



## **MODEL MINING DEVELOPMENT AGREEMENT**

### **CIVIL SOCIETY CONSULTATION**

#### **Minutes of Proceedings**

Toronto, Ontario, Canada  
*Grand Hotel and Suites, Mount Pleasant Room*  
April 24-25, 2010

Kelli Schulte, Rapporteur

These minutes are an attempt to capture the thrust of the comments received at the Model Mining Development Agreement (MMDA) Civil Society Consultation on April 24-25, 2010, organized under the auspices of the Mining Law Committee of the International Bar Association. They reflect individual comments, which will be considered by the MMDA project coordinators and drafters as the next phases of work are done, and further consultation held. The inclusion of any comments here do not reflect any position taken by the project coordinators, and indeed in some cases the comments are contradictory, as one would expect in a broadly based consultation.

This meeting preceded the International Bar Association's Biennial Section on Energy, Environment, Natural Resources and Infrastructure Law (SEERIL) Conference, held from April 25-28, 2010 at the Four Seasons Hotel in Toronto, Canada. The intention of holding the Consultation at this time and location was to attract SEERIL attendees to the Consultation's open forum, held on April 25, 2010.

The Consultation was held under the auspices of the Mining Law Committee of the International Bar Association, of which Peter Leon is the Chair. The International Bar Association has delegated the immediate task of organizing the development of the MMDA to the Administrative Working Group of the Mining Law Committee, whose members are listed below.

**Administrative Group of the Mining Law Committee**

Robert Bassett

Elizabeth Bastida

Michael Bourassa

Luke Danielson

Peter Leon

Howard Mann

**April 24, 2010**

**9:00- 10:45AM: INTRODUCTION TO THE MMDA PROJECT**

*Peter Leon, Webber and Wentzel, Johannesburg; Chair, IBA Mining Committee and Robert Bassett, Holland & Hart, Denver*

- Introduction to the IBA, SEERIL and Mining Committee (See Power Point Presentation: MMDA CSC\_Peter Leon and Bob Bassett IBA Intro Presentation 04.24.10)

*Luke Danielson, Sustainable Development Strategies Group, Gunnison and Howard Mann, International Institute for Sustainable Development, Ottawa*

- Introduction to the MMDA Project (See Power Point Presentation: MMDA CSC\_Luke Danielson and Howard Mann, Introductory Presentation 04.24.10)

**Aim of the MMDA Project**

- Purpose is not to impose any certain model on any country, but to provide potential users, both in industry and government, and interested civil society organizations, with a useful tool.
- The Working Group has assembled a number of contracts into a database.
  - Looked at similarities among contracts: tenure, financial, rights and obligations, community, and contract terms.

- The Mining Law Committee has established a Working Group that will manage the drafting process

### **Structure of the Draft Outline**

- The model contract that will emerge will have multiple options for most specific clauses

### **Where We Are/ Where the Process is Heading:**

- Stage One: Consultation with practitioners in March, 2010 in Toronto
- Stage Two: Consultation with civil society representatives in April, 2010 in Toronto (this meeting)
- Stage Three: Consultation Website Launched by May 3
- Stage Four: Delivery of the initial draft and drafting questions by the Working Group
- Stage Five: Suggestions and comments from Practitioners and Civil Society
- Stage Six: MMDA presentation to IBA Annual meeting in Vancouver, October, 2010

### **Beyond Our Project**

- This is a “hot topic.” There are many organizations interested in this topic and in this project.
- There is an ongoing project focusing on African mining agreements. United Nations Economic Commission for Africa (ECA)/ African Union (AU) International Study Group is producing a Framework Report on the Review of Africa’s Mining Regimes. <http://www.uneca.org/>; <http://africa-union.org/>
- World Economic Forum is developing a Fair Mineral Development Agreement. <http://www.weforum.org/en/index.htm>
- International Council on Mining and Metals also has plans in this area. <http://www.icmm.com>

Other organizational links that may be of interest are:

<http://www.pdac.ca/>

<http://www.dundee.ac.uk/cepmlp/>

<http://www.revenuewatch.org/>

<http://eitransparency.org/>

<http://wbcSD.org/templates/TemplateWBCSD5/layout.asp>

- Sponsorship
  - The financial sponsorship that is making organization of this consultative effort, including this meeting, possible is being provided by the International Bar Association, the World Bank's Extractive Industries Technical Advisory Facility, the Prospectors and Developers Association of Canada, the University of Dundee, the University of Denver's Public Interest Law Group and the International Council on Mining and Metals.
- Purpose/Vision
  - Involvement of civil society;
  - Creation of "soft law:" Not legally binding but, may become legally binding by providing a baseline and move legislation towards where we would like it to be.
  - Maybe the best current mining agreements are still not the "high water mark" – we need to strive for what is really best.

### **Comments/ Feedback**

- A key question was asked as to the vision for the final MMDA: what was it trying to achieve? After discussion, the vision as set out in the MMDA 2 page project description was discussed further:

*"The MMDA project seeks to provide a tool with a specific starting point. It asks what a mining contract might look like if the process started from the precept of a project aiming to contribute to sustainable development not just of the project itself, but of the local, regional and national community as well. While the project clearly recognizes that a mining development must be commercially viable to proceed, it also recognizes this is no longer the only issue around which contract negotiations should proceed. Rather, all parties to a negotiation should take a broader, and integrated, look at the relationship between the proposed project, the state and the local communities. The natural, social and economic environments around mining projects are also essential considerations today."*

- The need to reflect the vision/purpose in the preambular provisions or a purpose clauses was expressed.
- Agreed commentaries on each clause of the agreement would be helpful, but are also very time consuming. This could delay the publication of the agreement online. Participants at the consultation may be able to secure funds to develop commentaries in the future. We may want to have multiple commentaries, from different viewpoints.
- Goal of the project should be to draw a balance from different regions. There are areas within the contract that can bring in standardization of clauses.
  - The MMDA will touch on provisions to “fill in gaps ” and provide stability when a country does not have strong underlying legal institutions/ a mature mining code (i.e.: DRC)
- How is the MMDA applicable to countries with a Mining Code?
  - There is a niche for contracts in community, environment, job creation, taxation, corruption, etc.
  - We are finding that mining codes are not answering all the questions and are often accompanied by a supplementary contract.
- A compilation of best practices is good, but are current best practices enough? Isn't the reason we are here that the current system is not working well? What do we need to do to make the system work?
- We have talked about multiple clauses that take into account different circumstances. We would never be able to agree on exact clauses that should be employed-- especially by October.
- We hope to provide commentary and feedback on how to use the MMDA.
- It is too ambitious to get a single unified commentary by October.
- We need to be present where similar efforts are underway to make the most of our limited funds and to seek input on the MMDA. We face the time constraints and need to develop a final product by October.

**10:45-11:00AM:** *Coffee Break*

## **11:00- 12:30PM: TENURE**

*Michael Bourassa, Fasken Martineau, Toronto*

- Tenure Provisions (See Power Point Presentation: MMDA CSC\_ Michael Bourassa Mineral Tenure 04.24.10)

### **Exclusivity**

- Exploration Permit: Is it exclusive? Rights to surface? Specify minerals? Delineation of area: metes and bounds; GPS; Term; What do we do when the ore deposit extends beyond property limit: Rights to contiguous areas?
  - It could be insulting to have a contract that goes beyond the local legislation.
  - Company obligation to apply for various operational permits?
  - Should Government be involved in approving exploration programmes?
  - Right to reduce size of license without penalty; should relinquishment of portions of license be mandatory?
  - Distinguish between the property right and the right to operate?
- Form of Tenure?
  - Many jurisdictions provide for exploration (research) license, followed by exploitation (mining) license.
  - Are there examples of “unified” tenure – exploration and production – that can be used? E.g. where Company can go from one stage to another without exercise of Government discretion?
- Extension or Renewal Rights
  - Obligations on Surrender of License
  - Rectification or Relief from Forfeiture Rights
- Grant of Mining License
  - The grant of the Mining License should be exclusive to the cCompany

- What triggers the grant of the Mining License?
  - Submission of a Feasibility Study? Alternatives and concerns?
  - Government could avoid commercial risk and obtain guarantees to protect it against damages.
- Should the Feasibility Study include an Environmental Impact Assessment; Environmental Management Plan; Social Action Plan; Skills and Technology Development Plan?
- What about incidental rights?
  - Access to watercourse, etc.
- The “John Williams Observation:”
  - Distinguish Tenure Rights from Operating Rights
  - Tenure as a property right can be granted with relatively limited review
  - Operating Rights: Company may have to jump through more hoops – more explanations, review, transparency, etc.
- Land and Facilities
  - What about private lands or other rights to use the surface within license area?
- Assignment Rights
  - Assignment or rights in Property by the holder? In shares of Operating Company? Is consent of Government required? Should capacity tests be applied to the transferee?
  - What about Change of Control exceptions?

### **Comments & Feedback**

- Oil & Gas – you get the provision to explore for and produce oil concurrently
- Exclusivity? If the exploration is not exclusive, the company could be at a disadvantage. However, from another perspective, it could be advantageous for multiple licences to explore different minerals to coexist.

- This section could deal more with the ability of the community to have a voice in mining licenses.
- What level of discretion should or should not be left with a government to accept or reject such studies and proposed mitigation? Can some issues simply be non-mitigable and hence lead to a decision not to issue the licence?
- What about the length of exploitation? How long can the provisions in the agreement remain in effect? Do they end when the mineral is exhausted?
- Exclusivity – Ghana – your exploitation license is limited to a specific mineral. If you want a mining lease for a new mineral, you have to apply for a new license.
- It is important to distinguish between tenure/ property obligations and operating obligations? Should this be done so rigidly? Should tenure rights be given without reviewing the operations issues and implications first?
- Here we aren't talking about small or artisanal mining; this is about a contract between a government and a multinational company. It isn't possible for multiple large-scale mining projects to co-exist. Companies want to protect their mining methods – not share them. Exclusivity is often mandatory.
- We have to take care not to make a model agreement that is so strong that, should the government adopt it, no multinational company would want to invest in that country.
- At some point we must talk about surface rights. What tenure do companies in the model agreements have regarding surface rights?
- Community consent, informed consent. This is complicated because it is difficult to negotiate this consent before an assessment has taken place. People wouldn't know to what they are consenting. Informed consent requires meaningful input over time. (An issue relevant to separating tenure and operating rights.)
- What's the nature of the respective penalties? If the ministry of mines can't shut you down, what's the point? We need to discuss remedies.
- Difficult to discuss tenure in too much detail in the model agreement because each country is different and there are different legal systems.
- What does "local consent" mean? Everyone in the room has a different definition of "local."



- Great problems arise from relocation of populations to explore for minerals. We could reference the World Bank Performance Standard on Involuntary Resettlement. <http://Inweb90.worldbank.org/oed/oeddoclib.nsf/DocUNIDViewForJavaSearch/17FD21DF63BB00CB852567F5005D8603>
- Assignment – there is a tremendous problem when a company agrees to only buy from one source, etc.
- Why are we only talking about large mining deals here? Mining agreements, small and large, should be different. Agreements also must be different according to the type of deposit.
- Exclusivity is important in the sense that it defines who is responsible for what happens in the area. However, the agreement could provide incentives for joint ventures and partnerships. In particular, the relationship between large and small-scale mines is very important.

**12:30- 1:45 PM:** *Lunch Break*

**1:45- 3:00 PM: FINANCIAL PROVISIONS**

*Peter Leon, Webber Wentzel, Johannesburg*

- (See MMDA Draft Outline: Section 4: Royalty and other duties- Section 10: Financial Records and Statements, Auditing, Accounting standards, and Currencies)

**Royalties and other duties**

- Are mining companies treated as a special “economic zone” that is charged no duties?
  - Removal of customs duties in developing countries has been the norm. Canada, for example, does not provide exemptions because it wants to protect its own industry.
  - This could be due to “cookie cutter” solutions provided by entities like the World Bank.
- Taxation: This will be a unique issue in each country.
  - A unique schedule could be attached to each agreement.

## Stabilization Clauses

- Very serious concerns about the use of stabilization clauses.
- The group needs to be conscious of John Ruggie's work as the U.N. Special Rapporteur in this area. <http://www.reports-and-materials.org/Ruggie-report-2010.pdf>
- Can we distinguish between stabilization of tax regimes and stabilization of other things (e.g. environmental laws)? Is the former more acceptable than the latter?
- How long are we stabilizing things? Long enough for the investor to recoup its investment? Or 50 years? The acceptability of stabilization may depend not just on what is being stabilized but for how long.
- A 50-year stabilization clause is simply unrealistic – it is going to get renegotiated and if there is no process provided for renegotiation it will be renegotiated in an atmosphere of conflict.
- Social forces will compel government to act, regardless of what the contract says.
- Can we say in some commentary that we are divided about whether any stabilization is ever appropriate?
- Can we provide some model stabilization clause and say that while we take no position on stabilization, here is a clause if someone wants to use it?

## Transparency

- Publication of Payments
  - Importance of creating a multi-stakeholder counsel to monitor payments and where money is going.
  - Published – how?
    - Publishing on a website may be the easiest answer, but many people cannot access the Internet.
    - Language is also important; contracts need to be in the native language of the country or community you are dealing with.
    - The simplicity of the information is also very important. If people cannot understand the information, it is of no use.

- Shareholder agreements should also be public; they should not be a screen to hide the 'real deal'
- Sanctions – what happens if the company or the government doesn't publish? What are the sanctions? Who would impose those sanctions?
- We could reference:
  - Transparency International; <http://www.transparency.org/>
  - U.S. Foreign Corrupt Practices Act
- Royalties – how are they used? How distributed?
  - Example, money may not be used to pay civil servants, but must be used for environmental projects.
- Obligation for government to publish helps the company publicize its contribution to the government revenues.
- Should write in adherence to the National Mine Closure Law.
- Financing

**3:00- 3:15 PM:** *Coffee Break*

**3:15- 5:00 PM: RIGHTS AND OBLIGATIONS OF THE GOVERNMENT**

*Robert Bassett, Holland & Hart, Denver*

- Government Assurances and Obligations (See Power Point Presentation: MMDA CSC\_Howard Mann and Bob Bassett Government Obligations 04.24.10)

**Rights and Obligations**

- Who has the rights?
- In labor code, the labor minister must check on working conditions in the mines. How prescriptive must we be here?

- Not all of the items listed under “Government Rights” are actually government rights. Some of them are government limitations. We need to change the headings.
- Greater clarity of the contract will help parties avoid “trouble” with bilateral and multinational investment treaties.
- Government assurances and obligations: Stabilization Clause: 16.2.1 Does not talk about compliance, only compensation.
- Government assurances and obligations: Stabilization Clause: 16.2.2 Limits 16.2.1.
  - Not limited to expropriation
  - What is the proper scope for discussion: fiscal issues; but what about regulatory issues, should these be subject to stabilization provisions, either for the application of new measures or requiring the government to pay for the costs of compliance with new measures? What is the impact of causing governments to pay on the ability to adopt new measures?
  - What happens when a government’s action to protect people (health & safety) or the environment has a negative impact on the mining company? We don’t want this to lead the government to arbitration.
  - Best technologies standard
  - A company with all its resources and access to resources could keep a government from protecting human rights.
  - There may be more of a case for stabilization in mining agreements than in oil and gas agreements.
  - The enormous capital investment and the payback period are very long.
  - Other instruments are available: i.e., insurance, bilateral investment agreements
- Title to Minerals (after Severance)
  - Once severed, they belong to the mining company
- Government Development Obligations
  - We have nothing in this section – why? This hasn’t been addressed.

- Will the government be obligated to build roads? To provide power? This could be addressed in the “infrastructure section.”
- Government Obligations Re: Local Governments and Landowners
  - Called “Impact and Benefit Agreements” in Canada
  - At what point does the mining company become a de facto government? We will discuss this more tomorrow.
- Foreign currency remittance and availability

## **APRIL 25, 2010**

### **8:30- 10:00 AM: RIGHTS AND OBLIGATIONS OF THE COMPANY**

*Robert Bassett, Holland & Hart*

#### **Rights and Obligations of the Company**

- Keep in mind that we are talking about company rights and company obligations.
- The topic of community relations and sustainable development are usually an “add-on” in the agreement. We don’t want these clauses to be an afterthought, but to be integrated into the agreement.
- Some topics we will defer to the afternoon session. This morning will focus on community development.
- Remember this is a work in progress. There is duplication in the outline.
  - Marketing of Minerals
    - There have been jurisdictions that have required sales to the government at a price lower than the world market.
    - However there may not be a concern unless the government is trying to have a monopoly.
    - One example is selling to government (China in this example) at 50% of the market rate.
    - Particularly a concern with industrial minerals or other metals.

- Important to maintain the freedom of the company to set the rate.
- An example of this type of clause is in the Mongolian contract provided in your packet.
  - Regardless of the price of sale it is deemed to have been sold at the “London Metals Price”
- Recognize that these are permissible transactions – to sell to an integrated affiliate.
- Hiring corporate affiliates to do construction work or as a consultant; other transfer pricing issues
- Enforcement – may ultimately be in a tax claim.
- What if a separate company is wanted for liability purposes? May be permissible but may want to require consolidation for tax purposes. This makes no difference to their aggregate revenue.

### **Company Staffing Rights**

- Company has the right to determine whom it will hire. The balance between expatriates and local hires changes in various contracts. This is recognition that the issue needs to be addressed in the contract, not a prescription about how to address the issue.
- This may not be a rule which States enforce.
- This does not override immigration laws, but is related to immigration laws.
- Do we really need to address this in a contract?
- Be careful with this kind of clause – it is very political.
- This is national law, not part of an investment contract.
- We should have a warning at the beginning that not all of these clauses will be applicable everywhere, but we want people to think about this issue.
- Issues arise such as pressure to hire relatives or pressures to hire for other reasons that may be unfair or not beneficial.
- Issues also arise where violence results due to disparity in wages for expatriate hires and local hires.

- Company should be able to hire whomever they like without pressure from the government to hire certain workers. Can be akin to corruption.
- Maybe there should be a clause somewhere that allows, possibly as a result of community negotiations, a preference for local hires.
- Unions will come up later in the afternoon.

**Foreign and Domestic Bank Accounts & Repatriation of Funds; Currency Exchange** – these need to be consolidated and perhaps added to the section on Finance.

- Some contracts have provisions against speculation, perhaps a waiting period before repatriation of funds.
- Is this even a real issue for a mining company? In mining your funds are pretty much exhausted. This may not be a concern unless the company is changing ownership, and this would likely be an offshore transaction.
- You could have hedging contracts, contracts that relate to the funds created by the production of the minerals.
- Mining companies want clauses that allow them not to be paid in foreign currency or to have to keep money in a foreign bank.

### **Company Obligations**

- There is an obligation for the company to procure local goods and services to the extent they are available.
- Capacity building for procurement. Even if there is not a local capacity to provide the services, what can the company do to develop this capacity?
- Is this really a company responsibility?
- When mining is no longer there but the community must carry on, this is very important.
- Post mining development as part of the planning is very important.
- In some countries you must be concerned with TRIPS – Trade Related Aspects of Intellectual Property Rights

- One example is where a mining company agreed to employ 200 people in a small country. You want to diversify your economy. When you train 200 people to be mining specialists, does this help diversify your economy?
- There are increasing demands from the host country.
- We should incorporate mining social responsibility practices.
- How to create value change? Not only to sell products, but to create change?
- The focus should be not only about the mine, but about the community needs – and the community should have a voice in determining these activities. This is not the traditional approach.
- The mining company is not the only company making contracts. There are many contracts involved in mining work. Language that talks about negotiating the contract is important. You see this in community relations fields, but the mining company may not be part of it.
- Who is local? There can be an enormous gulf between people who live near the mine and people bussed in from the other side of the country.
- The training of people who live near the mine-- people who may be illiterate- is very important. People want these jobs but may be overlooked. Language that clarifies what constitutes “the community,” community impacts and benefits, community development – this is very important.
- Anti-discrimination clauses – this could be a requirement for every sub-contract, as required in the U.S.
- One example of legislation relates to “content in work and service” – in order to continue to work, the contract can require a certain percentage of “local” hires, but these persons can be from anywhere in the country.
- We would then need a provision on procurement auditing. We have to enforce the terms of the contract. This could be added to evaluation.
- You have to be very careful with local content. What if you say you have to buy from a country that does not even provide the good or service? You could just be enriching a middle man.

## **Environmental and Social Assessment**



- To what extent is it local?
- These would be requirements that don't already exist in existing law.
- These may belong in the section on government obligations.
- You have to have a social assessment before you can have social plan.
- A model contract must be preceded by analysis and prioritization at a local level. This means inviting more local stakeholders to the table to address this.
- We should address who is responsible for the implementation of the plan – the company? We should likely have a parallel obligation for the government.
- Where does the company get the basis of their plan? Company headquarters? International law?
- What happens if the government makes laws later?
- To what authority does the company submit the plan?
- Why don't we create a chapter titled "Environmental Rights and Obligations?"
- A different structure could be useful – "Environmental and Social Obligations?" Whether this is national law or not, the company should have an environmental and social obligation.
- "Akwé Kon" Guidelines should be referenced – this is the first document that will come up if you Google "Akwé: Kon." This is an important one to look up. <http://www.cbd.int/doc/publications/akwe-brochure-en.pdf>.]
  - We may be able to incorporate documents and agreements like this by reference.

### **Insurance**

- One would hope that an international mining company would have insurance – but this is just a placeholder to be sure. Insurance must also apply to contractors and sub-contractors.

### **Joint Planning and Use of Infrastructure**

- Balancing the need and desire of the mining venture to utilize the railroad it puts in, what is the capacity to make it available for other industries?

## **Surface Rights**

- This is a universal issue.
- Minister of Mines may have to decide the compensation to be made to the surface owner.
- This is a difficult issue.
- Who will respond to the pollution or the effects of the mining operation?
- There is no single way to solve this, so you may only have to refer to the local law.
- Communal rights may mean there is no formal title to the land. The local community knows who has the rights to the land, but it isn't related to a "formal" system.
- Issues of resettlement – we should reference the international standard.
- In many developing countries there is no title to the land. This develops difficult issues.
- If mining is in conflict with other land uses, there is an obligation to compensation.
- Must have rules of engagement – rule based and institutional based.
- Mongolia has good examples.
- A way to move forward is to recognize the principle that companies should be sensitive to surface rights. We can move forward from there, but we need this platform.
- Maybe we need to be more specific – “be sensitive to...” – what does that really mean? Does that make a difference?
- Remember there is international law, so we can refer to this when there is a void.
- Remember that we are talking about governments with no mature mining law. We want to offer guidance.
- We aren't going to develop a clause that prescribes who must be consulted with, this is for the companies and local communities to arrive at.
- What about people who do not occupy the land? Local people whose creation myth is that everyone came from a certain place and must return to that place at the end of time? This is only an example, but would create an important place that we must protect.
- Another example is a communal right to herd sheep – is this a surface right?

- This is a difficult contractual area. If you don't address these issues, the project could fail.
- Priority v. sensitivity – because this is a model agreement that cannot dictate terms, we have to think about how this model will be used. If this doesn't include free prior and informed consent, then it ignores recent developments in international law. The drafting should mirror the Declaration of Indigenous People regarding Free Prior and Informed Consent.  
<http://www.treatycouncil.org/PDFs/FPIC%20Treaties%20and%20the%20UN%20Dec%20UNPFII%203508.pdf>
- IFC Performance Standards – “broad community support” – what does this really mean?  
[http://www.ifc.org/ifcext/sustainability.nsf/AttachmentsByTitle/pol\\_SocEnvSustainability2006/\\$FILE/SustainabilityPolicy.pdf](http://www.ifc.org/ifcext/sustainability.nsf/AttachmentsByTitle/pol_SocEnvSustainability2006/$FILE/SustainabilityPolicy.pdf)
- We could reference the Equator Principles. <http://www.equator-principles.com/>
- Consent, Consultation, Consideration, Resettlement and Displacement. These are all issues.
- The company will not be on board unless it knows it has access to the surface. There must be a way to have the government give a mining easement in order for the company to operate; otherwise the company must be compensated.
- You may want to say “owner or occupier” of the land – but who is compensated? Could use “lawful occupier.” However you may have a tenant who isn't the owner – then who is compensated?
- IFC Performance Standard 5 deals with land acquisition– this is a good reference that provides three categories of land relationships. One involves occupiers that are entitled to a different type of compensation. This could be incorporated by reference or use of the actual language.
  - You are taking land so you must give fair market value. However, consent means you have the right to capture some of the gains of the project. The IFC performance standard is not the same as consent.

**10:00- 10:15 AM: *Coffee Break***

## 10:15- 11:30 AM: COMMUNITY ISSUES

*Luke Danielson, Sustainable Development Strategies Group*

- Community Issues (See Power Point Presentation: MMDA CSC\_ Luke Danielson Community Issues 04.25.10)

### **Issues/ Concerns**

- The mining company as purchaser of goods and services can promote development.
- The minerals industry is currently structured so that the end users have much more benefit, and margins are lower for primary producers.
- Equator Principles may often apply, but how effectively?
- The Regional Development Authority provisions in the Mongolia contract should be noted as one potential model.
- What we need may in some circumstances be a three party contract, company-national government - community.
- Another model for our agreement might be to say: “There *shall* be a community development agreement” and specify some general subject matter. Breach of community agreement treated as breach of national level agreement?
- Relocation and resettlement: we have to say something – what?
- Labor and working conditions. The right of free association of labor and of other labor standards – this is extremely important. Government in some contracts prevents people from joining unions.
  - IFC Performance Standard 2: Labor and Working Conditions is a recognized standard.<sup>1</sup>

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<sup>1</sup> International Finance Corporation’s Policy on Social & Environmental Sustainability. World Bank Group, April 30, 2006.  
[http://www.ifc.org/ifcext/sustainability.nsf/AttachmentsByTitle/pol\\_SocEnvSustainability2006/\\$FILE/SustainabilityPolicy.pdf](http://www.ifc.org/ifcext/sustainability.nsf/AttachmentsByTitle/pol_SocEnvSustainability2006/$FILE/SustainabilityPolicy.pdf)

- Special concerns of tribal and indigenous peoples. IFC Performance Standard 7: Indigenous Peoples.<sup>2</sup>
- Biological diversity. IFC Performance Standard 6: Biodiversity Conservation and Sustainable Natural Resource Management<sup>3</sup> may be a good reference here.
- Integrated Mine Closure Planning Toolkit of the ICMM contains resources that may be helpful in dealing with the mine closure issue.
- Need some kind of mechanisms where local people have a way to complain.
- Complaints are one thing, but what if the local people and the company don't agree? We need a dispute resolution mechanism.
- What is the forum available to the local farmer whose chickens have been run over by a truck, if this is an area of weak governance and few functional institutions?
- Third Party Rights
  - Do third parties ever have rights to enforce the investment agreement?
- There are revisions to the IFC Performance Standards so we need to be careful to know what the most recent revisions are before we reference them.
- We need specifically to address community engagement in these processes.
- We must also consider the discretion of the government agencies to respond to the findings of these assessments.
- It is often the right of the company to initiate operations or not, but government may want them to operate.
- There is a lot of merit in an option that project approval should be preceded by community consent. This brings so much social capital to the project that you can't bring in at a later stage. Community participation and ownership of the project is a priority. Investment in community participation at an early stage is crucial.
- The IFC Performance Standards Revisions should refer specifically to human rights, the obligation for companies to conduct due diligence, dispute resolution, etc. Engagement and grievance resolution go hand in hand.

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<sup>2</sup> Ibid

<sup>3</sup> Ibid

## **Social and Environmental Impact Assessment**

- In Tripartite agreements, how can you determine – who is the community? Who represents the community? How can we throw out a recommendation for this issue without resolving these issues?
- It is just as difficult to identify the decision-maker in a company as in the government. The identification of power is a serious issue – who can commit the party to a decision?
- In the case of a community, it takes a special effort to find the decision maker. The company has to invest that effort; it is not the community's responsibility to become hierarchical just because that makes things easier for the company.
- The investment in defining the power in the community is a critical investment that cannot be avoided.
- What if the center of power is not representative of the broader community? What if this person is not a benevolent person? It's not that easy to identify whom you should be talking to.
- By contrast, companies can try to hide who is in power, but it is pretty easy to find out where the real power is in a company.
- If you are dealing with post-conflict zones, these problems are amplified.
- When you have rights to the land, which entails first nation rights to the land, or traditional rights; in some countries it is very clear whom you need to meet with to make decisions.
- Traditional communities have structures -- you can find someone to make decisions and to fulfill the duty of consultation.
- Civil society is a legitimate stakeholder. It can be difficult to find the representative, but if we don't have a solution to the question of who decides, we still have to maintain the principle.
- There are multiple stakeholders – not one. If you've decided that there is only one stakeholder, you are dealing with grievances only with that single party. Grievance mechanisms need to deal with more than the single party.
- The social license to operate – if we are talking about change and changing what has traditionally been done, then we have to look at the negotiations today as negotiations that are equally for the mineral licenses AND the social licenses. Companies always

spend vast resources and time on sampling and financing, it should also conduct proper due diligence on the social license to operate. The recognition of this is part of the role of this project as being an agent of change.

- In some places a three-party agreement would be very appropriate, for example, if there is a first nation, or a couple of first nations with overlapping claims. If you have a nation-to-nation relationship those local interests would expect to be part of something akin to a treaty process. A model agreement should propose a three-party agreement.
- You could consider the “area of impact” of the mine. You cannot avoid this. There is no ‘rule of thumb’ like a certain distance from the mine that is going to work – you have to invest in knowing the communities and understanding how they are affected, and early enough to make a difference.
- Stakeholder mapping looks at legal rights and culture.
- It is a risk management process, not a rights management process. Social license is more behavioural than contractual.
- You could require a sustainable development report. A community relations plan also comes into play.
- How can we require a third party to sign a community development agreement?
- There are two sides to this: an agreement with the community about grievances and an agreement with the community about benefits. The company may use a certain amount of money to provide community benefits. This is a cap for the company and a promise to the community. This is in addition to any damages.
- We could incorporate Extractive Industries Transparency Initiatives and Voluntary Principles on Human Rights
  - [http://www.fco.gov.uk/resources/en/pdf/pdf7/fco\\_voluntaryprinciples](http://www.fco.gov.uk/resources/en/pdf/pdf7/fco_voluntaryprinciples)
- Mine closure requirements are clearly part of the obligations that must be assumed in the contract.
- Special/sacred places warrant special mention in the model contract.
- The problem people have is companies acting as governments. Mining companies have done this throughout colonial conquests, but suddenly have qualms about such actions.

- Third party beneficiaries – who can enforce such provisions? Is there a mechanism for enforcement?

### **Grievance Mechanisms & Dispute Resolution Mechanisms**

- We can think of this as building compliance and a culture of compliance instead of as enforcement.
- Three pillars to Ruggie mandate, found at paragraph 94: 1) State duty to protect; 2) Business responsibility, and 3) Need for greater access to remedies.
  - <http://www.reports-and-materials.org/Ruggie-report-2010.pdf>
- Series of principles recommended for companies: must have a grievance mechanism to manage conflicts and resolve disputes:
  - Perceived of as legitimate and credible;
  - Accessible to the users (people must know about it);
  - Predictable (in terms of process – you know it will lead to resolution);
  - Equitable (people find the results fair and appropriate);
  - Rights compatible (gives voice to the parties, the ability for people to be recognized as human beings);
  - Transparency (difficult – doesn't have to be complete and open but the process must be transparent and must encourage learning from resolution of the problems); and
  - Based on dialogue and engagement, not on the company acting as an adjudicator.
- This isn't a one way "complaint box."
- Recognize that conflict is inevitable.
- Is there a need for a mechanism for the company? How does the company keep the chickens off the road?
- If you are dealing with human resources, you have to deal with conflicts from multiple sources. There are many sides to the issues.
- Alien Tort Claims Act is also an example of how conflicts can be resolved.



- Possibilities may be limited by labor laws – but our expectation must be higher. Publication, publicity and transparency must be of a different and higher standard.
- Arbitration proceedings are notoriously not published, not transparent and inaccessible to society, ICSID, for example.
- When the matter is before the community and a contractor, the government may step in, but a process must be followed for a reasonable solution.
- Some communities may want more involvement of the government in dispute resolution, mediation. This may help balance an unbalanced relationship.
- “C-300,” a bill currently before the Canadian Parliament, is the result of complaints regarding Canadian companies in the Philippines. A series of meetings ensued. The representatives of extractive firms and many NGOs constructed this document based on the Equator Principles. The voluntary norms on human rights were also incorporated. Government didn’t want to recommend anything. An agency would oversee complaints. Sanctions could include withdrawal of the mining company. Huge back-peddalling on industry side. However, bill 300 recommends similar provisions. This could be made law.
  - Chief complaint is “frivolous claims.” C-300 would be relatively transparent and would allow people to make complaints to a government agency.
  - The bill as written would allow anyone to make a claim.
- We didn’t discuss use of security – private or public. Use of voluntary principles on human rights – we could use this where there are not specific provisions.

### **11:30- 12: 30 PM: HOW TO MOVE FORWARD FROM HERE?**

- We must deliver a product to the IBA at its conference in October. How to get there?
  - How to manage the rest of the consultation?
  - Evaluations
  - This afternoon we have a larger audience. We need to report to the larger group and have a dialogue with them about how to move forward.
- What should we do to move forward?

- Use the MMDA website. We need a moderator, a formal way to organize comments and extract main ideas and conclusions.
- Include additional people on the working group.
- We currently have a limited capacity to moderate large number of comments on the website.
- A number of people were invited to the meeting but were not able to join us. Everyone who was invited to the meeting will have access to the website.
- We have to think about the exact language we use – it must be friendly both to the community and to the company.
- We are still not clear if we are producing a document of best practices, or just various existing models. We still don't know.
- There are some critical areas where no best practices exist. We can't ignore that.
- If we find clauses that don't make sense, we will filter those out. We don't know how rigorous that filter will be at this time.
- We want to develop a document that is user-friendly, with a target of governments and communities.
- This document is only the first step. October is a very ambitious deadline.
- “Model” should be the best. But we can't really do everything by October, so we must set specific achievable objectives.
- We need separate documents – one for activists and one for governments, etc.
- Any civil society explanation must come from civil society. We need someone to develop this.
- How do we take this beyond being just a document?
- We must recognize that “the mining industry” is not a united group. We need a tool that companies of various sizes and less responsible mining companies can use and have an incentive to use. This must be an agreement that works.
- Upcoming Meetings:

- The World Economic Forum (WEF) has a project kick-off in June. It would help to take a couple of people from this group to that meeting. We need to take advantage of the WEF meeting in June.
- There is a huge movement of civil society to incorporate social and environmental protections into mining agreements. Groups are meeting in Vietnam in May. It would be useful for someone to go to Vietnam in May.
- The African Union project has a meeting in September.
- Extractive Industries Transparency Initiative (EITI) meeting in August or September could be an opportunity to involve more people.
- No one is working full time on this project, and the work being done is largely on a pro bono basis.
- This is just the beginning of a web-based process. We can build on the process and see how this is being used or not used. We need to incorporate additional best practices.
- We discussed having a competition – who can develop a best practice from their own practice? This could be a way to allow companies to show off their good deeds.
- We could publish a “pilot” with one chapter to attract more financial support and to allow people to comment and to sell the idea.
- Our intention is to produce a draft.
- What is the point of trying to tag onto other conferences? This would require someone who is already going to the meeting and sending a couple of people to the meeting to stir up additional input and interest. The model has already been useful in major agreements.
- We should also involve Mines and Communities, Jubilee, Oxfam Australia, and other activist groups – at least to converse. Some of these groups were invited but didn’t come.

**12:30- 2:00 PM:** *Lunch Break*

**2:30- 5:00 PM: OPEN SESSION WITH IBA-SEERIL MEMBERS**

Panel: *Luke Danielson, Peter Leon, Howard Mann, Bob Bassett*

**Introduction and Introduction to the MMDA:** *Peter Leon, Webber Wentzel, Johannesburg*

- What we are trying to do here is not meant to be prescriptive.
- The Consultation was not driven at getting consensus, but to get feedback.
- There is a vision of a product, to be presented in October, which may not be perfect but will be quite good enough to be released to users, and to be useful.
- October product will be MMDA Version “1.0.”
- We are creating a website; it will be used as the principal source for ongoing consultation on the MMDA. It will be available initially on a limited access basis in order to garner feedback and comments in a manageable way.
- We envision a period of perhaps six to eight weeks during which:
  - The password to the website is shared with interested organizations but still on a limited basis to members of the Mining Law Committee, invitees to the first and/or second consultations, sponsors, people who are on our e-mail information list, etc.
  - We cannot get in a position where there is more comment than we can responsibly take on board.
  - We learn how to use the website, and see how much work it takes to process what comes in; and
  - We try to locate additional resources in cash or kind that can be dedicated to dealing with website communication.
- For the last day and a half we have been talking about the outline of the agreement. What should be in it and what shall not.
- Sponsors: the International Bar Association, the World Bank’s Extractive Industries Technical Advisory Facility, the Prospectors and Developers Association of Canada, the University of Dundee, the University of Denver’s Public Interest Law Group and the International Council on Mining and Metals have all assisted us at arm’s length – which is very important to let us carry on independently.

- Since the MMDA presentation at the Prospectors and Developers Association of Canada Convention 2010 (March 8, 2010, 206AD, North Building- Metro Toronto Convention Center) six weeks ago, a lot has happened. In particular, the Basic Principles have been more clearly defined.
- Thank you to the civil society participants who joined us for the past two days to discuss the draft outline, through travel issues and often inconvenient circumstances.
- Special thank you to Robert Bassett, Holland & Hart, who has been leading much of the work, deconstructing the agreements and putting together an outline of what we will present in October.
- This has been a collaborative effort to reflect development and sustainable development issues in a real fashion.
- This civil society component of drafting the MMDA has been a really exciting part of this process; this input is a very valuable part of the process.

#### **How We Got Where We are Today:**

- We collect 50-60 mining agreements, and with 7 lawyers and interns divided the MMDA into 5 topic areas. We pulled clauses relative to specific areas and evaluated their effectiveness based on clarity, support and applicability.
- We then took the best of what we collected and hope to meld it into an agreement.
- The Prospectors & Developers Association of Canada (PDAC) meeting was heavily attended by government people; this expanded our scope and vision.
- The Civil Society Consultation that took place over the past two days further expanded our vision and scope.
- We now have a better idea of how to develop the product itself.
- We did not strive to achieve a consensus in the MMDA, but to obtain input and multiple perspectives; we feel that consensus by one party or the other would be an indication of failure on our behalf.
- We have asked the civil society attendees to get together a couple of spokespeople together to present their thoughts on the draft outline and to address what is important to them from our discussion over the last couple of days.

## **CIVIL SOCIETY PANELIST COMMENTS AND FEEDBACK**

### **Vision**

- What is the vision? Mining contracts are not a new area. What is the difference between what we have now and what we are hoping to achieve?
- We discussed whether we are trying to propose a model contract or create a best practices guide. It has become clear that this needs to be addressed.
- There is a general consensus that we are not trying to propose a prescriptive model but, rather, an agenda that is objective and takes into account different legal systems, countries and situations.
- We envision a variety of clauses to deal with a variety of situations, primarily for countries with limited capacity to negotiate with large mining companies.
- We are not trying to regulate, but to facilitate better negotiation.
- Governments may use the MMDA as a way to regulate, as a better way to get things done.
- We also feel that best practices should shine in this document.
- This model is meant to work amongst community, government and company. It is not an easy task to make everyone feel comfortable.
- It is extremely difficult to imagine a contract that would apply 60 years from now to something like a mine closure. Things will change over time. This is a limitation.

### **Changing Industry**

- The mining sector is in transition along with the energy sector. It is no longer the priority. The fear after WWII of lack of minerals did not turn out to be true. We are not “running out” of minerals.
- What is development? We are way beyond the old vision that development is a new highway to realize that development is freedom; it is the process that gives people freedom and the ability to make decisions.

- If we are doing a really brilliant job today, we won't know for 50 years how it will turn out.
- There are so many approaches that it seems almost impossible to create one model agreement. There are so many different minerals that must be treated differently; and some present more controversy than others.
- Remember that there are many different types of mining companies. Are there different requirements at the exploration stage and at the development phase?
- We assumed that the government where the MMDA would most probably be used would not have a mature mining code. What if we are not dealing with a mature mining company?
- We need to be careful so that the MMDA is not only workable for a large company – it needs to be adaptable for small and mid-size companies.
- A principles-based approach to exploration and to development and exploitation and closure is needed.
- Radioactive minerals warrant special consideration. Communities ask for more security when the mine involves radioactive minerals, but our answer is often the same as if it were bauxite and gold mines. On the contrary, companies that produce non-radioactive minerals in areas where radioactive mining occurs are seeing increased pressure to exercise the increased caution.
- Have you dealt with transboundary issues? No, but there is an obligation on States now in customary international law and in air and water agreements to include transboundary impacts in the environmental impact assessment process. Presumably this would include transboundary impacts in such processes relating to mines.
- We are no longer talking about negotiating simple hard rock mining licenses. We have moved into an era where it is about a hard rock license and social license concurrently. Social licenses are not “add-ons.”
- While doing exploration, due diligence, economic feasibility, geological and financing assessments, we should also be doing due diligence on operating in a particular society and in a particular environment. This shouldn't be thrown together in the last days of the negotiation process.

## **Exploitation period**

- Traditional exploitation lasts 30-35 years – we discussed that this should probably be extended: some participants feel that we should exhaust the resource if we have a deposit that can be extracted beyond its typical 30-35 year life span.
- Not all are like this – there are some deposits that will take only 8-10-12 years to mine.

### **Closure**

- Mine closure is a huge issue: acid drainage, ongoing care. Governments are ultimately left with these responsibilities.
- Over time these big mines, by the time they close, tend to be in State hands.
- It is extremely difficult to imagine a contract that would apply 60 years from now to a mine closure. This is a limitation.
- Closure is definitely an issue. If you change the plan part of the way through, you will have to change the closure plan as well.
- We need stringent requirements regarding decommissioning.

### **Best Practices**

- We have discussed a draft model.
- We have worked with actual contracts.
- The MMDA will be non-prescriptive. Parties could feel free to adopt the pieces that fit.
- We want the MMDA to be of use. It must be commercially viable.
- We need to integrate the social and environmental components with all of the other parts of the mining agreement. Not making these an “add on” is very important.
- We are really looking for a mixture between a “model agreement” and a variety of principles and sample clauses for an agreement, or perhaps “best practices.”
- The document is an agenda for negotiations more than anything else.
- We can’t foresee all of the situations that may arise – the level of development, the environment, and the type of mineral – there are so many elements. We just want to make sure every issue is “on the radar screen.”



- This needs to be respectful of traditional community law as well. We can't come to a single prescriptive conclusion. We want to show business and community groups that a different type of agreement "can be done." This is a roadmap for how to achieve this.

### **Tenure**

- Tenure rights were discussed first – the heart of the mining legal system – this very important part of the agreement needs to have more work done in the environmental and social sector; the industry is in transition and these changes need to be constantly accounted for.

### **Exclusivity**

- We discussed whether it makes sense or not to maintain exclusivity principles.
- We also discussed exclusivity in relationship between large and small scale mining.
- Many of us think that exclusivity plays an important role in the case where small scale mining occurs with large scale mining concurrently because it delegates responsibility in regards to the environment and social issues.
- The tension is around permission and free access.

### **Tenure Length**

#### **Large vs. Small Scale Mining**

- We need to be careful that we are not only developing something that is useful to a large mining company but also to small mining companies.
- The observation was made that we want the MMDA to deal with competing land interests; in our opinion if this isn't dealt with then nothing is achieved.
- We need to discover how multiple stakeholders can work in the same area.

#### **Consent or Consultation**

- How should these be dealt with in terms of community support?

#### **Defining the Community**

- The scope of the community is more and less local: the most impacted community and "lesser impacted community."

- We need to identify the representative of the local community for developing the social dimensions of the mining license, not just at the later stages of the negotiation, but at the beginning of the process as well.
- This isn't a new argument, but it is a fascinating argument: the question about the community and where it fits in, about agreements between communities and companies. Community consultation from the beginning is imperative.
- Technological improvement can provide hope.
- We should seek minimal impact on land and environment while maximizing impact on community—using the community's vision to determine what needs improvement and how to go about meeting those needs. This starts with good faith negotiation and it involves documentation of participation and outcomes.
- The “tragedy of the commons” – we have to obtain a balance in the allotment of resources and a balance in the community. We need strong policies to be sure we allot the costs and benefits for generations to come.
- One thing we didn't discuss is the [Not In My Backyard] “NIMBY” problem. Would we be willing to use the same kind of requirements in our own backyard? This may also apply to other fields outside of mining.
- This project parallels community and company needs: we are starting to see merger in parallel initiatives.
- The question persists of when we need to negotiate with the community: before the contract is signed? After?
- The key word is legitimacy. Is this legitimate activity in our community? Are these the legitimate people to do the job?
- Local communities expanded, we have expanded our definition of “indigenous communities” in some contracts.
  - Conflict in how “indigenous” peoples are defined

### **Free Prior and Informed Consent (FPIC)**

- Consensus, consent and consultation.

- Aim is to safeguard the community and the environment, to establish an ongoing continuous relationship.
- When does this become a veto of mining operations?
- This is not a technical issue – it is political. But we can contribute in a technical manner to this political issue
- Legitimacy, prior consent, mining, benefits, access – there are two worlds out there – exploration and mining – that generate wealth and opportunities. What type of agreement is appropriate for an exploration? For mining? They are different things. The critical issue is exploration and less so about production.
- A practical system to get FPIC requires democratic principles and a rule-based approach.
- The starting point would be the law of local communities (i.e.: living customary law).
- This must be the free and prior decision of the community adults in order to be relevant.
- We have enough guidelines to investigate and begin. In this way we can creatively borrow from other organizations and get local input on what would be appropriate in various circumstances.
- Key to consent is not giving authority to the majority but, giving a voice to the affected minority.

### **Revenue Sharing**

### **Transparency**

### **Confidentiality**

- It has been a principle of free market economics that markets work best when the participants in the market are fully informed. The international contract process will work better if the players in the market are better informed.
- We must provide adequate transparency in order to address concerns and community needs.
- Information is part of the power relationship.

### **Corruption**

- The issue of corruption – we cannot address the issue of corruption in a model mining agreement, but we can provide that the parties agree to adhere to local law.
- If the incentive to be corrupt is there for both parties, we will see corruption for years to come.
- You can use the system to shame the government – sue if there was an expropriation of your money.
- We have a specific provision on bribery in the outline – company and government. We also have provisions on transparency of the process – the EITI principles. We need proper auditing of books and records.
- Incentives – the international arbitration processes have become much more stringent on corruption. The last public cases to deal with this come to the same conclusion. If you come to an arbitration with dirty hands, we won't hear you. There is a higher standard now.
- What about predatory states? This needs to be addressed.

### **Need for a Commentary**

- One thing that we talked about that wasn't reflected here is that there is consensus among the Civil Society Consultation participants that in order for this form to be useful it has to be more than a form; instead it has to be more of a commentary to explain the circumstances of when the clauses may or may not be useful. This may make committee's job more difficult but, far more valuable.
- We suggest flagging controversial clauses like stabilization and free, prior and informed consent.

### **Closing Remarks**

- We are not working in a vacuum; we should strive to link to existing benchmarks such as the Equator Principles, IFC Standards and World Bank Guidelines on Resettlement.
- Development is freedom – it is about multiplying options for people. We want to multiply options.
- This has been a great opportunity to discuss important issues with lawyers and civil society representatives.

- There is much to be gained by company, civil society, and governments if this project succeeds.
- This is a learning process with great leadership. The project deserves investment.
- This started with the Rocky Mountain Mineral Law Foundation in Buenos Aires. We have dissected contracts and conducted a consultation at the PDAC 2010 Convention with about 100 people. This greatly broadened our scope.
- The panelists here, a wonderful group of Civil Society Consultation representatives, have gone through a draft outline, point by point, to raise concerns.
- We haven't always agreed, but this is part of the process.
- This Consultation has given a different perspective to what we are doing. Having a group of this calibre has been wonderful.
- We have deconstructed the agreements, but do the agreements really represent best practice? This is an important question to consider as we move forward.
- What do we do when all acknowledge there is a gap, when contracts are not working because something is missing?
- We hope to have a basic outline within the next few weeks.
- This is a great initiative of the IBA.
- Unlike many projects, this project does have an end point. This will end and there will be a product in October. The product won't be perfect, but we don't want the "perfect" to get in the way of a "very good" product that can be submitted.
- To some extent we have a very big project, but we approach it with a great degree of humility. We hope it will make a significant contribution to a different approach to how mining agreements can be done.
- We need the leadership of the IBA Mining Community.
- Thank you to all those who have traveled far and wide to be here.
- We have been largely a volunteer committee. We live in different places and different continents, but we do have a plan.

- Over the next three weeks, each member of our committee will take responsibility for a section of the draft. We will then circulate the draft for comments. In about a month, we should have a draft for IBA feedback.
- We want to involve as many people as possible. We are looking for opportunities for people, where interested parties are gathered, to present the project and get feedback.
- Please let us know if you know of any events/organizations with members that might be interested in the MMDA Project and we will try to expand our reach in order to obtain additional feedback.
- The IBA is working on this and more people are getting on board. The World Economic Forum, the Economic Commission for Africa, the International Council on Mining and Metals is kicking off a project, and we are excited to see this interest.

*We appreciate your participation and we look forward to your comments and feedback.*

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