

## 3.6 Mining

### 3.6.1 What is at stake?

Mining and ore processing activities are very contaminating processes, ultimately affecting the quality of lands and water. Many mining operations take place in open pits, destroying natural habitats in large areas. Often local watercourses, which provide fresh water to people, wildlife and forests in a much wider area, are severely polluted. Mining companies use the water to separate the mud from the minerals, or to dump acid, toxic or even radio-active tailings. This is not only polluting waterways and rivers, but also marine environments around estuaries.

Pollution of waterways can also be caused by erosion, as many mines are located in accidental terrain. When forest cover is lost, soils and mud begin to slide under the influence of rain and end up in local water courses. This erosion can even lead to landslides and fatal floods.

Ore processing plants, even when using modern technology, often cause significant air pollution in a wide region. Impacts of mining also occur after operations are closed where rehabilitation is inadequate and with long term problems such as acid mine drainage continuing for decades to centuries and polluting surrounding waterways.

In many cases mining operations do not acknowledge the land rights of local inhabitants, taking away large (forest) areas from local communities which depend on these lands for their subsistence. The failure to contain mining waste can lead to an accumulation of heavy metals in the environment, posing serious public health risks, while mining water use can pollute or destroy water sources relied upon by local people.

Pollution of waterways and air pollution affects the health local communities directly, as they use this water for drinking and other needs, and indirectly as it impacts subsistence livelihoods and other agriculture, agroforestry and fishery activities.

Furthermore, mining appears to distort macroeconomic development in many countries through what is called the *resource curse*, which explains the fact that a combination of large unaccountable revenues, poor governance, corruption, inadequate distribution of revenues to local communities and local environmental and social costs, in fact leaves a country poorer than before they developed its mining resources. Moreover, controversies with mining corporations have often been costly for communities and governments.<sup>90</sup>

According to the *International Labour Organization (ILO)*, between 80 and 100 million people depend on artisanal and small-scale mining as part of their livelihoods. The sector employs some estimated 11 to 13 million people worldwide and in some regions offers a livelihood to vulnerable population groups. Artisanal and small scale mining also usually takes place in fragile ecosystems characterised by cultural and biological diversity. The environmental impacts of these mining operations can therefore also aggravate poverty and deteriorate human health in these regions.

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To contribute to a more sustainable and socially equitable world, the mining sector needs to drastically change course, in order to:

- Eradicate corruption, illegal activities and the financing of conflicts;
- Limit the need for new mines by recycling minerals and secondary mining;
- Phase out mining of polluting and dangerous energy minerals as coal and uranium, together with the development of sustainable energy sources;
- Favour artisanal and small-scale mining over large-scale mining, while safeguarding biodiversity and the natural environment;
- Use best available mining and ore processing technologies, to limit the impact on biodiversity, the environment and public health;
- Ensure public disclosure of information relating to the range of economic, social and environmental concerns that affect the public interest;
- Adequately contain its waste products, in particular its tailings and other toxic or potentially polluting forming materials. Eradicate waste disposal/dumping in waterways such as rivers, lakes and oceans;
- Respect and guarantee the rights and livelihoods of local inhabitants in mining areas;
- Ensure rehabilitation, monitoring and management of impacts post mine closure and the provision of financial sureties to guarantee availability of funds for such tasks.

The bank's policy should ensure that it will only be involved in the financing of companies in the mining sector which meet these criteria. In developing such a policy, the bank could make use of the best international standards available as described below.

### **3.6.2 Best standards available**

Initiatives to address potential risks to the community and natural environment are diverse, but international consensus is emerging with regard to standards and norms for improvement of extractive projects. The [Framework for Responsible Mining](#), developed by WWF and the Centre for Science in Public Participation, provides a comprehensive analysis of environmental, social, community and governance issues to be addressed in a policy for the mining sector.<sup>91</sup> Additionally there are a number of international conventions and multi-stakeholder processes which set important standards for mining operations.

#### **Emergency response and prevention**

Following environmental accidents in the mining sector, United Nations Environment Programme (UNEP) in 2001 convened a multi-stakeholder initiative for the mining industry as part of its 1988 [Awareness and Preparedness for Emergencies at a Local Level](#) (APELL) programme which helps companies, response bodies and communities to be fully prepared to deal with incidents.<sup>92</sup>

#### **Waste management**

Many environmental problems associated with mining are related to the generation and management of waste. Existing standards and guidelines regarding waste management have been developed:

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- The [1972 Convention on the Prevention of Marine Pollution by Dumping Wastes and other Matters](#) prohibits the dumping of mercury and mercury compounds directly into the sea, and requiring special permits for dumping cyanide and heavy metals.<sup>93</sup>
- The 2003 [Extractives Industries Review \(EIR\)](#) by the World Bank recommends that companies should avoid sub-marine and riverine tailings disposal, and that companies explore safer alternatives to the use of cyanide and mercury.<sup>94</sup>
- The [Mining, Minerals and Sustainable Development](#) (MMSD) project, carried out in 2000-2002, endorsed a presumption against riverine disposal. Legislatures and regulatory agencies in countries such as the United States and Canada have banned the practice of dumping directly into rivers.
- Large mining companies such as [BHP Billiton](#) have indicated they will not use riverine tailings disposal in any new projects, and that it is unlikely that they would use submarine tailings disposal in any future projects.<sup>95</sup>
- The gold industry has developed an [International Management Code for Cyanide](#), a voluntary agreement which emphasises minimising the use of cyanide, safe transport, worker health, safety and training, emergency response plans and third party audits. The code still lacks guidelines on waste disposal.<sup>96</sup>

### **Closure of production facilities**

The procedure by which a mine is closed can have an impact on the surrounding community and ecosystem for years, potentially in perpetuity. The [Mining, Minerals and Sustainable Development](#) (MMSD) project calls upon companies to address the effect of mine closure on host community's development aspirations (such as through a Community Development Plan), and the allocation of resources and responsibilities that would be required to realise them. The best standard in this respect is set by the United States and some other jurisdictions, where mine closure standards require companies to provide a financial guarantee for clean-up, restoration and ongoing monitoring.

### **Financial transparency**

In countries where governance is weak, activities in the mining industry may contribute to poverty, corruption and conflict. The [Extractive Industries Transparency Initiative](#) (EITI), supported by a coalition of governments, companies, civil society groups and investors, is a voluntary host-country driven process that has established criteria for full publication and verification of company payments and government revenues from mining.<sup>97</sup> The [Publish What You Pay](#) coalition is further calling for:<sup>98</sup>

- revenue transparency requirements on extractive companies and resource-rich country governments to be incorporated into international norms and standards such that extractive companies (multi-national, private and state-owned) publish what they pay to governments in every country of operation and governments disclose what they earn from extractive companies;
  - disclosure of key contract provisions between governments and extractives companies (such as environmentally and socially-relevant portions of *Host Government Agreements* or *Intergovernmental Agreements*);
  - banks to disclose all resource-backed loans and require that the borrowers agree to be audited in a transparent fashion, as a condition of receiving the loan.
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Transparency requirements are increasingly being imposed by multilateral lending institutions, including the *International Finance Corporation (IFC)* and the *European Bank for Reconstruction and Development (EBRD)*:

- The [IFC Policy on Social and Environmental Sustainability](#) requires clients of new extractive projects to disclose payments to host governments, and to ensure that payments from projects to host governments are also disclosed;<sup>99</sup>
- The [EBRD Energy Operations Policy](#) includes a minimum requirement for project sponsors to disclose their payments to host governments and to adhere to the principles and criteria of the EITI. A good example of best practice, it also requires public and private project partners in the extractive industries to put in place transparent systems for accounting for financial flows from energy projects and for widespread publish dissemination of this information.<sup>100</sup>

The subject of transparency and tax avoidance is further dealt with in paragraph 4.6 on Taxation.

### **Artisanal and small-scale mining**

If well managed, artisanal and small scale mining can be a catalyst to sustainable economic and social development at the local level. The [Association for Responsible Mining](#) (ARM) is an independent multi-stakeholder initiative seeking to enhance equity and well being in artisanal and small scale mining communities through improved social, environmental and labour practices, governance and the implementation of ecosystem restoration practices. In March 2007 ARM published the draft [Standard Zero for Fair Trade Artisanal Gold and Associated Silver and Platinum](#).<sup>101</sup>

### **Protected areas**

Mining activities in any of the protected areas covered by the [IUCN](#) I-IV categories, the [UNESCO World Heritage Convention](#) and the [Ramsar Convention](#) should be excluded from financing. This subject is dealt with in paragraph 4.1 on biodiversity.

### **Nature of contracts**

The contracts signed by mining companies should ensure that the jurisdiction in investment disputes lies within the country in which the investment is located. Investors should commit to use local and national means of recourse, not those of their home countries or of international corporate arbitration committees.

The [Calvo Doctrine](#), which has been incorporated into several state constitutions and been included in a number of treaties, statutes and contracts, is a recognized and widely used principle. As best practice, it prevents the abuse of the jurisdiction of weak nations by more powerful actors.<sup>102</sup> This is also in line with the 1974 [UN Charter of Economic Rights and Duties of States](#), which determined that foreign investment should be subject to the laws, regulations and policies of the host state.<sup>103</sup>

### **Sovereignty over resources**

The legislative framework covering natural resources varies from country to country. However, mining companies should recognise that the concept of *Permanent Sovereignty over Natural Resources* was enshrined in a number of United Nations resolutions. The 1962 [UN Declaration on Permanent Sovereignty over Natural Resources](#) gave producing countries a right not only to make decisions about how to extract or manage their natural resources, but also to expropriate or nationalise where it is in the public interest to do so,

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as long as compensation is paid.<sup>104</sup> Amending this declaration, the [1966 UN Resolution 2158 \(XXI\)](#) dealing specifically with developing countries, promoted joint ventures as the most appropriate model for development.<sup>105</sup>

Respect for the national sovereignty over resources needs to be matched by respect for the rights of indigenous peoples (see paragraph 4.4).

### **Good governance**

To avoid negative impacts deriving from the resource curse, it is important that mining extraction be correctly sequenced with minimum good governance standards. The [Extractives Industries Review \(EIR\)](#) of the World Bank recommends that private investments in extractive industries should not be promoted where governance is inadequate and that “explicit core and sectoral governance requirements should be met” before a project is financed.<sup>106</sup>

### **Rights of indigenous peoples**

Mining companies need to respect and guarantee the rights of indigenous peoples to protect their land, societies, cultures and livelihoods, by acknowledging their sovereignty and self-determination, and in particular their right to exercise *Free, Prior and Informed Consent* for developments on their land. This subject is dealt with in paragraph 4.4 on Indigenous Peoples.

### **Human rights**

Mining companies need to ensure that they respect, promote and secure the human rights of those affected by their operations. This involves avoiding direct, indirect and silent complicity in human rights abuses. This subject is dealt with in paragraph 4.3 on Human Rights.

### **Industry specific standards**

For some minerals and sub-sectors of the mining industry, specific standards are being developed:

- The role of the diamond industry in armed conflicts has led to the development of the [Kimberley Process Certification Scheme](#). The scheme requires governments to certify rough diamonds that are free from conflict diamonds. The certification process is a useful first step, but currently lacks independent monitoring mechanisms.<sup>107</sup>
  - The [Council for Responsible Jewellery Practices](#), with members in all parts of the gold and diamond jewellery chain, works on development of a certification process similar to Kimberley.<sup>108</sup>
  - The two initiatives above, as well as several others, since August 2006 collaborate in the [Madison Dialogue](#). This is a cross-sector multi-stakeholder initiative seeking to encourage best practices, sustainable economic development and verified sources of responsible gold, diamonds and other minerals.<sup>109</sup>
  - The [Roundtable of Sustainable Platinum Group Metals](#) aims to find agreement on strategic questions related to PGM, as a basis for concrete actions towards more sustainable PGM that can be endorsed by relevant stakeholders.<sup>110</sup>
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As these initiatives are still in their early stages, they do not yet provide credible standards to which bank policies could refer. It is however recommended to follow their development and participate actively in it.

### **3.6.3 Content of a bank policy**

The banking sector will have to adopt clear policies incorporating the standards described above, stimulating its mining clients to adhere to best practices in the following fields:

- Emergency response and prevention
- Waste management
- Closure of production facilities
- Transparency and tax avoidance
- Artisanal and small-scale mining
- Protected areas
- Nature of contracts and sovereignty over resources
- Good governance
- Indigenous peoples and human rights

The policies will have to be consistent with other policies relevant for the mining industry, such as Human rights, Indigenous peoples, Biodiversity, Tax and Climate change, which are addressed in other paragraphs of this report.

### **3.6.4 Scoring table**

The considerations in the previous paragraphs lead to the following scoring table with regard to bank policies on extractive industries:

- 0.** *The bank has no policy on this sector;*
- 1.** *The bank's policy is vaguely worded or aspirational, with no clear commitments;*
- 2.** *The bank's policy sets as precondition for its financial services the best international standards for at least three of the elements listed in paragraph 3.6.3;*
- 3.** *The bank's policy sets as precondition for its financial services at least five of the elements listed in paragraph 3.6.3;*
- 4.** *The bank's policy is fully in line with all international standards and guidelines for all elements listed in paragraph 3.6.3.*

When one or more of the elements listed in paragraph 3.6.3 are dealt with in a comprehensive way in other policies of the bank, these elements will be regarded as being included in its Mining policy as well.

The Equator Principles and the EITI score 1 point on mining. These collective standards are discussed further in paragraph 7.1. The scores for these collective standards are awarded to all signatories, unless the bank's own mining sector policy scores higher. Scores of individual and collective standards are not added up, only the highest score is awarded.

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### 3.6.5 Results

Although the mining industry has an extremely large impact on the natural environment and the lives of affected communities, only four banks have developed a policy focusing on financing the mining industry. Most of the banks earn their credits by being signatories to the Equator Principles.

Only HSBC (United Kingdom) has a fully disclosed and comprehensible Mining and Metal policy. ING (the Netherlands), ABN AMRO (the Netherlands) and Barclays (United Kingdom) have also developed credit policies for the mining sector, but specific (exclusion) criteria and preconditions are not set or not (fully) shared with the public.

Scores on Mining policies					
HSBC	3	Intesa Sanpaolo	1	Unicredit	1
ING Group	2	JPMorgan Chase	1	WestLB	1
ABN AMRO	1	KBC	1	Westpac	1
ANZ	1	Merrill Lynch	1	Bank Mandiri	0
Banco Bradesco	1	Mitsubishi UFJ	1	Bank of China	0
Banco do Brasil	1	Mizuho Financial Group	1	BNP Paribas	0
Banco Itaú	1	Nedbank Group	1	China Construction	0
Bank of America	1	Rabobank	1	Deutsche Bank	0
Barclays	1	RBS	1	ICBC	0
BBVA	1	Royal Bank of Canada	1	Morgan Stanley	0
Citi	1	Scotiabank	1	Santander	0
Crédit Agricole	1	Société Générale	1	Saudi-American Bank	0
Credit Suisse	1	Standard Chartered	1	Standard Bank	0
Fortis	1	Sumitomo Mitsui	1	State Bank of India	0
Goldman Sachs	1	UBS	1	Dexia	X