share grievances about impacts from EI activities.

In Pakistan, Gul Najam Jamy shares insights from a case in Pakistan’s Kirthar National Park. The inclusion of environmental groups, scientists, government counterparts, the media, other public interest groups, and citizens in ongoing dialogues regarding studies about the potential impacts of oil exploration highlighted good representation across sectors and uniting for a common cause, which eventually led to pressuring the EI to abandon the project in the eco-sensitive park. An initiative by the Affiliated Network for Social Accountability in East Asia and the Pacific (ANSA EAP) has enabled communities and EI to voluntarily score the companies’ protection of community rights during the various stages of the mining operations. Emy Perez compiled examples from the voluntary use of community scorecards among stakeholders to evaluate performance of the companies according to community-defined indicators in the sectors that they most value.

In the Philippines, communities learned the mining company in the area complied with royalty payments to the indigenous peoples, invested funds in a social development programme, and published information publicly; the findings provided a space for communities to recommend improvements. The scorecard initiative has proven to increase peoples’ awareness about their rights, relevant laws and policies regarding the benefits due to them, participatory budget planning, and impacts of the projects. However, these efforts raise further questions of whether it is just a way for companies to obtain a “social license to operate”, how meaningful is the engagement with communities, and whether there is adequate compensation.

Tools and methods for assessing the impacts should engage communities and examine the gender dimensions of EI activities.

Robert Goodland notes that during the ESIA processes, in relation to companies’ studies to assess the feasibility of the projects, often the costs and impacts are under-reported. Therefore, independent third-party monitoring organizations, which are neutral, objective, and lack bias, could be effective for conducting IAs as well as for ensuring the inclusive participation of communities. Arturo Requenes and Fiorella Arenas further highlight a UNPFII report (Para 85) for recommending social, cultural and human right impact assessments with indigenous peoples during the different stages of extractive projects. To account for the environmental impacts, the report (Para 89, 94) recommends that countries enforce higher standards of environmental protection and establish stricter penalties for extractive companies that violate environmental laws.

Emma Wilson introduces the Sakhalin-2 project in the Russian Far East regarding its use of IAs and community engagement, particularly involving indigenous peoples’ issues. The Sakhalin-2 project online library includes a range of documents that reveal the extent of the project’s attention to stakeholder engagement and analysis of potential impacts and stakeholder concerns: a social impact assessment (SIA), a resettlement action plan, an indigenous peoples’ development plan, and a company-community grievance mechanism. The company had conducted an ethno-cultural impact
assessment to understand the implications for the communities’ livelihoods (see the Akwe: Kon guidelines). Yumiko Yamamoto highlights a Toolkit for Human Development Impact Assessment of Trade Policy. Using a human rights based approach the toolkit could be applicable in analyzing the impacts of EI-related policies, notably the gender dimensions of mining which include disproportionate job creation for men in the higher-paid, formal labour market, with women left to work in lower-paid, informal services such as care givers, food stalls, lodges, and sex work. Glenn Banks elaborates on the industry’s impacts on inward migration, seen as a destructive social process due to its impacts on the already established communities, environmental resources (e.g. water, land) and the increases of sex work activity, alcoholism, violence and risks of sexually transmitted diseases like HIV. In Papua New Guinea, an Inward Migration Plan, based on the IFC Handbook for Addressing Project-induced Migration, helped develop comprehensive strategies to reduce and mitigate the effects of migrant flows on local indigenous communities.

Brian Kohler emphasizes the participation of local communities, civil society, and workers, including trade unions, and setting industry norms according to ILO Conventions and the ILO Decent Work Agenda when understanding the social impacts. It is important to look at the sustainability dimensions using indicators, such as the Global Reporting Initiative (GRI) Guidelines, and validating the findings via multi-stakeholder consultations in facilitated, consensus-based decision-making processes. Daniel Franks provides examples of SIAs also involving public participation. In Australia, the industry used a Sustainable Resource Communities Policy and Social Impact Management Plans throughout the life cycle of projects. In the Philippines and Sierra Leone the public could access mining lease information online, but these initiatives require strategies to address the digital divide in many communities. Moreover, Glenn Banks raises caution when examining ‘best practice models’ for community engagement and impact management because they rely on a particular idea of ‘community’ that could assume the stability of membership and institutional relationships. Therefore, when creating policies it is recommended to use caution due to the continuous shifting of internal dynamics, relationships, and stressors within communities near mining operations. Policies also should be flexible and adaptive to these changes over time.

Innovative policy solutions for transitioning into more sustainable industries that deliver fair and equitable benefits need to be on the immediate agenda to tackle climate change and scarcity of natural resources.

Saleem H. Ali raises ecological economics as a way to value natural systems provided by ecosystems. The economy is seen as a subset of the ecosystem and projects; Stanford University’s Natural Capital Project and the Gund Institute for Ecological Economics at the University of Vermont are developing systems to measure the linkages between the economy and ecology. This emerging discipline could be one way to encourage countries to integrate environmental conservation into EI operations. For example, Ecuador questioned the environmental costs of extracting its oil reserves in the Yasuni National Park, estimating the value of its forest conservation to be much greater. Ecuador has proposed to international donors to raise half the value of oil extraction (about US$ 3 billion) by 2024 (or the life of the proposed EI project).

Blake Ratner proposes strengthening institutions to better manage ‘the commons’, including in areas of just administration and dispute resolution at the state and community levels. Understanding EI’s role in sustainable development might look at how all these features could benefit developing
countries to safeguard impoverished peoples’ access to ‘common-pool resources’, rather than selling off resource rights for commercial mega-resource projects.

In order to understand whether EI can contribute to sustainable development, Robert Goodland posits that benefits must outweigh social and environmental costs. Policy-makers and the industry must make clear efforts for investing in more sustainable industries and other productive capacities. Perhaps moving towards sustainable development requires reimagining the way we live to become more harmonious with our environment, which is already well practiced among a number of indigenous communities. In this way, J.E. highlights a number of concepts that could gain stronger influence in policy circles, including Universal Rights of Mother Earth, the Andean ‘buen vivir’, Bhutan’s Gross National Happiness (BNH), or the Iroquois’ Seven Generations.

In sum, EI could exacerbate existing inequalities or create new ones if governments and EI do not adopt inclusive, participatory, consensus-building, and benefit-sharing processes. Comprehensive impact and risk assessments, disclosure of revenue expenditures at subnational levels, established grievance mechanisms, as well as clearer understandings of cultural contexts and local power dynamics in representation and decision-making could help mitigate the negative consequences from extraction.

Note:
(*) Passive investing seeks to mimic the returns of a market, whereas active investing aims to pick winners and losers and buy more or less of certain companies.
(**) A phenomenon in which the state uncovers large NR reserves and shifts its economic focus towards EI due its high valued resources. This, in turn, pushes skilled workers from other sectors to transfer to the resource sector. Exchange rate appreciation makes the national currency less competitive, and other industries cannot compete, resulting in decline.
(***) Nationalization may not be an option for non-Least Developing Countries (LDC) countries, which have agreed to Special and Differential Treatment and nondiscrimination commitments under the World Trade Organization (WTO).
(****) Environmental Sustainability is defined as not decreasing natural capital, keeping this capital intact, or maintaining ecosystems’ capacities to absorb carbon emissions.
Launch Message
Rathin Roy, UNDP Asia-Pacific Regional Centre, Bangkok

Non-renewable natural resource-based industries present complex issues for development. The extraction of non-renewable natural resources represents an enormous opportunity for countries in Asia and the Pacific to support economic growth and expand the fiscal space required to finance social programmes that advance human development. Yet poor management of extractive industries can undermine the sustainability of growth, and can lead to increased poverty, devastating conflicts and environmental degradation. Making growth more inclusive and ensuring sustainable development in the Asia-Pacific region calls for policies that allocate revenues from EI to address inequalities, mitigate grievances associated with land rights and displacement, reduce the risk of conflicts, and improve ecosystem conservation efforts.

The growing demand for energy and mineral resources has led a number of countries in Asia and the Pacific to open up their natural resource wealth to extraction and to develop extractive industries. Countries in the region are, therefore, increasingly looking at UNDP for policy advice and programme support to address the issues associated with the management of such industries, and to turn mineral resource extraction into a means to help advance human development.

Against this backdrop, we are launching this e-discussion today to: i) enhance the understanding of the economic, environmental, and social implications of EI from a human development perspective, and ii) examine ways in which EI can be managed and revenue utilized for sustainable development.

Your contributions will be captured in a regional report -- identifying ways towards greening growth and sustaining human development -- that will inform the UNDP programming and policy support at the country level.

The e-discussion is conducted on both email (ap-igd@groups.undp.org) and UN Teamworks. Over a 6-week period, the following sub-themes will be discussed:
WEEK 1-2 (6-17 August): Revenue generation: Planning for inclusive growth
WEEK 3-4 (20-31 August): Revenue utilization: Prioritizing the present or the future?
WEEK 5-6 (3-14 September): Implementation challenges and impact management

Under the first sub-theme we explore how revenue from EI can be generated toward inclusive growth strategies by asking the following questions:
- What are the policy options available for countries to generate revenue, improve revenue collection, and maximize resilience from commodity price fluctuations?
- What are the planning and regulatory frameworks required to balance revenue generation considerations vis-à-vis social and environmental costs?
- Specifically, what institutional capacity challenges do national and local stakeholders encounter in setting up these frameworks and negotiating contracts with the private sector?
- What are the available good practices through which these challenges have been overcome? What are some of the useful mechanisms or guidelines to be followed?

I invite you to actively participate in the e-discussion and share your views, experiences, case studies, lessons learnt and policy suggestions from within and outside Asia-Pacific.
I. Contributions on Revenue Generation: Planning for Inclusive Growth

Timor-Leste’s Petroleum Fund
Rui Gomes, UNDP Timor-Leste

The successful experience of Timor-Leste—a small, young and poor country—may offer some valuable lessons as to whether to spend the income today or to save for future generations. Timor-Leste is today the second most petroleum-export-revenue-dependent nation in the world, spending its non-renewable oil and gas wealth to pay for around 95 percent of annual state expenditures.

Timor-Leste’s Petroleum Fund, which was established through a law in mid-2005, is based on the basic principle that all petroleum revenues go into the Fund. At least 90 percent of the Fund is invested in U.S. dollar-denominated government bonds, and up to 10 percent is invested in bonds in other currencies or in equities. Withdrawals from the Fund can only be used to finance expenditure of the state budget and are guided by consideration of long-term sustainability. The Petroleum Fund was established to ensure three principal aims. First, all petroleum revenues to be properly accounted for; second, the government budget to remain the primary vehicle for public policy, and third, the petroleum wealth is preserved for future generations. The Fund functions as a repository for the country’s oil and gas receipts, including royalties, taxation and selling of the hydrocarbons. Timor-Leste’s Petroleum Fund is essentially a government account with the Central Bank to which the country’s petroleum receipts are credited and from which debits can be made to finance the state budget.

Key features underlying the Petroleum Fund are as follow:

Management - The Fund is managed prudently in accordance with the principle of good governance for the benefit of current and future generations. The Government is responsible for the overall management and the Central Bank is responsible for the operational management.

Income - All Timor-Leste’s revenue from petroleum operations is paid into the Fund and the Fund also retains all investment income (net of management expenses).

Investment - All assets are invested abroad in established financial markets, with at least 90 percent in U.S. Dollar denominated fixed income instruments. Currently, according to the management agreement between the Ministry of Finance and the Central Bank, the Fund is restricted to holding U.S. government securities in order to track the benchmark Merrill Lynch 0-5 year bond index.

Withdrawals - Transfers from the Fund can only be made to the single state budget account. The amount transferred in any fiscal year can only take place after the publication of the budget law and cannot exceed the appropriation specified therein. Transfers are also contingent on the Government providing Parliament with a report specifying the estimated sustainable income (ESI) and a certification of that amount by an independent auditor (see Box 1 below).

Savings policy - To preserve the real value of the country’s petroleum wealth, withdrawals from the Fund are guided by the concept of sustainable income. For each year, ESI is calculated as 3 percent of the sum of the Fund balance and the present value of expected future petroleum receipts. Withdrawing more than ESI requires the Government to provide Parliament with a detailed
explanation of why it is in the long-term interests of the country, and also a report estimating the impact on future ESI that is certified by the independent auditor.

Reporting - The Central Bank publishes quarterly reports on the performance and activities of the Fund. The Government submits an annual report to Parliament with an audited financial statement. Details on revenue receipts and composition of the investment portfolio are fully disclosed.

Oversight - An Investment Advisory Board advises the Minister of Finance on the overall investment strategy and management of the Fund. An independent Consultative Council advises Parliament on the performance and operation of the Fund and also on budget appropriations and whether these are being used effectively to the benefit of current and future generations.

Transparency - Fund management is to be carried out with the highest standard of transparency. Quarterly and annual reports are made public, as is the advice of the Consultative Council (within 30 days of having been provided to Parliament). Minutes of Investment Advisory Board meetings have routinely been posted on the Central Bank’s website.

The purpose of the ESI rule is to limit the amount of money that can be transferred from the Petroleum Fund to the State budget, thus protecting the country’s non-renewable resource wealth for future generations. This aimed to ensure a lasting stream of transfers and implied that reductions in remaining petroleum reserves would be offset by a buildup of financial assets. The approach has the benefit of being intuitively simple, it is wise from the point of view of intergenerational equity, and it offers a reasonably stable source of income to the budget.

Timor-Leste’s savings policy is similar to Norway’s but it differs in one important respect, allowing for greater immediate expenditure. Whilst the Norwegian approach allows only the spending of the real rate of return on accumulated financial assets, Timor-Leste’s model calculates the income on the total petroleum wealth, including projected future receipts. Timor-Leste’s model assumes a lower real rate of return (3 percent rate compared to Norway’s 4 percent). However, this distinction allows for greater transfers initially when most petroleum revenue still has to materialize.

Box 1. Calculation of Estimated Sustainable Income

The estimated sustainable income (ESI) for a given fiscal year is defined as the maximum amount that can be appropriated and transferred from the Petroleum Fund to the budget while retaining sufficient resources to appropriate an equal amount in all subsequent years.

ESI for a given fiscal year is calculated according to the following formula:

$$ESI = r \left[ V + \sum_{t=0}^{n} \frac{R_t}{(1+i)^t} \right]$$

where $r = 3$ percent is the specified real rate of return, $V$ is the balance of the Fund at the start of the fiscal year, $R_t$ is the budget projection for petroleum revenue in year $t$, $n$ is the last year of projected receipts, and $i$ is the discount factor specified as the nominal yield on U.S. government securities averaged over years 0 to $n$.

The Petroleum Fund Law states that all assumptions upon which this calculation is based shall be
prudent, reflect international best practice, and be based on internationally recognized standards. Moreover, the resulting calculation shall be certified by an independent auditor.


What are the lessons from a prudent management of the Petroleum Fund?

1. Continued political will to guarantee inter-generational equity so that the government does not spend all of the money as it came into the Fund or when oil prices are high.
2. The Petroleum Fund Law clearly establishes several measures for transparency and requires quarterly performance reports, annual reports, and audits to be made public.
3. The PF Law defines the roles and responsibilities of public institutions like parliament, government, the central bank, and civil society organizations.

The success lies essentially on continued prudence in the management of the revenues from extraction of hydrocarbons, effective utilization of the revenues to diversify the domestic economy, design and implementation of meaningful programmes and projects for poverty alleviation and improvement of human welfare in the country.

**Question on checks and balances of Petroleum Fund withdrawals**

Carl Bruch, Environmental Law Institute, Washington D.C.

The experience of Timor-Leste's Petroleum Fund is very interesting. I wonder whether you or other members might be able to comment further on Lesson 1: “Continued political will to guarantee inter-generational equity so that the government does not spend all of the money as it came into the Fund or when oil prices are high”.

Last September, I was conducting research in Timor-Leste, and there was considerable concern among people I interviewed that the withdrawals were exceeding the estimated sustainable income (ESI), with the government budget growing more than ten-fold in a decade. This concern was compounded by the fact that existing proven reserves are expected to be exhausted in a little more than a decade (although additional reserves may extend the income).

Do the checks and balances mentioned work?

**Checks and balances are not a guarantee**

Rui Gomes, UNDP Timor-Leste

The Timor-Leste’s Petroleum Fund assets have accumulated substantially over the past eight years to reach more than **US$10 billion**, owing to high international oil prices and concerted efforts to maximize revenues from this extractive industry. For example, the Petroleum Fund Law was amended on 28 September 2011 to allow higher investment in equities (up to 50 percent of the Fund), and for remainder of 2011, the Fund to be used to secure government borrowing (up to 10 percent of the Fund). This was not the first diversification. In October 2010 another diversification, into global
equities, had taken place through the selection of Schroder Investment Management Limited as the Funds’ first equity manager. This mandate is 4 percent of the Fund and is invested in global stocks traded in the world’s largest 23 markets. Yet, the first diversification of the Fund had taken place earlier, in June 2009, when the Bank for International Settlements (BIS) was appointed as the Fund’s first external manager, to manage 20 percent of the Fund. The BIS mandate is a global portfolio invested in sovereign and supranational bonds in the currencies of Australia, EU, Japan, United Kingdom, and United States. These examples show the country’s efforts to get the highest return possible out of the diversified portfolio. (For detailed reports, see http://www.bancocentral.tl).

Figure 1 shows how the Petroleum Fund has grown since 2005; it registered an annual average increase in the rate of asset accumulation of 36.5 percent.

Figure 1: Timor-Leste’s Expenditure and Petroleum Revenue (in US$ million)


The saving framework, combined with conversion of part of the revenues into other more productive assets can be considered as prudent from the viewpoint of both building up sufficient liquidity for sustainable spending once revenues falter, and to avoid Dutch disease and its effects.

The worrying part of this somewhat “successful story” is that Timor-Leste remains one of the most petroleum-export-revenue-dependent nations in the world, spending its non-renewable oil and gas wealth to pay for more than 90 percent of the annual state expenditures. Its non-oil tax revenue is less than 6 percent of non-oil GDP and less than 10 percent of the country’s annual total revenue (*). Yet, the extraction and selling of hydrocarbons mainly from the Bayu-Undan oil fields, which provide more than a billion dollars every year today, will be used up in less than two decades.

Over the last four years, spending from the Petroleum Fund has indeed exceeded the estimated sustainable income (ESI) of around 6 percent or more—an issue that has recently become contentious. For example, the proposed 2012 Budget envisaged another scaling up of capital spending, so total government spending had risen to US$1.7 billion—an increase of about 45 percent over 2011 spending and more than twice the level of the ESI of US$0.7 billion. In June 2011, the government
launched the Strategic Development Plan (SDP) aiming to transform Timor-Leste into an upper-middle-income country by 2030. To achieve this goal, it plans to scale up public investment to improve poor infrastructure. The SDP puts infrastructure as a central pillar to promote the country’s development.

In this way, the government is focusing on electricity, roads, and the rural housing programme (or, the MDG Suco Programme), which envisages the construction of pre-fabricated houses for each Suco (villages). The government is also investing in infrastructure on the South Coast to attract investment in the downstream petroleum sector with the view of bringing in the pipeline on-shore from the Greater Sunrise oil reserves. These projects are mainly financed by withdrawals from the Petroleum Fund, as well as borrowing. For example, capital expenditure has increased sharply with total government spending estimated to rise to US$1.2 billion (in 2011) from US$0.8 billion (in 2010), to improve poor infrastructure (**).

For the next two decades, the infrastructure-oriented plan envisages excess withdrawals, which would bring down the ESI and the wealth in the Petroleum Fund by about 40 percent (or US$0.4 billion) by 2030 (***)

Timor-Leste has clearly made a wise decision to accumulate assets abroad and adopted an ethical framework, showing that it wants to value the present as much as the future generations. Given the fact that the economy is underdeveloped and poverty affects more than half of the population, this makes a good case for spending the revenues from its hydrocarbons on consumption and investment beyond the ESI.

However, despite expenditures increasing sharply, there is fairly slow progress in the economy and social indicators. We are yet to see the traction that such ambitious spending plans will have in the future to compensate for the loss of natural resources, even before the economic resilience is achieved. It is, therefore, important that the country strikes the right balance between what is being taken from the Fund and diversifying and strengthening economic resilience away from its hydrocarbons dependence.

Notes
(*) See also various General State Budget Books that can be accessed from the Ministry of Finance website at http://www.mof.gov.tl
(**) Based on author’s calculations using figures from the National Accounts Report and the Revenues reports from the Central Bank.
(*** )The International Monetary Fund’s Article IV warns that a downturn trend in oil prices to US$50 a barrel would create this reduction of the ESI. For further details, please see IMF (2012) Democratic Republic of Timor-Leste Country Report No. 12/24. February 2012, p. 6.
Addressing macro concerns?
Taimur Khilji, UNDP Asia-Pacific Regional Centre, Bangkok

Global political economy issues surrounding natural resources seems to be quite an important (although often neglected) dimension. One often decouples ‘failed states’ from prosperous ones, but natural resources/extractive industries forge the undeniable link between prosperous countries and resource-rich failed states in a globalized world.

The absence of enforceable international rules/laws/regulations in this area opens space for human rights violations, poorly negotiated contracts, significant corruption, inadequate transparency and accountability, etc. Generally, though not always, under such a scenario the stronger, more influential party (be it a large company, an individual, or a nation state) is able to negotiate relatively more favorable terms for itself.

The development concerns are well documented and the narrative well-rehearsed. What is missing is leadership at the multilateral level to put in place mechanisms that protect the weaker parties (governments and/or affected vulnerable populations) and encourage fairness in terms of negotiations of contracts. A dispute resolution body, similar to the one within the World Trade Organization (WTO) (for trade disputes), can help amiably resolve disputes and ensure a more open and transparent process.

Revenue generation from extraction of natural resources would seem to be intimately tied to the level of transparency and openness of the contractual process. Secret contracts, financial incentives offered to politicians, and the fairly extensive off-shore banking network aid and abet an anti-development outlook. The more secretive the contractual process, the more likely that the revenue generated from extraction is channeled to personal and private ends.

Making contracts public would help encourage greater transparency between the stakeholders involved, including the general public, and, as a consequence, the financial proceeds generated through such a process are more likely to be used for public benefit (i.e. development).

Some of the questions listed above are likely to dissolve if there is greater transparency in this area. Also, it would be useful if the multi-lateral system moves towards articulating an overarching objective similar in spirit to the International Court of Justice (ICJ) and/or a dispute resolution mechanism that allows for equal (or relatively more equal) exchange between the various stakeholders (governments, the public, multinationals, etc.).

Presently, it is not clear what the larger multilateral objective is beyond advocacy and creating general awareness in this area. While such efforts alongside technical support offered to countries to better channel revenue generated (for example, Timor-Leste) are expected to yield favorable outcomes, a more sustained effort is needed to put in place mechanisms that ensure transparency, quick dispute resolution, and greater public involvement.
Revenue stabilization, regulatory frameworks and capacity: Some observations of the Papua New Guinea case
Glenn Banks, Massey University

Some comments from a long-term academic observer of the minerals sector in Papua New Guinea in terms of the link between revenue from the sector and ‘inclusive growth’.

In economic terms, there clearly are models for deriving significant stable revenue streams from the extractives sector: the Timor-Leste example captures many of the best elements of existing models. In the case of Papua New Guinea, a Mineral Resources Stabilization Fund (MRSF) was one of the innovations of mineral policy at Independence in 1975. However this had limited success in stabilizing revenue inflows to the government, and by the 1990s it was increasingly subject to the vagaries of political ‘raids’ on its resources. It was effectively wound up in 1999 when it was emptied to retire ballooning public debt, and mineral revenues now flow through the shell of the MRSF into consolidated government revenues. Recent policy has sought to utilize an array of small Trust Funds to carry forward mineral-derived revenues in excess of fiscal targets, but this has also proved problematic in terms of transparency and accountability. The general thrust of this policy has been to use revenues in excess of a set proportion of GDP in two ways – to pay down external debt and bring forward priority development expenditures. The key lesson that can be drawn from this very brief history – and particularly the MRSF – is that it is wrong to assume that a good economic policy ‘model’ is somehow detached from broader trends within individual countries.

In terms of planning and regulatory frameworks in Papua New Guinea, a revenue generation focus continues to predominate, while considerations related to the environmental and social issues (in this order) are always secondary. This is largely because of the continuing focus on resources as the driver of broad-based growth (or at least revenue generation and economic growth), allied with the (contested) status of mineral ownership as being vested with the State. There is also typically pressure from local stakeholders to focus on the distribution of economic gains, sometimes even at the expense of environmental costs, and within the regulatory framework a normative adherence to environmental and social impact assessment as a means to manage/ mitigate/ compensate the social and environmental costs. Experience shows that the latter belief is frequently (and sometimes massively) misplaced.

A central issue here is less with national capacity (although the chronic under-resourcing of the regulatory bodies involved in the sector is a major concern) and more with a virtually absent capacity at the Provincial and Local-levels of government to negotiate and particularly manage the revenue flows associated with mining developments. A proposed ‘Sustainability Policy and Planning Framework’ for the minerals sector (developed with World Bank funding) 10 years ago identified Provincial Government revenues as those with potentially the most direct developmental potential, but also were at the time the least transparent and accountable [see Department of Mining (2003) Sustainable Development Policy and Sustainability Planning Framework for the Mining Sector in Papua New Guinea: Green Paper]. The lack of capacity at local and provincial levels severely undermines the local developmental outcomes of the various mining operations, and does little to mitigate the social and environmental costs that the local communities bear.

A new initiative, about which others may be better placed to comment, is the sovereign wealth fund recently set up by the Papua New Guinea Government to manage the substantial anticipated revenue
flows from the massive LNG project currently being constructed. This appears to encode many of the ‘best practice’ lessons from elsewhere in terms of management of resource revenue flows. Significantly though, even the best managed fund can’t guarantee the funds will be used effectively for developmental purposes when they leave the fund – again this is an issue of the broader capacity, will and effectiveness related to the whole of government, not just the minerals sector.

**Natural resource revenue collection in the context of increasing commodity price volatility**
Yanchun Zhang, UNDP Bureau for Development Policy, New York


Many developing economies, including those of least developed countries (LDCs), small vulnerable states (SVS) and heavily indebted poor countries (HIPCs) are greatly dependent on commodities. The commodity booms that the global economy recently experienced have brought in large revenues, creating important economic opportunities for inclusive growth and development. This trend has encouraged many developing countries to intensify their natural resource exploration and to increase commodity production.

A necessary precondition for a country to avail of its natural resource endowment is a clear, smooth and effective collection of revenues from commodities’ extraction. Governments have a wide set of fiscal instruments at their disposal to collect revenues from extractive industries. In fact, many resource-rich countries levy a combination of taxes (e.g., royalties, corporate income tax) and charges (e.g., concession charges, license fees) to generate revenues from the extraction of resources. However, many resource-rich developing countries do not collect revenues effectively – this might be due to the complexity of the extractive sector itself that often receives a special tax treatment, or to developing countries’ often limited fiscal systems that are characterized by restricted administrative capacities, a narrow tax base and insufficient accountability and transparency.

The challenges of natural resource revenue collection are exacerbated by increasing commodity price volatility (CPV), which has increased over the last decade, and tax receipts in resource-rich countries have followed this volatile trend. A comparison between the development of tax revenues in resource-rich and non-resource countries (Figure 1) shows that volatility of tax receipts is much higher in resource-rich countries. While the increase in tax revenues is generally a positive development, the high volatility certainly creates challenges.
The unique challenges posed by increasing CPV in natural resource revenue collection are mainly two-fold. First, strengthening the fiscal system is challenging for many developing countries; designing the system to be responsive to changing circumstances such as volatile commodity price movements is even more challenging. It is well documented that limitation in fiscal capacity and over-dependence on volatile commodity producing sectors actually compound one another in many resource-rich developing countries. Loose tax and regulatory systems make it even more difficult to build volatility-smoothing fiscal mechanisms in a more systematic manner and thus expose resource-dependent developing countries more to CPV.

Second, volatile commodity prices could interfere with the governments’ incentives to improve their often limited and weak fiscal systems (e.g., tax base, administrative capacities, lack of accountability and transparency), which will make effective and efficient taxation very difficult.

Resource-rich economies’ high dependency on volatile commodity markets could also encourage illicit financial flows. Six of the top ten countries ranked by size of illicit capital outflows have net commodity exports accounting for more than 50 percent of their total exports (Angola, Chad, Myanmar, Uganda, Yemen and Zambia [see IMF (2012). World Economic Outlook database. April]. Additionally, the reliance upon volatile tariff revenues from commodity exports has been found to reinforce the risk of smuggling.

There are two broad groups of options that governments can adopt to help collect natural resource revenues when facing an increasing CPV: a) fiscal arrangements and b) market-based risks management instruments. Fiscal arrangements structured to adapt to fluctuations in commodity prices can serve governments well in raising revenues more effectively while also enabling them to
benefit from the resource windfalls. Market-based risk management instruments, like contracts, futures and options can help countries hedge their commodity export earnings.

For instance, many mineral exporting countries have implemented (and experimented with) a number of different types of “mining taxes” (the royalty, the corporate income tax, the windfall profits tax, and others). Each of these fiscal arrangements can be designed to enable resource-rich developing countries to benefit from the commodity price boom. **Mongolia** introduced a “windfall profits tax” in 2006 to benefit from the rise in gold and copper prices [see World Bank (2011). “Mongolia at a Glance”; and World Bank (2011). “Mongolia Quarterly Economic Update”, August]. **Chile** engaged in an important fiscal reform in the 2000s to improve its revenue collection and fill its fiscal coffers [see Fuentes, Rodrigo J. (2011). “Learning How to Manage Natural Resource Revenue: The Experience of Copper in Chile.” In Paul Collier and Anthony J. Venables, eds. Plundered Nations? Successes and Failures in Natural Resource Extraction. Basingstoke and New York: Palgrave Macmillan].

By making use of market-based commodity price risk management instruments such as forward contracts, futures, options, or complex combinations, commodity producing countries or companies can transfer their risk to others. Therefore, these instruments allow producers to better forecast their earnings in the short run as well as to gain better access to credit due to the lower risk of default.

**Mexico** is one country that has used put options to hedge its oil revenues against a drop in oil prices. Mexico’s purchase of put options in 2008 brought a huge windfall gain for the fiscal year 2009. For the whole of the fiscal year 2009, the Mexican Federal Government received US$5.1 billion as a result of the oil hedge program: This more than compensated for the US$1.5 billion it invested in the hedge [see Secretaría de Hacienda y Crédito Público de México (2009). “Federal Government 2009 Oil Hedge Results.” Press Release. 8 December; and Blas, Javier (2009). “Mexico’s Big Gamble Pays Off.” Financial Times. 7 September].

In conclusion, a **well-designed fiscal system** structured to respond to CPV has served some countries well, and some fiscal arrangements like windfall profits tax prove to be useful in the short term to **capture the resource windfalls**. However, none of the windfall profits taxes were sustainable, suggesting that an adequate and well-structured tax system is needed. In addition, governments can use market-based commodity price risk management instruments to smooth their revenue flows -- and Mexico showcased it.

**How to evaluate the usefulness (or ‘safeness’) of derivative transactions?**
Satoru Araki, Asian Development Bank, Manila

Thank you very much for your interesting article. For the example of **Mexico**, where hedging by derivative transactions was successful for FY 2009, I think it may be more sensible to look at several years’ performance in order to evaluate the usefulness (or ‘safeness’) of derivative transactions. For FY 2009, the Mexican government bought put options equivalent to 1.5 billion US dollars (by no means a peanut amount), this amount could have been a loss if oil prices had gone upwards as the bought put options were not exercisable.
Follow up on using market-based risk management instruments to hedge against price swings
Yanchun Zhang, UNDP Bureau for Development Policy

Thank for your comment. I agree with you that Mexico’s purchase of oil derivatives could have wound up as a loss if oil prices in 2009 had stayed at an average of US$70 or above a barrel. In our paper, we did collect multi-year information to showcase the positive role and potential risks that market-based price risk management instruments may be associated with. As we analyzed, Mexico’s purchase of oil put options for year 2010 and 2011 did end up with losses (red bars in Figure 1).

Figure 1. Mexico’s Use of Put Options to Hedge Oil Revenues, 2009 – 2011 (US$ per Barrel)

Note: Due to lack of data availability for Mexico’s export oil price, we use the petroleum price of West Texas Intermediate (WTI) 40 API, Midland Texas, US$ per barrel as a proxy. WTI prices were highly correlated with Mexico’s export oil price (Daniel 2001) in the 1980s and 1990s. We assume the WTI price continues to be highly correlated with Mexico’s export oil price in the 2000s. Sources: Own computation based on IMF primary commodity price dataset, Secretaría de Hacienda y Crédito Público de México 2009; Blas 2009; and Gould 2010.

Mexico’s purchase of put options in 2008 brought a huge windfall gain for the fiscal year 2009. In anticipation of a drop in oil prices in 2009, Mexico started buying put options to hedge a substantial part of its oil production. The government paid in 2008 to gain the right to sell its oil for US$70 a barrel in 2009. Ultimately, Mexico’s use of a ‘market-based financial instrument’ paid off because oil prices dropped dramatically in 2009. For the whole of the fiscal year 2009, the Mexican Federal Government received US$5.1 billion as a result of the oil hedge programme which more than compensated for the US$1.5 billion it invested in the hedge. Had Mexico not hedged, it would have had to sell at a much lower price (Figure 1). For 2010, Mexico hedged less oil at a lower price of US$57 per barrel on average. For 2011, Mexico again hedged oil at an average price of US$63 per barrel and for 2012 at an average
price of US$85 per barrel. Figure 1 also shows that Mexico’s purchase of put options for year 2010 and 2011 did not pay off as oil prices stayed at elevated levels. We do not have information on how many barrels of oil Mexico hedged for 2010 and 2011 and could not calculate the amounts that Mexico lost on these put option purchases (Secretaría de Hacienda y Crédito Público de México 2009; Blas 2009; El Economista 2010; Gould 2010; Rodríguez 2012).

Therefore as you rightly point out, when a country use market-based risk management instruments to hedge against price swings, there is a risk of losing the premiums it pays for hedging instruments. But if the country bet right about the direction of the price swings, the potential payoff can be huge (like in Mexico’s 2009 case) and will help avoid big disruptions to the economy caused by volatile commodity prices. We also recognize that hedging instruments are technically complex and politically costly (Landon and Smith 2010), which might explain why until now, the extent to which resource-exporting countries have used hedging instruments has been limited.

Additional Reference

**Investment in human capital and community participation in monitoring mining activities**
Amarendra Das, Utkal University

I would like to share my thoughts on the management of revenue from minerals.

1. Investment in human capital
The revenues from non-renewable resources are temporary in nature. Therefore, it should be used in the areas which develops the capacity (human capital) of the nation to produce substitutes for the non-renewables. The thrust should be given on the investment in health and education of the country. Focus also should be given on the research and development activities for developing substitutes for the exhaustible resources.

Although I appreciate the idea presented by Rui Gomes in the context of Timor-Leste’s Petroleum Fund, I have some reservations on such investment plans. Instead of investing the fund in the Dollar denominated bonds, the funds should be utilized for building up infrastructure (road, ports, hospitals, energy, schools so on), education, training and research. The formation of capital can generate sustainable income sources for the natives.

2. Community participation in monitoring
Many of the developing countries are facing severe challenges of illegal extraction of minerals. This causes severe loss of revenue to the public exchequer. The illegal mining activities transfers the revenue to a very few powerful people of the nation. For minimizing the illegal mining activities, India is planning for more digitalization and application of satellite imaging services.

On the other hand for the development of the mining region, Government of India is proposing to create a Mineral Development Fund in every district, in which profit and royalty shared by miners will be deposited and spent on the local population and area development. As per the new proposal coal mining companies will have to share 26 percent of the profits from their mines with people impacted
by projects. In the case of non-coal miners, the new law will provide for payment of an amount equivalent to royalty paid to the state government to project-affected persons.

The profit sharing idea has not been well accepted by the mining firms. Moreover, if this is implemented, the mining firms will not hesitate to manipulate their balance-sheet for showing zero profit or minimum profit. This is well anticipated from the fact that there are many instances of underreporting of the quantity of mineral extracted and the actual market price of minerals while paying the royalty to the government.

In such a circumstance the involvement of local community in the management of minerals will give them a sense of ownership and enable them to get a part of the profit to offset the loss caused due to loss of common property resources and environmental damages.

**Strong regulation and enforcement mechanisms to maximize environmental sustainability and social benefit**

Dorji Choden, UNDP Bhutan

This e-discussion comes at a time when a debate is ongoing in Bhutan on whether the extractive industries, which include mining, should be nationalized. I was prompted to share what I know about the subject in Bhutan's context.

Bhutan’s mining industry, dominated by the production of cement, coal, dolomite, gypsum, limestone and quarries (stone and sand) is small, relatively underdeveloped and insignificant to its economy. But the sector is expanding, as indicated by the increased production statistics, increasing number of leases issued and revenue generated, which are attributable to (i) the growing exports of minerals, (ii) increasing domestic consumption by industries as raw materials, and (iii) the construction boom, especially in the fast growing urban centers. It was reported that mining companies topped the list of taxpayers in the country during the financial year 2009-2010 to the national revenue from the private sector (see “Mines tops taxpayer list”, Bhutan Observer, 19 February 2011). The greatest benefit accrued from the mining sector compared to other benefits is the large number of jobs created.

When the Environment is among four pillars of the country's development philosophy of Gross National Happiness and the Constitution requiring the country to maintain 70 percent forest coverage for all times to come, the extractive (mining) industry does not spell well. It comes as serious challenges not only to the environment but also to other aspects of social well-being, particularly on health. While the country takes pride on its environmentally friendly policies, there were incidences of people complaining about damages to agriculture and wildlife, dust-related respiratory problems, and claims about the destruction of forests and hills affecting the area's microclimate.

The Environment Impact Assessment is mandatory for extractive industry and administered by the National Environment Secretariat. In addition the approvals from the affected public are important regulatory instruments to minimize adverse environmental and social consequences. The excellent policy instruments on paper are often mismatched at the time of operation on the ground. Some of the challenges, and often the bigger questions, are:
1. Are the good regulatory instruments that are in place enforced effectively and uniformly to curb malpractices?
2. How does the benefit reach to the poor who are most often affected?
3. The process of public consultation and negotiation - how competent is the public to know the long-term adversity?
4. Are social and community concerns addressed adequately?

Given that the Economic Development Policy of Bhutan (www.gnhc.gov.bt/) envisages mining to play an important role in supplying raw materials for industries, construction materials for infrastructure in development projects, important initiatives have been taken to exploit prudently the limited and non-renewable resources:

(1) Nationalization of quarrying (stone and sand) to meet the increasing demand from mega projects and to stabilize the price. Recently there was a national debate with online voting on whether nationalization is a way forward! To the question “Should Bhutan nationalize Mining?” 55 percent (128 votes) of the voters responded affirmatively.

(2) Drafting of the Mineral Development Policy aimed at bringing changes in the allocation of mines/quarries and having a properly planned, efficiently regulated and professionally managed mineral industry. It is also aimed to incorporate greater social and environmental responsibilities (for example, an environmental restoration bond as a guarantee to ensure reclamation and restoration; at least 10 percent of the share, if any, for the affected community; to establish a community development fund).

Does improvement on legal and regulatory mechanisms on paper, necessarily translate into sustainable operations on the ground?

**Social accountability pivotal to achieving inclusive, green growth in the extractive sector**

Kishan Khoday, UNDP Saudi Arabia

Social accountability mechanisms will be pivotal to achieving inclusive, green growth in the extractive sector. Recent years have seen a surge of social movements in Asia and elsewhere focused on the extractive sector; posing questions about the nature of wealth and power in society, and calling for more transparent, accountable and participatory governance of natural assets. In this regard, the recently published UNDP-IPC Working Paper No.91 Development from Below: Social Accountability in Natural Resource Management may be of interest. A few key points from the paper follow.

As governments and corporations scramble to secure resources, investments into natural assets have surged 5000 percent, from $6 billion in 2000 to $350 billion by 2010 (UNCTAD 2001) while corporate revenues have hit record highs, crossing the $400 billion mark for the first time. But as we also see from experience on the ground, amidst record prices and profits, the gap is growing between industrialists and speculators on the one hand, and rural communities who live on this treasure of natural assets but are excluded from benefit-sharing, while also suffering the social and ecological impacts of extractive sector growth.
Asian examples include a surge of community protests across the Tibetan plateau in recent years, home to one of the region’s largest mineral reserves. Despite a rare victory by monks and communities in early 2012 forcing closure of a polluting mine at the sacred Mount Kawagebo, major issues remain in various parts of the plateau. And the concerns are not limited to the mining phase of extractive industry but to other parts of the minerals life cycle. For example this year also saw mass protests over pollution concerns in Shifang district in neighboring Sichuan, leading to cancellation of one of the world’s largest planned copper smelters. Across the Himalaya in India, community protests have likewise surged in recent years. This is particularly so in India’s tribal belt, home to the country’s poorest districts and India’s richest reserves of minerals. In Indonesia’s eastern Province of Papua too, long-standing issues around copper/gold and natural gas reserves have re-surfaced with a series of protests and confrontations in recent times against abuse of power by the State and social and environmental impacts from extractive industry.

These and numerous other cases in Asia and beyond show the rise of social accountability movements in which citizens confront the State regarding impacts of the commodity boom on their social and ecological well-being. As countries respond to these drivers of change, four key areas of focus are proposed in the Working Paper for consideration.

1) Regulatory and planning frameworks: Extractive sector laws and policies are being amended across Asia and elsewhere to adapt to social movements around the extractive sector. Global platforms like the Natural Resource Charter can serve as a common reference for enhancing planning and regulatory frameworks. One local example is in India, where an extractive sector Sustainable Development Framework was drafted and released for consultations in 2011, specifically to respond to civil society’s agenda for change and address the convergence of economic, social and environmental sustainability in the extractive sector. This is coupled with draft revisions to the 1957 Mines and Minerals Development Act which if passed would increase the rate of tax/royalties and set up new Local Development Foundations to manage revenues under direction of a multi-stakeholder board. The revisions also call for mining firms to design local Sustainable Development Plans to achieve inclusive, sustainable growth. Examples of innovative legal regimes in other regions can also provide valuable comparative insights, with examples from West Africa and Latin America also touched on in the Working Paper.

In parallel to enhancing extractive regulations and planning, regimes for Social and Environmental Impact Assessment are also in need of strengthening, as are mechanisms for citizen access to justice. Examples in China include a Strategic Environmental Assessment Law which has sought to mainstream social and environmental issues into upstream planning of sector wide investments, while a Regulation for Public Participation in Environmental Matters has sought to engage potentially affected communities in Environmental Impact Assessment processes. This has been coupled with emergence of more than 47 local environmental tribunals across the country in recent years, albeit facing implementation challenges.

Regulatory reform and planning measures can help achieve greater transparency, accountability and participation in resource governance. How are such measures helping to consolidate civil society calls for change and institutions that increase social accountability and checks and balances on the State and corporations? How are legal regimes being tailored to the goal of social accountability across different categories of resources? Within these emerging processes of reform, opportunities arise to support new fiscal measures to better account for extractive-sector revenue and reduce overseas
capital flight, institutional frameworks that secure long-term values of ecosystems, and increased citizen access to information, participation and justice.

2) Indigenous rights: Indigenous/tribal autonomy regimes are being engaged in countries around the world. Examples in Asia include India’s Tribal Forest Dwellers Rights Act (2007) and Indonesia’s Special Autonomy Act for Papua (2001), both of which have seen serious implementation challenges. Examples from Latin America are of particular comparative value, including regimes for indigenous empowerment in Brazil, Bolivia, Chile and Peru and innovative Constitutional provision on the Rights of Nature in Ecuador. As noted in a recent Policy Brief on Environmental Justice for Inclusive Growth, there is a need to prioritize the use of legal frameworks specially-tailored to recognize the unique history of indigenous and tribal peoples, their customary rights of ownership, use and access to resources. Further it is important to ensure that indigenous peoples make free and informed choices about the development of their lands and resources. Are rights-based models emerging that yield tangible results for goals of social inclusion and ecological sustainability? Beyond mere participation, how far do they go towards recognizing historic injustices to indigenous communities, legitimizing indigenous constructs of nature and society, and customary law related to access to and use of natural resources?

3) Corporate citizenship: Many multinational and local businesses are trying to engage inclusive, green growth in their operations, and scope exists to scale up clean technology solutions for less resource-intensive and toxic growth. The recent Rio+20 Corporate Sustainability Forum highlighted various examples in this regard, while examples from Asia were highlighted in this World Economic Forum report. What prospects exist for scaling up and replicating these efforts in the extractive sector and linking them to social accountability frameworks such as the Ruggie Protect, Respect and Remedy Framework endorsed by the UN Human Rights Council in 2011, the UN-backed Principles for Responsible Investment that seek to integrate environmental, social and governance (ESG) principles into investments, or the Extractive Industry Transparency Initiative?

4) South-south cooperation: The quest for resource security is a core feature of the rise of the South, with emerging economies now a driving force in the global dynamics of commodity supply and demand. Many emerging economies, particularly those in Asia, have seen a surge of outward direct investment (ODI) and Official Development Assistance (ODA) into resource-rich but less developed countries. Chinese ODI for example has grown from $1 billion/year in 2000 to over $5 billion/year today with cumulative stock of over $300 billion (Ministry of Commerce 2010, Statistical Bulletin of China’s ODI). As noted in a report on Africa-China Cooperation for Sustainability issued in the lead up to the July 2012 Forum on China-Africa Cooperation (FOCAC), attention also now turns to benefits of integrating inclusive, green growth approaches into ODI flows. How can such proposals being catalyzed into action to prevent social and environmental impacts in commodity source countries? What role exists for UN/UNDP to help analyze evolving ODI/ODA flows, catalyze inclusive green growth approaches into ODI/ODA, and build on our universal presence to shape policies in both commodity supply and demand regions across the South?
The sustainability issue in EI
Robert Goodland, Environmental scientist working in developing countries

I find the topic of this discussion very interesting and relevant to my work - I have assisted Indonesian Minister, HE Emil Salim, with the 2001-2004 Extractive Industry Review of the World Bank’s Extractive Industry portfolio.

As an environmental scientist, I am interested in “environmental sustainability”. The biophysically rigorous concept of Environmental Sustainability (ES) is defined as non-declining natural capital (nature’s stocks that yield a flow of services or resources into the future), keeping natural capital intact, or maintaining the source and sink capacities of the ecosystem.

Environmental sustainability is therefore closely related to three of the top over-riding issues: (a) fewer impacts, (b) internalizing external costs, and (c) using full cost pricing. From this perspective, mining can never be fully sustainable as it inherently depletes a stock resource. Metal recycling and efficiency can postpone exhaustion, but cannot make mining sustainable.

Utilizing the concept of “weak or quasi-sustainability” [see Salah El Serafy’s excellent work in this regard (1996) – “In defence of weak sustainability”. Environmental Values 5: 75-81] mining can be considered broadly to contribute to sustainable development only if economic benefits outweigh social and environmental costs, and if mining revenues are invested in building sustainable industries, enterprises and productive capacities.

The “weak sustainability” principle, however, posits that different forms of capital (natural, human, and physical) are substitutable. Yet, the substitutability between various forms of capital is limited. Activities can be considered “sustainable” if the overall stock of capital is at least not diminished and preferably augmented. This broader definition suggests that mining can contribute to sustainable development if “it gives rise to long-term net benefits (environmental, social or economic) that equal or exceed the values that existed prior to exploitation” (see Amezaga et al. 2011, A Rich Vein? Mining and the Pursuit of Sustainability).

The “net” is important as the social and environmental costs and all the external costs must be subtracted from the benefits. In addition, the ‘trickle-down theory’ namely that some fraction of the benefits accrued by the recipients of most royalties, profits, taxes etc. may eventually trickle down to the impacted people is an aspiration at best.

Impacts or costs of mining are likely to soar once the ore is depleted, when the major costs of restoration and very lengthy treatment of wastes (acid rock drainage, etc.) start to be tackled. Once the ore is depleted mining proponents tend to lose interest, especially in mine closure and restoration.

My interest in EI, and specifically in metal mining, is that it can lead to social injustice as the more accessible ores are depleted and mining moves to remote areas often inhabited by indigenous peoples and forest (and its biodiversity). As extractive industry activities can generate effects that infringe upon indigenous peoples’ rights and the environment, free prior informed consent (FPIC) needs to be mandatory in such cases.
Are you concerned with what has been called “privatization of profits and socialization of costs”? I’m especially concerned because mining proponents often wield power over legislative processes and legislatures. For example, this recent lawsuit in El Salvador at World Bank’s International Centre for Settlement of Investment Disputes (ICSID) ruled in favour of a mining company that sued the country for not issuing an “exploitation permit” to mine for gold. Guatemala reduced royalties to 1 percent with tax holidays while a major gold mining company was developing projects in the Western Highlands. Making mining codes more “industry friendly” at the expense of vulnerable ethnic minorities, workers and biodiversity is problematic. The power of mining proponents is often excessive, especially in countries with weak governance or simmering conflict. As Stiglitz (2012) puts it: “Those with power use it to insulate themselves from competitive forces by winning favorable tax treatment, government-protected market share and other forms of rent-seeking” (see The price of inequality. NY, Norton, pp. 414).

Do you think that such asymmetric power relationships between mining proponents and impacted stakeholders, such as Indigenous peoples, lead to less development, less efficiency and more inequality?

Poverty reduction at Porgera mining site, Papua New Guinea
Glenn Banks, Massey University

Many of the trends identified in the previous contribution by Robert are also at work in Papua New Guinea’s extractives sector: the rights of communities to protest the social and environmental effects of proposed or actual mines were curtailed through changes to legislation last year.

I specifically want to comment on your final question concerning the asymmetries of power between corporations and communities. In the Papua New Guinea context, while abuses certainly do happen, local communities have demonstrated a range of ways of redressing at least some of these imbalances, often in the absence of strong state support. There are upfront negotiations required (the 'Development Forum'), codified expectations of shares of various revenue streams, and perhaps most importantly an understanding that if the communities affected become too dissatisfied with the mining operation, they are able to significantly obstruct or even close the operation down (usually temporarily, but the memory of the forced closure of Bougainville in the late 1980s still pervades the public and the corporation imagination).

How does this affect development, efficiency and inequality? In part, it depends on your definitions of each of these. In terms of the last of these, work I did some time ago (published in Focaal: the European Journal of Anthropology in 2005) showed that at the Porgera gold mine, the mine development had significantly reduced absolute poverty, but introduced new axes of inequality (over top of some of the pre-existing forms of hierarchy and inequality within the community). And typically in Papua New Guinea the mines bring much better health and education facilities and opportunities for the remote communities, but these do not always translate into greater overall development. Recent work at Lihir has shown improvements in most of the health indicators over the 15 years of minelife (life expectancy, infant and maternal mortality) except for increases in the incidence of diabetes and other ‘lifestyle’ diseases.

These are big and important questions, and I look forward to hearing from others on them.
Poverty often increased at mining site
Robert Goodland, Environmental scientist working in developing countries

Thank you to Professor Banks' for his comments. It’s always encouraging -- if unusual -- to hear that one's scribblings are found to be "excellent".

Glenn has worked long and hard in PNG, and I never have, so I fully defer to him. I greatly enjoy his many and very useful publications on A-P mining and its impacts. I’m delighted to hear that the mine-impacted people in PNG can halt a mine project. We should learn from this achievement and replicate it elsewhere if and when fully justified. It would be great if your web discussion could tell us of more examples and how they can be replicated.

I’m also delighted to hear poverty has been reduced in relation to the Porgera mining activities, presumably beyond the temporary employment and local procurement at the mine, which ends soon after mine closure. That too is rare in my non-PNG experience. Often, poverty is increased by a mine because the impacted people are forced to get out of the way of the mine (through involuntary resettlement) and suffer other impacts such as loss of forest resources, loss of agriculture, less fish from riverine tailings disposal and pollution, and violence from security forces. The Porgera example must be unique because the very conservative and prudent Norwegian Government decided its track record was so lamentable that they ceased all their investments in Porgera.

Perhaps, Glenn can provide additional information on how Porgera has improved their social and environmental track record since then in the next round of discussions.

Revenue generation from natural resource extraction for development
Bishwa Nath Tiwari, UNDP Asia-Pacific Regional Centre, Bangkok

There are contrasting evidences about the effects of natural resource wealth on economic growth and income inequality. While a number of resource-rich countries have not befitted, there are some which have furthered their development from natural resource extraction such as Chile, Indonesia, Malaysia and Norway, among others. The negative relation between natural resource and economic growth has been dubbed as ‘resource curse’ in literature advancing several arguments against extraction, including: deterioration of terms of trade of primary commodities against manufacturing goods; revenue volatility from extraction; the enclave nature of mineral-based industries hardly benefitting local communities; Dutch disease effects through exchange rate appreciation; unwanted increase in role of state; and development of ‘rentier state’. Whether a country can develop from its resources depends on how issues associated with extraction, as pointed above, are managed. These involve decisions revolving around political, social and economic spheres which are not easy in the presence of diverse interest groups and actors.

Two arguments are advanced here about extraction revenues. The first argument is that mineral revenues are volatile because of unstable market prices and fluctuating trade volume of minerals which in turn creates macro-economic instability in a resource-dependent country. The instability is further aggravated by a pro-cyclical fiscal policy of such countries which incur higher expenditure during boom and low expenditure during slump period. The second argument is that amount of
royalty or resource rent (in real terms) decreases in long run. Therefore, unless economic policy of mineral-rich countries addresses the two issues, they cannot develop in long run.

A number of factors affect price of minerals including discovery, technological innovation, and demand of products – both mineral and manufacturing. Despite Hotelling’s rule that prices of exhaustible resources grow at the rate of interest, there is tendency of decrease in real amount of revenues from extractive industries (*). This is plausible given the fact that amount of resource rents depends on cost of extraction and world price of minerals. As lower unit cost mineral is explored first, it is likely that the resource rent that government can generate from extraction decreases over time. However, this holds only if government has already extracted all surplus revenues over and above the cost of extraction. Therefore, this leaves the possibility of increasing resource rent or revenue from minerals.

Unlike Hotelling’s rule which operates under perfect competition, the markets of extractive industries are characterized by imperfect competition with a number of market failures including those resulting from asymmetry of information between the government which is the resource owner and the extractive industry. Generally, extractive company holds much more information than the government about the discovery and revenue and cost of extraction. Because of this asymmetry, the government fails to extract resource surplus from ownership of its resources exploited by private companies. This market failure can be addressed through increased research and development (R&D) investment by government and serving as the sole leader in the discovery of minerals. This will help government increase its bargaining power with private companies to argue for increased royalty. Few countries have promoted a prime national company, a nodal agency approach, guiding others including foreign companies.

However, information about cost and price of minerals and its ore deposit is only one aspect of revenue maximization. Policy measures on natural resource extraction require a holistic approach, dealing with discovery and innovation, macroeconomic stability, expenditure management through prudent fiscal policy, which in turn depend on economic status, political system and governance structure of the country.

Note
(*) The first path-breaking paper published on exhaustible resources is by Harold Hotelling in 1931 which has come with a number of propositions under certain assumptions. These propositions later have stimulated interest in the field; a number of studies have been carried out especially after the Meadows and Meadows’ famous report on the Limits to Growth published in 1972.

**Designing fiscal policy to ensure resilience against political and economic volatility**
Matthew Genasci and Katarina Kuai, Revenue Watch Institute, New York

In the majority of the countries in which **Revenue Watch Institute** (RWI) works, rents appear to be significantly under-taxed relative to potential or optimal tax levels. **Revenue Watch Institute’s analysis of data** from the Extractive Industries Transparency Initiative (EITI) highlights how little some resource-rich countries, especially countries dependent on mining, have managed to collect. In at least one reporting year for which EITI reports have been produced (*), mining revenues totalled less than US$30 million in each of the following countries: **Burkina Faso, Ghana, Liberia, Mauritania, Niger**, ...


and **Sierra Leone.** In **the Philippines,** the Finance Secretary recently revealed that the mining sector paid a mere US$47 million in taxes in 2011, or 0.17 percent of total tax collections. **Official statistics** indicate a mineral export value for 2011 of US$2.66 billion (**).

Fiscal regime design. While there can be no “one-size-fits-all” fiscal regime appropriate for every country, fiscal regime design should generally have certain core features in order to generate revenue, facilitate revenue collection, and strengthen resilience against commodity price fluctuations. Some of the core characteristics that could help to generate/maximize revenue are:

- **Ensuring a balance between windfall profits and a steady revenue stream.** Gross income-based, royalty-type fiscal tools ensure that states directly share in the value of their resource endowments and provide a baseline level of revenues throughout production. However, all systems should have some mechanism for capturing a share of rents given windfall profits, relative to the government’s tolerance for risk and resource dependency. While the influx of revenues associated with windfall revenues will no doubt test weak macro-fiscal management systems, a failure to integrate these boons makes a tax system vulnerable to excessive renegotiation and other damaging disruptions that discourage investment.

- **Political economy realities: ‘flexibility’ over ‘stability’.** Flexible fiscal tools that are robust to changing political and economic circumstances over the life of the project enable states to share in windfalls, and are more credible than overly rigid, contractually stabilized, fiscal regimes. At the time of negotiation, governments facing immediate-term time pressures to deliver results (especially in impoverished countries, young democracies and fragile states) have high political discount rates and rely more heavily on fiscal instruments that deliver returns quickly. It is crucial that a system’s design recognizes this and seeks some effective valuation mechanism to help a government avoid sacrificing too much in the future in favour of revenues today.

- **Alternatives to traditional tax-and-spend theories of public finance.** RWI encourages international technical assistance providers to help governments analyze the value of fiscal packages that include direct provision of infrastructure or payments made by companies directly to communities. Benefits and costs need to be evaluated objectively while remaining responsive to citizen demands for visible benefits.

Fiscal regimes enshrined in generally applicable legislation facilitate implementation. Apart from the typical variations in tax and royalty rates commonly found in negotiated agreements, ad hoc fiscal regime design in the context of negotiated agreements often results in sub-par legal and fiscal regimes while exacerbating administration challenges. That is to say, agreements which deviate substantively from basic legislative and regulatory rules in the calculation of income (e.g., utilizing different bases and value measurements for assessing royalties; providing entirely different thin capitalization rules or loss carry forward rules for different projects; allowing one company special exceptions to ring-fencing rules; establishing complicated multi-phase rate escalations for various charges, etc.) could put tax administrators and other regulatory bodies at a significant disadvantage.

Greater use of standardized form agreements and reliance on legislated fiscal terms create efficiencies in the use of limited human and technological resources for under-capacitated tax administrators. In addition, administratively challenged countries can further improve the regulation of transfer pricing by introducing standards “**relative to observable and verifiable variables such as world prices**”. Legislated fiscal regimes may also have positive impacts on investor perception of risk, as contract-based fiscal regimes raise the likelihood of discriminatory treatment of different investors. These
arguments in favour of relying on generally-applicable legislation over ad hoc contracts, where key interests are at stake, apply equally to environmental and social considerations. The proper balancing of social and environmental costs vis-à-vis revenue generation considerations is best done in the context of the development of broadly applicable legislations. Where significant trade-offs are made in the course of particular negotiations, the likelihood of mistakes rises and the regulatory task can be made much more difficult.

Transparency of bidding procedures, bids, contracts and beneficial ownership. Well-designed and transparent competitive processes can support greater rent capture by the state. This includes rigorous pre-qualification procedures for companies to disclose their financial and technical capabilities to develop the concession. For example, lessons can be taken from Nigeria where in the mid-2000s, companies won ostensibly competitive bids only to either fail to make the payments due, or to seek to quickly “flip” control to a higher bidder and reap the benefits of the margin.

In addition:
- bidding criteria and timeframes need to be clearly explained and widely disseminated
- the content of winning and losing bids should be disclosed wherever possible
- the contracts resulting from the processes should be published
- ultimate beneficial ownership of licensees should be disclosed.

Without transparency, the likelihood that competition will, on its own, produce better fiscal terms—and especially that it will produce more effective enforcement of those tools—is greatly reduced. Transparency also enables monitoring and accountability by a wider constituency of citizens, civil society, local and elected officials, and the media among others who can support over-burdened administrative and regulatory agencies.

Notes
(*) The research covered reporting years 1999-2009. The reports themselves were published between 2002 and 2011.
(**) The Philippines Government’s extremely poor resource rent collection is due to a host of factors, starting with widely granted and overly generous tax holidays and investment incentives and compounded by inadequate tax auditing and mineral production monitoring.
Closing Message
AP-IGD Network Facilitation Team

Thank you for your enriching contributions and for following our e-discussion, Advancing Sustainable Development: The Case of Extractive Industries!

During the first two weeks (6-17 August, 2012) we received 16 responses focusing on generating revenue for inclusive growth. The enriching conversation drew on contributions from development practitioners in UNDP Country Offices, the Asia-Pacific Regional Centre in Bangkok, the Bureau for Development Policy in NY, academia, and research institutes. Contributions drew upon examples from the Latin America, Africa, Asia and the Pacific regions.

Under sub-theme 1 of the e-discussion, we examined policy options and strategies available for countries to improve revenue collection, in spite of commodity price volatility. To respond to the need of promoting inclusive growth and sustainable development, we looked at approaches and themes that could weigh social and environmental concerns. In addition, our responses raised a number of institutional challenges for designing effective fiscal policies and legislations – while indicating good practices in which the challenges had been averted.

A complete summary of the first sub-theme will be provided in the following days. You can access the contributions to sub-theme 1 on our Teamworks space: https://undp.unteamworks.org/node/264352
If you would like to join our Teamworks space, please contact ap-igd@groups.undp.org

Your active participation has been a valuable resource and we hope to continue the momentum! Now we would like to turn your attention to the next sub-theme: “Revenue utilization: Prioritizing the present or the future?”
II. Contributions on Revenue utilization: Prioritizing the present or the future?

Opening Message
AP-IGD Network Facilitation Team

Thanks again for your substantial participation in the first part of this e-discussion! The second part will run between 20 to 31 August 2012 and will focus on revenue utilization.

EI revenue can be employed to stimulate inclusive growth, but how can countries save, invest or spend this revenue to translate it into long-term benefits for their people is subject to debate. How can countries manage revenues from their extractive industries, balancing between the need to address immediate development issues through short-term interventions (e.g. cash transfers, employment schemes, other social safety nets, etc.), and the need to accumulate capital for future generations (e.g. through investments in public health and education)? The depletion of non-renewable resources, while raising environmental concerns, also affects the long-term flow of resource revenues. To sustain this flow, it becomes critical for countries to convert non-renewable resources into other forms of capital, upon which future generations can benefit. Therefore, what are the economic policies, the capital investments, and other strategies that countries can adopt to manage their mineral resource wealth, in order to better balance the needs of current and future generations? This sub-theme aims to draw from your own experiences and knowledge the good practices that countries have adopted, the challenges they have faced and the strategies they have adopted to overcome them.

Among the issues that we will consider in this part of the e-discussion are the transparency and accountability issues related to the revenue flows between governments and the private sector; corporate social responsibility practices; economic diversification strategies to avoid resource-dependence, and investments in social programmes, biodiversity conservation and peace-building efforts.

While responding to the overarching question, Revenue utilization: Prioritizing the present or the future?, we request members to focus on the following aspects:

- What institutional and policy frameworks have countries adopted to sustainably manage revenue flows from Extractive Industries in a transparent and accountable manner?
- How are the resources generated from Extractive Industries used to diversify the economy, ensure inclusive and sustainable economic growth? What are the challenges faced and some good practices?
- Specifically, how are the resources generated from Extractive Industries used to support social policies (e.g. health insurance, education grants, cash transfers, employment) and ensure resilient local communities?
Investing mining revenues for the future: Australian experiences
Kieren Moffat, Commonwealth Scientific and Industrial Research Organisation (CSIRO)

Australia has experienced unprecedented growth in mineral development over the last five or so years as a result of record commodity prices and demand growth in its main export markets, particularly China. As in many mining jurisdictions around the world, the Australian government has sought to maximize the value of its mineral endowment. In 2010, the then Prime Minister Kevin Rudd sought to introduce a Resource Super Profits Tax (RSPT) sparking a major dispute between the government and the mining industry. Central to this conflict was a dispute about the amount and appropriateness of taxes already paid by the industry, as well as the multi-layered and complex taxation and royalty regime in Australia that involves both the Federal and state governments. (The RSPT was eventually replaced by what was called the Mineral Resource Rent Tax (MRRT), as was the Prime Minister by one of his colleagues).

This episode was followed by a decision to trial the Extractive Industries Transparency Initiative (EITI) in Australia to develop an agreed understanding of the revenues generated by the industry and received by government. In the words of the Australia’s peak industry representative body, the Minerals Council of Australia (MCA), “in the absence of the EITI, there has been no mechanism to fully measure mining’s total contribution to all levels of Government in Australia”. The Australian Government has also committed to AUD (Australian Dollar) 12 million to support EITI advocacy internationally through the Mining for Development initiative.

The increase in revenues from the mining sector in recent years has ensured that Australia’s balance sheet has remained relatively healthy throughout the Global Financial Crisis (GFC) and arguably allowed the Government some flexibility to stimulate the economy at its height in 2008 and 2009. During these boom times, the Australian government has invested in several large ‘nation-building’ projects and initiatives which are very much focused on prioritizing the future. These include an AUD 30.4 billion investment in high speed broadband to all Australian premises through the National Broadband Network (NBN). The government has also increased the compulsory superannuation guarantee rate (i.e. the proportion of annual wage compulsorily set aside for retirement income) for all Australians from 9 percent to 12 percent by 2019. Workplace Relations Minister Bill Shorten explicitly tied the increase to mining revenues, stating that “We know the mining boom is great news for the mining industry and the country - but we want to make sure those digging up Australian minerals are sharing their profits with average Australians.”

At a state level, Australia’s two largest mining states, Western Australia (WA) and Queensland (QLD), have employed a royalty distribution scheme to share state-based mining revenues with regional communities. Western Australia’s Royalties for Regions scheme was introduced in 2008-09 and distributes 25 percent of the state’s mining and offshore petroleum royalties to regional areas of WA “as an additional investment in projects, infrastructure and community services”. In 2011-12 alone this amounts to planned investment of AUD1.2 billion of funds. The scheme has a stated focus on building communities in regional areas through three funds. These fund investment by local governments to provide and renew infrastructure (e.g. roads, bridges, parks, and footpaths), regional community services (e.g. supporting the Royal Flying Doctor Service, health initiatives, and subsidizing fuel cards for aged pensioners), and large-scale regional infrastructure projects (e.g. increasing irrigation areas to support agriculture growth, and building new cities in WA’s Pilbara mining region to reduce cost of living and support an in situ industry workforce. QLD’s similarly titled Royalties for the Regions

...
program, announced in March 2012, will invest AUD$170 million over four years, growing to an annual
AUD$100 million a year fund according to government statements. Social infrastructure, health
services and roads will feature as funding priorities under this scheme.

Australia has a long history with mining and sophisticated legislative frameworks for managing the
exploitation of its resource endowment. Yet the challenges experienced in developing mineral
economies regarding transparency and agreements on revenues generated by mining to flow to the
government similarly exists in Australia. The Federal Government-funded EITI trial, in partnership with
the MCA, represents a proactive step to inform future discussions about the nature and
appropriateness of industry’s contributions to government revenues.

In recent times, the direct reinvestment of these revenues into national and regional communities
through the increase in compulsory superannuation contributions legislated by the Federal
Government and state-based royalty distribution schemes in WA and QLD represent real, tangible
benefits from mining for Australia’s citizens. Yet, the experiences of people living in resource intensive
regions are not universally positive by any means, particularly in areas that have seen enormous
industry expansion, such as the Hunter Valley in New South Wales. The initiatives described above
represent a recent response to societal pressure and expectation that a national mineral endowment
should generate greater benefits for all Australian citizens and particularly for those living in regional
and remote Australia from which most mineral value is extracted. The challenge for Australia is to
translate this endowment into long-term benefits for all of its citizens.

Leveraging the power of the market to encourage better development and sharing of
resources with the most vulnerable people impacted by mining
Jennifer Horning, Solidaridad Netherlands

EI revenues do not always need to be directly managed by governments alone to lead to inclusive and
sustainable economic growth. There is potential to turn the growing attention to value chain
transparency for metals into a mechanism for encouraging broader re-investment of EI revenues by
miners themselves. I would like to introduce some ideas for doing that.

When you ask most mining company executives about their value chains, they tell you about the
inputs they need to run their operations, like cyanide and truck tires. Rarely do they mention what
happens once the mined mineral leaves the mine. In fact, they may not have to think too much about
this. After all, it isn’t hard to attract a buyer for, say, gold these days, right? Yet, for a growing number
of companies at the other end of the value chain, the question of where their metals come from and
how they were mined is quickly growing in importance. This is due to several factors. Some leading
companies in the jewellery and electronics industries have voluntarily taken steps to better
understand their value chains as a way to connect with their customers, improve their market
positioning, and reduce their risk in a difficult global market. However, one of the biggest drivers
across the market for greater transparency is the concern over conflict minerals in Africa and new
regulatory requirements, such as Dodd-Frank in the US (similar legislation may be introduced soon in
Europe). Buyers are facing pressure to answer questions not just about their own practices, but those
of their upstream suppliers as well.
Several initiatives have emerged recently to help buyers better understand the risks in their chains, led by organizations such as Organisation for Economic Co-operation and Development (OECD), the World Gold Council, the London Bullion Market Association, and the Electronic Industry Citizenship Coalition (EICC) and the Global e-Sustainability Initiative (GeSI).

Stakeholders must make sure that these risk reduction initiatives are matched with development opportunities. This will help to ensure that the people in the informal economy, such as artisanal and small-scale miners (ASM), are not further marginalized because they are not able to provide assurances that buyers increasingly need.

In my work for the Gold Programme at non-profit organization Solidaridad, I focus on enabling the most vulnerable people in the gold value chain—ASM communities and people who are impacted by industrial mining in the Global South—to build better livelihoods.

Since 2009 we have provided training and other support to ASM gold miners in Latin America and Africa so that they can meet the new Fairtrade and Fairmined standard (FTFM) standard and pass external audits. There is significant development potential in the ASM sector if mining is done in a responsible way. Over 20 million people worldwide are directly employed in the ASM sector and over 100 million indirectly rely on its income (over 90 percent of the employment is ASM in the mining sector). We believe in enabling those who depend on this sector to reinvest their mining revenue in their own livelihood development. Miners who are candidates for FTFM certification must agree to formalize and legalize their operations and adopt environmental and social safeguards. In return, the standard requires that buyers pay the miners at least 95 percent of the market price for the gold they produce. Plus, the mining association earns a 10 to 15 percent premium that must be reinvested for community benefits, such as better access to water or schooling, or income diversification projects. This extra income is a powerful incentive for miners. To date, over 2000 miners have participated with us across six countries. Five mining associations have been certified and 60 jewellers have bought certified gold.

Last year we began a pilot project for industrial mining companies using the Responsible Jewellery Council (RJC) standard, which scored highest on a benchmark study that we commissioned in 2010. The mining companies will invest in the improvements needed at their own mines to become certified. In addition, we are asking them to go “beyond certification” and contribute to better practices among ASM miners on or around their concessions (through, e.g., co-investment with Solidaridad and technology transfer). This is often a win-win situation for these two sectors, which tend to be in conflict. Several large, branded jewellers would like to use RJC’s Chain-of-Custody system to buy gold from participating mines.

While the focus of our work is at the mine level in the Global South, we always work with gold buyers, primarily in the North (*) for three main reasons:

1. To provide market access for responsible producers, especially smallholders, who may need to find buyers willing to pay a premium or otherwise invest in building a new supply chain;
2. To leverage the growing demand for responsible, traceable gold among these buyers to encourage better practices; and
3. To foster closer long-term relationships between producer and buyer so that there is greater accountability and incentive for continuous improvement over time.

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Though the Gold Programme is still new and we have yet to measure the full benefits, the expectation is that through wider use of market-based approaches, we can encourage broader sharing of mineral wealth in developing countries (*). 

The answers to the following points could help to identify how governments and other stakeholders in the Asia-Pacific region can support re-investment of EI revenues using market-based tools:

- Are mining companies (or refiners) experiencing greater pressure from business partners, such as the buyers of gold and mining project investors, to adopt better practices and provide assurances that they are meeting those practices?
- What can local/national governments and donors do to encourage the use of market-based tools by the private sector and civil society?
- How can governments balance regulation with market-based tools for effective EI revenue investment?
- What is the potential for larger mining companies to support more formal, responsible ASM nearby as a way to ensure sustainable livelihoods in areas where ASM is already occurring? Which are the specific cases where it has/has not been successful?

Note

(*) In the Asia-Pacific, Solidaridad has not started work on gold. However, we are working with jewelers in Europe who source their products from Asian manufacturers.

**Partnership central to sustainable development with focus on service provision**

Francesca Viliani, International SOS and International Association for Impact Assessment (IAIA)

**Historical development**

Private companies, including the extractive industry ones, are already contributing to poverty reduction and development. One might question their effectiveness (see Pegg 2003), as others questioned the effectiveness of development aid (see Moyo 2009), but the private sector is a key partner in the sustainable development quest (as highlighted during the Rio+20 Corporate Sustainability Forum), and the extractive industry is at the forefront of this attempt (Hilsen 2012).

The year 2012 marked the tenth anniversary of the Mining, Minerals, and Sustainable Development (MMSD) initiative which is a milestone for the mining sector and lead to the development of ICMM Sustainable Development Framework. The World Summit on Sustainable Development in 2002 put Corporate Social Responsibility (CSR) on the international policy agenda and generated growing interest on the link between CSR and development and it officially launched the Extractive Industry Transparent Initiative (EITI). Simultaneously national governments adapted their approach to international development and, for example, the Canadian International Development Agency (CIDA) is partnering with mining companies to co-finance community development projects around the world as well as advising developing countries on how to manage their natural resources. The World Bank Group has played and still plays a key role in financing extractive projects but also in developing regulations and best practices. Some international Non-governmental Organizations (NGOs) raise fundamental questions about the development benefits of mining investments and their role as watchdog is of the outmost importance.
The extractive industry sector is therefore working within a very dynamic environment and addressing the needs and development aspirations of the local communities is central for obtaining the social licence to operate. However, no sustainable development is possible without an active and real partnership among all actors involved in development: communities, local and national institutions, private companies, civil society organizations, and other development actors (see Viliani 2009). I consider here how partnerships play a crucial role to guarantee people’s health.

**Health example**

People’s health is largely determined by several environmental, social, and institutional factors. Few of these factors – determinants of health - are under the direct control of the health sector. For example, water is important for our wellbeing, however, quality and availability of potable water is usually not a responsibility of the Ministry of Health but it depends from other departments and national bodies. Furthermore, planned and existing projects and human activities such as agriculture, transport, and mining among others, alter both quantity and quality of water and might generate serious health problems which pose a burden to the local health system and hamper local development. Therefore, the health sector in most countries should be one of the key partners but not the sole responsible of community health and wellbeing: prevention, protection, and promotion are all more cost effective options than treatment. In Tanzania, for example, the private sector has been seen as an effective partner in workplace health interventions by providing HIV prevention and care to 1500 mining workers and 12000 community members. However, this raises questions of sustainability.

**How revenues can improve social service delivery**

The central government is always in charge and responsible for the macroeconomic policy, the transformation of natural resources wealth in human and social capital, and it should enable a context where other operators can contribute to infrastructure constructions and the provision of social services, respecting human rights and protecting the vulnerable or disadvantaged groups. Private companies should not substitute the government in the provision of health and social services (*), but they should partner with the existing authorities and other providers to strengthen their delivery capacity (**). This happens in different ways:

1. By ensuring that the project is not negatively impacting the existing context and undermining the service delivery capacity of the existing public sector;
2. By adopting international good practices in Safety, Health and Working Conditions;
3. A percentage of the taxes and royalties paid by the operation to the central Government is allocated by the national code/law to the administrative area where the resource is located and it should be reinvested locally to ameliorate social and health services;
4. The CSR investments of the private company support health and social projects that are consistent and aligned with national and local plans;
5. Foundations, Development Fund, or other revenue-sharing mechanisms agreed among the private company, communities, and local authorities finance health and social activities.
6. Creation of Stabilization Funds/Non-renewable Resource Funds which save money for future generations and for the management of emergencies or unexpected events.

Unfortunately, in most countries there are no mechanisms to track the distribution of revenues from central government to the communities and, therefore, is if often challenging to track these
investments. For this reason quite often companies allocate a big portion of their CSR investment to projects aiming at improving socio-economic conditions as well as improving the quality and availability of services. Regrettably, CSR-funded activities are exercised in a wholly discretionary manner and not all the companies follow national polices and plans. Furthermore, pressure on existing services is not always fully addressed in the impact assessment process. Option 5 should be characterized by broader participation and transparency as communities manage their share of the profits, however, Foundations are not free from conflicts because communities are not uniform and homogenous groups.

Conclusions

In the absence of a functional state with a clear legislative framework and monitoring capacities, the extraction of resources cannot generate sustainable development as the majority of people will not benefit from it, the wealth generated might further contribute to inequities, and the associated impacts are not fully assessed and managed. To ensure that the revenue generated by the extraction of mineral resources is used for the benefit of the existing communities and in respect of the development needs of the future generation transparent partnership among all actors is essential.

Notes

(*) Different is the situation for companies operating in conflict area or within fragile states. See for example, a case study of a gold mine in Côte D'Ivoire. Tomlinson et al. 2011.


References


How does revenue from mining companies go into community development initiatives?
Bryn Gay, UNDP Asia-Pacific Regional Centre

I’m delighted that Francesca has provided a bit more context on how the private sector may be contributing to poverty reduction efforts, while emphasizing the need for partnerships among a variety of actors in essential service provision. It’s an interesting and challenging approach to see the private sector as a central player for sustaining human development, particularly in how its share of revenues could contribute to community development initiatives (such as health clinics at mining sites). I’d like to learn more from our Network about the kinds of mining ‘reinvestments’ into community development initiatives (maybe under a CSR approach) that are seen as working and sustainable. What are criteria to determine this success? Is this a strategy to consider or bolster within Asia-Pacific countries engaging or about to engage in EI?

As mentioned throughout the discussion, there is concern that government share of earned revenue could be better applied to improve infrastructure (e.g., physical) to immediately attract other investments, put into establishing or improving social programmes that could turn into medium or longer term benefits (e.g., education and health systems), or put towards developing other types of industries away from resource dependence. Yet when there is insufficient capacity to absorb revenue, and transparency/accountability of government to prioritize and spend wisely, I can see the urge to look to other actors, such as private sector or NGOs, to help fill in the gaps of basic services.

Francesca Viliani and Glenn Banks mention a couple examples in Tanzania and PNG, respectively, where the mining company put some of its revenue into social services, such as clinics and schools, into the mining communities, but how are they aligned with the government’s national development plan? What are the consultation, coordination and monitoring processes with the government on the quality of services? What is the protocol for ensuring those services do not undermine what the government is able to offer? Have you seen certain features in contracts/licenses that companies have to operate in a part of the country that looks at service provision after the departure of the company due to resource exhaustion?

Also linking to the sustainability issue, the mining companies in Tanzania had provided some HIV prevention and treatment care to its workers and in the surrounding communities. (It’s possible that this approach doesn’t address some of the poverty-social-migration dimensions which might contribute to new infections at the mining sites). But if companies are looking to sustain profits and leave due to economic/political instability, exorbitant costs for operation, or resource depletion, this could have disastrous implications for impoverished peoples dependent on the companies’ health service provisions. Further, if other actors (namely Ministries of Health) cannot fill the gap from a company’s flight, how does this disrupt HIV+ peoples’ access to specialized treatments?

A public-private partnership with extractive companies to fulfill these services also might increase user fees (in cases where developing countries rely on them to sustain the health sector) creating additional impediments to healthcare access.
Perhaps our Network knows about additional examples where revenue from mining companies went into meeting community needs -- in meaningful and long-lasting ways -- that did not shift the government’s roles in service provision or create dependency on health/education services coming from a flight risk industry?

**Thoughts on sustainability of the interventions**
Francesca Viliani, International SOS and International Association for Impact Assessment (IAIA)

Thank you for your questions and further inputs in these aspects and I am indeed keen in getting comments and views from the other network members.

I would like to add a few considerations based on my working experience in this sector regarding the points you raise on sustainability of the interventions. EI projects can have a different life span, but big projects (which are, on one side, the ones with potentially the biggest impacts, but at the same time generating the highest revenues) have a long life cycle. Therefore, these projects are operating in a given area much longer than any NGO or donor; they cannot simply pack their bags and leave as the natural resource is there. From this point of view, EI projects need to have a much longer term planning and vision than any other development actors, as a 5-year strategy is not good enough. They might have a 5-year implementation plan, but the strategy has to be much longer or they will encounter troubles during the way. Concluding, if the project is committed to pay for HIV treatment (anti-retroviral treatment (ART) and opportunistic infections) they will need to consider their long-term presence in the area and they might support these drugs for a longer period than the Global Fund itself.

I am working in some public-private partnerships (PPP) and, in several cases, the international donor has decided to fund the programme, because the mining/oil company was already present in the location and, therefore, they could provide on-going support at a very local and remote level. In one instance, in the DRC the PPP should assist the health system to deliver HIV services that the health facilities should already provide as per national regulation. Unfortunately, they lack the funds, human resources, equipment and training to do it. So, in this instance, the PPP is not increasing the user fees but it is increasing the services portfolio.

For me, the focus on PPP is important, but it not the most essential one in the debate. These projects – the ones financed as PPP -- are the easy ones to follow and monitor (as development donors have a system in place for doing it). Furthermore, PPP need to follow the national health plans and regulations and quite often they include a “health system-strengthening” component.

The priority number one should be for an EI project to identify and avoid or minimize all negative impacts. From the health point of view, for example, it means not increasing the burden of disease, not (re)introducing diseases, but also avoiding the transfer of health costs from the project to the health system. Unfortunately, quite often project proponents and national authorities tend to focus on the physical aspects of the environmental impact assessment (EIA) and the human health consequences become a marginal topic.

If:

- Negative impacts are included and properly managed,
- Residual impacts adequately compensated;
Positive impacts enhanced; then EI projects would be already more sustainable and the communities better off. Unfortunately, this is not necessarily the case and quite often health issues are either not included or only considered marginally. Once the boom is gone and the jobs and the revenues are gone, what people might find is that their health status is not what it was before the project started. In this instance, any lifelong health conditions will be treated and paid for by the national health system, which has not necessarily received any of the revenue generated by the exploitation of the natural resource.

Expectations of wealth often lead to an overestimation of the possible short-term economic gains and to an underestimation of the long-term environmental, health and societal costs. However, the situation is slowly changing and the industry is realizing that assessing the impacts that they might have on health, safety and security of workers and communities is essential for the long-term strategy of their operations. At the same time, national governments are getting better at assessing the overall impacts of natural resources exploitation.

Utilizing extractive industry revenues for sustained economic development
Saurabh Sinha, UNDP Mongolia

After the initial euphoria over the discovery of hydrocarbon and mineral deposits (*), governments in newly resource-rich countries (**) face difficult policy choices at various stages between extraction and preservation of exhaustible resources at the beginning; and how best to spend the revenues and avoid the ‘resource curse’ once the revenue begins to flow.

These policy challenges stem from primarily two factors: (i) highly uncertain and inter-related estimates of the extent and values of proven and potential reserves, future prices, and cost of, and rates of return on, exploration; and (ii) countries need to balance various priorities such as how to smooth public expenditure from commodity price fluctuations; how to ensure inter-generational equity; whether and how much to allocate for investing in improving public services.

A review of international experience (summarized in the accompanying table attached) reveals that governments often adopt one or more of the following three broad policy options for utilizing revenues from extractive industries:

Save – This includes placing the revenues in either a (i) stabilization fund designed to mitigate the detrimental impact of volatility of revenue flows, and/or a (ii) savings fund which saves the funds for future generations or for use when the non-renewable resource has been depleted. These funds are together known as Sovereign Wealth Funds (SWFs) and some countries use both.

Spend – In utilizing this option, governments use natural resource revenues to (iii) invest in better public services, infrastructure, and human capital investments necessary for long-term growth.

Distribute – Revenues can be distributed either as (iv) cash transfers to citizens, or (v) shared with sub-national governments as part of fiscal decentralization.
These options are not mutually exclusive. Countries such as Botswana, Chile, Indonesia and Peru have used one or more of these options to turn their resource wealth into effective and sustained economic development. Botswana, in particular, has consistently reinvested mineral revenues in infrastructure and human capital development in accordance with the Government’s National Development Plans, and is widely considered an example of successful resource management. Others, such as Chad and Nigeria, have squandered their resources and are ranked near the bottom of the Human Development Index (HDI) ranking.

While there is a clear and present danger that mineral wealth can turn into a curse through economic mismanagement, the onset of the ‘resource curse’ is not inevitable. Natural resource abundance does not automatically entail negative outcomes. Botswana, Chile, Indonesia and Malaysia have avoided the detrimental effects of the resource curse (Rosser, 2006) and benefitted enormously from their mineral wealth. Other countries with similar natural resource endowments have experienced different harmful effects.

Mongolia, with the world’s second largest reserves of copper and the largest coal deposits, has a real opportunity to convert its mineral wealth into a blessing by adopting sound fiscal policies. Its commitment to use mineral wealth to transform its development prospects is quite remarkable and its policy responses, at various times, have covered the entire range of options mentioned above.

These include:

- Setting up a Fiscal Stabilisation Fund as a unique treasury account at the Central Bank after the passing of the Fiscal Stability Law in 2010. By mid-2012, the accumulated revenue has grown to about US $185 million, and can be tapped during an economic downturn.
- Establishing a Development Bank in 2011 to finance infrastructure such as the development of the new railways to transport minerals, improve road connectivity between aimags and Ulaanbaatar, energy sector projects, public housing, including subsidized mortgages to low income households, and the Sainshand industrial park in south Gobi.
- Redistributing a portion of the mining revenue to its citizens as cash transfers, initially targeted to children under 18 through the Child Money Programme (during 2005-2009), and later (until 30 June 2012) as universal cash handouts from the Human Development Fund.
- Proposal after the passing of the Integrated Budget Law, to transfer approx. US $80 million from 2013 as block grants to aimags (provinces) and soums (districts) to promote greater fiscal decentralization.

The key issue for a large number of countries is which option to adopt to ensure that their abundance in resources remains a blessing.

Notes
(*) Hydrocarbon and mineral deposits are non-renewable natural resources and refer to oil, gas or mining industries which are also collectively known as extractive industries. These terms are used interchangeably in the paper.

(**) Such as Afghanistan, Cambodia, Liberia, Mongolia, Mozambique, Papua New Guinea, Sierra Leone and Timor-Leste.
IMF Topical Trust Fund on managing natural resource wealth
Kishan Khoday, UNDP Saudi Arabia

In terms of examples of international support to address effective use of resource revenues, one important reference could be the new IMF Topical Trust Fund on Managing Natural Resource Wealth. The TTF provides capacity development technical assistance to least developing countries (LDCs) and lower-MICs to enhance revenue management in oil, gas, and minerals sectors. It focuses on 5 areas:

- extractive industries fiscal regime;
- extractive industries revenue administration;
- fiscal policies and public financial management in resource-rich countries;
- natural-resources-related financial asset and liability management; and
- statistics for natural resources.

To set the stage for its implementation, couple of policy briefs and an e-discussion was undertaken recently, both of which may bring insights into this discussion as well:

Also two UNDP reports I always thought gave nice insights into revenue management challenges and best practices: one on NR revenue management, and another on lessons from the South in the oil-gas sector:
http://ssc.undp.org/content/dam/ssc/documents/e-library%20docs/Effective%20Hydrocarbon%20Management%202009.pdf

Managing expectations of benefits to be accrued from the extractive industry
Dr. Eugene H. Shannon, Former Minister of Lands, Mines and Energy - Republic of Liberia; Natural Resources Development Corporation, Inc.

The Extractive Industry (EI) can be employed to increase the wealth of a nation and should be associated with accelerated growth and development. However, their production can in some instances generate social and economic upheavals. For example, if on one hand, the discovery of oil and natural gas must be considered as an avenue of success and not a roadway to distress, on the other hand, the production of oil and natural gas can bring about new inequalities and expand the gap between the “haves” and “have nots”.

The trend wherein natural resources become a means of increasing the wealth of the already wealthy and impoverishing the already impoverished must not be allowed to happen in the emerging producing countries. Serious attention must be given to the plight of the poor who usually bear the greatest social costs but yet receive the least benefits.

Total accountability to people must be the number one priority in the management process. The EI must be responsive to the greater good of society, curtailing and warding-off the incidences of the
resource curse and Dutch disease. Society, in general, expects to see huge increases in the national budget that should lead to massive improvements in their social and economic conditions.

People’s expectations for ensuring inclusive growth and sustainable development from EI-generated revenue include: marked improvement in healthcare delivery and other basic social services such as the provision of safe drinking water; electricity and telecommunications; massive job creation and employment opportunities; effective public transport services with low fares; massive improvement in infrastructure development, mainly roads; free education for all primary school children with quality feeding programs to motivate and maintain enrollment; full-fledged scholarships and/or heavily subsidized tuition fees for secondary and tertiary education; and drastic reductions in the price of petroleum commodities on the local markets.

In addition, revenue accrued from the EI must be made to catalyze growth in other key sectors such as agriculture, forestry, fishery, tourism and other sustainable projects so as to further expand revenue and create more employment opportunities. Revenue from the EI must also be reinvested into sustainable, new, and renewable energy sources in line with the Clean Development Mechanism (CDM) (associated with zero or low carbon emission); promote mechanisms for value addition and infrastructure development; develop local/indigenous capacity through technology transfer; redirect revenue to local empowerment programs such as building of sustainable small to medium scale enterprises (SMEs); women and youth empowerment programmes; creation of export processing zones (manufacturing to include use of indigenous resources-human and material); and promote and support research and development (R&D) and human resource development (HRD) to strengthen National Capacity Building in the area of Science and Technology and development of a knowledge-based industry.

Finally, let me conclude by saying that the misuse of revenue accrued from the production of essential minerals of the EI can have far reaching implications for peace and security, especially in countries where unemployment is high and poverty severe.

Using mineral rents to finance social policies
Katja Hujo, UNRISD

One important aspect of mineral-led development is the management of revenue flows from extractive industries. This question comprises issues of revenue generation, as well as revenue distribution and allocation, going beyond technical issues related to public management as it concerns political processes and power constellations.

While many studies concentrate on fiscal regimes and stabilization policies related to mineral rents, the role that social policy has played and could play in harnessing the use of these rents for development has been mostly ignored. This might change given the importance of EI and the dynamic developments that are taking place in different regions. To give an example: 93 percent of the Latin American population (including Mexico) live in countries that are net commodity exporters and most countries are heavily dependent on natural resources in terms of exports, national income and fiscal revenues (De la Torre 2011). Several governments in Latin America ruled by the so-called “Progressive Left” such as Argentina, Bolivia, Ecuador, Venezuela and, to some extent, Peru channel
revenues from mineral and agricultural production into redistributive social policies such as child benefits, social pensions or social assistance.

A recent edited volume published by UNRISD (2012) is framed around a broader analytical framework that aims to disentangle the economic, social and political dimensions of a development path that is based on the extraction of natural resources. As UNRISD research has demonstrated over the past decade (e.g. UNRISD 2010, 2006), social policy is a crucial instrument with regard to a strategic management of development, especially for mineral-rich developing countries (MDCs). Social policy addresses many of the problems resource-rich countries face, as it can exert a positive impact on growth, employment, social cohesion and political legitimacy, whereas one of the main constraints for social policy, the financing question, is relatively less binding than, for example, in resource-poor low-income countries, the latter of course depending on the capacity of governments to capture parts of the rents generated.

This claim is supported by historical evidence. In many of today’s advanced countries, extractive industries have not only laid the foundations for broad-based industrialization, but they have been pioneers in institutionalizing social insurance programmes for workers and employees in the sector with subsequent extension to other strategic sectors and finally universalization of social insurance coverage for the whole economy. Unfortunately, this progressive path of upgrading of programmes and extension of benefits from privileged sectors to the general population has rarely been observed in the developing world. During the last decades and years, many public mining or oil companies, which had provided extensive social services such as schools, hospitals and social security to their workers and to mining communities, have been closed down or privatized, and governments have often been unable to expand or even maintain the existing social infrastructure (the case of Zambia is illustrative in this regard, see Garrone 2010).

The UNRISD volume (Hujo 2012) contains several case studies with examples for sustainable and transparent revenue management and the use of revenues for diversification of the economy and investments in social policy.

One interesting example is the case of Chile (Guajardo Beltrán 2012). The country has gone through a long and, at times, painful historical learning process with regard to what was considered excessive dependence on mineral resources (nitrate) in the past. Although today the copper industry is dominated by private enterprises, the public copper corporation CODELCO (Corporación Nacional del Cobre de Chile) generates important fiscal revenues and functions as a benchmark institution in the sector. Over the last decade, the government has introduced several reforms that contribute positively in terms of macroeconomic stability and fiscal revenues. Since 2001, the country fiscal policy has been built on the concept of a central government structural balance (Dabán 2011). In practice, this means that the budget is isolated from the cyclical variations of three variables that impact on government revenues: the potential GDP growth rate, the copper benchmark price and the Molybdenum (by-product of copper extraction) price. The structural balance pursues a surplus target of 1 percent of GDP established in order to honour future contingent fiscal responsibilities such as pensions.
The structural balance rule was institutionalized through the Fiscal Responsibility Law (Law 20.128) approved in 2006, which also regulates investment of assets. And finally, the specific tax on mining (called Royalty 2) was implemented in 2005 in order to increase the tax contribution of private copper producers, with the purpose to finance innovation for diversifying the economy (Guajardo Beltrán 2012). The establishment of a Pension Reserve Fund (part of the Fiscal Responsibility Law) and booming copper prices have contributed to some recent social policy reforms, such as the expansion of social pensions to 60 percent of the Chilean population in 2008 (Rofman, Fajnzylber and Herrera 2008).

Challenges remain, even for the more successful cases such as Chile, a country characterized by democratic politics and remarkable achievements in human development and economic growth:

- Governments have to grapple with the effect of increases in domestic spending on prices and exchange rates in a context that is already characterized by the Dutch disease (a tendency towards inflation and currency overvaluation).
- They have to overcome the contradiction between volatile revenues from mineral rents and the fiscal requirements for stable long-term social spending.
- They have to manage environmental issues, conflict and social mobilization around mining projects, especially with regard to indigenous peoples.
- They also have to forge a consensus on the use of funds for economic and social development and to guarantee a fair and transparent budget process.
- And last but not least, policies are needed that give incentives for economic diversification, as EI are time bound and tend to generate few opportunities in terms of productive employment.

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**The Case of Peruvian mining canon**

Graciela Arrieta Guevara, Centre for Energy, Petroleum, and Mineral Law and Policy, University of Dundee

Peru has a long mining history – in 2012, it is the second largest producer of silver in the world and South America’s largest producer of gold, silver, zinc and tin (PWC 2012). The Peruvian record of attracting Foreign Direct Investment (FDI) has increased considerably from US$ 1,114,000 in 2001 to US$ 8,772,000 in 2011. Despite the success in macro-economic terms, the mining industry is still perceived by most of the local communities and civil society as a threat - an activity which not only produces pollution, with tremendous social and environmental impacts, but also does not contribute to the development of the local communities.

Considering all the revenue generated by the mining sector, the Peruvian Government enacted necessary legislation to return mining benefits to mineral-producing regions. The Government established a special fund called “canon minero” (Mining Canon) – a mechanism of redistribution through which part of the revenues generated by the exploitation of minerals were devoted to the localities where minerals were extracted (*). Further, it directed companies’ voluntary contributions to support required developments in the regions where, due to the presence of mining activities, people’s lives had been directly affected. It is important to mention that the Oil and Gas extraction also generate their own canon called “oil canon” and “gas canon” which have the same purpose, but vary in their percentage and calculation.

In this contribution, we will concentrate on the “mining canon” (hereinafter, MC) due to its importance and relevance as a source of revenue for the Government. The MC corresponds to 50 percent of the Income Tax that holders of the mining activity title need to pay for the exploitation of mineral resources; thus, is not a mechanism to impose an additional tax. According to the Law of Canon (Art. 9), this 50 percent of the income tax has to be transferred by the Central Government to the regional and local governments according to a distribution criteria, for financing projects related to infrastructure (or any physical projects) with impacts at the regional and local levels (Figure 1).
Along the same line, it would be important to distinguish the difference between MC and the Mining Royalty for only conceptual purposes. Unlike, MC, “mining royalty” is the payment from the companies to the Government for the exploitation of the natural resource with a particular calculation (**).

Eleven years after the creation of the MC, communities still doubt about the direct benefits that mining activities can bring to their lives. This is also due to the fact that in some cases a large share (even 50 percent) of the resources collected had not been utilized to improve people’s lives through infrastructure projects.

Fortunately, people have access to information regarding these transfers. Thanks to the Law of Transparency and Access to the Public Information (***) every citizen has the right to request to any public entity information without needing to express the purpose of the request. Thus, this mechanism allows people to monitor the resources that have been transferred to regional and local governments. Nowadays, there are also on-line mechanisms to access to the public expenditure and be informed.

Yet, challenges remain as these tools have not been properly disseminated within the communities, which are primarily poor and, in some cases, illiterate. Poor people often do not have a clear idea about how they can participate in the approval of the investment projects and their rights in general. There is a lack of information, technology and communication, and, unfortunately, a weak participatory mechanism to engage the communities in the decision-making process. In 2004, Peru took an important and positive decision to be part of the Extractive Industries Transparency Initiative (EITI) The same year, the Government discovered that some companies -- under stabilization contracts -- were paying less taxes as agreed upon. As a result, regions such as Ancash and Arequipa stopped receiving ten of millions of dollars from the MC. Peru’s EITI group was
officially established in 2006; after a long process, in February 2012, Peru was designated as EITI compliant (http://eiti.org/Peru). Although mechanisms to access information are in place, it is important to highlight that information about the impacts of MC people’s lives is not easily available. Actions in order to foster transparency and accountability must be done at the regional and local level, especially in consultation with the local communities.

Notes


(**) Calculated based on the operating profits or sales revenue and must be paid on quarterly basis (cumulative progressive rates from 1 to 12 percent).


References


The Kingdom of Carbon: Oil and the future of development in Saudi Arabia
Kishan Khoday, UNDP Saudi Arabia

Oil revenues have been the basis for development in the West Asia/Middle East region for decades. Among the region’s oil rich nations, the Kingdom of Saudi Arabia has the world’s largest reserves of conventional oil, the source of 80 percent of all public revenues in the country. (Ministry of Economy & Planning 2011) The way oil revenues are used has always been and continues to be a core concern at the heart of development policy in the Kingdom.

In many ways, the country’s vast oil wealth has been translated into human development results. As noted by the 2010 Human Development Report, Saudi Arabia ranked 5th among all countries in terms of positive trajectory on the Human Development Index (HDI) during the period 1970-2010, and fared even better at 3rd among all countries when per capita income gains were ignored and only improvements in access to education and health services were factored in. However, one can also point to several key challenges faced in translating oil wealth into inclusive, sustainable development, many of which mirror classic issues faced around the world in economies overly dependent on
resource exports – a non-diversified economy, youth unemployment, corruption, and local conflicts in resource-rich areas.

As oil reserves decline in coming years owing to surging rates of global and local demand, some are beginning to question if the next generation can enjoy the same level of benefits. As with many neighbouring Arab countries, rates of improvement in development indicators began to stagnate in recent years. Just as the wealth resulting from the last oil boom of the 1970s fuelled many development results during the 1980s-1990s, the question remains whether today’s oil boom can likewise lead to more inclusive, sustainable development for the next generation. As these issues grow as points of social contention, new policies are starting to emerge.

1) Re-Investing Oil Revenues for a Low-Carbon Future: Today, Saudi Arabia produces about 10 million barrels per day (mbpd) of oil, of which 3 mbpd are consumed in the local economy for power generation, transport and other purposes, while the remaining 7 mbpd are exported. But some estimate that over the past decade the Kingdom has been second only to China in the growth of energy intensity (Economist 2012), with some forecasting that by 2030 local energy demands could soar from 3 mbpd to over 7 mbpd. This scenario has created concerns for the future of the oil-export based development model. With record public revenues owing to high global oil prices, the Government now plans to re-invest this into creation of a lower-carbon future through energy efficiency and renewable energy solutions. This would reduce the rate of energy intensity growth, and ensure future oil export earnings by the next generation. Actions includes among other things, launch of a Saudi Energy Efficiency Centre through a UNDP technical assistance programme that also helps design the Kingdom’s first Energy Conservation Law and develop capacities of the new centre to promote energy intensity reductions in industry sectors such power, petrochemicals, buildings and transport. The programme brings together various Ministries, Saudi Aramco, the world’s largest oil company by size of reserve, and the King Abdullah City for Atomic and Renewable Energy. The latter is now completing design of the country’s first Renewable Energy Policy expected to set an ambitious goal of 20 percent of energy mix from renewables by 2030, with US$100 billion of new investments expected.

2) Combating Social Exclusion through Economic Diversification: Another key strategic priority of the Government is to translate record oil revenues into a more diversified, employment generating economy that can sustain future development beyond oil. UNDP provides support to the Ministry of Economy and Planning for new macroeconomic modelling and oil revenue forecasting systems, and reviews of the Kingdom’s extensive household subsidy and cash transfer systems. Through the 9th NDP and related policies, oil revenues are expected to be re-invested in a way that supports a shift from an oil-export based social welfare state to a more diversified, market-based development model. Cooperation helped design the 9th National Development Plan (NDP) setting a record US$386 billion of allocations for the 2011-2015 period, half of which goes to human capacity development for economic diversification and youth employment. Today about 95 percent of all employees in the private sector are expats, while 60 percent of the population is under 30 years of age and the country faces a 30 percent youth unemployment rate. A need also exists for regional diversification of development benefits and non-oil growth. Tensions have mounted in the eastern province of Saudi Arabia, home to the Kingdom’s oil reserves and a religious minority who have expressed the need for more equitable use of revenues and local benefits from development.
3) Investing in Global Public Goods: Saudi Arabia has also effectively channelled significant amounts of its revenues into global humanitarian and development initiatives. Since the start of the last oil boom in the 1970s, the Kingdom has provided over US$100billion of Official Development Assistance (ODA) to over 87 countries around the world. With approximately US$3billion annual ODA allocations in recent years, it stands as one of the largest Southern providers of ODA alongside Brazil, China and India. ODA is provided mainly through the Saudi Fund for Development (SFD), which has energy investments into LDCs as a key focus. Other channels include the Saudi-based Islamic Development Bank (IsDB) and the OPEC Fund for International Development. The IsDB Energy Strategy seeks to support low-carbon developments in Asia and Africa, while OFID sustainable energy initiatives have become part of its core focus, include a recent Rio+20 commitment of US$1billion for Sustainable Energy for All. A new post-2015 development framework is emerging beyond traditional North-South modes of cooperation, with Saudi Arabia and other resource-rich economies set to play an increasingly important role in global affairs.

**Benefits of the Petroleum Fund to the state budget**

Rui Gomes, UNDP Timor-Leste

Timor-Leste is facing significant challenges that include the legitimization of the democratically elected leadership, valorization of those who fought for independence, the construction of the set of laws and rules, provision of infrastructure, and investment in human capital that, in conjunction, will help to improve the living conditions of the population and create economic resilience. To achieve all these objectives, there is need for policy design and interventions aiming to provide sources of income to the inhabitants, whilst at the same time, restore and strengthen social cohesion as a strategy to promote and foster the sense of citizenship. These call for the need to put human development and all its constituting dimensions at the centre of policy making.

The scaling up of public spending since 2007 has been mainly funded by the withdrawals from the Petroleum Fund, which one has to applaud cautiously. Much progress has indeed been made. For example, the largest capital investment in the country of US$900 million for the national electrification programme is already providing 24-hour electricity to Dili and eight other districts. Construction of the second new power station on the south coast is due for completion at the end of 2012. Although this electrification programme will quickly narrow the gap and constraint to development that is posed by shortages in electricity, the challenge lies on the capacity issue—in terms of both financial and permanent institutional setups—to maintain such a mega-infrastructure, which could rob the value of what has been invested.

The government also designed several main social protection programmes, including the universalized pension programme to both older persons and persons with disabilities, conditional cash transfers (known as Bolsa da Mãe), and pension to the National Liberation Combatants and relatives of the Martyrs. All social protection programmes commenced implementation in 2008, benefiting some 120,000 recipients. In addition, the government launched what is called the MDG Suco Programme, with the objective of freely providing five decent houses per aldeia (hamlet), equipped with electricity, water and sanitation facilities. Besides these mega-infrastructure projects, salaries have increased by 15 percent in 2011 due to the regularization of temporary civil servants into fixed-term positions.
The continued expansion of the fiscal envelope will remain in the coming years. Public expenditure has affected the rate of economic growth. A strong relationship exists between the non-oil GDP growth and the fiscal sector, whose correlation approaches 1 (\(^*\)), between the growth rates of both variables. The correlation indicates that fiscal expenditure plays a major role in the overall growth of the non-oil GDP, without which the non-oil GDP would be almost stagnated. It could be said that the GDP growth of the economy is led by the contribution of the public sector, while the private one accompanies, mainly fulfilling the demand for better goods and services that the economy makes, led by the increased incomes of the population. This development ought to be closely monitored because it may generate a process of “high income-led growth”—for consumption—that may be beneficial in the short run, but may have limits in the medium run due to the high propensity-to-import induced by higher incomes. Looking at a disaggregated budget by category, it is clear that the capital development, due to its strong impact on the domestic economy, and its multiplying effects, has the biggest share of contribution. The linkages between the money devoted to current expenditures, (mainly salaries and wages), and the GDP growth, are also positively correlated. This is because state employees consume all their incomes domestically, and that has some multiplying effects.

Whilst public expenditure on infrastructure serves today’s legitimate purposes, the balance between the investment in hardware (i.e., infrastructure) and the “software” (i.e., people) turns out to be indispensable in order to guarantee effectiveness and efficiency in the use of the resources. It is critical to consider how the fiscal interventions affect the rate of growth, the sectoral balance of the economic growth, and the impact on employment generation. In addition, how the size of the fiscal envelope impacts prices, imports dependency, and the overall balance of payments of the country are key factors to weigh. The challenge is to maintain the pro-cyclicality of this fiscal policy through better reprioritization and efficiency, in order to accelerate the pace of achieving better social and economic indicators, by taking advantage of the large infrastructure investment for the people (**).

Finally, the important question remains whether or not the transfers made from the Petroleum Fund into the state budget can really protect the domestic economy from petroleum revenues, and create opportunities that enable citizens to generate productive livelihoods.

Notes

\(^*\) Based on an econometric exercise conducted by author to identify the correlation.

\(^*\) In many countries, particularly developing ones, the fiscal policies often follow a procyclical mode, or spending goes up (when domestic taxes go down) in booms and spending goes down (when domestic taxes go up) in recessions.

**EITI as an international standard for transparency in EI sector**
Katarina Kuai and Erica Westenberg, Revenue Watch Institute

The topics covered under sub-theme 2 are broad enough to merit more than one response. In this contribution we consider the role of the Extractive Industries Transparency Initiative (EITI) as an international standard for transparency in the sector.
While no two states share the same prescription for the management of natural resource wealth, principles of transparency and accountability along the decision-making chain reduce corruption and facilitate informed policy discourse on how revenues should be deployed for sustainable development purposes. The EITI (*) is a voluntary global standard to promote revenue transparency in EI. It is currently being implemented in 36 countries (**) and has documented more than half a trillion dollars in revenues in over 130 EITI reports. In many EITI countries this has yielded some tangible development impacts, particularly in capturing revenues, improving national oversight (***) and addressing systemic weaknesses that can enable corruption. In Nigeria, for example, “since the creation of Nigeria EITI (NEITI) in 2004, the average government take has jumped from 63 to 75 percent annually, without any major change in the tax regime or revenue collection procedures“. In Tanzania, a member of the EITI multi-stakeholder group has indicated that transparency and increased public pressure led to improvements in the tax regime, such as a new royalty rate of 4 percent on gross sales (up from 3 percent). The second Tanzanian EITI reports confirms that the government received more than US$300 million from the mining sector in 2010, a revenue increase of almost three times what was reported for the previous year. In Liberia, the findings of the 2008 EITI report revealed an income tax discrepancy that led to a fraud investigation and legal action against the company.

In building an international standard around payment disclosure, EITI has enabled unprecedented public scrutiny of resource revenues. Can it do more to inform citizens about how such revenues are utilized?

In several EITI countries the success of the revenue transparency movement has spurred innovations in EITI implementation, including:

1. Advances in the monitoring of revenue flows to sub-national government and natural resource funds;
2. Tracking of development funding through CSR activities or company donations; and
3. Monitoring of state investments as an equity partner in extraction projects.

The following are examples of EITI reports that have taken such innovative approaches:

- In Mongolia, Ghana, Nigeria, Peru, and Sierra Leone, data on revenue sharing with sub-national governments is included in the reports. This allows citizens to see how revenues are distributed, understand EI’s impact at the local level, and pinpoint places where revenues may be lost or diverted. This is important not only because such funds can directly contribute to local development, but because these transfers may not otherwise subject to scrutiny if they are made outside the budgetary process. Even though Indonesia has not yet produced its first EITI report, RWI has been working with civil society in promoting similar innovative measures, such as subnational data collection in the Blora and Bojonegoro districts.

- In Burkina Faso, Kazakhstan, Kyrgyzstan, Liberia, Mongolia, Peru, the Republic of Congo, Togo, Yemen and Zambia, the EITI reports also track the amount and purpose of donations made by companies for various aspects of local development. Disclosing this information helps the public and policymakers to assess the full benefits against the costs of mining. Meanwhile, companies can highlight the contributions they make to development, which can encourage CSR. Local authorities can also be held accountable for effectively using the social payments they receive and linking donations to local development planning.
In Cameroon, the Democratic Republic of Congo, Gabon, Ghana, Kyrgyzstan, Mali, Mauritania, Mongolia, Mozambique, Nigeria, Norway, the Republic of Congo, Tanzania, Togo, and Zambia, EITI reports also contain information on revenues the state earns as a partner or shareholder in extractive companies, which helps to ensure that the government is making decisions in the public interest when investing in and negotiating with extractive companies. Numerous complexities can arise from situations where the state is both a shareholder and a tax collector; citizens should be able to assess whether the benefits of equity participation outweigh the risks as compared to traditional tax and royalty systems.

As mentioned previously in the e-discussion, Timor-Leste reports on payments to its development fund – a special fiscal instrument dedicated to infrastructure projects, education, or inter-generational savings – which is entirely resourced through EI revenues. This information enables monitoring of development fund receipts against fund rules on infrastructure and community investment. Mongolia is also assessing the possibility of using EITI to monitor institutions such as the development bank and human development fund – both relatively new institutions that are funded exclusively through resource revenues.

Civil society groups in the region are calling on the Association of Southeast Asian Nations’ (ASEAN) to endorse transparency and accountability in managing EI resources, including by adopting a joint policy at the ASEAN level endorsing the commitment to EITI by resource-rich member countries. Given ASEAN’s ambition of market integration by 2015, the opportunity for ASEAN to help countries harmonize their mineral policies through the endorsement of EITI is ripe.

In sum, if EITI is to remain at the forefront of the extractive sector transparency movement, it will need to shape its strategic direction accordingly. The Revenue Watch Institute recommends a progressive approach for EITI, including a robust set of reporting requirements that are reflective of the numerous innovations that countries are already undertaking.

Notes

(*) The Extractive Industries Transparency Initiative (EITI) is an international voluntary standard that seeks to improve natural resource revenue transparency. In countries participating in EITI, oil, gas and mining companies are required to publish what they pay to governments and governments are required to publish what they receive from companies. These figures are then reconciled by an independent body and published in a report. A multi-stakeholder group that includes representatives from the government, industry and civil society oversees the EITI process in each country.

(**) 8 in Eurasia-Pacific (Afghanistan, Azerbaijan, Kyrgyz Republic, Indonesia, Kazakhstan, Mongolia, Solomon Islands, Timor-Leste), 21 in Africa, 3 in Latin America and the Caribbean, 2 in Europe and 2 in the Middle East. However, the ASEAN member states of Myanmar and the Philippines have recently expressed their intention to join the EITI.

(***) Though our contribution focuses on EITI as an international standard, we would note that EITI is adapted and owned by each implementing country, often alongside other domestic oversight entities, for example, the Public Interest and Accountability Committee (PIAC) in Ghana. The PIAC was created as a part of Ghana’s 2011 Petroleum Revenue Management Law and is comprised of representatives from a diversity of citizen’s groups including women’s groups, environmental activists
and religious groups. With RWI technical support, and funding from Deutsche Gesellschaft für Internationale Zusammenarbeit (GIZ), the Committee has been able to put together a first report, set up a website, and organize dissemination though public consultations in several key regions. PIAC in Ghana critically analyses the country’s revenue management policy from a public interest perspective, e.g. identifying ways in which the reality diverged from saving and spending regulations, and the lack of accountability with regard to public funds diverged to the national oil company GNPC, among other criticisms.

**El revenues should adequately compensate local losses**  
Amarendra Das, Utkal University

Minerals are mostly endowed in the hinterlands of countries where indigenous communities depend on forests for their food and shelter. The extraction of minerals causes deforestation, death of a number of flora and fauna or loss of biodiversity, and thus negatively affects indigenous communities. In India, most of the mining areas are in the regions where indigenous tribes reside in forested lands. In many cases government has forcibly acquired the land without adequate compensation and rehabilitation (Bhusan and Hazra 2008: 67). Due to loss of forest and other common property resources adivasi people suffer multiple deprivations. The infrastructure and environment of the mining regions need to be enhanced.

The revenue generated from El has been often diverted from the public interest, and has not been invested to alleviate the environmental, economic and social losses borne by people. At least a part of the revenue generated from El needs to be invested for the development of physical infrastructure (e.g. good roads, water supply, electricity) and social infrastructure (e.g. health and education) and building capacity of the people in the mining region. It is heartening to note that the governments of Western Australia (WA) and Queensland (QLD) have undertaken initiatives in this regard by transferring 25 percent of the royalties collected (as discussed by Dr. Kieren Moffat in the e-discussion) to the communities. The contribution indicated that the aim is to provide “renew infrastructure (e.g. roads, bridges, parks, and footpaths), regional community services (e.g. supporting the Royal Flying Doctor Service, health initiatives, and subsidizing fuel cards for aged pensioners), and large-scale regional infrastructure projects (e.g. increasing irrigation areas to support agriculture growth, and building new cities”.

Usually, all sources of revenue of a country are channelized to the consolidated fund of the nation and spent for all sections of the society. However, the revenue from El is associated with environmental, economic and social costs which negatively impact people of the mining region. Therefore, a large part of the revenue from El should be earmarked for compensating the losses of the people of mining region.

In India, neither the central government, which retains the regulatory authority over minerals, nor the state governments, which own the mineral resources, have undertaken any such policy measures. Although recently, the Indian government has proposed to create a Mineral Development Fund in every district, by collecting additional revenue from the mining firms, so far it has not envisaged transferring a part of the revenue collected through royalty and other sources to the local communities affected by the mining projects.
Therefore, along with asking the mining firms to share a part of profit for the development of mining region, in my view state governments should invest at least half of the revenues generated from minerals for the physical and social development of the mining regions.

Reference


Proposed mining regulation in India: Principle of 26 percent equity sharing for affected people

Sharmistha Bose and Lucy Dubochet, Oxfam India

The Government of India is preparing a new mining legislation, Mines and Minerals (Development and Regulation) Bill, 2011, with the declared aim of reconciling two agendas that have so far clashed: i) supporting growth by outlining a more coherent framework for investments in the mining sector; and ii) addressing widespread poverty and social unrest in mining areas.

The first draft Bill included a noteworthy pro-poor provision: People directly affected by mining operations were to be awarded 26 percent equity of the company’s operations, in addition to employment opportunities and infrastructural development in resettlement sites.

However, faced with intense opposition by the corporate sector the government chose to dilute the provision before introducing the revised Bill in Parliament in December 2011. Leading business associations had successfully argued that the provision is a disincentive to the sector, and threat to foreign direct investments (FDI). Yet, examples of progressive norms for compensating local communities in countries such as Australia, Canada, Papua New Guinea, and South Africa question the real strength of this argument. The revised draft Bill mentions a 26 percent share of net profit for coal and lignite industries, and an amount equivalent to the annual royalty for all other major minerals.

This provision itself is not winning favours with the private sector, which would rather provide fair settlement and a share of royalties.

Problems of poverty, weak governance, and violence in mining areas back the call for a 26 percent share of equity with at least two arguments:

- Rampant illegal mining precludes profit sharing. In 2010, state governments across India reported 82,000 cases of illegal mining; in contrast, the number of mines registered with the Ministry of Mines amounts to a mere 9398 (*).
- Genuine power in the hands of the most vulnerable and a share of the economic benefits would have fostered sustainable mining and growth in a country that faces massive unrest due to forceful land acquisitions under the eminent domain exercised by the government and Maoist insurgency that affects 83 districts commonly known as the red corridor. The fact that India’s poverty map overlaps with the richest mineral bearing districts is an additional argument. The Scheduled Tribes and other forest dependent communities, who live in some of the country’s richest mineral-bearing regions, are particularly vulnerable to displacement and dispossession.
Some of the states that have high tribal populations show very poor HDI indicators: Chhattisgarh, for example, has the second highest incidence of poverty among all Indian states (48.7) after Bihar. Levels of poverty in the state have stagnated, with a decrease of only 1.3 percent over the last five years, against a national average of 7.4 percent Jharkhand and Orissa (with respectively 39 and 37 percent of the poor), also fare worse than the national average (30 percent) (**). These indicators clearly show that benefits from extensive mining do not trickle down to the affected communities.

To allow the sector’s growth rate to increase, as planned by the Ministry of Mines, and attract more foreign investments, discontent among the negatively affected communities needs to be addressed. Pro-poor provisions in a number of positive new laws which are at a critical juncture of being passed will help in balancing economic growth and redress the historic exclusion of these communities.

Beyond these arguments, the debates around a 26 percent share of equity raise a number of questions which relate to the redistribution of EI-related revenue. The views and experiences of other participants of this forum on some of the questions raised by the debate above would be most welcomed. In particular:

- What are successful examples of profit sharing from mining activities across Asia?
- How should institutional processes of profit sharing be established and criteria for determining who qualifies as affected persons?

Notes


Revenue distribution through cash transfers
Nienke Raap, University of Groningen

As a Master student in International Political Economy, I have followed the e-discussion with great interest and would like to draw your attention to a topic that has not been touched upon, but which I believe is very relevant to the third question in this sub-theme: How the resources generated from Extractive Industries are used to support social policies (e.g. health insurance, education grants, cash transfers, employment) and ensure resilient local communities?

Governments with windfall revenues from extractives find themselves well positioned to channel these resources into social policies. One of the ways to maximize citizens’ benefits from the resource wealth is through direct cash transfers. This is not only a ‘fair’ way of distributing the revenues to those that should take the ownership of it, but it is also a policy option that has proven to be effective in poverty reduction in many cases. The examples of Alaska and Indonesia can illustrate how countries have used their resource revenues in either conditional or unconditional cash transfers in different schemes.
Alaska (universal cash transfer programme)

Alaska’s Permanent Fund Dividend is a unique example of a universal cash transfer that provides a basic income guarantee to its citizens. The Permanent Fund receives at least 25 percent of all revenues gained by the state government from mineral extraction in Alaska. A dividend from this fund is given to all those who have resided in the state for at least one calendar year. The dividend is calculated as half of the Fund’s income averaged over five years, divided by the number of eligible recipients. In most years it has lain between US$600 and US$1,500. Although there is no research relating the dividend to poverty rates in the state, in 2007 Alaska had the joint second lowest poverty rate (with Hawaii) of all the states of the United States, behind only New Hampshire, despite having only the 19th highest per capita personal income.

Taking the Alaskan case as an example, the Center for Global Development has been exploring the viability of universal cash transfers in other resource-rich countries under the oil-to-cash initiative. The initiative holds that an even distribution system can create several benefits by arguing that taxing the generated income will create a strong public demand for the government to be more transparent and accountable. Beyond serving as a fair distribution mechanism, cash transfers may mitigate the corrosive effect natural resource revenue often has on governance. Some research warns that in the implementation of these schemes, success will depend on context-sensitive design and sufficient political support (Gillies 2010).

Indonesia (conditional cash transfer programme)

In the case of Indonesia, a different policy option was implemented by distributing part of the rents through targeted cash transfers to vulnerable and poor households. More than providing its citizens with their fair share of the rents, the Indonesian Government aimed to create a more equal distribution of resources within society so that all have access to social services (Ascher 2011). Indonesia is not only one of the countries said to have escaped the resource curse (Rosser 2006), but has also made notable progress in reducing severe poverty in the last decades.

After Indonesia started the implementation of a far-going fiscal decentralization in 2001, direct cash transfers became a central feature of their safety net policy. The Bantuan Langsung Tunai (BLT) and Program Keluarga Harapan (PKH) programme are examples of cash transfer programmes for the main part funded by oil rents. The BLT programme was announced in 2005 as a program of unconditional cash transfers to poor and near-poor citizens to help them overcome the adverse effects of fuel price hikes caused by a massive reduction in subsidies. The program—the largest of its kind in the world, covering some 19 million households—was reintroduced in 2008 following another round of fuel subsidy cuts. In the case of the PKH or “Family of Hope” programme, conditions were attached to provide an economic incentive for poverty-struck families to invest in the health and schooling of their children. Although the transfers have been praised to reduce poverty by replacing inefficient social protection programmes, there is room for improvement in the area of targeting and preventing leakages (World Bank 2011).

These two examples raise several relevant questions, which I open up for Network members to respond, including to which extent have these programmes led to a more equitable and fair distribution of revenues? What are the pitfalls or advantages of a universal scheme versus a targeted and/or conditional cash transfer, specifically for low-income countries? What are the downsides of
Beyond best practice models
Andrew Bauer-Gador, Revenue Watch Institute

Norway and Timor-Leste are both commonly discussed as models of good oil revenue management following similar principles. However, the realities are so different in these countries that policies would be better determined as a function of domestic indicators and institutions. Indeed in the course of this e-discussion, Timor-Leste’s fiscal rules emphasizing saving over spending and an extremely low risk foreign asset investment strategy have been discussed as “prudence in the management of the revenues from extraction of hydrocarbons”. Notwithstanding that this somewhat mischaracterizes the Fund (Timor-Leste fiscal rule includes an important exception in the savings provision and has recently shifted its foreign investment strategy) one key difference between Timor-Leste and Norway is in their respective capital stocks. Timor-Leste lacks the infrastructure and human capital that enables self-sustaining growth in developed countries. Thus, the social rate of return to domestic investment in infrastructure, health, education, government and the financial sector is much higher in Timor-Leste than in economies like Norway. More importantly, the social rate of return on domestic public investment can be much higher than the rate of return on foreign investments. Though the rate of return on the Timor-Leste Petroleum Fund investments last year was nearly 3 percent, a World Bank study found that the social rates of return to investing in electricity-generating capacity was around 100 percent in Bolivia, Indonesia and Kenya. In these countries, and possibly in Timor-Leste as well, it may not make sense to invest the vast majority of oil revenues in foreign assets when the domestic returns are so much higher. At the same time the study showed that the social rate of return was negative in Brazil, Mozambique, Papua New Guinea, Portugal, and Zimbabwe. This raises a very relevant question about absorptive capacity differences from country-to-country. There is therefore a justification for slowly increasing government expenditure (‘expenditure smoothing’) to give the government time to develop the capacity to manage large revenues and citizens time to adjust to a new environment (see, for example, Baunsgaard et al. 2012; Heuty and Aristi 2011; Sturm et al. 2009). Arguably, this builds a convincing case for resource revenues to be invested in complementary infrastructure or government capacity to manage infrastructure provision rather than saving revenues for future generations. Saving petroleum revenues and investing them in assets outside the country is not a development strategy. At best, this can be seen as helping to smooth expenditures over time and prevent wasteful over-spending. At worst, where capital is scarce and infrastructure and training identified objective guidelines to help policymakers determine appropriate savings-investment-consumption ratios. For example, governments with significant capacity to manage large revenue inflows or with the potential to learn how to manage these revenues should be given the fiscal space to invest these resources, particularly if public debt is high or the country is capital-scarce. On the other hand, if the return on foreign investment is high or there is a risk of environmental, economic or social crises, then the government may want to save more for precautionary purposes and shift the saving-spending ratio in favour of foreign assets. That said, in most cases resource-dependent countries should benefit from saving some revenue for stabilization purposes. There is significant
evidence that short- and medium-term macroeconomic volatility (e.g. price and exchange rate volatility), financial sector volatility, and government budget volatility lead to significant output volatility, which in turn leads to lower growth and poor investment decisions by both the public and private sectors. In many countries, the impact of ‘pro-cyclical fiscal policy’ that follows oil or mineral prices has led to spending on extravagant projects like monuments, hotels and redundant machinery when prices are high. When prices decline, the result is often painful cuts, resulting in lack of maintenance and dilapidated infrastructure. In fact, Pallage and Robe (2003) found that eliminating output volatility in Sub-Saharan Africa would likely increase GDP growth by 1 percent per year.

RWWI’s work (*) in several countries and the IMF’s Guide on Resource Revenue Transparency have suggested that clarity in laws or regulations defining fiscal rules, disclosure requirements and oversight mechanisms can help promote revenue management in the public interest. They can also help governments adhere to long-term plans that are so important for development in countries reliant on exhaustible resource revenues. In contrast, countries that rely on discretionary policies for saving and spending, like Azerbaijan, Kazakhstan and Libya, have higher volatility and, as a result, more wasteful spending than countries with fixed, widely-accepted rules. In recognition of this, Alaska, Chile, Ghana, Mexico, Nigeria (in 2011), Norway, Timor-Leste and Trinidad & Tobago have legislated fiscal rules to manage their resource revenues, including deposit, withdrawal and investment rules. Most of these countries also have strong transparency requirements, e.g. the regular publication of audited financial statements by the sovereign wealth fund. Ghana and Timor-Leste are particularly notable for establishing oversight committees consisting of government and civil society members to ensure adherence to rules, following the Chadian model (**). The Public Interest and Accountability Committee (PIAC) in Ghana just released its first report, which should be required reading for all those keen on improving resource revenue management globally (see also Tayou 2012). Beyond international best practice models, these countries are also drawing on transparent and inclusive domestic consensus-building processes to ensure that the policies are appropriate for the country and implemented with public integrity.

Notes

(*) With reference to the Ugandan experience, see, for example, RWI 2012 and Heller 2012.

(**) For more information on Chad, see for example Gary and Reisch (2004).

References


Strengthening transparency and accountability: UNDP Timor-Leste’s experience
Rui Gomes, UNDP Timor-Leste

Since its inception in 2000, a large part of UNDP’s engagement in Timor-Leste has been to support and foster sustainable livelihoods and help create enabling conditions in which they can thrive. In Timor-Leste, UNDP does not directly engage in the extractive industry sector but its contribution over the years has had positive impacts on transparency and accountability mechanisms in the country, particularly through the creation and strengthening of parliament institutions, the judiciary, and civil services. As a young nation Timor-Leste—with no prior experience in governance—has considerably relied on international expertise, and UNDP is the leading agency providing support in this area. UNDP initially supported the creation of essential systems and processes needed for the functioning of the national parliament, and has subsequently helped to develop national capacities in key areas such as drafting of legislation, provision of technical advice to parliamentarians in exercising oversight functions, communications and outreach for democratic participation, and gender mainstreaming. The legal technical support facilitated by UNDP was important in enabling the functioning of the Members of Parliament, the Parliament Standing Committees (*) and the Office of the President. There is considerable acknowledgement of the improvement in parliamentary accountability. One of the examples quoted by government representatives was the Parliament holding government accountable in the electricity sector and the power outage cases. As a result of the debate, Parliament approved a resolution to conduct an external independent audit of the electricity sector—the largest capital investment ever since the restoration of independence in May 2002. Other relevant institutions that UNDP supports are the Civil Service Commission, which enforces discipline in the civil service, and the Provedoria (Ombudsman) for Human Rights, which also has a mandate on good governance. There is indeed evidence of enhanced transparency in the country when it comes to management of its Petroleum Fund (**). Notwithstanding, this does not automatically result in better (economic) governance (***)


The future demand for assistance in (economic) governance is likely to grow with the increased financial assets in the Petroleum Fund, expansion of the public administration and the creation of local governance structures—key areas for effective implementation of the country’s Strategic Development Plan. Today, the demands for more inclusive growth and development—characterized by increasing pressure “from below” to achieve a fairer distribution of the increasing financial assets in the Petroleum Fund, social justice, and protection of people from rising food prices—have become even greater and require expanded response that goes beyond the usual business. To that end, UNDP is actively exploring other possible areas of contribution in governance that include public administration, right to information, e-governance, local governance (through strengthening access to quality service delivery), rule of law (through continued support in justice sector, enforcement and neutrality), strengthening of capacities within the audit and autonomous oversight agencies, such as support to the Anti-Corruption Commission (CAC), the Office of the Inspector General, and share best practices, as well as facilitate effective political dialogue, highlighting key issues and offering policy options for more investment in human development and economic resilience through its national human development reports (HDRs) and seminars. These initiatives are unavoidable progression in the programming for UNDP.

One important message to end this note is that in developing the right strategic interventions in the area of governance would entail not only effective multi-stakeholder partnerships, but also an understanding of the underlying reality based on the country’s specific context within which any collaborative effort is delicately molded. In all these the issue of ownership of the processes and systems becomes extremely important in ensuring the country’s continued adherence to transparency and accountability. The successful initiatives in Timor-Leste may not be compatible with the challenges facing other post-conflict, resource-rich countries. In other words, pasting similar successful initiatives onto countries whose governance structure are absent and where there is lack of comprehensive legal framework around the extractive sector, compounded by the inexistence of monitoring systems would be simply unsustainable and politically counter-productive.

Notes

(*) An example of this is the technical support provided to the Standing Committee on Economy, Finance and Anti-Corruption in the national budget analysis, and to the Members of Parliament in the revision and analysis of the budget execution reports.

(**) For example, Timor-Leste was classified as an EITI compliant country, which meets all the requirements in the EITI standard. See http://eiti.org/TimorLeste. Recently, the Government also introduced the Timor-Leste Budget Transparency Portal, which can be accessed at http://www.budgettransparency.gov.tl/publicTransparency

(***) According to the World Bank’s Country Policy and Institutional Assessment (CPIA) index, which measures the quality of policies and institutions, Timor-Leste is still classified as a “weak” performer despite the recent improvements. The CPIA measures the average economic management that includes macroeconomic management, fiscal policy and debt policy, with the highest rating being 6 and the lowest 1. Timor-Leste’s average in 2011 was 3.8. Accessed on 10 July 2012 at http://data.worldbank.org/indicator/IQ.CPA.ECON.XQ/countries?display=default
The emerging extractive industry in Cambodia
Jean Chapman, Simone de Beauvoir Institute, Concordia University

In Cambodia, two out of every five persons still live on less than US$1.25/day. The country’s Human Development Index (HDI) is 0.523, which gives the country a rank of 139 out of 187. Despite the increase since 1995, Cambodia’s 2011 HDI (of 0.523) is below the average of 0.630 for countries in the medium human development group and below the average of 0.671 for countries in East Asia and the Pacific. In this context, it is important to consider the role of EI in the country, what institutional and policy frameworks exist and how they have helped/are helping to sustainably manage revenue flows from EI in a transparent and accountable manner.

Institutional and policy frameworks for the Khmer EI sector

All permissions for exploration and mining are centred in Phnom Penh. Prior to 2009, policy frameworks were in place to produce industrial minerals such as sand and gravel, crushed stone for the domestic construction industry, and limestone for cement production. The exploration of mineral resources has since expanded and policies and programmes are in place authored by the Ministry of Industry, Mines and Energy. Within this ministry, the Council for the Development of Cambodia, created in 2008, organizes investment in Cambodia. It grants exploration and mining licenses to investors, and will eventually set industry standards. To date, 160 exploration licenses have been granted. Three mining licenses were granted in 2011 for a total investment of US$31.3 million. The area under exploration is 13.6 percent of total landmass.

Local and foreign, publicly listed companies and other investors have arrived from a number of countries in the region, for example, Australia, China, Japan, Malaysia, Singapore, the Republic of Korea, Thailand, and Viet Nam. Concessions are issued for minerals, such as bauxite, gold, silver, lead, copper, perhaps rare earth, among many more (Fong-Sam 2009; Fong-Sam 2010), as well as drilling for petroleum and natural gas. Additionally, the Council has created 21 Special Economic Zones around the country with investment capital in excess of US$1 billion.

Contracts are the legal agreements between the government – as legal right holder to subsurface non-renewable natural resources – and private EI companies. Companies are given the ability to explore and produce resources in a given location, for a limited time, in exchange for specified payments in cash or kind. In the petroleum industry the two main types of contracts are (i) production sharing, and (ii) concessions (CRRT 2009).

Transparency

The Royal Government of Cambodia (RGC) must create mechanisms for monitoring revenue flows that, in the case of petroleum and natural gas, will begin between 2013 and 2015. While the Extractive Industries Transparency Initiative (EITI) has been established in other resource-rich developing countries, the RGC has not yet become an EITI member. Civil society has taken on the issue of transparency and accountability within the EI sector, by ‘Cambodians for Resource Revenue Transparency’ (CRRT) -- launched in June 2009. It issues a Newsletter, holds public hearings, and advocates inclusive participation in EI revenue management and expenditure.
Revenue generation from EI

Revenues generated from EI take the form of income tax (30 percent for mining companies), gross revenue royalties (2.5 percent), government share of production sharing agreements, bonuses, surface rental, dividends of national oil companies, customs duties, fines, penalties, and other contributions in cash (UNCTAD 2003; CRRT 2009). Revenues from the EI at the present time are predominantly exploration licences (CRRT 2009). It is not clear how the revenue or the resources generated from EI will be utilized to diversify the economy for sustainable economic growth over and above the National Strategic Development Plan which puts together a comprehensive reform and development agenda for five years to provide basic services (Royal Government of Cambodia 2009) and to create a conducive environment for the private sector which the RGC sees as the main engine of economic growth.

Challenges to economic growth

Obstacles that could impinge on future growth are a haphazard financial landscape and corruption (RGC 2009: 103). Further, Cambodia has limited higher-educated, well-trained, English-speaking workers and limited expertise in geology/minerals. To overcome these limitations, the RGC will fund short-term training in the country, scholarships for higher education abroad, and reopen the school for geology/minerals -- closed since 1999 (Suy 2010). Domestic protocols for its three mineral assay laboratories are yet to be standardized using one measurement system. Infrastructural development by the private sector for a rail network, a 1,800-megawatt coal-fired power plant, a water treatment plant, roads, and agri-business have had a number of poorly conducted surveys, contractor disputes, delays, and cost overruns (Invest in Cambodia 2012 sections on 'transport,' 'tourism,' 'banking,' 'investing'). The RGC is considering building its first nuclear power plant and says it is aware of the challenges which it identifies as the lack of technology, trained personnel, financing and the acquisition of materials (Fong-Sam 2010:1-2).

End points

The EI sector may not be a high priority for the RGC because of the 21 sectors identified for investment, the EI sector ranks 16. (Instead, the top three priorities are crop production, livestock production, and fisheries). Production and exploitation activities to protect the environment ranks 21 which might explain the paucity of literature on the emerging EI sector in Cambodia. What is somewhat disconcerting is what resource-rich communities can expect from the RGC (*). The Minister of Industry, Mines and Energy (MIME), puts it this way: “Illegal mining operations will generally have to be eliminated through the collaboration of the MIME with all relevant agencies and local authority. In dealing with illegal small scale artisanal mining operations in mining concessions, the Director General has been formulating a study from which the findings will form basis for developing policy that will determine how to deal with such illegal activities. The solution may include their legalization and limit their operations to designated areas with low mining potential and as defined by the Director General on Mines and their organization into small scale mining community operations” (Suy 2010).

De-legitimizing small-scale artisans and ghettoizing them into low-producing mines is to forge a link between EI and resource-rich communities that was severed when the RGC publicly stated that small-scale artisanal operations are, until further notice, illegal. The RGC might be successful in making policy without tapping into local knowledge found in resource-rich communities, it might exclude
small-scale artisanal entrepreneurs as stakeholders in the EI, but this could undermine the success of policy implementation if indigenous knowledge is rendered illegal. Exploitation of local resources is best understood by its female and male practitioners. They are the link between EI and resource-rich communities, and can be a viable model for development.

Secondly, it is feasible for the RGC to institutionalize transparency of EI revenue flows and resources. It is a bold step which has been seen elsewhere. Liberia, for example, became a member in EITI in July 2009. EITI helps countries address information asymmetry through consultations, town hall meetings, radio programmes, newspaper articles, and posting data on resource wealth in public places. Transparency is making a difference to millions of people who have access to reliable revenue data of wealth generated from EI. The first EITI report contained information on taxes and contributions paid to the government, and corresponding revenues the government received from the companies on a company-by-company basis. Discrepancies were discussed openly among local residents, government officials, non-government representatives, environmental groups and mining companies. The failure to report on revenues is subject to criminal proceedings. In sum, the Liberian EI narrative has useful lessons for the emerging Khmer EI sector.

References


Closing Message
AP-IGD Network Facilitation Team

Thank you for your enriching contributions and for following our e-discussion, Advancing Sustainable Development: The Case of Extractive Industries!

In this round we received 19 contributions which have focused on managing the EI revenue sustainably and have highlighted existing efforts to ensure accountability and transparency. Country examples from Australia, Cambodia, Chile, India, Indonesia, Mongolia, Peru, Saudi Arabia, Tanzania and Timor-Leste, have considered how extractive industry-related funds have generated enormous wealth – but with serious development challenges to manage.

A number of recent mining legislation has been introduced to address issues related to the management of revenue flows in open, accountable, and transparent manner, and the compensation of losses to local communities. Further, there have been efforts aimed to promote economic diversification. Although the reinvestments and distribution of revenues have not always benefitted the people whose lives have been affected the most, schemes that prioritize the future have started to be introduced.

To view the contributions received during the last two weeks please visit our Teamworks space at https://undp.unteamworks.org/node/266417
If you would like to join our Teamworks space, please contact ap-igd@groups.undp.org
Now we would like to turn your attention to the final sub-theme, Impact Management and Implementation Challenges.
III. Contributions on Implementation challenges and impact management

Opening Message
AP-IGD Network Facilitation Team

Welcome to the last round of the e-discussion, which will run from 3 September to 14 September! During the next two weeks, we will discuss how to manage impacts and overcome challenges for implementing policies as they may relate to extractive industry (EI) activities.

The understanding of the potential social, economic, environmental and health impacts of EI operations can help with informed decision-making in developing countries in the Asia-Pacific region and beyond. The discussion will help to highlight the types of impact assessments that have been carried out when initiating an EI project, which standards and safeguards have been identified as inclusive and participatory, and how communities have been involved in decision-making processes. The forum will also help to highlight strategies and options related to EI available to countries.

While responding to the topic, Impact Management and Implementation Challenges, we request members to address the following questions:

- What strategies can countries pursue to minimize risks pertaining to environmental degradation, conflicts, and macro-economic shocks?
- How have countries addressed issues of land rights and benefit sharing over natural resources? What are the examples of successful participatory consultation and dispute resolution processes?
- What type of impact assessments has been undertaken (social, environmental, etc.) prior to and after extracting resources?
- What are good measures undertaken by national/provincial governments, local authorities and extractive companies to mitigate the impact of their activities on the environment and local communities? What specific measures are taken to include local communities, particularly disadvantaged populations, into decision-making processes?

Extractive industries and the governance of common pool resources
Blake Ratner, WorldFish Center and International Food Policy Research Institute

A large proportion of the poorest rural households in Asia, Africa, and Latin America depend critically on common-pool resources—such as forests, fisheries, and rangelands—for their food and livelihood. For many of these households, access to these resources means the difference between an adequate diet and malnutrition; for others it represents the chance for a growing income, a means to invest in children’s education, and a route out of poverty. One of the most significant trends undermining poor people’s access to common-pool resources is the transfer of resource use rights for large-scale commercial exploitation, through international or domestic private-sector investment. The tension between private-sector development and local livelihoods is expressed most forcefully in many regions as a conflict over access to land, forests, and water.
Cambodia represents all of these trends in sharp relief. On the one hand, the government has transferred resource exploitation rights through concessions—previously for forestry and now increasingly for agribusiness and mining—that have spurred widespread conflicts with local communities. On the other hand, it has set in place a policy and legal framework that supports community-based forest and fisheries management. These sectoral reforms primarily concern the distribution of authority among state, private-sector, and civil society actors with regards to decision-making over natural resource allocation and management.

Yet, improving natural resource governance requires much more than getting sectoral policies and regulations right. It depends critically on the effective functioning of state agencies, alongside the private sector and civil society, to help translate policy goals into practice. In particular, beyond distribution of authority, effective governance reform requires measures to ensure:

- inclusive representation of affected groups, particularly the poor and vulnerable, in policy formulation and development planning at all levels;
- robust mechanisms of accountability to ensure that individuals and groups granted decision-making authority are held responsible for the public consequences of their choices and do not abuse their authority; and
- institutional capacity to enable public, private, and civil society actors to fulfill their roles effectively; to adapt to changing circumstances; and to negotiate implementation challenges as they emerge.

Strengthening institutions to manage the commons is not simply a matter of removing state interference and letting local communities get by as they see fit. In Cambodia—as almost anywhere in today’s world of integrated markets, scarce resources, and growing demand—the competition is far too great for local institutions to manage alone. It does not imply a rejection of market forces, as equitable access to market opportunities is an essential requirement for the success of community-based management. The effectiveness of state institutions is essential for just administration and dispute resolution for individual, corporate, and community-based tenure arrangements alike.

Progress in governance does, however, require a willingness to look beyond written policy, law, and regulation, to critically examine how power is exercised in practice.

Excerpted from:
[Download the full paper at http://www.ifpri.org/publication/common-pool-resources-livelihoods-and-resilience]

**Extractive industries, contracts, and post-conflict peace building**

Päivi Lujala, Norwegian University of Science and Technology and Carl Bruch, Environmental Law Institute

Peace brings with it both expectations and demand for development and prosperity. In countries endowed with valuable natural resources, the opportunity provided by resources places a great
pressure on post-conflict governments to get mining and exploitation underway. At the same time, contracts and concessions dating from the pre-war and conflict years may be unfair or outdated, and interim and transitional governments may be tempted to grant exploration and exploitation rights—often at cut-rate prices—to reap rents before more accountable governments are established by elections, or to build financial reserves and political power for the election. Good opportunities and the advantage of being among the first to secure the most lucrative rights can lead to a race by companies in which transparency and corporate social responsibility are side-stepped or only used strategically to obtain operating licenses and concessions.

We examined many of these issues in the book High-Value Natural Resources and Post-Conflict Peacebuilding (*), which is part of a series of six edited volumes on peacebuilding and natural resource management. Following are a few of our findings, focusing particularly on oil, gas, and minerals.

In the chaotic post-conflict environment, managing both existing and new contracts and concessions can be difficult and subject to oversight by government agencies, international organizations, and businesses. However, the failure to adequately address processes related to exploration, exploitation rights, and contracts and concessions can deprive the state of a considerable amount of revenues, fuel corruption, cause unnecessary environmental damage, and undermine the state’s legitimacy—all of which can undermine post-war economic recovery and general peacebuilding. Monitoring revenue generation in extractive industries through contracts and concessions is essential to ensure that governments receive fair share of revenues and that revenues are properly accounted for.

It can be in a country’s best interests to impose a temporary moratorium on new contracts and concessions until processes that secure negotiations, award, revenue sharing, and follow-up are in place. Experiences in Liberia (see Atman et al. 2012: 337) and elsewhere illustrate the utility of such temporary moratoria.

To cope with the odious contracts and concessions, the government needs to review existing contracts and concessions, as well as the process for granting future contracts and concessions. The review should be based on an agreed-upon set of criteria (e.g., legality, conditions, benefits to the country, etc.). Non-compliant contracts and concessions should be cancelled or renegotiated. One way of dealing with existing resource contracts and concessions is to require auditing to ensure legality, profit sharing, and taxation. These can be done on a case-by-case basis or via concession and contract reviews. In the case of Liberia and Democratic Republic of the Congo (DRC), the reviews were undertaken by the regulatory authority, with third-party support.

Several post-conflict governments have reviewed, reassessed, and renegotiated resource contracts and concessions, with varying degree of success. One of the most complex set of reassessments took place in the DRC in 2004 and 2007, but failed to bring the desired results as the president took limited action on recommendations (Le Billon 2012; Atman et al. 2012). On a more positive note, President Ellen Johnson Sirleaf of Liberia cancelled all timber concessions in 2006 when a review revealed that not a single concession met the minimum standards for legality (see Atman et al. 2012). President Johnson Sirleaf was also able to renegotiate—and significantly improve—an iron-ore mining contract that had been signed by the transition government (see Le Billon 2012: 69).

Unfortunately, contract reviews and reappraisals have proved to be slow and contentious processes, as in the case of the DRC. The meager outcomes of contract reviews can be partly explained by limited
expertise and capacity. Other constraints on contract review include asymmetric information, political fragility, and outright corruption.

The key ingredient for successful review is political support at the country’s highest level; without it, the process of pulling through renegotiations to the benefit of the whole nation is very difficult. So, among the first tasks when contract review is planned is to ensure that the recommendations from the review committee will be implemented. Parallel to contract review, it may need to be necessary to review and strengthen the legal framework for natural resource management and mechanisms to monitor and enforce contractual requirements. This may include training of local law enforcement officials or judicial authorities.

To encourage and support contract reviews, donors should provide review committees with technical and financial assistance. Donors should also support domestic NGOs who often play a direct role in monitoring contract negotiation processes and monitoring company operations once contracts have been granted. Another strategy for supporting contract review could be for donors to help to make up for potential revenue losses during review and reform periods. In the case of Liberia, sanctions can help to motivate countries to conduct a review. In this case, sanctions on all timber exports imposed by the UN Security Council drove concession review and forest reform. President Johnson Sirleaf, recognizing the economic importance of timber, used her first Executive Order to cancel all existing timber concessions after the review and then supported the development of a new forestry law, contributing to the lifting of the sanctions.

While most attention is paid to extracting the resources and to sharing revenues, it is increasingly clear that post-conflict governments need to consider and address the long-term environmental and social impacts of extraction. After more than 70 years of diamond extraction, Sierra Leone is starting to run out of diamonds and needs to rehabilitate former mining sites for agricultural and other purposes.

In conclusion, in order to monitor revenue generation and ensure governments’ fair share of revenues, a post-conflict country should review natural resource concessions and contracts, cancelling noncompliant contracts and renegotiating unfair ones. Further, there should be a moratorium on new extraction contracts until appropriate processes for negotiation, award, and follow-up are in place. In both cases, environmental and social standards for extractive industries should be included and enforced.

Note

(*) The individual chapters for the book can be downloaded at: http://environmentalpeacebuilding.org/high_value_natural_resources_and_post_conflict_peacebuilding

References

Considerations for NRM in post-conflict settings?

Bryn Gay, UNDP Asia-Pacific Regional Centre

Policy considerations for the management of natural resources in post-conflict settings have been touched upon briefly in other rounds of the discussion. It’s interesting to see in Blake Ratner’s contribution how Cambodia established legal frameworks to support community management in its fisheries and forestry sectors, relying on partnerships among government, private sector and civil society – to decentralize power in some of the NR decisions.

In the article from Paivi Lujala and Carl Bruch, we see examples from Liberia in how it placed temporary moratoria on contracts and concessions in the timber sector, which had been used to finance its conflict. As well, they highlight how important it is to strengthen existing frameworks on NRM or validate what had been signed under a transition government as a country moves towards peace.

In this way, what options and finances are available for countries emerging from conflict to employ (independent?) third-party legal reviewers or auditors to help take stock of regulatory frameworks? Furthermore, control over resources and authority to make decisions, such as issuing permits or contracts to exploit resources, is a key issue. For example, we came across this recent article [http://allafrica.com/stories/201209040671.html] about Private Use Permits in the timber industry in Liberia. These permits appear to undermine the governments’ reform efforts and extensive forestry laws, as well as forest-dwellers’ rights to continue their livelihoods. It is noted that Liberia is investigating the granting of these permits and trying to tackle the illegal logging issue.

It would be interesting to hear from other Network Members who have experience in natural resource management in post-conflict countries, to understand what measures have been seen as exemplary to protecting their resources? To avoid regressing into conflict? Or ways that foreign companies or investors in the NR sectors -- be it timber, iron, gems, oil, etc – respect the host countries’ conflict resolution frameworks and integrate human rights/human development considerations in the contracts to operate?

The Mining, Minerals and Sustainable Development (MMSD) agenda: 10 years on

Abbi Buxton, International Institute for Environment and Development

The Mining, Minerals and Sustainable Development initiative, completed in 2002, laid out an agenda for sustainable development in mining that was adopted by the mining company chief executive officers (CEOs) of the day. At the time, MMSD was ground-breaking in its breadth of coverage and combination of corporate buy in and independent research. After 10 years, it is important to take stock of what has been achieved, and identify the successes as well as the ongoing challenges.
Thus, IIED has reviewed 10 years of progress against the MMSD agenda this year. We spoke to nearly 40 key stakeholders across the sector and published a discussion paper that looks at progress and ongoing challenges across issues of the environment, communities, supply chains, economic development and more.

One of the primary findings, which many of those spoken to agreed on, was that during the last 10 years standards have been set; during the next decade efforts should relate to the implementation of these standards.

Best practice standards and international initiatives have proliferated over the last 10 years. The International Council of Mining and Metals (which received its mandate largely from MMSD) has produced a raft of good practice guidance that has served to fill many of the gaps identified by MMSD. And the Extractive Industries Transparency Initiative, International Finance Corporation Performance Standards and the Natural Resources Charter, amongst others, which were not in place 10 years ago, now serve to set a standard of what is expected of the sector for sustainable development of resources.

But implementation continues to be a challenge for all stakeholders and this is particularly the case when considering social and community issues. During the MMSD+10 review, we spoke to many mining executives who felt that social issues are the single biggest issue facing their companies for the next 10 years.

Community development remains a complicated issue – both in rhetoric and implementation. There has been some evidence of progress and a more sophisticated approach to the issue. For example, a switch from paternalistic approaches to social and environmental impacts assessments which allow the community to define the impacts. However, many of the issues continue to be framed in black and white terms that prevent proper engagement with the issue. An example of this is Free, Prior and Informed Consent, which many companies view as having no pragmatic entry point.

However, communities are now more aware of their rights and have greater awareness of the benefits that mining can or cannot bring. This is seen in an increasing number of social movements reacting to mining developments across the world. Similarly, one of the drivers for the current wave of ‘resource nationalism’, which ranges from changes in mining policy to governments increasing their equity stake in mining companies, may be a response to increasing pressure on mining companies to deliver benefits to local communities. Although many companies feel threatened by this trend, is there an opportunity to reshape the social contract for mining in a way that sees stronger partnerships between governments, communities and companies? If so, what capacity is needed to deliver this change? How quickly can that capacity be built?

The MMSD+10 review spoke to a range of stakeholders across the mineral sector. However, it did not undertake a ground level assessment of mining’s impacts. However, even if we had done so, we would not have had baseline data against which to compare these results. As the greatest question is one of implementation, more research is needed to understand these issues and to share knowledge and experience of what works and what doesn’t. Perhaps the AP-IGD online community has additional information on approaches to overcome the implementation challenges of these standards. For example:
- How do we ensure all the good practice guidance that has been produced since MMSD has traction at the ground level?
- How do we monitor the impacts of international standards and initiatives to ensure they produce information that holds governments and companies to account on issues that are important at the local level?
- How should industry respond to the new international agenda on human rights and Free, Prior and Informed Consent – both in the right spirit and tangibly – and increased community expectations around mineral developments?
- Although understanding of sustainable development in the mining and minerals sector has improved, how do we move this beyond industry leaders and company policy?
- And what should be the response to the latest wave of resource nationalism to ensure partnerships deliver tangible benefits from mining?

These and other issues need to shape the agenda for the next 10 years – an agenda which recognizes the progress that has been made and builds on it to ensure that good practice is consistently achieved in implementation of improved standards.

**Benefits allocation and FPIC**

Robert Goodland, Environmental scientist working in developing countries

**Allocation of Benefits**

As mentioned in my earlier contribution, extractive industries activities could contribute broadly to sustainable development if two essential elements are guaranteed: (a) the benefits outweigh the social and environmental costs, and (b) the revenues are invested in building sustainable industries, enterprises and productive capacities. That’s not at all easy to guarantee in remote areas with weak governance, risks of conflict and corruption (*).

EI should secure optimal “net benefits” to citizens of the host country - therefore, the social and environment impacts should be kept at the lowest level possible. ‘Net benefit’ means the profits, royalties, benefits, etc., accruing to the corporation or government, minus the environmental and social impacts accruing mainly to the impacted communities. Companies should publish what they pay to governments in royalties, taxes and fees.

The Extractive Industries Transparency Initiative (EITI) is followed by best practice corporations. That’s the easy part. How to enhance payments from the mining corporation to the government and how to prevent corruption are more difficult. (Please refer to Revenue Watch’s work in these areas).

Although it is true that social and environmental costs are more difficult to estimate than the costs of bulldozers, diesel, cement, and steel, it must be attempted and corroborated by independent third parties. The Environment Social Impact Assessment (ESIA) process, paralleling the Feasibility Study, is the main way to clarify social and environmental impacts and their costs. For example, in the case of acid rock drainage (**) to be controlled in perpetuity, the cost for a “typical” mine may well rise to hundreds of millions of dollars. Full cost allocation means that all the internal and external costs and benefits, including social and ecological, of alternative decisions concerning the use of natural and social capital should be identified and allocated.
Countries need robust governance if they are to verify data on the volume, composition and value of resources being extracted and exported. The mining proponent has powerful incentives to under-report the richness of the ore or whatever is being exported. To monitor how much ore is exported is time consuming, expensive in terms of monitors constantly measuring tonnages being loaded for export, and sensitive to corruption. In some countries, where there are weak governance mechanisms, independent monitors are often used for such work, especially at ports. An increasing number of organizations are capable of undertaking independent third-party monitoring, conformity assessment and certification (**), including Global Witness, the Environmental Investigation Agency, the Environmental Law Institute, SGS (Société Générale de Surveillance) of Geneva, and Bureau Veritas. This does not preclude participatory monitoring by impacted communities, which can be very effective. Yet, finding an organization that is truly independent is challenging. Independent does not just mean, “Not paid for by the company” – it also means neutrality, objectivity, and lack of bias.

Estimating social and environmental costs is difficult but unavoidable. If the impacted people find that social and environmental costs are significantly underestimated, or that the compensation of residual impacts is too low, the project is best halted until an agreement can be reached.

**Free Prior Informed Consent**

Free, Prior, Informed Consent (FPIC), as mandated by the UN’s Declaration on Indigenous Peoples (**), is the best practice. FPIC means the days when exchanging beads, blankets or footballs to Indigenous People for the rights to mine on their territory are over. FPIC is mandatory for International Finance Corporation (IFC) projects and aims to empower potentially impacted communities, give them a formal role in the decision process. Projects should not be imposed on indigenous – or any other peoples. As mentioned, involuntary anything (as in involuntary resettlement) can no longer be the standard as it was in the colonial era.

Economics depends on “willing seller – willing buyer”. If one or the other does not pertain, then the project is not being run on economic lines. Involuntary resettlement is the most common example of the use of force to foster development. FPIC is the main way to ensure that force is not used against the people ‘in the way’ of the mine, in the form of violence, intimidation and coercion by the agents proposing the project. The proponent of the extractive project has to fully inform the potentially impacted people of the social and environmental impacts from the start. The best way is to involve the potentially impacted people in the ESIA process itself, such that after the “c.2-year period” in the ESIA process, so that people fully understand the impacts, how to reduce them and what to do about any residual impacts.

The Impact-Compensation Contract (ICC) or Impact-Benefit Agreement (IBA) (***) is designed to compensate for adverse impacts of mining on local communities and their livelihoods, and to ensure that potentially impacted people receive compensation from a mine impacting their lands. ICCs should be transparently negotiated in good faith in the public domain between the mining corporation and the impacted people, preferably with government approval as a formal legal contract. The contract should be justiciable and is usually based on the last section of the ESIA, often called the management plan or mitigation plan. If and when the impacted communities sign the contract -- that is taken as evidence that FPIC has been achieved. The contract is re-negotiated or amended if there are any changes in the mine project.
One of the main goals of Corporate Social Responsibility (CSR) is the social license to operate (SLO) which is formalized in free, prior informed consent (FPIC). Having a “social license to operate” a mine is an emerging concept within the hard-rock mining community and acceptance of the definition and application is broadening. SLO is a comprehensive and thoroughly documented process in which local stakeholders identify their values and beliefs as they participate meaningfully throughout the environmental and social impact assessment process of the proposed project, from scoping through mine closure and restoration. Social license must be earned and then maintained. It is dynamic and nonpermanent because beliefs, opinions, and perceptions are subject to change as new information is acquired.

Notes


(**) Acid Rock Drainage (ARD) occurs when sulphide-bearing minerals in rock are exposed to air and water, converting sulphide to sulphuric acid. It can devastate aquatic habitats; it is difficult and very expensive to treat and, once started, can continue for centuries. Roman mines in Great Britain and Spain continue to generate acid drainage more than 2000 years after mining ceased. In many mine sites water treatment costs exceed hundreds of millions of U.S. dollars, yet the contamination problems persist (e.g., Summitville, Leadville, Eagle Mine, Crested Butte, Colorado; Clark Fork and Zortman-Landusky, Montana; Bingham Canyon-Kennecott, Utah). Acid rock drainage can develop throughout the mining process.

(***) Third-party monitoring, conformity assessment and certification are becoming the standards. Third-party is to prevent bias and maximize objectivity. Conformity assessment is where an organization determines if the requirements of an agreed-on standard are being met. Accreditation is a third-party attestation related to a conformity assessment body conveying formal demonstration of its competence to carry out specific conformity assessment tasks.


(******) “A new wave of co-operation between Aboriginal peoples and the mineral industry can be felt across Canada. It is evidenced by the growing number of impact and benefit agreements that are created every month. Gone are most of the adversarial relationships between mining and Aboriginals in favour of participation and sharing.” Benefits/impact agreements are becoming the norm worldwide.

References for further information


Revenue Watch. 2012. The Capacity to Change: RWI has developed strategies for parliaments to maximize the use of oil and mining revenues.


**Addressing indigenous peoples’ concerns with extractive industries (EI)**

Arturo Requesens and Fiorella Arenas, UN Secretariat of the Permanent Forum on Indigenous Issues

Indigenous peoples live in close relation to their lands and territories, as these constitute the basis of the spiritual, social and cultural aspects of their lives. Therefore, extractive industries’ activities represent a major concern of indigenous peoples all over the world, as they are often implemented in indigenous territories without appropriate guarantees and without the involvement of the people concerned. In many cases, the activities of extractive industries have had a catastrophic impact on indigenous peoples, creating numerous conflicts.

In order to minimize conflicts, the Permanent Forum on Indigenous Issues has recommended that states fully recognize the need for effective participation of indigenous peoples in all negotiation processes related to extractive industries. Further, it has called on countries to adopt legislation according to international standards to guarantee the right to consultation and free, prior and informed consent of indigenous peoples (Articles 19, 32) for extractive projects that might have a substantial impact on indigenous territories; as well as to ensure the establishment of national mechanisms to facilitate these processes (Para 82, 84, 87). In addition, the Permanent Forum on Indigenous Issues recommends that states undertake social, cultural and human right impact assessments during the different stages of extractive projects (Para 85).

In order to minimize environmental degradation, the Permanent Forum on Indigenous Issues recommends that countries enforce higher standards of environmental protection, to regulate in an effective way the operations of extractive companies and to establish penalties for environmental violations (Para 89, 94).
Benefit sharing over natural resources and participatory consultation: successful examples

Some countries have adopted legislative measures that have helped to address issues of land rights and of benefit sharing over natural resources. In Australia, in accordance with the Aboriginal Land Rights Act of 1976, Aboriginal land councils must give priority to the protection of the interests of traditional Aboriginal owners and promote effective consultation with them. In addition, it is regulated that a mining interest may not be granted in respect of Aboriginal land unless an agreement has been reached between the Aboriginal land council and the intending miner.

There are examples of successful participatory consultation processes, such as the one undertaken in 2010 by the Bolivian Ministry of Hydrocarbons and Energy to the Guarani. The process related to a proposed hydrocarbon exploration project in the indigenous territory of Charagua Norte and Isoso in the Santa Cruz region in Bolivia. Successful agreements between the Government and the Guarani Peoples Assembly of Charagua Norte and Isoso were undertaken, documenting community consent prior to the initiation of exploitation activities.

Addressing environmental, social and cultural impact on indigenous peoples

The Permanent Forum on Indigenous Issues has recommended undertaking social, cultural and human rights assessments prior, during and on the completion of all the project activities.

In Canada, the James Bay and Northern Quebec Agreement (JBNQA) provides the first piece of legislation in the country to identify specific environmental and social impact assessment process within the Eeyou Istchee Cree territory. In order to comply with the JBNQA, an environmental and social impact assessment study of the Matoush Uranium Exploration Ramp Access project was prepared by Strateco Resources Inc. and the public was invited to review the assessment.

Challenges still persist

Although some governments have enacted laws and policies that regulate consultation processes for extractive activities, the Permanent Forum on Indigenous Issues does not have very much information on related good measures undertaken by national/provincial or local governments or extractive industries. Furthermore, during the Permanent Forum, indigenous peoples have raised concerns about the lack of indigenous communities’ involvement in decision-making and consultation processes concerning extractive activities that have taken place in their lands and territories.

In a 2011 report (Para 43) about extractive industries operating within or near indigenous territories, the UN Special Rapporteur on the Rights of Indigenous Peoples, presented the case of the Lubicon Lake Indian Nation from Canada, where indigenous peoples maintained that “…extractive companies carry out consultations as a mere formality in order to expedite their activities within indigenous territories […] and that indigenous peoples’ input does not substantively affect pre-established Government or industry plans”. The same report presents the case of Mexico, where “the lack of prior involvement, labour conflicts, unmitigated environmental damage and unfulfilled promises were identified as reasons why many indigenous communities fear or outright reject current proposals for extractive projects in their territories, even before receiving information on potential new projects or engaging in discussions about possible arrangements in this connection”.

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The SPFII would like to encourage EI and governments to pay special attention to the rights enshrined in the United Nations Declaration on the Rights of Indigenous Peoples related to lands, territories and resources. The compliance of those rights does not only benefit indigenous peoples, but also guarantees a more sustainable development, a better benefit sharing of the development processes, preventing conflicts.

References


Implementation challenges and impact management: Canada’s oil and gas GHG challenge
Dave Sawyer, International Institute for Sustainable Development

Canada is experiencing a boom in oil and gas activity with no end in sight. With 175 billion barrels of proven oil reserves and another 63 trillion cubic feet of cubic feet (EIA 2010), billions of dollars are being spent on accelerating resource extraction. One recent estimate places total incremental investment in the oil sands sector, which accounts for 99 percent of proven oil reserves, could total Canadian Dollar (CAD) 100 billion by 2020. With all this investment in increasing oil and gas activity, on top of a sector that has expanded rapidly in the last 10 years, economic impacts have soared.

The economic contribution of this development can’t be understated. In the province of Alberta, where the vast majority of oil sands are located, the potential value (or rent defined as revenue minus costs) of the oil sands reserves is about CAD1 million per resident. The Government of Alberta currently receives about one third of its tax revenue from the oil and gas development. However, oil sands royalties are likely to climb 2.7 times between now and 2015 - from CAD 3.7 billion in 2011 and
CAD 10 billion in 2015. According to the Canadian Energy Research Institute (CERI), Alberta could expect oil sands royalties of about CAD184 billion over the next 25 years. Government spending on social services is therefore tightly tied to oil sands success.

The generation of revenue from oil sands, however, poses environmental challenges. Notably, the oil and gas sector’s greenhouse gas (GHG) emissions have been steadily rising since 2005, with IISD forecasting a 50 percent increase by 2020 over the 2005 levels. This will mean that in 2020, 25 percent of Canada’s total GHG emissions are likely to come from the oil and gas sector. This rising trajectory of economic activity and emissions poses a significant challenge to the Government of Canada’s ability to achieve its Copenhagen GHG target of -17 percent below 2005 levels, or 605 mega tonnes (Mt). Simply the rapid growth in emissions against a fixed 2005 baseline means that an increasing level of effort is required to achieve its GHG target.

But there is another challenge to managing the GHG impact of oil and gas development. The abatement opportunities in the oil and gas sector are limited. A soon to be released IISD paper estimates that the oil and gas sector has little room to reduce emission at costs short of halting production (*). At carbon prices in the order of CAD100 per tonne, emission reductions are at best 30 Mt or 20 percent below 2020 forecast levels. To put this into perspective, a CAD100 carbon price would be 10 times greater than current EU ETS carbon price of US$10.32 and emissions from Canada’s oil and gas sector would still be 10 percent greater than 2005 levels.

With recognition that emissions must be reduced, the Government of Canada is currently developing GHG regulations for the oil and gas sector to be released in 2013. The challenge for the regulator is to balance the rapidly expanding sector with GHG performance. Likely emerging is an intensity performance standard that sets GHG performance based on emissions per unit of output such as GHGs per barrel of production. But in-sector reductions at reasonable costs are unlikely to be achieved, and as such there is a need for out-of-sector flexibility. Enabling access to offsets, or emission reductions outside of the regulated community is one option as is a maximum compliance price safety value (i.e. CAD 40 per tonne) with compliance payments to be used to fund additional emission reductions outside the sector. Both of these compliance mechanisms would enable compliance flexibility for the oil and gas sector that contained costs but could also increase the level of ambition of the GHG policy.

Canada’s resource boom is placing a range of challenges on governments to ensure responsible resource development. Both the economic and environmental impacts of the resource boom are significant, placing pressure on governments to manage an orderly and response resource development path. In the case of GHGs, innovative and flexible climate policy will be required to ensure balanced economic and environmental outcomes. Canada’s oil and gas boom will continue for some time, but getting the emerging federal GHG regulations for the sector right is central to ensuring responsible resource development.

Reference

Ecological economics as a planning tool for extractive industry projects
Saleem H. Ali, University of Queensland

All too often developing countries consider environmental regulations as ancillary to the core development imperative. The debate is framed in terms of “jobs versus the environment”; or “poverty alleviation versus conservation.” Despite numerous efforts by international donors to suggest that sustainable development is only possible with a consideration of environmental criteria, there remains a reluctance to consider environmental mitigation strategies seriously. The most promising way to convince governments in developing countries regarding the importance of environmental conservation in relation to extractive industries projects is to use the paradigm of ecological economics. This is an emerging discipline that is gaining traction among mainstream economists as well. It attempts to consider the economy as a subset of the ecological system and to develop metrics which consider the connections between ecology and economics in a systems-oriented way.

Although for many years mainstream economists disparaged ecological economists, and still many economists at development banks dismiss any attempts to value natural services provided by ecosystems, the tide is changing. A promising sign in this regard has been the willingness of scholars such as Pavan Sukhdev to engage with environmental organizations while working at major financial institutions. The techniques for valuing services, provided through research efforts at initiatives such as Stanford University’s Natural Capital Project or at the Gund Institute for Ecological Economics at the University of Vermont, should be given more importance in extractive industries planning.

Another interesting approach which has been put forward by Ecuador is to value nature conversely by considering the value of resources that would not be extracted due to forest conservation. The estimated value of oil extraction from Yasuni National Park was valued at about US$7.5 billion and the Ecuadorian government agreed to halt plans if “crowdfunding” from various donors could raise even half of that amount by 2024 – the projected life of the oil extraction project. A poll in December 2011, reported by the UK’s Guardian newspaper, suggested that more than 83 percent of Ecuadorians supported the scheme which is now managed as a fund administered by the United Nations. Although this approach can only be confined to areas of exceptional conservation value where no “win-win” outcome of mitigated extraction would be possible, the implicit valuation of natural assets in congruence with development goals is worth considering.

For practical purposes the way extractive industries development could employ ecological economics approaches in planning would be during the environmental and social impact assessment process. There could be scenarios developed for pollution mitigation strategies and the costs in terms of ecosystem services lost or alternative development paths that could be compromised by a particular extraction technique. The temporal dimension of how long the project will last, and the mitigation cost and recovery time of ecological systems, to allow for new activities to proceed once the extractive project closes, can also be more adequately measured through such metrics.

It is high time that ecological economics are not considered a threat by development donors and extractive industry developers. Rather it should be considered a tool for risk management that can lead to more appropriate development paths and pacing of extractive industry projects.
Mechanisms, such as prior consultations, negotiations, and compensation with indigenous peoples living in resource-rich regions, are not perfect. To work more effectively towards protecting peoples’ self-determination, these mechanisms must define and support participatory and consultative decision-making processes that involve: the private sector companies engaged in resource extraction (EI), affected communities and governments. These mechanisms must be used from the very beginning, when EI and governments approach local communities prior to initiating extractive activities. It would also help if autonomous independent indigenous organizations working on these issues could advise indigenous communities during free, prior and informed consent (FPIC), negotiation or benefit-sharing processes.

This is urgently required as self-determination is usually not respected. The initial act of coming into a community and proposing how a mine, a dam, a pipeline or an agro-fuel could bring “benefits” to the local population is where the problem begins. The ability to come into a community with the arrogance of thinking that an extractive project would be better for the local population than the way they have been living until then is a sort of “worldview of missionary colonialism”, that is, culturally arrogant and paternalist. Populations whose subsistence comes directly from the Earth are too often being portrayed as inferior to populations that rely on industries, which can destroy the possibilities of self-reliance for the purpose of creating profits and purchasing what was once produced locally, from elsewhere. This model sold as upward mobility, progress, development, ultimately leads people in communities to develop self-depreciation of endemic values, leading to the loss of subsistence methods and worldviews that are actually more ecologically sustainable and socially just, than the ones being imposed on them.

Considering this point, I think that the structure of the current e-discussion could be more inclusive of communities’ perspectives, especially when many communities simply do not want projects at all. Its current constrcut appears more limited to the industries’ perspective, rather than the worldview of self-reliant and subsistent communities, as it focuses on revenue generation, revenue utilization and implementation challenges and impact management. Recognizing self-determination would allow the community to define what and who their nation is. Once this is established and upheld, then we can talk about the self-determination to decide how we will live in our territory.

Based on my work with indigenous communities, I have observed that in practice most countries do not fully respect the self-determination of its inhabitants, despite signing onto the UN Declaration on the Rights of Indigenous Peoples or ILO Convention 169. In many cases, if a government wants an extractive project to go ahead, it will do so without consulting the local communities, regardless of what they want and need. For example, coal mining in the Guajira Peninsula in Colombia, is within the territory of the Wayúu People, and has visibly scarred the territory and the people who continue to oppose it. For fair or equitable consultations, a community needs to be able to say ‘no’ to extractive projects in their territory and have negotiation power. At the same time, governments must respect the self-determination and autonomous, collective decision-making of communities, including the rights for communities to have their own prior, private, internal consultation processes without participation from the government of private sectors.
Most of the spaces that have been generated through organized struggle, such as the communities’ rights to have prior consultations, negotiations, and compensations, have become stepping-stones in a forced pathway to extractive projects. These mechanisms have not protected communities, as well as what they define as their territories, and, really, all life, not just human or biotic forms. In many cases, these mechanisms have turned into the methods that the industry and governments can use to oblige extraction projects on communities. Only using these mechanisms as tokens for accessing sites for mining does not respect and protect the rights of the communities nor protect their territories. This can result in a colonial denigration of local worldviews, needs, and traditional land uses, and lead to forced displacement. For example, there are an estimated 41,000 indigenous internally displaced peoples in Colombia. However, indigenous displacement often goes unregistered – due to the remoteness of indigenous territory, lack of access to state services and cultural barriers. Undermining indigenous rights through forced displacement can exacerbate cultural assimilation, loss of identity, and breaking of social ties in the community that deepen local divisions and may trigger conflicts.

One such example of obliging extraction projects on communities without meaningful, prior consultation is in the Embera territory; the Darien-Colombian Pacific Coast is one of the world’s wettest and most biologically diverse regions. The Embera peoples of Colombia and Panama are still considered one of the more sensitive status as Indigenous Peoples because their territory has been widely destroyed for the creation of oil palm agro fuel plantations, gold mining belonging to companies, the Urra I & II Hydroelectric Projects in Cordoba Department, among many.

The initial interactions between the mining companies and Embera peoples characterize many prior consultations during which a mine or mega-development project is pre-determined. Companies will generally offer local communities a certain financial amount or alternative to move elsewhere. If a member of the community stands up for their rights companies offer a higher amount to get the group to back down. But there is another element to be considered: Most communities have never had to negotiate with an EI company. Most local communities do not have prior experience in negotiations, do not know how to demand their rights, or do not have access to all the information available to show legally that the procedure or implementation was not conducted respectfully. In this way, autonomous independent indigenous organizations working on these issues could advise these communities during FPIC, negotiation or benefit-sharing processes.

The worldview embedded within EI and development projects often promotes very different values than most indigenous communities’ ones. In Central and South America there is a common belief, held amongst different Indigenous Peoples, which is the “buen vivir” -- to live well -- a vital part in the push for Universal Rights of Mother Earth. While many extractive projects are accompanied by social and environmental projects that (sometimes) seek to altruistically minimize the impact of the project on local human and non-human populations, these mitigations are constructed by the anthropocentric, industrial and utilitarian worldviews. This mainstream approach highlights the general unawareness in extractive industries and by policy makers that many of the affected communities do not share this worldview. Community members are forced into having to learn this perspective to be able to protect our territories and communities. The very act of having to fight on the State’s terms and struggle to save ourselves becomes a possible step in losing everything. By providing spaces to address grievances and regular dialogues with indigenous communities can help raise awareness about our needs, concerns, cultural contexts, and unique histories with colonialism.
There could be true prior consultations, negotiations and compensations where local communities have the power from the beginning to simply say “we do not want the project”, walk away and have that decision respected by the industry, government and the international community. Until worldviews and indicators such as the Andean “buen vivir”, the Iroquois’ Seven Generations or Bhutan’s Gross National Happiness (BNH), to name just a few, gain stronger influence within global political, economic, development, social and environmental policies, those of us who live in the communities that will drown with the dams, be destroyed by the mines, or disappear within the mono-crops will continue to struggle against the Earth-destroying policies that a mainstream worldview considers as “progress” and “development”.

Notes
(*) The author uses fieldwork, observations and dialogues from within a number of indigenous and activist communities in Latin America as the basis for many of the claims within this contribution.

Communities, not politics? : Corporate Social Responsibility and the micropolitics of recognition
Leah S. Horowitz, Hawai’i Pacific University

Thanks very much for the opportunity to contribute to this exciting discussion. I would like to provide a critical perspective on Corporate Social Responsibility through a detailed case study from my field site, New Caledonia. New Caledonia is a Melanesian archipelago (population 246,000), estimated to possess nearly 25 percent of the world’s nickel reserves (Mining Journal 1999). I have conducted fieldwork in New Caledonia since 1998, and began to study this project in 2006.

In 2002, an indigenous Kanak group called Rhéébù Nùù began protesting against a multinational mining company constructing a nickel refinery in New Caledonia. In 2008, Rhéébù Nùù leaders, customary authorities and two company representatives signed a “Pact for Sustainable Development of the Far South [of New Caledonia]”. The company called this agreement “an example of a best practice and benchmark in the relationship between resource companies and aboriginal communities” (Marcuson et al. 2009).

In this contribution, I will scratch the Pact’s glossy surface to uncover the company’s strategy in engineering this agreement, using what I call the micropolitics of recognition, which builds on the insight that “distribution conflicts” are also, at least partly, a type of “struggle for [social] recognition” (Honneth 2004). Further, I use this case study to argue that Corporate Social Responsibility may mask, yet depend upon and exacerbate, intra-community power inequalities.

Customary authority is highly respected by Kanak and forms a crucial part of their cultural and political identity. From the beginning, both the mining company, and the protest group that opposed it, attempted to turn people’s support for customary authority to their own advantage.

At first, Rhéébù Nùù was successful in reinforcing its legitimacy through association with customary authority (Horowitz 2009). The idea for the protest group’s creation originated from two local chiefs, who had accepted the mining project for the local employment opportunities but aimed to organize the community to remain vigilant as to environmental impacts. They forged a broader base of legitimacy by involving as large a number of customary authorities as possible.
The person chosen to lead Rhéébù Nùù was from a clan low on the customary hierarchy. However, when both of the chiefs who had initiated the protest group died in 2004, Rhéébù Nùù continued to define its identity as representing customary authorities.

At first, customary authorities gave Rhéébù Nùù their support. However, by mid-2006 they began to have mixed feelings about the protest group. Without the chiefs as figureheads, Rhéébù Nùù’s basis in customary authority became less obvious, and customary authorities began to complain that it no longer respected them.

The company, meanwhile, was doing its best to position Rhéébù Nùù as a fringe element that represented neither the chieftainships, nor the population as a whole (Horowitz 2012). As I will argue, they ultimately achieved this positioning through the micropolitics of recognition.

The talks between the company and Rhéébù Nùù persisted throughout 2006 but did not bring the parties to a resolution. In early 2008, the company began laying the pipeline that would dump effluent into the marine environment, sparking fresh protests and a blockade of the installation (ABC Online 2008). In the midst of this turmoil, Rhéébù Nùù was swept into office at the municipal level.

At this point, the company flew one of their legal specialists from headquarters as the new lead negotiator. He took a different tactical approach, observing that the “fundamental flaw” in the negotiation process was that “Rhéébù Nùù was the only party at the table allegedly representing indigenous community interests” (R. Benke in Baseswiki 2010). Instead, he reached out to customary authorities, arguing that talks needed to be held with the “communities” and not just a marginal element thereof.

Negotiations became tripartite, involving Rhéébù Nùù, customary authorities, and the company. The lead negotiator was satisfied that the company was talking with “all interested parties,” addressing “all legitimate customary representatives of all tribes related to the project” and working with the local “communities, as much as possible separate from local politics” (R. Benke in Baseswiki 2010).

However, the lead negotiator neglected to mention that this definition of community excluded stakeholders less favorable to the mining activities, such as women and youth. Meanwhile, the painting of “local politics” as something to be avoided sidestepped the fact that the municipal elections, at which Rhéébù Nùù leaders had been voted in, were open to the entire population, whereas customary authorities – who are only men, usually senior – are chosen by a select few senior men.

Simultaneously, the company assimilated the protest group itself, again largely through recognition. For instance, the Pact included an Environmental Customary Consultative Committee of which a Rhéébù Nùù leader would later become president, largely a figurehead role. The government, meanwhile, absorbed this leader by making him the chairman of the board of an “observatory” composed of a range of stakeholders (including the company itself, which provided half its funding), charged with monitoring the project.
When the company started to win the battle for customary legitimacy, Rhéébù Nùù was implicitly faced with a choice: take on a new identity not based in customary authority, or give up their struggle. They chose to sign the Pact.

From all sides, only senior men were invited to sign. The company pledged relatively small economic and environmental benefits and otherwise proceeded with its original plans. Meanwhile, women and young people angrily described their shock and dismay. The company justified its exclusion of them through a discourse of respecting local customs, as I will discuss further in my next contribution.

Thus, CSR initiatives may present themselves as benefitting “communities” while in fact relying upon, and intensifying, the power inequalities within these communities. They may reinforce certain community members’ power, and further marginalize others (less favorable to the project) through strategic manipulation of the micropolitics of recognition.

References


Contractual violence: Corporate Social Responsibility, environmental harm, and the manipulation of power inequalities in New Caledonia

Leah S. Horowitz, Hawai‘i Pacific University

Thanks for another opportunity to contribute. I would like to follow up on my last contribution with a closer examination, from the same case study, of the power dynamics of company-community
negotiations. As mentioned in my previous contribution, I have conducted fieldwork in New Caledonia since 1998, and began to study this project in 2006.

Within Corporate Social Responsibility, an important tool is the Impact and Benefit Agreement (IBA), a company-community contract that formally documents putative community acceptance of a project in exchange for various types of benefits that may include, inter alia, financial payments, employment quotas, support for local business development, environmental management, and cultural heritage preservation (see Gibson and O’Faircheallaigh 2010). Corporations’ willingness to negotiate with communities reduces the physical violence committed both in opposition to, and in support of, industrial activities. However, this begs the question of whether IBAs eliminate violence, or whether they may perpetuate other forms of violence. To address this question, this contribution examines an IBA between a multinational mining corporation and an indigenous community in New Caledonia. This agreement effectively ended a protest movement that had included the burning of company equipment and confrontations with armed police (see Horowitz 2012). However, I argue that although this IBA eliminated the physical violence associated with the mining project, it furthered both ecological and social harm, particularly toward women, through what I call “contractual violence”.

Corporate environmental violence may involve direct harm to ecosystems but, like social violence, it is often indirect. Another form of indirect violence is cultural violence, belief systems that can be used to justify or legitimize direct or structural violence. Meanwhile, the “consent” that a contract putatively embodies often masks coercion by concealing the negotiation process, its social context, and the resultant “bargain”.

In Kanak (New Caledonian Melanesian) societies, women are expected to defer to men, who hold all customary positions of power. However, women are increasingly achieving respect, autonomy, and even political power. Nonetheless, when the company effectively ended violent protest against their project through a “Pact for Sustainable Development” in 2008, they only invited senior men to negotiate and sign the agreement.

The women with whom I spoke described their dismay at the Pact’s signature. Company representatives, asked why no woman had been invited to negotiate or sign the Pact, replied that this was due to Kanak “cultural values”. However, customary authorities noted that they would not have objected had the company held separate negotiations with local women. Meanwhile, to accept the structural violence of women’s powerlessness as a “cultural” norm, ignoring the significant gains that Kanak women have made, and reinforcing inequitarian power structures by excluding women from decision-making processes, is arguably to commit cultural violence.

Moreover, a participant from the company side recalled that customary authorities had “reproached us for granting too much importance to Rhéébù Nüu” (pers. comm. Sept. 10, 2010). However, Rhéébù Nüu leaders had been given an equal place at the negotiating table. Clearly, the fact that women did not engage in physically violent resistance independently of Rhéébù Nüu meant that they could safely be ignored.

Women also had different interests and concerns. First, a major stake in the mining project was the social recognition of positions of customary authority, which would not apply to women. Also, women may have been less interested in the employment opportunities offered by the project. Instead, they expressed concern that marine resources – their subsistence and livelihood – were threatened.
Beyond marginalizing women’s concerns, the Pact directed power away from the government and the community. The company wanted to avoid having to go to court, where it had lost important cases. Therefore, the Pact specified that any future disagreements should be resolved through “discussion,” or through a group of third-party arbitrators. The Pact also channeled community concerns into forms that the company could control. The Environmental Customary Consultative Committee could only provide opinions to the company, with no conduit to the regulatory authority. In return, the company committed itself (in the words of the Pact) to “corrective mechanisms so as to maintain conformity with the environmental standards applicable to this project” — which it had to do anyway — “in light of the relevance” — determined by the company — of the committee’s recommendations. Meanwhile, the Environmental Technicians – trained and paid by the company – could only recommend studies, not practices. Indeed, there was no provision for pressuring the company, in any meaningful way, to change its environmental management procedures. In fact, there was a lesser chance that the company would alter these procedures, as there was now a lesser risk of public exposure.

In summary, the Pact performed cultural violence against women, reinforcing power inequalities between the sexes through reference to outdated cultural norms. It also directly performed structural violence, directing powers away from the government and communities and toward itself.

Although these largely invisible forms of violence do not threaten the company’s reputation as much as physical violence, they can be very harmful to local communities. Therefore, I argue that IBAs cannot be assumed to indicate “community consent”. In order to be meaningful, these agreements must involve representation of all community sectors and true power-sharing through compromise, and they cannot replace protective legislation. In other words, they should transfer power away from, not toward, companies. Otherwise, “Corporate Social Responsibility” risks becoming yet another example of corporate violence – in this case, contractual violence.

References


Challenges and impact management in EI sector in East Asia and the Pacific

Emy Perez, Affiliated Network for Social Accountability in East Asia and the Pacific (ANSA EAP)

Communities tend to be in the fringes of decision-making in the extractive industry – this is too often an unfortunate reality. Although there may be national policies and laws that address community participation and Global Standards that profess commitments to mainstreaming people’s participation in processes along the EI Value Chain, communities, we’ve worked with, express disappointment on not being heard and not having adequate and timely information necessary for them to effectively participate. Participation in Environmental Impact Assessments (EIAs), though calibrated, are provided in many national laws and in Global Standards adopted by extractive
companies, such as the Equator Principles (*). However, community participation and access to information is a rarity rather than a standard practice.

The current concentration on revenue and benefit-sharing from the extractives, even at the onset of the project, distracts people from the less-discussed concern of participation. Information on potential payments, royalties, taxes, and benefits that may be derived or gained from the project, as part of the consent-seeking process, is like ‘dangling the carrot’ especially to traditionally non-cash based economies, when this information does not become a reality or advance communities’ rights. “Focusing discussions on revenues ‘lulls’ the communities to accepting the mining project,” say some NGOs across the region.

Protecting community rights and promoting community welfare can happen with purposive processes and mechanisms for engagement in various phases of the mining cycle. The Affiliated Network for Social Accountability in East Asia and the Pacific (ANSA EAP) embarked on a partnership initiative with a few NGOs in the region, to experiment the use of Community Scorecards (CSC) as a tool for constructive engagement among three stakeholder groups: Communities, Local Governments, and companies. The NGO partners facilitated the CSC processes by generating the community indicators, scoring indicators according to the 3 stakeholder groups, facilitating discussions in the Interface Meetings, where consensus-building on agendas’ actions surfaced.

Community Scorecards (CSC) are both a research methodology and a tool for community empowerment as respondent communities are encouraged to assess the performance of government and companies and hold them accountable (WaterAid 2004). It has been used in the sectors of education, health, water services where communities assessed the performance of government as service providers. Its use in the extractive sector was on a pilot scale, and involved companies in the activities. CSC consists of a series of processes which are inseparable and connect to each other. In general, CSC process consists of several phases:

- Phase 1: Preparatory groundwork and research. It is integral in the groundwork to ask approval from a company – as a major stakeholder - for their willingness to be scored as well as scoring themselves.
- Phase 2: Input tracking
- Phase 3: Development of indicators, questions, and scores
- Phase 4: Stakeholder scoring and company self-Scoring
- Phase 5: Interface Meeting

In facilitating the CSC/performance assessments, partners chose their focus sectors:

- Community access to information the impacts of the project, the laws governing, definition and clarification of the roles and responsibilities of government and companies in providing information;
- Transparency, accountability, and participation in the Local Content (**) that EI projects implemented in communities;
- Implementation of the Health, Safety and Environment (HSE) commitments of the company;
- Transparency, accountability, participation in the Social Development Management Program (SDMP); and
Initial lessons learnt from the Community Scorecards initiative indicate that this can be a viable tool for engagement among the stakeholder groups. Importantly, the initiative has been contributing to:

- Share information about the (potential) environmental and cultural impacts of a project;
- Share information about existing laws and policies, including about legal bases of royalties and benefits that are due them, as well as about the sources and amounts of budgets for Local Content and community development projects;
- Promote consultative and participatory processes in decision-making in the activities; and
- Contribute to the reform of some systems, such as in synchronizing budget planning for community development projects.

The CSC initiative aims to ensure that communities’ voices are heard while determining and evaluating issues that matter to them, and claiming their rights to, among others, obtain information and participate in local development.

In this contribution we would like to share some insights from the CSC initiative in Indonesia. This example highlights the importance of sharing more information with communities, and of taking into account communities’ concerns.

The Voice from Ring-1 (PATTIRO and Bojonegoro Institute, Indonesia)

Two organizations in Indonesia collaborated in piloting the use of CSCs in villages where on-shore oil extraction operates: Pusat Telaah and Informasi Regional (PATTIRO) and Bojonegoro Institute, both are NGOs dedicated to promoting good governance and social justice, particularly at the local level. Impacted communities are given compensation, including health projects, according to their distance from the operations.

Ring-1 is defined as 7-km radius from the oilfield or oil operations. PATTIRO and Bojonegoro Institute in East Java, Indonesia brought people from 3 villages (Sambiroto, Ngampel and Campurejo) located in Ring-1 to the discussion table with local government officials and representatives of the oil company working in that area. The aim was to discuss the company’s performance in implementing Health, Safety and Environment (HSE) and community development projects. The CSC initiative revealed that access to information and community participation were crucial issues.

Issues that concerned communities related to the standards on noise, health hazards, and kick gas or gas flaring time that are observed by the company. Gas flaring is the practice of burning natural gas that is extracted from the ground through tall pipes that disperse pollutants over wide areas (**). During this time communities bear a degree of heat much higher than during ‘normal’ company operations. Early warning instituted by the company to alert residents of the gas flare incidents included setting up wind directional flags, sounding sirens, ringing school bells, and distributing face masks via the village leaders. However, these measures were deemed inadequate by the communities as they continued to manifest adverse impacts in terms of higher incidences of respiratory ailments, anxiety, and other health-related complaints. Emergency plans and procedures for evacuation during kick gas and gas leaks are found to be available in the company’s offices. However, the communities
lack this information, and there are insufficient emergency/evacuation drills or simulations conducted to prepare communities for such eventualities.

The oil company implements Community Development (CommDev) projects in the villages in Ring-1. The communities’ assessment, however, is that both information and implementation of the projects had been on a limited scale, reaching only the community elite. The company’s and government’s claim that, as public information, anyone from the community can access information on budgets, projects, participants; however, final approval on their release to the public will have to be from the company’s central office in Jakarta.

Stakeholders came out with recommendations to address the issues during the subsequent Interface Meeting. Beyond observing proper distance between the flare stacks and residential areas, communities recommended to better compensate people impacted by intermittent kick gas, and to provide emergency responses such as evacuation routes. The company agreed to improve dissemination of information on these concerns. Both the EI company and local government also committed to enhance collaboration and coordination in project implementation and service provision to communities affected by the extractive activities.

Notes

(∗) Equator Principles are a voluntary set of standards for determining, assessing and managing social and environmental risks in programme financing. Finance institutions require the borrower to consult with stakeholders (i.e. NGOs and project-affected groups) and provide them with information on the environmental and social risks of the project in a process that ensures free, prior and informed consent.

(**) Local content is defined as the added value brought to the host country through the procurement of goods and services and local workforce development. It also refers to extractive companies’ provisions for projects for skills and technology transfer, education, infrastructure, agriculture, and health. (See www.bsr.org, Commercial Value From Sustainable Local Benefits in the Extractive Industries: Local Content, March 2011).


Community Scorecards Initiative in Timor-Leste and the Philippines

Emy Perez, Affiliated Network for Social Accountability in East Asia and the Pacific (ANSA EAP)

We would like to share more insights from the Community Scorecards (CSC) initiative in Timor-Leste and the Philippines.

In the village of Mabadeno, Aileu District in Timor-Leste, community residents who participated in the CSC initiative facilitated by the NGO, Luta Hamutuk, realized the importance of participating in the entire cycle of community development. This approach goes beyond being mere recipients of projects that had been identified and implemented by companies. When communicating this message during
the Interface Meeting, government and company stakeholders agreed to actively involve communities in the planning, implementing, and monitoring of local content projects.

In another context, Community Volunteer Missioners, an NGO whose members are indigenous peoples in the Cordillera region in northern Philippines, facilitated the CSC process in two indigenous communities that have hosted a 50-year mining operation. Activities for the CSC were modified to respect the communities’ culture to initially communicate their opinions and evaluations of projects and policies in private. At the Interface Meeting where responses to the CSC interviews and focus group discussions were presented as consolidated data (without pinpointing the names of respondents), free speech and citizenship got a “big push”. They discussed issues on: the use of royalties paid by the mining company to indigenous peoples amounting to PhP144 million (about US$3.5 million); procedures for the selection and funding of Social Development Management Projects that are required by the law; and the need for clarity in budget sources for community projects (e.g., delineating funds from mining company and government funds).

Some more details on the initiatives in Timor-Leste and the Philippines are presented below.

Ami Prontol ("We are ready!") (Luta Hamutuk Institute, Timor-Leste)

Timor-Leste was the first Asian country to become compliant with Extractive Industries Transparency Initiative (EITI) on July 1, 2010. Luta Hamutuk Institute for Research, Advocacy and Campaign, an NGO based in Timor-Leste, focuses on monitoring the revenue from oil and monitoring the national budget. It sits in the Multi-stakeholder Group, representing several civil society organizations (CSOs). The CSC exercise helped to improve transparency of payments from EI companies – on one hand, information on funds devoted to local content projects was shared; on the other hand, communities and local governments started to get involved in decision-making processes related to such projects.

During the training seminar on Social Accountability (to help prepare for the CSC process), held in February 2012 in Dili, Timor-Leste, participants clearly and boldly stated, ‘Ami Prontol!’ It signified their readiness and eagerness to undertake CSC with Luta Hamutuk. Community leaders and focal points from the Ailieu district, CSO representatives, students and local government officials attended the seminar. The CSC facilitated the community assessment of one of the major oil companies in the country, particularly its performance in the provision of local content to the village of Madabeno, Laulara Sub-district, District of Ailieu, Timor-Leste. The assessment posed the question: How transparent, accountable, and participatory were the processes undertaken by the EI company related to provision of water, health clinics, and library supplies at the Madabeno Primary School?

The community’s assessment yielded low ratings of the company’s performance. It raised, however, respondents’ awareness on their right to participate in identifying projects and participants for the local content provisions. Information on budget allocation for the projects and the process of planning which projects to fund then to implement would help communities to understand what they would contribute to make the project more valuable to them – either in terms of skills, labour, or local construction materials.

Analyzing such information could transform communities from being mere beneficiaries of local content projects towards being more active actors in EI governance and local development. Discussion on the scores and analysis during the Interface Meeting (the culmination activity) allowed stakeholders to hear each other out, and look at community issues from a shared framework.
Representatives from the government and the oil company exclaimed “Ami Pronto!” alongside people from the communities as they agreed to provide more information on local content and explore ways of involving community members more in the planning, implementing, and monitoring of different projects.

Journey to the Gold and Copper Dust Trails (Cordillera Volunteers Missioners (CVM), Philippines)

Focusing the CSC on a mining company that has operated for more than 50 years in indigenous communities’ lands in the Cordillera, in northern Philippines, the community organization, Cordillera Volunteer Missioners (CVM), had to review and reflect on its mission statement: Will doing the CSC not compromise the group’s anti-mining position? Taking into account the indigenous communities’ apparent acceptance of mining in their lands, CVM led a review of how the mining company has provided for the communities’ entitlements as outlined in the Philippine Mining Act (RA 7942).

Two multi-stakeholder forums, aimed at creating stakeholders’ “buy-in” for the initiative, preceded the work to conduct the CSC. While debates marked both events, there was consensus among participants on the relevance of the performance monitoring. During the CSC, however, local government officials from the two identified villages and prospective informants from a mining company, were not available for the focus group discussions (FGDs) regarding the implementation of mining-related laws. Not quite disheartened, CVM journeyed ahead and got the participation of the community in responding to the FGD schedule (equivalent to interview schedules’ or structures). Minimal FGDs were conducted, and instead, individual interviews were employed as the researchers later realized that people from the Kankanaey tribe were more comfortable responding to questions and expressing their opinions or positions in private.

The CSC initiative confirmed that the mining company had complied with the requirements of the Mining Act: by providing funds for social development programmes, paying royalties to the indigenous peoples, and publishing this information on its website -- although there is room for improvement. For example, residents near the roadside generally have their projects prioritized for funding. Communities advocate to review how programmes and funds are planned and implemented so that they can reach members of the community who need the services most: i.e., people not in the immediate radius of the mining company but who are often marginalized from services and programmes.

Risks that contribute to mining related development deficits
Catherine Coumans, MiningWatch Canada

Countries that host large scale mining face considerable risks related to, among others, environmental degradation, conflicts, and macro-economic decline. The following brief notes provide some considerations of these risks and their possible mitigation.

There are some lessons that can be learnt from developed countries (such as Canada) where serious long-term impacts from mining are now acknowledged, and governments are being tasked to deal with these impacts. For example, it is now recognized that mining impacts post-closure have potential negative effects on water, land, health and social conditions, as well as a country’s economy. The potential long-term impacts are particularly severe in projects that mine below the water table and in ore bodies that contain sulphides commonly leading to the need to control acid mine drainage and
metal leaching “in perpetuity.” The expense of dealing with over 10,000 legacy mines in Canada is now conservatively estimated to cost federal and provincial taxpayers well over CAD 5 billion dollars (*). In Canada this awareness has calls for regulatory reform to deal with the clean-up and reports have been commissioned to consider funding options for the cleanup of legacy sites.

In order to avoid expensive liability post mining, Asian-Pacific governments must demand realizable bonds at the inception of mining that are set at the full estimated costs of remediation. Governments can seek guidance on how high a bond should be set from independent experts. Bonds should be re-evaluated every 3-5 years to take into consideration ongoing risk assessments and any significant change of the original plans. Just because costly this issue is now acknowledged in Canada, host country governments should not expect Canadian companies automatically to post adequate realizable bonds when they operate overseas. A Canadian mining company has estimated the closure costs of its mine in Guatemala at US$ 17 million. An independent study, however, reviewed publicly available sources and estimated the closure costs at US$ 49 million. The company has posted a bond of US$ 1 million, as of April 2012.

Increasingly, social conflict is a significant risk for mining companies and host governments, but even more so for communities that feel compelled to oppose a project they consider to be harmful to them. These days mining companies are quick to say that they recognize the need for a “social license to operate.” But they consistently oppose existing or proposed measures in host countries that would allow local government units, or communities, the right to reject a mining project (**). Consultations and seeking a social license to operate can only be meaningful if the right to reject a mining project is recognized.

Industry resistance to local governments’ right to oppose mining was most recently in evidence in the Philippines. There have been at least 42 mining moratoriums declared by provincial and municipal governments in the Philippines in recent years (**) under the Constitution and Republic Act 7160 (Local Government Code). These moratoriums reflect decisions made by elected local government officials in response to demands by their constituents. The texts that accompany these declarations usually detail the justification for this decision. These moratoriums should be seen as a clear sign to mining companies that those jurisdictions are not locations where a “social license to operate” is attainable. Rather than recognizing that the power of local government units to make such decisions in the Philippines provides clarity to the industry, the industry, through its own associations, as well as through the Joint Foreign Chambers of Commerce of the Philippines lobbied the Philippines’ President to remove the local powers under Executive Order 79.

Governments that seek to avoid local-level conflicts and ensure that mining is welcome must support any existing legislation that allows local governments and communities to make decisions related to mining on behalf of non-indigenous constituents. Where such legislation does not exist, governments must consider creating such legislation. With respect to indigenous peoples’ rights, it is not sufficient that the legislation exists (as it does in the Philippines). It has to be ensured that the legislation, which mandates that companies obtain Indigenous Peoples’ Free, Prior and Informed Consent (FPIC), is rigorously enforced. This is currently a failure in the Philippines. In countries where such legislation does not currently exist, it must be created in alignment with the UN Declaration on the Rights of Indigenous Peoples.
The well-researched and defined phenomena of the “resource curse” and of “Dutch disease” signal to developing country governments that there is not an automatic correlation between resource development and macro-economic progress. Rather, many developing countries which have prioritized resource development have found themselves poorer over time than before they started to develop their natural resources. There are many reasons for this negative correlation. Given the limited space, I highlight one -- related to the conditions that exist in many, often confidential, contracts signed by mining companies and national governments. These conditions often include lengthy tax holidays and lengthy holidays from import and export duties. Additionally, so-called transfer pricing provisions are particularly pernicious in mining contracts because transfer pricing can be a primary vehicle of capital flight out of a country. Transfer pricing can result in potential revenues for a country leaving for any number of global tax havens – amounting to tax evasion (**).

The three issues discussed point to the broader need for governments to do full costs accounting when considering resource extraction. The costs that must be taken into consideration do not only include the three discussed above – long-term closure costs, costs of conflict, and capital flight -- but many others, including lost development opportunity costs and the rarely accounted for but very substantial institutional costs associated with properly regulating the mining industry (***)

Notes


(***) For more information on transfer pricing and associated capital flight, see: http://taxjustice.blogspot.ca/2010/05/dark-side-of-transfer-pricing-new-aaba.html; http://www.alumni.hbs.edu/bulletin/2010/june/money.html; and http://books.google.ca/books/about/Capitalism_s_Achilles_Heel.html?id=Wkd0--M6p_oC&redir_esc=y [Last accessed on 4 September 2012].


Additional references

For more on potential regulatory reform, see “Wanted: A legal regime to clean up Orphaned/Abandoned mines in Canada”. [http://www.mcgill.ca/jsdlp/sites/mcgill.ca.jsdlp/files/6_2_2_castrilli_0.pdf].
Need to strengthen enforcement of environmental laws in India
Amarendra Das, Utkal University

In India, a plethora of rules govern the mining activities. As per the rules in India any mining project exceeding the land area of 5 hectares of land shall have to submit an environmental impact assessment plan, a mining operation plan, and a mining closure plan before getting the license to extract minerals. As per the Environment Impact Assessment (EIA) Notification of 2006 issued by the Ministry of Environment and Forest all the proposed mining projects owners have to do a public hearing to get local people’s approval.

In India mining activities are primarily regulated by three state agencies—State Pollution Control Board, State Forest Department, State Director of Mines — and three central agencies – Ministry of Environment and Forest, Indian Bureau of Mines (IBM) and Ministry of Mines. It is unfortunate that to date environmental performance of mining firms has been far from satisfactory. This is also due to weak enforcement of mining related laws.

The inspecting authorities, like IBM, Director of Mines, and State Pollution Control Board, are supposed to inspect the mines sites and assess the compliance of mining companies with their mining plans and environmental management plans. However, due to understaffing and lack of resources like money and vehicles, the inspecting officials fail to inspect the mining sites at regular intervals. Similarly, in some cases, mines are owned directly by politicians or other influential people (see, for example, an article in the Times of India 2012). In such cases, the regulatory authorities adopt lenient approaches. Another factor behind the weak enforcement of rules is the lack of coordination among different agencies. In case of violation of rules, regulatory authorities do not have enough power to take stringent action against the mining firms. The maximum action usually taken is cancellation of the lease or closure of the mines without any criminal proceedings or cash fines.

Therefore, in order to improve the environmental compliance of mining firms in India enforcement mechanisms need to be strengthened. Strengthening the regulatory authorities with additional staff, vehicles and other modern equipment (such as tracing through GPS) as well as rendering power to take stringent action against the incompliant firms can improve environmental outcomes. While giving the options to mining firms to comply with the existing rules, provisions should also include severe penalties in case there is a breach of rules.
Policy innovation for better governance of the social impacts of mining
Daniel Franks, University of Queensland

Mining and energy developments bring change. They can negatively impact the environments, communities and economies near ore deposits and processing sites; simultaneously they can also bring economic, social and sometimes environmental opportunities through the conversion of the ore body into financial resources; the development of skills, infrastructure and businesses; and the investment of those resources into social and environmental initiatives. Change is experienced very differently by different people depending on a multitude of factors including, values, history, livelihoods, demographics and, of course, the distribution of the costs and benefits of a project.

The process of how change is managed can have a big influence on the outcomes. It is sometimes argued that to attract extractive resource developments developing country governments should reduce business costs and put in place policies and laws that expedite or prioritize mineral and energy resource development. Such an approach, however, can be a disincentive for investment by experienced and responsible resource developers not only because it can increase business risks and jeopardize the prospects for long-term success of developments, but also because weak governance environments tend to attract inexperienced companies. Significant costs can be experienced by companies in conflict with communities due to delays, shutdowns, and the closure of projects (see Davis and Franks 2011).

When stakeholders have an opportunity to actively participate in the decision-making of resource developments and ensure that the project is consistent with their values and livelihoods, their experience of those developments tends to be more positive and their attitudes toward projects more supportive (though this is not exclusively so).

Public participation may take the form of local community consultation (and increasingly consent), opportunities for civil society involvement in impact assessment processes, or more active participation such as involvement in ongoing community consultative committees, the negotiation of community development agreements, opportunities for dispute resolution, or participatory environmental and social monitoring initiatives. In the state of Queensland, Australia, social impact assessment and multi-stakeholder governance processes were strengthened through the Sustainable Resource Communities Policy. The policy also introduced Social Impact Management Plans as an ongoing process across the life-cycle of projects (see Franks 2012). In the Philippines and Sierra Leone public access to mining lease information is provided through online repositories. In Peru local communities have been involved in participatory water monitoring projects.

There are also examples of policy innovation within companies to better address the social impacts of resource development. A South African-founded company has developed the Socio-Economic Assessment Toolbox as a requirement at their mines. An international company based in Switzerland requires sites to develop a complaints and grievance handling process. A British-Australian multinational requires sites to develop community plans (sometimes undertaken as a community strategic planning processes in collaboration with local government). International institutions, such as the International Finance Corporation (IFC), have also developed performance frameworks for environmental and social issues.
These initiatives point to greater flexibility for governments to implement policies that mandate better social and environmental performance for all companies operating within their jurisdiction. A policy framework that encourages responsible mineral resource development and greater public and civil society involvement in decision-making can improve outcomes for communities while still maintaining a reasonable investment climate.

**Extractive industries and sustainable development**

Brian Kohler, IndustriAll Global Union

Sustainable development is development that meets the needs of the present without compromising the ability of future generations to meet their own needs” – as per the Brundtland Commission (1987). Sustainability addresses three broad areas of needs that are not easily separated from each other: social, economic, and environmental. Social sustainability begins with respect for human rights, cultures and communities, and values such as fairness, equity, and justice. Economic sustainability refers globally to the smooth functioning of the economic system for the benefit of all peoples (including opportunities for growth of the economy of less-developed nations), and locally to the continued financial viability of communities and enterprises and their ability to provide decent work. Environmental sustainability results from a commitment to minimize environmental impacts and resource consumption of a production process “cradle-to-grave” from raw materials to products. Without the preservation of the natural environment, neither social nor economic sustainability is possible.

A necessary pre-requisite in the journey to sustainability is to create and implement good industrial policy. Cleaner and more sustainable industries can benefit both workers (and the families and communities that depend on them) and the environment. The economy also benefits as a significant number of decent jobs could be created.

Dependency on the extraction or harvesting of natural resources is a common situation in developing countries, notably in small communities and remote areas where there are few other economic opportunities. The social impacts of resource industries are very important: The fate of entire communities may hang from a single industry.

While acknowledging that natural resource extraction or harvesting is essential to the economy of many regions, such land uses may compete with traditional, agricultural, recreational, and cultural needs. Indigenous peoples tend to be most dependent on their lands for survival. Governments, as trustees of countries’ resources on behalf of their people, must examine the various short-term drivers of resource exploitation and resulting economic displacement, vis-à-vis the need for long-term sustainable development. For example, misguided agricultural subsidies can encourage the conversion of forest lands to unsustainable forms of agriculture that will, in a few years, leave the region with neither forests nor agriculture. Communities and cultures must be respected when their needs come into conflict with commercial interests.

In general, there is nothing that compels investor or management decision-making to take the slightest notice of long-term sustainability issues. The general consensus in most business schools is that they should emphasize short-term gains. Therefore, good national and global governance of the financial markets, including judicious use of instruments such as taxes and subsidies, is one of the
prerequisites for sustainability. Globally, a financial transactions tax would not only provide significant funds for sustainable development, but would help stabilize the global economy and discourage predatory speculation, as has been explained by Nobel Laureate James Tobin and others. Governments should continue to value the role for the public sector in resource development; and for crucial resources such as water, the public sector must be preferred because they are essential public goods.

Governments also must acknowledge the crucial role that civil society can play in policy decisions. In particular, trade unions have significant capacity to comment on the social dimension of sustainability. They have demonstrated this capacity at all of the World Summits on Sustainable Development, at all of the UN Framework Convention on Climate Change (UNFCCC) Conferences Of the Parties (COPs), and at many other international and national consultations. While it is fashionable for governments to talk of partnering with business, all of the social partners must be equal participants in the discussions for good decisions to result.

An effective process of consensus decision-making facilitated by honest brokers has succeeded in balancing, for example, the land claims of indigenous groups with the need for resource development. Such processes require effort, time, understanding, and above all respect for the peoples affected, including civil society, trade unions, local communities, and in particular disadvantaged populations. Their inclusion may require education, training and funding; but in the end inclusive processes almost always result in better decisions. For more on this subject, including case studies, see various publications and studies produced by Canada’s National Round Table on the Economy and the Environment, under the initiative “Building Consensus for a Sustainable Future”.

International institutions and instruments, for example, the UN Declaration on Human Rights, ILO Conventions, and the ILO Decent Work Agenda point out how development should take place. The participation of the local communities as workers, partners, operators and owners ensures that some of the benefits of resource exploitation accrue to the inhabitants of the land. Education and training opportunities - sometimes in non-traditional formats - can play an important role.

Impact assessments (in the cases in which they are conducted) frequently examine only impacts on the natural environment. Sustainability demands the examination of the complex interaction of environmental, economic, and social impacts. There has been quite a lot of work done on useful indicators for all of the dimensions of sustainability, for example, see the Global Reporting Initiative (GRI) Guidelines. Unfortunately, some indicators, particularly those examining the social dimension, tend to be qualitative rather than quantitative, but this does not make them any less important. The best approach to doing an impact assessment as well as risk assessments is through multi-stakeholder consultations in a facilitated, consensus decision-making process. Risk assessments tend to differ depending upon whether one is doing the assessment or facing the risk.

The future for any government of any country depends on decisive action to build a sustainable future. Leaving the problem of sustainable development for our children to deal with cannot be an option, since the window of opportunity to effectively act may close before they get their chance. Yes, we have a responsibility to worry about jobs and the economy, but there are no jobs on a dead planet.
Pakistan case study on gas exploration in Kirthar National Park
Gul Najam Jamy, UNDP Pakistan

Introduction

Pakistan is a strategically located country in South Asia with a population of over 177 million. It is home to several extractive industries, including oil and gas, coal, marble and precious stones. The country is known to have several large reserves of oil and gas; however, most of these remain untapped due to variety of reasons, including lack of advanced technologies, and security situation in parts of the country where these reserves are mostly located. Pakistan has crude oil recoverable reserves of 247.53 million barrels as of December 31, 2011, while it extracts about 24 million barrels per annum and imports about 51 million barrels to meet national demand (*).

A large number of local and multinational oil and gas exploration companies operate in Pakistan and are subjected to Environmental Impact Assessment (EIA) Guidelines specifically developed for the Oil & Gas extractive industry. These Guidelines were developed within the larger of key global agendas and guidelines, including, but not limited to, United Nations Agenda 21, UN Convention on Biological Diversity, UN Framework Convention on Climate Change, Kyoto Protocol and World Bank Guidelines on Environment.

Although Pakistan’s oil and gas sector is considered more compliant of its national EIA Guidelines, compared to other extractive industries, in the initial years (**) there have been instances, including the case of the Kirthar National Park, where environmental concerns were not addressed fully due to the absence of any environmental act or guidelines for oil and gas sector which were promulgated a few months after the license for drilling was awarded. However, there were some provincial laws related to protection of forests and wildlife. This led to conflict between the oil and gas sector and key stakeholders.

Kirthar National Park

This case study relates to oil exploration in the Kirthar National Park, which was included in the UN World List on National Parks in 1973. The park is situated in the south-western part of Sindh province, stretching from north-east of Karachi district to Dadu/Larkana districts. The total area of the park is more than 308,000 hectares. The park belongs to International Union for the Conservation of Nature (IUCN) Category II Protected Area, designated mainly for ecosystem preservation. It is home to several rare and threatened animal species like the Sindh Ibex, Urial sheep and the Chinkara gazelle (***)

Exploration in the Kirthar National Park and Pro-environment Protests

In July 1997, Government of Pakistan invited a British oil company to search for natural gas believed to be trapped in the porous rock beneath the park. In 1998, two oil companies set up a joint-venture for prospecting in the park. However, after a series of protests by pro-environment groups, led by IUCN Pakistan, World Wide Fund for Nature (WWF) and local advocacy NGOs, the Government ordered a baseline study of the park’s ecological status to determine if the exploration should be allowed.

This forced the two companies to suspend the EIA of the park which had already begun. This was the first victory for the environmentalists who were of the opinion that an EIA by the oil companies in
Kirthar violated the country’s wildlife laws because an EIA amounted to being the first step toward exploration. However, they supported a baseline study of the park – efforts were made to gather enough scientific data on the ecological status of the park to help determine whether or not there could be any commercial activity within the park. The environmental lobby launched a media campaign in the national press against the project and started collecting signatures in support of its protest. This was in contrast to the stance of the provincial government which considered that the protests were “anti-development.” They claimed that gas prospecting would result in economic benefits that would transform the extremely poor area. The scientific debate around the proposed exploration activity and the public protests finally forced the oil companies’ joint venture to bow out of this activity under the pretext of any extraction being uneconomical, though they did undertake some drilling despite all protests.

Conclusion

Pakistan may not have an enviable record of public interest groups coming together for a common cause. However, this was an important case, related to the extractive industry, where NGOs, public interest groups, media and common citizens joined hands. The key factors were an exact interpretation of hitherto seldom applied local conservation laws, national environmental law, EIA Guidelines, and public pressure which forced an activity - that could threaten a major eco-system - to be abandoned.

Notes

(*) See chapter 14 of the Pakistan Economic Survey 2011-12.

(**) Oil and gas exploration and extraction has been going on since the early 1950s, but it gained momentum during the 1980s. Pakistan’s first Environmental Protection Act is dated 1997 while EIA Guidelines for Oil and Gas Sector were also produced in late 1997.

(***) The Sindh Ibex or Turkman Wild Goat (Capra aegagrus blythi) is a vulnerable wild goat commonly native to southern Pakistan. This wild goat is gregarious, and if undisturbed will congregate in fairly large herds. The urial (Ovis orientalis vignei), also known as the arkars or shapo, is a subspecies group of the wild sheep Ovis orientalis. The chinkara, or Indian gazelle, (Gazella bennettii) is a species of gazelle found in south Asia.

Social issues management and the Sakhalin-2 project in the Russian Far East
Emma Wilson, International Institute on Environment and Development

The Sakhalin-2 oil and gas project, off the eastern shores of Sakhalin Island in the Russian Far East, is seen as a pioneer of social impact assessment and community engagement in Russia, notably in regard to indigenous peoples’ issues (*). The company has engaged in extensive lesson-learning and dissemination of its experience. This is useful for other projects in Russia and for the Asia-Pacific region more broadly, especially in providing models for key impact assessment documents; in illustrating attempts to integrate international and national standards and practices; and in the inclusion of disadvantaged communities (in this case the local indigenous peoples) into decision-making
processes. The impact assessment and stakeholder engagement documentation is available in an electronic library and can be used as reference for social issues management on similar projects.

The Sakhalin-2 project started up in the 1990s, producing its first oil in 1999 (**). The project has come under considerable international scrutiny due to the presence of multinational corporations in the project consortium and the principal company’s policies of transparency, which have ensured that more information is made available to the public – and consequently attracted more interest. The project also sought project finance from international financial institutions, notably the European Bank for Reconstruction and Development (EBRD). The EBRD provided a loan for Phase I of the project, and then carried out a rigorous due diligence process – including an analysis of the environmental and social risks of the investment – before ultimately deciding not to provide a loan to Phase II (due to environmental considerations).

The Sakhalin-2 project online library includes a range of documents that reveal the extent of the project’s attention to stakeholder engagement and analysis of potential impacts and stakeholder concerns. This documentation includes a social impact assessment (SIA), a resettlement action plan, an indigenous peoples’ development plan, and a company-community grievance mechanism. The SIA was completed in 2003, as part of an international-style environmental, social and health impact assessment (ESHIA), as required by the project lenders. The international-style impact assessment is carried out according to international good practice standards (generally these are aligned with the performance standards of the International Finance Corporation), which are often higher than national impact assessment requirements, and generally cover a broader range of topics. An addendum was completed in 2005 to address outstanding concerns of lenders and stakeholders. Since then the implementation of the related management plans has been closely monitored, with reports published online.

In 2005 the indigenous peoples and local environmental activists protested against the apparent lack of attention to project impacts on traditional livelihoods. They demanded that Sakhalin Energy complete an ethno-cultural impact assessment, referring to the Akwe: Kon guidelines on cultural impact assessment (produced by the Convention on Biological Diversity)and the Russian form of anthropological expert review of industrial projects, known as etnologicheskaya expertiza (**). With no methodological guidelines in Russian law for the etnologicheskaya expertiza, the Sakhalin-2 project commissioned a review of the existing social impact documentation. This formed the basis of the Sakhalin Indigenous Minorities’ Development Plan (SIMDP), which developed in collaboration between the company and indigenous representatives (**). Phase I was from 2006-2010 and Phase II (2011-2015) was approved in 2011.

The Sakhalin-2 project has pioneered many approaches. For example, the company-community grievance mechanism was assessed by the Harvard Kennedy School for the UN Special Representative on Business and Human Rights and has informed the development of principles relating to grievance mechanisms (Rees 2011). The Sakhalin-2 project is the first in Russia to apply the principle of free, prior and informed consent (FPIC) to its activities, albeit in a very limited way. During development of Phase II of the SIMDP, the plan itself was developed in collaboration with the indigenous peoples, and the company went through a process of eliciting their approval of the plan before it was finalised (**). The Sakhalin-2 project has also made efforts to train its contractors in social performance management – including engagement with communities; identifying and understanding social issues
(from labour issues to road safety to indigenous peoples land rights); and social issues reporting. The company provides assistance in preparing a social performance management plan; training on key aspects of social performance, such as the Code of Conduct and social issues reporting; and contractors must have their own community liaison officers or social focal points (Wilson and Kuszewski 2011, pp. 42-43).

It is worth noting that Sakhalin-2 is atypical for Russian projects, and there is a lot of other interesting and diverse experience of company engagement with indigenous and local communities, by Russian and foreign companies alike (********). However, Sakhalin-2 does provide rich learning material and importantly this experience can be seen as very accessible.

Notes

(*) For example the indigenous peoples’ development plan was awarded a Corporate Philanthropy Leaders award for Best Programme for Corporate Philanthropy Policy and Company’s Social Investments Principles (http://www.sakhalinenergy.com/en/default.asp?p=channel&c=1&n=400).

(**) The consortium also includes two Japanese companies.


(****) See the online library at: http://www.sakhalinenergy.com/en/library.asp (under ‘Social aspects/stakeholder engagement’)


(******) For Russian speakers, the following website is a good place to start for material on social issues management relating to a range of industrial projects in Russia: http://www.ethnoconsulting.ru/

References


Human development impact assessment tool of trade policy: An application to extractive industries
Yumiko Yamamoto, UNDP Asia-Pacific Regional Centre

Previous contributors pointed out a lack of participation of stakeholders in decision-making processes related to investment in extractive industries (*). Even at the state level, consultation on trade policy and coordination of trade and development goals among different ministries and between ministries and parliament has not been institutionalized in many countries.

Multi-stakeholder consultation (**) is embedded into the process of the Human Development Impact Assessment (HDIA) of Trade Policy since the HDIA is not merely an analytical tool; rather, the process of conducting the HDIA is itself a form of capacity development of stakeholders to understand the linkages between trade and human development. I would like to introduce the concept of the HDIA since the tool can be applicable for the assessment of existing or future extractive projects given the fact that the majority of (foreign direct) investment in mining is export-oriented.

Human development has two perspectives. One is the formulation of human capabilities, which reflects the combination of functioning – being and doing – in which one sees as value and has reasons to value. The other is the real opportunity to accomplish what one values by using these acquired capabilities. The HDIA, therefore, needs not only to assess whether people are the beneficiaries of economic growth (led by investment in and exports of mines, in this case) but also whether such trade reform ensures that people have equitable access to human opportunities so that they become the agents of development. The HDIA is not a ‘one size fits all’ tool but impacts can be analyzed through four essential pillars of human development – namely, productivity, equality, sustainability, and empowerment.

Investors say extraction of natural resources will create jobs and bring large revenues to the country. Healthy people with relevant education and skills can obtain jobs in mines (productivity). But who are likely to benefit most? Do all people have equal access to new job opportunities (equity)? (*** ) Other aspects of equity and of sustainability and empowerment have been discussed in the last several weeks: e.g., do all people benefit from increased national revenue generated from mining sector? Does governing of financial and environmental resources not compromise the ability of future generations to improve their welfare? Are people participating in decision-making processes that affect their lives?

The HDIA should also look at direct impacts as well as subsequent impacts. While an example of the direct impacts can be environmental impacts such as land degradation from the mineral extraction, subsequent impacts also can be loss of livelihoods in the affected communities. Its gendered impacts can stem from the gender division of labour in agriculture and forestry and on an increase in unpaid work to mitigate or adapt to the negative environmental impacts (****).

It is possible to undertake a HDIA before, during, and/or after extractive projects are in place. An ex-ante assessment is intended to identify in advance the effect of extraction. It can inform the choice, design, and sequencing of alternative policy options. After the project starts, the monitoring of its impacts can lead to refinement of the policy; to a reconsideration of the pace/sequencing or institutional arrangements of the policy; or to the introduction or strengthening of mitigation
measures. An ex-ante assessment examines the actual impacts of extraction, which helps to suggest mitigation measures if negative impacts (e.g., land degradation, widening inequalities) are observed.

Ideally, governments would lead the HDIA since governments need to verify the outcomes of the assessment and implement policy measures that facilitate positive impacts (e.g., revenue redistribution mechanisms) or ameliorate the negative impacts of extraction. Policy-makers from all relevant ministries (*****) and the parliament -- together with representatives of the groups (likely to be) affected by extraction, experts from academia, and CSOs -- need to be part of the HDIA exercise in order to democratize the debate on which groups are most likely to be affected and how they are affected. If the voices of the stakeholders cannot be well represented in a setting of consultations at the national level, other means to reflect their concerns and opinions in a collective manner, such as town-hall meetings, focus group meetings, surveys, and interviews can be held. Stakeholders also need to review, verify, and monitor the outcomes of the HDIA. The HDIA should not be a one-time exercise per extractive project. The ultimate goal of the HDIA exercise would lead to an institutionalization of multi-stakeholder consultations in decision-making processes related to export-oriented investment projects.

Notes

(*) For example, J.E. called for fair and equitable consultations. Horowitz illustrated a case of Nickel mine negotiation processes in New Caledonia, where women and youth were excluded from the process by their own senior male community leaders. Perez wrote that community participation rarely happens during environmental impact assessments (often conducted by companies that aim to explore mining).

(**) By referring to the case of the Japan-Philippines Economic Partnership Agreement (EPA), Bernabe (2009) argues that multi-national consultations in policy formulation could have produced a more development-oriented outcome of the EPA as well as a speedy implementation of the agreement. The EPA’s entry into force had been delayed for two years because some concerns over the environmental and social impact of the trade agreement were raised by the Philippines’ Senate during the process of ratification.

(***) Mining is a largely male-dominated industry. For example, male share of employment in mining and quarrying are 86.3 percent in Bangladesh (2005), 79.4 percent in China (2007), 87.7 percent in Indonesia (2008), and 64.3 percent in Mongolia (2008) (Employment general level by economic activity, LABORSTA Internet - Last accessed on 13 September 2012). Similar to other industries however, men and women have different statuses in mining. Men tend to get the high-paid formal jobs in capital-intensive large mines while women are concentrated in smaller-scale, often informal and low-paid mining such as in gem mining.

(****) Another example of direct impacts can be job creation in large-scale mines. Subsequent impacts include the emergence of new services sector near mining sites, including lodges and dining. Such sectors might create jobs for women who are considered as ‘care-takers’; however, some other women are also drawn into commercial and transactional sex with male migrant workers. An HIV risk exposure is also high in mining and logging towns. See UNDP and Secretariat of the Pacific Community. 2010. Migration, Mobility and HIV: A rapid assessment of risks and vulnerabilities in the
In addition to ministries of mines and commerce, the ministry of finance and planning are the key institutions for taxation and other institutional setting regarding redistributing revenue from extractive industries. For economic and social impacts, ministries of health, labour and women’s affairs are also important to debate and monitor impacts on various social groups. See Note 4 above.

References


Resource revenue sharing with subnational governments: Opportunities and challenges
Varsha Venugopal, Revenue Watch Institute

Several national governments share resource revenues with regional and local governments (*) for reasons including compensation for negative social/environmental impacts and in response to the notion of local ownership of resources (**). In the Democratic Republic of Congo, the 2005 constitution established that provinces receive 40 percent of central government revenue, quadrupling their budgets. In Peru, oil and mineral producing regions receive 50 percent of the income tax paid by extractive sector companies. Within the regions, regional governments and public universities are assigned 20 percent of that amount, while local governments are assigned the remaining 80 percent. In all cases citizens can only benefit from revenue sharing if there are sound and transparent systems and processes for generating, sharing and spending resource revenues and subnational governments can effectively manage such revenues.

A sound and transparent national and subnational regulatory framework can enable subnational actors to manage natural resources effectively and minimize opportunities for wastage, mismanagement or conflict. For example, the Indonesian revenue sharing regime has created a disincentive for districts to save windfall revenues by effectively taxing away unspent funds. Aligning the regulations with incentives for districts to spend effectively would allow for citizen priorities to be met. Transparency in production volumes, sale prices and the revenue sharing formula will allow citizens to monitor revenue collection and spending and ensure public confidence in the distributions of revenues from companies and the national government. A recent Revenue Watch Institute (RWI) research paper focusing on two districts in Indonesia observed that expenditure transparency can have a significant impact on citizen political engagement and demand for good governance in windfall environments (***)

While potentially creating a unique opportunity to finance local development needs, sub-national revenue sharing can produce unprecedented challenges to local fiscal management and development planning capacities while potentially transmitting price volatility and other economic shocks to local economies. Relevant subnational government knowledge and capacities are required to collect and spend revenues effectively. In Ghana, the first Extractive Industries Transparency Initiative (EITI) report indicated that significant revenue losses were incurred due to missing payments.
at the subnational level. Central revenue transfers were also subject to long, unjustified delays. The EITI report provided a full mapping of revenue flows, exposing leakages and bottlenecks that were caused in part by the lack of understanding of revenue systems by district governments and communities. Despite addressing leakage issues, Ghanaian district governments continue to spend resource revenues primarily for recurrent expenditures, neglecting that these revenues will dry up once extractive projects close.

To optimize benefits from shared revenues for the citizens, RWI promotes sound, transparent systems and processes and builds subnational government capacities to manage resource revenues. Sound regulations include improved resource revenue sharing laws. In Peru, RWI and its local partners assisted subnational governments and civil society to formulate a proposal for improved resource revenue sharing and a bill is currently being debated in the national parliament. Transparent systems and processes could be accomplished through laws as well as through other institutionalized mechanisms. In Indonesia, advice and assistance by RWI to local Civil Society Organizations (CSOs) led to the passage of local transparency legislations in two districts. These laws require transparency in resource revenue received and spent by district governments as well as social and environmental impacts of extractive companies (**). In Nigeria, RWI in partnership with local CSOs developed a multi-stakeholder platform to monitor resource revenues collected and spent by the Bayelsa regional government (****). Increased subnational government capacity includes increased information, knowledge and technical know-how and having systems in place to institutionalize learning. RWI and its local partners assisted Peruvian regional governments with predicting resource revenues they should receive from the central government. As a result, absolute spending, spending effectiveness and allocations to priority sectors improved in regions that benefited from the assistance.

Resource revenue sharing with subnational governments can only benefit citizens if accompanied by enabling regulatory framework, transparency in processes and outputs, and increased local government capacity to manage resource revenues.

Notes

(*) Of the 58 resource-rich countries listed in the Revenue Watch Index, 31 have resource revenue sharing mechanisms in place.


(****) Additional information is available at http://www.revenuewatch.org/publications/indonesia-fueling-future, last accessed on 13 September 2012.

(*****) Additional information is available at http://www.revenuewatch.org/publications/nigeria-uphill-struggle, last accessed on 13 September 2012.
Caution with ‘best practice models’
Glenn Banks, Massey University

I really appreciate the various initiatives and perspectives offered by the participants over the past couple of weeks. Reflecting on some of them I would however offer a few words of caution in relation to some of the ‘best practice’ models being advocated here. The examples I draw on come from the Melanesian setting (and Papua New Guinea) and focus on two issues: the ‘universality’ of ‘International Best practice’ models, and comment on my involvement with a novel form of Impact Assessment: The development of an Inward Migration Plan.

Many of the best practice models (e.g., codes around involuntary resettlement and free, prior informed consent [FPIC]) advocated by institutions such as the World Bank/International Finance Corporation (IFC) are based on a particular model of ‘community’ that presupposes a degree of stability of membership and institutional relationships -- That ‘the community’ giving consent (or otherwise) is discrete and can be identified and ‘represented’ in some way that allows for a ‘community’ decision to be made. This is contestable in many instances and in Melanesia it is particularly difficult. As Macintyre (2007) has demonstrated with regard to FPIC, and Filer (1997) has argued, this is because the resources sector is embedded within a process marked by a ‘characteristic diversity and instability of the political relationships between persons, institutions, and communities that constitute [Papua New Guinea’s] national policy process’ (p. 94). In terms of ‘best practice’ this can mean, as Emma Gilberthorpe and I have recently argued for the Porgera case that “[t]he complexity and evolution of the local community… was more than a match for the World Bank’s best planning frameworks” (Gilberthorpe and Banks 2012). This means that companies, governments, academics and NGOs need to be wary of and constantly vigilant to the shifting internal dynamics and tensions with ‘the communities’ around the mine operations, and the structures, relationships and institutions around them need to be flexible enough to be able to accommodate (and monitor) these shifts.

In terms of Impact Assessments, I was involved last year in the development of an Inward Migration Plan (IMP) for a proposed major mining development in Papua New Guinea. Inward migration is regarded as perhaps the most destructive of the social processes associated with large-scale mining in Melanesia. Driven by economic opportunities associated with the mines, much of the inward migration is along kinship lines. It generates complex local contests around identity and representation, puts immense pressure on already stretched environmental resources, and adds to social problems such as sex work, alcoholism and violence (Banks 2009). As a result, communities and the companies seek to find ways limit this migration of people to the mine area. The IMP sat alongside, and to a large extent was integrated with, a series of other Social Management Plans, that in turn fed into and were also derived from a typically systematic social impact assessment (SIA). The IMP was based on the IFC Handbook for Addressing Project-induced Migration. The IMP itself was, to my knowledge, the first specific, comprehensive such plan in the Asia-Pacific region. It sought to both identify the likely make-up of migrants and their pathways to the proposed mine site, and developed a holistic approach to the development of strategies to reduce and mitigate the effects of these migrant flows on the indigenous communities in the area, all in a context where freedom of movement is constitutionally defined.

The strategy developed consisted of three major elements: A focus on the identification and registration of locals to ensure that both communities and the company could enforce a stringent local preference clause for employment and other benefit streams (a lax approach to this provides real
opportunities for migrants to become economically established in the project area); second, a regional approach to the spread of project infrastructure (and employment centres) so as to reduce the attraction of the immediate project area through the development with the government of regional ‘hotspots’ or growth centres; and finally, the strengthening of partnerships with the local communities to build a strong awareness and capacity to act from the communities themselves.

References


Indigenous communities’ participation essential in decision-making that affects their territories
Juan Pablo Soler Villamizar, Movimiento Ríos Vivos

In Colombia, the 1991 Constitution has radically changed the participation of the indigenous communities in the decision-making that affects their territories. The recognition of ethnic communities as individuals with rights and their ability to participate in the National Congress was a significant progress for the country.

However, several bills have been pushed forward, such as the draft Statute of Rural Development and the Forest Law, which may threaten the well-being of indigenous communities and other ethnic groups. For instance, the Law 21 (1991), related to the consultation with indigenous communities, ratified the provisions under the International Labour Organization (ILO) Convention 169. The Decree 1320 (1998) was aimed at regulating the prior consultation for natural resource mining exploitation. Nevertheless, this prior consultation is not applied to ancestral, collective or untitled lands. It should be noted that even if the mentioned legislation establishes specific provisions regarding the indigenous communities’ lives and livelihoods, they were not consulted. For this reason, the Constitutional Court declared that the Statute of Rural Development and the Forest Law was incompatible with both the Constitution and the ILO Convention 169, since the indigenous communities were not consulted in legislation that affects Colombia as a whole. In the same way, the courts have tried to annul it and clarify its scope. These mentioned cases were considered a weakening of the indigenous peoples’ autonomy in their territories. Additionally, the state of indigenous peoples’ rights has worsened compared to what is stated under the 1991 Constitution (*).

It is important that the Constitutional Court’s decision attempted to clarify the consultation processes, avoiding the use of a “one-size-fits-all” model in indigenous peoples’ consultation. In this way, the
courts take into account the ILO Convention 169 (Art 6 and 7), which establishes that the consultation processes must respect the practices, customs, methods and decision-making procedures of indigenous peoples. It was great progress for indigenous peoples but they were not completely consulted or consulted ‘in reality.’ Moreover, the Courts established that consultations should be held in indigenous languages, in order to avoid their possible manipulation when accepting the projects, since they do not clearly understand Spanish.

Recently, the courts have attempted to clarify the consultation process in the extractive projects with indigenous peoples, which show its increased commitment in the protection of their rights. However, it is not completely clear whether result of this enquiry is relevant in the implementation of extractive projects.

In the first place, it is necessary to raise indigenous peoples’ understanding about the external legislation that affects their autonomy in their territories, so as to assure that their rights are respected. Indigenous communities and their legal partners must ensure the inexistence of defects and/or irregularities in the provided instruments for their decision-making participation in the extractive-related projects and its legislation. Otherwise the achievements reached that protect indigenous rights are reversed.

In the second place, it is urgent to understand that indigenous communities have been victims of the colonial invasion, in various parts of the world. This has resulted in the occupation of many of their territories. Indigenous peoples have experienced forced displacement from their territories, and have had to live in inhospitable places in order to survive. Nowadays, extractive industries have raised their interests in further developing the now occupied places. In the neoclassical economic conception, the sustainable development model has limited the understanding that other human beings’ lives should be respected. In our experience, this limited understanding results in the disrespect of indigenous beliefs, as well as their perceptions of the world.

For example, in Colombia, since the late 1990s there is an oil exploration project in the indigenous U’wa territory. The U’wa have stated that oil is the blood of Mother Earth in their culture, just like the blood in our body. For this reason, allowing its extraction involves losing their beliefs and allows their destruction of their culture, people and Mother Nature.

In this sense, it is a priority to reflect about the extractive model, which should be to readdress the necessary or minimum required consumption. This would try to protect ecosystems and communities dependent on them for their inherent water sources. Extractive industries should consider the impacts that their operations would have beyond borders. For instance, its effect on the biodiversity and relevant water sources.

Notes


An additional reference is:
Participación de las comunidades indígenas esencial en la toma de decisiones que afectan sus territorios

[Nota de Facilitación: Juan Pablo Solero Villamizar es parte del Movimiento Colombiano en Defensa de los Territorios Afectados por Represas, o "Movimiento Ríos Vivos". Durante más de ocho años ha acompañado las comunidades indígenas que enfrentan conflictos ambientales en sus territorios, que incluyen los causados por las represas, extracción de petróleo, la minería a gran escala y la privatización de los servicios públicos en Colombia. El autor analiza algunos de la legislación promulgada para proteger los derechos indígenas. Hace hincapié en que la participación de las comunidades indígenas, utilizando sus propios idiomas, en las decisiones que afectan a sus territorios es esencial para preservar sus derechos.]

Para los pueblos indígenas de Colombia, la participación de las comunidades en las decisiones que afectan a sus territorios, tomó un giro fundamental con la Constitución en 1991, pues se reconoció que "las comunidades étnicas tienen derechos y consideraron que su participación en el Congreso era fundamental". Esto, sin lugar a duradas, fue un gran avance para los derechos indígenas en el país.

Sin embargo, varios proyectos de ley que han sido promovidos posteriormente, como el proyecto de Estatuto de Desarrollo Rural y la Ley Forestal, han puesto en riesgo el bienestar y los derechos ganados por los indígenas, comunidades indígenas y otros grupos étnicos. La Ley 21 (1991) ratificó las disposiciones contenidas en el Convenio de la Organización Internacional del Trabajo (OIT) 169 (relativa a las consultas con las comunidades indígenas; posteriormente el Decreto 1320 (1998) intentó reglamentar la consulta previa para la explotación minera de los recursos naturales, pero la consulta no se aplica a ancestrales o colectivo, tierras sin título. Aunque estas leyes tuvieron discusión respecto a las comunidades indígenas y establece disposiciones relativas a sus vidas y medios de subsistencia, las comunidades indígenas no fueron consultados. Sobre la base del hecho de que las comunidades no fueron consultadas por la legislación que afecta a todo el país, en 2011, la Corte Constitucional declaró el Estatuto de Desarrollo Rural y la Ley Forestal incompatible con la Constitución y el Convenio 169. Los tribunales han tratado de anularlo mientras tratan de aclarar su alcance. Estos casos fueron vistos como un debilitamiento de la autonomía de los pueblos indígenas en sus territorios y, posiblemente, erosionando los pueblos indígenas los derechos que había adquirido en la Constitución de 1991 (*).

Es importante resaltar que la decisión de la Corte trató de aclarar los procesos de consulta, señalaron que es imposible usar un "modelo único" de consulta para todos los pueblos indígenas. De este modo, el Tribunal relacionado con el Convenio de la OIT 169 (Art 6 and 7), que establece que el proceso de consulta debe ser respetuoso de las prácticas, costumbres, métodos y procedimientos de decisión de los pueblos indígenas. Este es un gran avance para los pueblos indígenas porque los pueblos indígenas que asisten a las reuniones sobre los proyectos fueron presentados a menudo el proyecto a grandes rasgos, sin entrar en el proceso de consulta real. Por otra parte, el Tribunal señala que las consultas deberían adelantarse en las lenguas indígenas, ya que a menudo se ha informado de que los pueblos indígenas han sido manipulados para que acepten los proyectos, ya que no entienden castellano con fluidez.
Los recientes intentos de los tribunales para aclarar el proceso de consulta con los pueblos indígenas sobre los proyectos extractivos muestra cierto compromiso con la protección de los derechos indígenas. Sin embargo, ha habido una gran brecha en la determinación de si el resultado de esta investigación es vinculante o no cuando la aplicación de los proyectos de extracción.

Para asegurar que el proceso de consulta se respeten los derechos de los pueblos indígenas, en primer lugar, es necesario que los pueblos indígenas puedan comprender la legislación externa que afecta a la autonomía de los pueblos indígenas en sus territorios indígenas. Cuando los proyectos extractivos y la legislación pertinente se proponen, en los primeros momentos, las comunidades y sus socios legales deben asegurarse de que no hay defectos o irregularidades en los instrumentos ya previstos para la participación en la toma de decisiones. De lo contrario los logros alcanzados para proteger los derechos indígenas se invierten.

En segundo lugar, es urgente comprender que las comunidades indígenas han sido víctimas de la invasión colonial, en varias partes del mundo. Eso hace que muchos de sus territorios que hoy ocupa. Los pueblos indígenas han sufrido desplazamiento forzado de sus territorios, y para sobrevivir han tenido que habitan en lugares inhóspitos donde las industrias extractivas de hoy han puesto sus ojos en nombre del desarrollo. El modelo de desarrollo sostenible en la concepción neoclásica de la economía ha limitado entendimiento de que hay otras formas de vida que deben respetarse, y esta comprensión limitada que destaca los proyectos extractivos, en nuestras experiencias, por lo general no respeta las creencias indígenas y visiones del mundo.

Por ejemplo, en Colombia, existe un proyecto de exploración petrolera en el territorio indígena U'wa desde finales de 1990. Los U'wa han indicado que en su cultura el petróleo es la sangre de la Madre Tierra, como la sangre en nuestro cuerpo, y dejar extraerlo entonces implica perder sus creencias, permitir la destrucción de su cultura, su gente y la naturaleza.

En este sentido, es una prioridad repensar el modelo extractivo, que no se señala a satisfacer las necesidades actuales, y debe ser re-dirigido a consumir solo lo necesario - ser capaz de consumir en un caso posterior al mínimo requerido. Esto sería tratar de proteger los ecosistemas y las comunidades que dependen de ellos para sus fuentes de agua inherentes. Las industrias extractivas deben considerar los impactos de sus operaciones tendrán más allá de las fronteras, por ejemplo, en las fuentes de agua y la biodiversidad pertinentes.

Notas:


The Benefit-sharing challenge: More than a matter of revenue
Leisa Perch, International Policy Centre for Inclusive Growth

There are many pathways to benefit-sharing and benefit-sharing can be understood in multiple ways. It has perhaps been too often presumed that benefits from natural resource exploitation in the extractive sector are largely defined quantitatively and in terms of contribution to GDP and further broken down into GDP per capita. The assumption being that directly or indirectly such benefits will accrue to the country and by extension to its people. Overwhelmingly, the evidence suggests that this approach is flawed and that even such benefits are not automatically fairly or equitably distributed across society and sometimes can be more intangible than tangible, i.e. being macro benefits which do not immediately provide either income, services or employment to society. It therefore begs the question if the current advances towards greener economies and greener growth will perpetuate the same mistake. Similarly, that analysis is based on industrial factors, finance and investment with similar hopes that secondary benefits to poverty reduction efforts and equity will be derived. For this reason, important questions of rights, benefit-sharing and participation are unavoidable.

The GDP or financial benefits are necessary but insufficient by themselves for human development. Whether we consider the recent patterns of growth in Africa, or we consider high growth in local consumption, rapid growth and booming manufacturing sectors in India, China and Indonesia, we cannot forget that these come accompanied by concomitant levels of pollution, significant poverty and inequality. Significant governance challenges continue to be the biggest barrier to inclusive development. The first Human Development Report for Africa released this year contrasted the recent sustainability of growth with the realities in terms of poverty, food insecurity or inequality of movement calls attention, through the court system, to potential risks and burdens from toxic impacts as well as rights abuses.

There are on-going efforts to address some of these structural inequalities which often tend to define the sector. In an effort to narrow the “benefit gap”, governments in the Global South have undertaken a myriad of approaches. For example,

- In China, new regulations related to energy resource management including a new tax regime for oil and gas; new regulations to improve the local share of resource revenues in western China, and new Regulations for Public Participation in Environmental Impact Assessment, amongst others, are being defined.
- India has embarked on overhauls to the Mines and Minerals Act and the Land Acquisition Act with implications for prior and informed consent, recognition of rural land rights and benefit-sharing, local development funds, and sustainability of ecosystems.
- Mongolia has been actively assessing new resource regimes in order to capitalize on its newfound position as a global minerals hub as well as entry into the Extractive Industries Transparency Initiative (EITI).
- In Indonesia, reform efforts are ongoing which seek to tackle corruption, improve tax and royalty systems in mining and energy sectors as well as address land rights abuses and impacts of toxic pollution on community welfare.

Equally, in South America, in Brazil, Chile, Peru and Bolivia, reforms have often targeted the distribution of revenue (through taxes and royalties) and sometimes participation (through prior informed consent legislation and enhancements to community empowerment frameworks). In Africa,
efforts have generally focused on defining benefits in economic terms as a share of the macro – in some cases 10 percent of oil revenues as in Chad assigned to poverty reduction or 10 percent of operation revenue from the exploitation of the diamond reserves for local communities in Zimbabwe (Khoday and Perch 2012).

Overall, these are still not comprehensive enough. Few tend to tackle participation and define benefit-sharing at the same time. Tackling the broader issue of other benefits, and more importantly the balance between public (common) and private (individual) benefits, is still the Achilles heel of the public policy process. The Nagoya Protocol is one of the clearest examples in the global environmental policy framework which explains the “what” and “how” of benefit-sharing. Defining benefits as economic, political, social and justice, it also suggests explicitly that, on balance, sharing should be both “fair” and “equitable” (*). This serves as a potential starting point for further reforms in the extractive sector and making benefits more inclusive particularly for rural and indigenous communities.

One interesting approach, which seems to provide this kind of balance, emerges from the forestry sector in Cameroon. The 1994 Forestry Law of Cameroon is the basis for the approach, establishing community forestry as a policy and formally transferring the management of forest resources to local actors and institutions. According to the Forestry Law (Article 37) and the Manual of Procedure of the Ministry of Environment and Forestry, community forestry is “a part of the non-permanent forest estate, measuring up to 5000 hectare acres, that is the object of an agreement between government and a community in which communities undertake sustainable forest management for a period of 25 years” (Somorin and Sonwa 2011). “In managing their forests, the members of the community forests generally make rules in the common interest in order to reduce the loss of the forest resources on which they depend, thereby reconciling short-term and long-term interests” (Ibid). On the poverty reduction side, the approach has led to direct benefits to communities in the form of revenues to the community, cash payments for individuals and employment. It also meets the participation test as it works on the basis of local management (not just agreement or consent) and clearly defined ownership, rights and responsibilities. Other benefits accrue from public goods such as local infrastructure and educational facilities. Though issues of corruption can and have arisen there too, this example still provides some clear pathways to resolving some of the persistent issues which have plagued the extractive sector for some time.

Looking forward, our thinking about benefits will possibly be as important as who gets them. It may be important to consider the following in getting the concepts and policy right:

• The International Policy Centre for Inclusive Growth (IPC-IG)’s approach to inclusive growth is one which seems explicitly relevant to this discussion. It defines inclusive growth as “both an outcome and a process. On the one hand, it ensures that everyone can participate in the growth process, both in terms of decision-making for organising the growth progression as well as in participating in the growth itself. On the other hand, it makes sure that everyone shares equitably the benefits of growth. Inclusive growth implies participation and benefit-sharing. Participation without benefit-sharing makes growth unjust and sharing benefits without participation will make it a welfare outcome.”

• Given the environmental consequences of rapid and extensive exploitation of natural resources, there can really be no discussion about benefit-sharing without also discussing burden-sharing. Research suggests that the major environmental impacts from the mineral industry occur at the point of extraction and most of those burdens are often borne, largely,
by local communities. Participatory and benefit-sharing mechanisms must work towards the reduction and sharing of these burdens across society as a whole as well as how communities ‘benefit’ in the short and long-term.

- In order to improve the balance between benefits and risks and benefits and burdens, integrated poverty, social and environmental impact analysis needs to be applied, ex ante and ex post, to proposed policy reforms. Such a tool is highly relevant in changing the current dynamic from good intentions to better results. In this context, impact assessment must consider both the process of change as well as absolute change.

Perhaps the most important lesson of all might be that some, if not most, of the answers to the challenges in the extractive sector exist in other fields of study, policy and research. This perhaps offers a pivotal opportunity for achieving inclusive development and doing so sustainably.

Note

(*) Please see Article 5 “Fair and Equitable Benefit-sharing”.

References


Closing Message
AP-IGD Network Facilitation Team

Thank you for your enriching contributions and for following our e-discussion.

In this third round of the e-discussion we received 24 contributions which focused on how to manage impacts and overcome challenges for implementing policies related to extractive industry (EI) activities. Impact assessments in developing countries in the Asia-Pacific region, and beyond, have been considered in aspects such as social, economic, environmental and health impacts. Moreover, the strategies suggested to avoid the negative impacts on people’s lives highlighted the importance of including local communities into decision-making processes.

The e-discussion has been a welcomed opportunity to collaborate on issues related to sustainable development in the context of EI with UNDP colleagues at the global, regional and country levels, other development agencies, private sector, civil society, academics, indigenous peoples, and other interested stakeholders. The e-discussion responses are available on the UN Teamworks space (https://undp.unteamworks.org/node/124146) where the summaries will be made available shortly. Your contributions will also be shared and discussed at the “Joint Learning Seminar on Poverty Reduction, Human Development, and Environment Linkages” (24-27 September 2012) in Bangkok, Thailand. Key issues raised in the online and face-to-face discussions will feed into a regional report, which will be circulated among the AP-IGD online community. If you would like to join the AP-IGD network, please contact ap-igd@groups.undp.org

Once again thank you for your contributions and dedicated participation in this online community of practice.
Resources
(cited in this e-discussion)


Garrone, Maria. 2010. ‘L’examen des effets économiques et sociaux des privatizations: le cas de la Zambie Consolidated Copper Mines Limited’. In Informations et Commentaires, No. 151, April-June , pp. 30-41.


Revenue Watch. 2012. The Capacity to Change: RWI has developed strategies for parliaments to maximize the use of oil and mining revenues.


How can the AP-IGD network help you?

- Identifies opportunities to discuss issues of common interest for countries in Asia and the Pacific with particular attention to persistent and emerging challenges
- Facilitates sharing and learning on good practices across the region.
- Connects practitioners, academics, experts, and civil society working on issues related to development priorities in the Asia-Pacific region, including extractive industries and natural resource management, social protection, inclusive growth and development
- Provides an interactive space for sharing resources, publications, articles, stories, tools and materials related to inclusive growth and development

How can you join the AP-IGD network?

- Visit our web portal at http://www.inclusivedevelopmentasiapacific.net
- Join our Teamworks online collaboration space at https://undp.unteamworks.org/node/124146
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