

Chapter 8. Special Issues

Artisanal and Small-scale Mining

Representatives from a range of stakeholders express concerns about the damaging environmental and social impacts of uncontrolled artisanal and small-scale mining (ASM), especially from itinerant miners. On the other hand, a regulated ASM sector can play an important developmental role (see Box II-5), through boosting employment, supporting communities, and alleviating poverty. Many stakeholders would like to see the WBG get more actively involved in helping governments improve their policies and their ability to regulate a successful small-scale mining sector, so that it can truly contribute to sustainable development.

Box II-5. Small-Scale Mining in Papua New Guinea

In Papua New Guinea (PNG), small-scale gold mining is legally recognized by the State and is under the administration of a Division of the Department of Mining. All alluvial gold is reserved for national citizens only. Small-scale mining is well regulated in PNG as a consequence of the country's mining history, the development of its mining law, and a very strong customary ownership rights to land. Today 97 percent of the land is owned by indigenous peoples and 3 percent by government. Mining regulations are enforced by Mining Wardens and Mines Inspectors. Courts and police also are used to ensure enforcement.

Small-scale mining in PNG is also well supported by international aid agencies and industry. The support includes education and training, as well as micro-finance programs, and comes from AusAid, the World Bank, the Japanese Social Development Bank, the Asian Development Bank, and Sysmin (the European Union). Overall, these programs have significantly improved miners' awareness of the hazards of mercury. Miners in large river systems, from which thousands of people derive their food, have stopped using mercury. There is also greater awareness of overall environment and safety issues and a steady increase in annual production.

It is estimated that PNG has 50,000 small-scale miners, whose income benefits approximately 400,000 other people and who produce up to 145,000 ounces of gold per year, equivalent to \$45 million. The average annual income per miner is \$900, which is substantially higher than the overall average income in PNG of \$250.

With good regulations in place, mine closures can be planned in a more sustainable way. At the Bulolo mine, for example, a well-planned closure led a small-scale mining company to develop a sustainable timber plantation project, using infrastructure established by the mining operations. This plantation is still viable today, sustaining a

after mine closure.

Source: Neale 2003.

Industry notes that the WBG could help improve the quality of the lives of millions of artisanal and small-scale miners around the world by helping them acquire legal title to mineral rights. This would let them trade their rights or use them for collateral to obtain financing. Many industry representatives who participated in the EIR's regional workshop in Africa suggested that the WBG adopt the Harare Declaration, which contains guidelines to provide a framework encouraging the development of the ASM sector as a legal and sustainable activity and optimizing its contribution to social and economic development.

Civil society representatives highlight the potential benefits of ASM, maintaining that it can play a greater role in poverty alleviation than large-scale mining can. At the regional workshop in Africa, they asked for a clear commitment by the WBG and governments to support artisanal mining by protecting land and mining rights and by providing financial and technical assistance to improve their productivity, minimize social and environmental risks, and enhance access to markets. It was also noted that large mining developments should not prevent local people from earning income from ASM activities. Indigenous peoples cautioned that support for ASM should only be undertaken in cases where their land and their resource and other rights have been fully recognized and guaranteed.

Several participants suggest that ASM issues should be integrated into a country's overall development strategy, perhaps by incorporating them into the Poverty Reduction Strategy Paper. A U.N. staff person at the Bali workshop maintained that solutions to ASM must be dealt with in a community development framework. Others recommend that help to areas with substantial ASM activity be channeled into promoting economic diversification.

A number of academics recommend that negative social, environmental, and health impacts associated with ASM can be mitigated through effective education campaigns, such as on HIV awareness. Participants at the regional workshops recommended that the WBG should address the issue of children living and working at ASM sites and should support HIV/AIDS initiatives for the ASM sector.

The workshops urged the WBG to support the formalization and regulation of the ASM sector through granting legally transferable mineral titles, developing regulatory regimes, providing technical support, and initiating capacity building for mining groups and government regulators.

In March 2001, the WBG was one of the sponsors of the Communities and Small-Scale Mining (CASM) initiative. CASM aims to improve the economic, social, and environmental performance of ASM activity. It operates as a forum bringing shareholders together to discuss and share best practice in ASM and to improve the level of information available regarding the sector. It also aims to match potential projects with sources of funding. Several Bank

projects have had ASM issues as significant components; project involvement has included improving the legal framework and formalization of ASM activities, increasing tax revenues, providing capacity building for government staff, improving production and efficiency, and improving environmental awareness and management.

The WBG internal evaluators report on extractive industries concluded that *“where appropriate, the WBG should help integrate artisanal and small-scale mining (ASM) with the formal sector and internalize their environmental and social impacts, while at the same time creating alternative employment opportunities and supporting the consolidation of ASM activities for greater efficiencies and economies of scale.”*¹¹⁷

Participants at the regional workshops recommended that the WBG make a commitment to ASM and work on internal capacity building to prepare itself for increased involvement. It was recommended that the WBG increase its involvement with CASM through a greater allocation of funds and by providing regional community development specialists to work with the organization. CASM should not only match projects with funding but should also devise and implement solutions with ASM communities. One mechanism for doing this was to develop model pilot projects with ASM communities in each WBG region in order to demonstrate solutions that work.

Human Rights

Human rights is a particularly important issue for extractive industries, given the sector’s checkered history of human rights violations. Areas of concern include indigenous peoples’ and minority rights, workers’ rights, women’s rights, children’s rights, use of security forces, public rights to participation, and rights related to environmental protection.

The WBG has adopted a dual approach to human rights, positioning itself as a champion of economic, social, and cultural rights while trying to avoid getting entangled in issues related to civil and political rights. WBG staff refer to their Articles of Association, which prohibit interference in “the political affairs of any member.” This argument, while legally questionable, is routinely deployed by WBG staff and can be said to be part of the culture of the Bank. Many commentators from civil society and academia label this approach an abdication of responsibility. They maintain that the WBG is subject to international law and has the obligation to uphold international legal standards, including human rights standards, both within its internal operation and in its dealings with states and companies. They also state that human rights are international—a concern of the global community, not just internal political affairs—and therefore they cannot be ignored by the WBG.

Another argument against WBG inaction on human rights is that the vast majority of member countries have themselves adopted human rights standards, through ratifying human rights treaties and incorporating them into domestic legislation. The WBG, in its involvement with countries, should work to ensure that these countries are in compliance with the treaties they have signed.

Civil society representatives and academics recommend that the WBG recognize and act on the relationship between human rights and development by explicitly adopting a “rights-based” approach to development.¹¹⁸ This explicitly ties development policies, objectives, projects, and outputs to international human rights standards requiring, among other things, that development be directed toward fulfilling human rights. In essence, this converts development goals and objectives into rights, entitlements, responsibilities, and accountability.

Under a rights-based approach, the WBG should abide by, protect, and promote international human rights standards, including the ILO Core Labour Standards. The WBG should acknowledge that it is subject to international law with an obligation to uphold human rights standards. It should incorporate these standards into its own operations and should ensure compliance on the part of countries and companies it is involved with. All programs and policies pursued by the WBG should be consistent with international human rights standards, and the WBG should not support new projects that deprive people of their basic rights.

Industry representatives also maintain that the WBG should require companies to comply with basic conditions regarding human rights, including the ILO Core Labour Standards, and that companies should have their human rights policies audited by external parties. Companies should commit to respecting the rights of local communities and have guidelines on security arrangements that are consistent with international standards for law enforcement, such as the U.S./U.K. Voluntary Principles on Security and Human Rights.

Participants at the regional workshops recommended that the WBG recognize its obligations under the international human rights system and develop policies accordingly. The WBG should ensure that human rights standards underpin sustainable development goals, and these rights should be incorporated into project implementation frameworks.

Other workshop recommendations included incorporating human rights conditionalities into WBG lending, backed by a system of education, monitoring, and enforcement. The WBG should not get involved in countries with a proven record of gross and systematic human rights violations, participants recommended. Where human rights violations occur at a project level, the WBG should withhold further support until the allegations are investigated and resolved in accordance with national laws and international standards. The WBG should also work to promote human rights in member countries through education, capacity building, and knowledge sharing.

Internal WBG evaluations have addressed human rights issues. The evaluators recommended that the WBG “*recognize the expanding awareness of the human rights dimension of WBG policies and projects, and explore possible avenues for addressing the issues, especially where it lags industry best practice, such as regarding site security.*”¹¹⁹ The CAO report *Extracting Sustainable Advantage?* recommended that “*IFC and MIGA should more systematically consider potential risks to human rights at the project level, take appropriate steps to mitigate them, and provide clearer guidance to clients on both of these aspects.*”¹²⁰

Indigenous Peoples' Rights

Indigenous peoples have continuously maintained that their rights have not been respected in extractive industries projects supported by the WBG. More generally, the question of control over land and resources has surfaced as one of the most contentious issues within the cycle of oil, gas, and mining exploitation and has created a legacy of distrust, impoverishment, violence, and conflict over the last three to four decades, often ending in gross human rights violations and even bloodshed.

At the root of these problems is an at times entirely different world view of natural resources. National governments and EI companies have one perspective, whereas indigenous peoples and some local communities have another. The former consider the natural resource, be it oil, gas, or minerals, a means of generating wealth, while indigenous peoples have multiple relationships, including economic, spiritual, cultural, and in some cases kinship, to the same lands—lands that are fundamental to their identity, survival, well-being, and security.

Some indigenous peoples have collaborated with industry or undertaken their own extractive projects in order to benefit from the wealth derived from exploiting oil, gas, or minerals. Nonetheless, in all cases indigenous peoples require prior recognition of rights to their traditional lands, territories, and resources and respect for their right to give free prior and informed consent.

Each government has a different view concerning control over land and resources. Many governments believe it is their sovereign right and that all citizens should defer the issue of natural resource extraction to the state for the greater benefit of the nation. Others recognize that resource rights may be vested in private persons or collectives, such as indigenous peoples, and that the public has a right to participate in decisions on these issues.

Indigenous peoples and others point out that sovereignty has never been and is not now absolute but rather is conditioned by, among other considerations, international human rights and environmental law, the former requiring that human rights be recognized and guaranteed in domestic law and respected in practice. Indigenous peoples and local peoples alike consider resource extraction operations that do not recognize and respect their rights to be contrary to human rights law, a view supported by international instruments and jurisprudence.

While indigenous peoples' rights have received a great deal of attention in the past 30 years—numerous advances have been made internationally and in domestic legislation—these rights are not uniformly guaranteed in all countries. And in some nations, only rudimentary protections exist. In countries with higher levels of protection, EI companies find it more straightforward to deal directly with national governments and indigenous peoples.

This view has also been expressed by U.N. bodies that have looked at this issue. The UN Center for Transnational Corporations, for instance, concluded that “TNCs’ performance was chiefly determined by the quantity and quality of Indigenous Peoples’ participation in decision making” and “the extent to which the laws of the host country gave Indigenous Peoples the right to withhold consent to development.”¹²¹ It also concluded that “TNCs find it

easier to involve Indigenous Peoples in decision-making when Indigenous Peoples' rights to their lands are secure" and, in general, that "land rights are a necessary precondition for effective participation."¹²²

On the same point, a recent U.N. workshop on indigenous peoples and natural resources development stated that the participants, including industry representatives, "recognized the link between Indigenous Peoples' exercise of their right to self-determination and rights over their lands and resources and their capacity to enter into equitable relationships with the private sector. It was noted that Indigenous Peoples with recognized land and resource rights and peoples with treaties, agreements or other constructive arrangements with States, were better able to enter into fruitful relations with private sector natural resource companies on the basis of free, prior, informed consent than peoples without such recognized rights."¹²³

There is a growing awareness among EI companies that it is important to engage and work directly with indigenous peoples and communities and to respond to local concerns and create opportunities that meet local aspirations, a concept that is integral to the industry's elaboration of the concept of "social license." Given different national situations, however, companies point out that this concept is difficult to implement in all countries. It may be said that EI companies find it easier to operate in countries like Canada, Australia, the United States, and Papua New Guinea than they do in many developing countries in Asia and the Pacific and in Africa, where the legal position of indigenous peoples remains less clear.

There are a few noteworthy initiatives in which governments, EI companies, and indigenous peoples have participated in multistakeholder dialogues to develop a common vision on how they would like to see these industries evolve (see, for example, the Whitehorse Mining Initiative in Canada). However, not all of these initiatives are universally supported by indigenous peoples.

Although the issues related to control over land and natural resources are quite real in developing countries, and often underpin many of the conflicts that evolve out of oil, gas, and mining development, the WBG seems to have mostly avoided the issue, according to the stakeholders. The approach used seems to assume that national governments have sovereign control over land and resources and that this is a sufficient analysis of the situation. It also assumes that sovereign governments are capable of practicing a strong rule of law and can protect their citizens' rights and the environment. In this theoretical context the WBG uses a partial approach, providing financial support and political insurances for EI companies, while avoiding or minimizing the internationally recognized legal rights of indigenous peoples and others.

WBG policies make little mention of human rights. For example, the Safeguard Policies on indigenous peoples and involuntary resettlement seek only to mitigate the impacts of destructive development schemes. They permit forced resettlement. However, in order to lessen the consequences for vulnerable social groups, specific plans are required during project preparation that, in the case of indigenous peoples, are meant to secure their lands and ensure participation in WBG-funded projects. Yet many indigenous peoples are quite critical

of the ability of the Safeguard Policies to protect them from the many adverse impacts of oil, gas, and mining projects.

The WBG Safeguard Policies have been developed without consultation with indigenous peoples and local communities. They have become weaker over time and are often ignored in the field. The current indigenous peoples policy, for instance, was developed without indigenous peoples' participation and has since been strongly criticized by them. The World Bank is reviewing its policy on indigenous peoples, but the revision has been repudiated repeatedly by indigenous peoples, both for the manner in which the associated consultations have been carried out and for the fact that the revised draft policy fails to uphold their rights and is weaker than the policy it is designed to replace.

Indigenous peoples maintain that the current Safeguard Policy (OD 4.20) and its draft replacement (OP/BP 4.10) do not provide meaningful safeguards, are inconsistent with their internationally guaranteed rights, and, in the context of extractive industries, are woefully inadequate.¹²⁴ For WBG-funded extractive operations on indigenous peoples' lands, OP 4.10 merely requires that the borrower "(a) informs these groups of their rights to such resources under statutory and customary law; (b) informs them of the potential impacts of such projects on their livelihoods, environments and use of natural resources; (c) consults them at an early stage on the development of the project, and involves them in decisions which affect them; and (d) provides them with opportunities to derive benefits from the project."

Indigenous peoples and others also maintain that compliance rates with the Safeguard Policy are far below acceptable. This view is supported by the recent Operations Evaluation Department review of OD 4.20, which found that this crucial policy was applied, fully or partially, only in 50 percent of projects affecting indigenous peoples. And of those, only 14 percent had the required indigenous peoples development plan, a key component of the Safeguard Policy.

A case study on indigenous peoples in Cameroon presented at the EIR-sponsored indigenous peoples workshop in Oxford described how the application of the Bank's Natural Habitats policy, which requires the funding of compensatory conservation measures to "offset" habitat destruction, has had negative impacts on indigenous peoples by excluding them from the national parks set up in their forests.

At the workshop on this subject, indigenous peoples called on the WBG to ensure that all future EI development upholds indigenous peoples' rights and to require companies to obtain the prior, free, and informed consent of indigenous peoples before operating in their lands and territories. The WBG should require private-sector clients to uphold human rights in line with their international obligations, and the WBG itself should observe international law and be bound by it in legally accountable ways.

The CAO's safeguard review noted that *"there is tremendous lack of clarity and specificity in who should be treated as indigenous, what impacts should trigger the policy, and, other than the preparation of an Indigenous Peoples Development Plan, what should be done for Indigenous Peoples."* Furthermore, the review points out that *"many sources in this review*

*suggested that the Indigenous Peoples policy be replaced with a policy that would address affected peoples or vulnerable groups. This means that specific remedies would still need to be more explicit.*¹²⁵

Legacy of the Past

Representatives from civil society, industry, and governments all recognize the importance of dealing with the legacy of past extractive industries activity and offer various suggestions for a WBG role in this.

Civil society representatives call upon the WBG to assume responsibility for damage caused by past projects to ecosystems and to the social and economic situations of communities. Participants at the Budapest workshop noted that the WBG should provide funds from its own capital base for compensation for damages and for the physical restoration of affected areas. They also call for an investigation into WBG-accumulated ecological debt for decades of oil, gas, and mining lending.¹²⁶

Industry representatives claim that the WBG should maintain a commitment to solving environmental legacy problems. More specifically, they call on the WBG to address the environmental legacy of past mines in order to create a positive climate for future investment and to expand the scope of activities to include the legacy of artisanal and small-scale mining.¹²⁷

Government representatives state that companies that polluted the environment ought to do the cleanup.¹²⁸ WBG technical assistance can and should have a significant impact on rehabilitation of mined areas.¹²⁹

Recommendations from the Africa workshop included developing programs to help governments address the legacy of the past (including physical rehabilitation of orphaned mines, land regeneration, water quality, community welfare, and access issues) and establishing compensation funds for people harmed by past developments. Recommendations from the Latin America workshop included establishing a database of environmental and social damage, categorized by the levels of risk, and identifying mitigation techniques to clean up abandoned sites.

Climate Change and Energy Policy

There is a broad consensus that climate change is important and that the extractive industries are large contributors to the problem. Several regional workshops recommended that the WBG assume a greater role in improving the policy environment for tackling climate change. Suggested WBG activities included enhancing its role in removing barriers to implementing climate change policies, such as technical assistance for capacity building, regulatory reform, and technology transfer; encouraging the development of market-based mechanisms for sharing the burden of emissions reduction, such as carbon-trading schemes; and working to accurately reflect the costs of climate change related to extractive industries and elsewhere,

such as through internalizing external costs relating to emissions and working to remove perverse subsidies for fossil fuels.

There is a consensus among stakeholders that reducing the carbon intensity of economic growth is necessary to preserve the environment. The debate is over the best way to do this, taking into account possible tradeoffs between growth and emissions reduction, and the future role of the WBG in this area.

The EIR looked at civil society perspectives on this issue.¹³⁰ The study concluded that civil society wanted the WBG to support a transition to renewable energy through encouraging the phasing out of subsidies for fossil fuels, to be replaced by an energy tax, with subsidies for renewables; increased investment in renewable energy projects; and promotion of renewable technologies. The WBG should also withdraw from investment in coal-related projects, except for decommissioning unprofitable mines, mitigating the social and environmental impacts of mine closure, and rehabilitating previous damage caused by coal mines. The study also concluded that civil society does not want public funds to be spent on oil investments.

A statement from civil society at the Eastern Europe and Central Asia regional workshop condemned the fact that WBG investment in energy efficiency and renewables is negligible compared with its investment in fossil fuel extraction and utilization. The statement called for the WBG to adopt an action plan within five years for the complete phasing out of financing for any new fossil fuel and mineral exploration, transportation, and industrial processing.

Labor and industry representatives stated that access to clean, reliable, and affordable energy goes to the heart of sustainable economic development and poverty alleviation, acknowledging the importance of issues such as climate change, local and transboundary air pollution, and energy security. Improving access to modern energy sources will profoundly improve the quality of life for millions of people. A shift in developing countries away from traditional energy sources will often involve increased use of fossil fuels, but countries will need to develop on a path of lower carbon and energy intensity.

Labor and industry representatives also maintain that the WBG has a role to play in influencing developing countries to adopt a low-carbon economic growth strategy by encouraging clean energy technologies, including renewables; improved energy efficiency; and energy market reform. Given the long “lock-in” period of energy infrastructure, which may be in place for decades, the WBG has an opportunity to encourage greater use of renewables and clean technologies in countries that are trying to expand access to modern energy supplies rather than passively watching them invest in and install infrastructure for fossil fuels. One way to do this in the near term is to encourage a shift to natural gas from other fossil fuels. The WBG should act as an honest broker in seeking a pragmatic and holistic approach to future energy policy in developing countries.

Recommendations from the regional workshops included leveraging policy frameworks to encourage low carbon growth; encouraging the use of alternative fuels and reducing barriers to implementation; encouraging fuel switching from coal to gas; helping to develop low-