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MOVING TOWARD HEALTHIER GOVERNANCE IN HOST COUNTRIES -- THE CONTRIBUTION OF EXTRACTIVE INDUSTRIES

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This document served as a background paper for a presentation made at the OECD Conference on Foreign Direct Investment and the Environment -- Lessons to be learned from the Mining Sector which was held in Paris on 7-8 February 2002.

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ABSTRACT

Mining companies have made considerable progress in controlling their environmental outcomes. OECD research shows that they have acquired management expertise and contributed to the growth of standards that help them improve their performance at lower cost.

Their efforts are an essential component of broader control systems designed to get better environmental outcomes from mining activities. However, the effectiveness of these private measures will be undermined if the overall framework in which businesses operate is working poorly. This framework includes law and regulation, of course, but also mechanisms by which “softer” pressures are formulated and applied to business behaviour. Even very general framework conditions -- such as protection of basic human, labour and civil rights and freedom of the press -- play an important role in influencing environmental outcomes in mining and all other sectors. No country is perfect in these respects -- getting these settings right represents a continual struggle for any society. The real challenge for the mining sector arises from the fact that it sometimes operates in countries that have fundamental problems in these areas.

Although the overall share of the mining sector in the world total is quite small, its importance for some economies can be large and the underlying issues affect the welfare of millions of people. Mining companies have an important, but necessarily only partial, role to play in improving these framework conditions in these countries. In responding to this challenge, they have sponsored anti-corruption activities in their industry organisationsand have begun to look at what happens to mining tax revenues once they enter public financial systems and at the transparency and design of the financial arrangements that link them to host countries. This is useful. More generally, mining companies could usefully act in co-operation with other extractive industry firms, with international organisations and with home and host governments to advance an overall governance agenda that already enjoys widespread consensus among all these actors. OECD experience shows that, even with general agreement on the desirable thrust of policy reform, the difficulty always lies in doing it. Mining companies can make an important contribution to creating momentum for reform and providing technical expertise for improving the general framework that influences mining regimes in host countries.

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Natural resources can be a source of great good… or dreadful ill. The key element is not the resource itself, but how it is exploited. An orderly mining regime, operating within a transparent and predictable legislative and fiscal framework, can be a major source of prosperity for governments and people. Without it, mineral wealth… will be a magnet for the greedy and corrupt to line their own pockets at the expense of the people.

Nicky Oppenheimer, Chairman, De Beers
Address at the Commonwealth Business Forum, November 1999
Diamonds Working for Africa

1. The discussants for this session have been asked to elaborate on the potential of voluntary approaches for improving environmental performance. I suggest that we first take a step back and look at what corporate responsibility is and at how it fits into the broader processes by which society seeks to get what it wants out of the business sector. We will then examine the "state of the art" in corporate responsibility initiatives and look at an OECD survey on how mining companies view their roles in the societies in which they operate.

What is corporate responsibility?

2. The business community has made and will continue to make essential contributions toward achieving the goal of sustainable development. It is worth recalling that business' most important contribution is the conduct of business itself -- its core responsibility, is to yield adequate returns to owners of capital by identifying and developing promising investment opportunities. In the process, businesses provide jobs and produce goods and services that consumers want to buy. OECD economic history attests to the power of the business sector to raise general welfare and living standards when operating in effective governance environments.

3. Of course, corporate responsibility goes beyond this core function. Businesses also have to comply with legal and regulatory requirements and, as a practical matter, must respond to "softer" societal expectations that are not written down in law books. OECD research suggests that many businesses have invested heavily in improving their abilities to do this. Companies make this investment because they recognise their interdependence with the societies in which they operate. Indeed, interdependence lies at the heart of corporate responsibility, which we at the OECD define as the actions taken by businesses to nurture and enhance their relationships with the societies in which they operate.

4. However, interdependence is always a two-way street. Societies can also act to nurture this relationship by providing such services as law enforcement, appropriate regulation, and investment in the many public goods used by business and by financing these activities via a well designed, disciplined tax system. If the actions of both business sectors and societies are successful, then the "fit" between the two helps to foster an atmosphere of mutual trust and predictability that facilitates the conduct of business and enhances economic, social and environmental welfare.

5. The concepts of governance and corporate responsibility are inseparable. As pointed out by the noted governance expert, Adrian Cadbury, systems of public and private governance help economies and

organisations strike the “right balance between economic and social goals and between individual and communal goals.” Getting this balance right is an ongoing task for any society. Success hinges on the creation of appropriate systems of law and regulation. It also requires suitable channels for less formal influences on business behaviour such as those coming from employees and colleagues or from the press and civic organisations. Thus, labour, civil and political rights are essential parts of both the public and private governance mixes. Finally, governments must be efficient and effective enough to deliver the various services that support business activity (prudential supervision, infrastructure investment, etc.). These include protection of property, contract enforcement, investment in public goods and provision of public services. If governments don’t play their roles, the business community won’t be able to play its part either -- corporate responsibility goes hand-in-hand with government responsibility.

6. The governance framework can be viewed as providing signals and incentives that guide companies in making investment choices that will not only yield adequate returns to owners of capital, but also conform to socially agreed trade-offs and constraints. For example, if societies are to benefit from mining company activities, then answers need to be produced to some basic questions -- What is an allowable trade-off between environmental harm and current income? What is society’s risk tolerance in certain areas (e.g. for occupational health and safety, public safety)? Although business has an important role in expressing its views on what these trade-offs and constraints should be, its voice is necessarily only partial. The answers need to be produced by processes that are balanced and inclusive so as to ensure that the relevant stakeholders and interest groups have their say. Despite the higher profile roles that international organisations and NGOs have assumed in recent years, the answers to these basic questions are still largely formulated via domestic political processes. The next section will show that progress on private initiatives -- including many undertaken by mining companies -- has been significant. However, the picture is not wholly positive. Subsequent sections will argue that the real problems lie in how the rules of the game are formulated in many host societies.

Private initiatives for corporate responsibility -- the state of the art

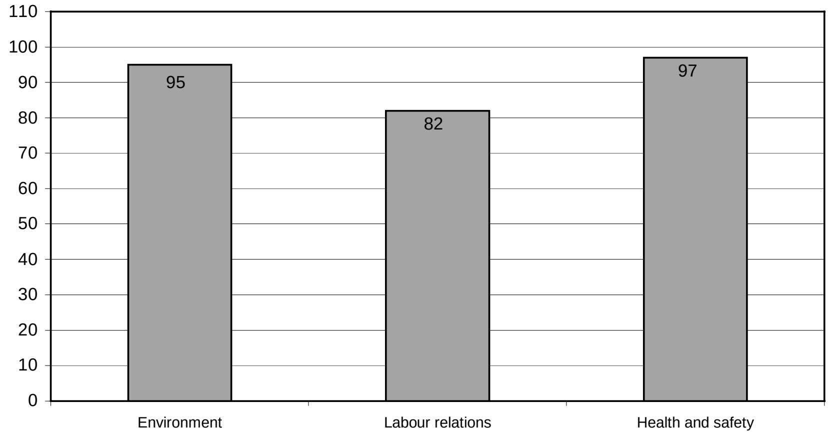
7. In a world that is in dire need of good news, there is quite a bit of it on the corporate responsibility front. A recent OECD Study, *Corporate Responsibility -- Private Initiatives and Public Goals (2001)*, using databases covering over two thousand organisations in thirty countries shows that most large OECD-based multinational enterprises have issued codes of conduct setting forth commitments in such areas as labour, environment, health and safety. Over the last fifteen years or so, principles and management methods have emerged that allow businesses to address ethical issues about which they would have been incapable of organising any systematic response even as recently as two decades ago.

- *Global phenomenon*. OECD research suggests that most major multinational enterprises have participated in this trend. For example, nearly all of the top 100 multinational enterprises publish material outlining the principles and management techniques they use to control environmental, health or safety outcomes or in the area of labour relations (Figure 1).

- *Growing expertise*. A new pool of international management expertise has been created. This new cadre of managers combines knowledge of regulatory and legal compliance with management control expertise. To cite only two examples, their activities can be readily seen in the emerging consensus on management practices in the corporate fight against corruption and in the increasingly sophisticated and standardised approach to environmental management. Figure 2, for example, shows the high rates of adoption of formal management systems among European companies operating in high environmental impact sectors. Mining is among the sectors with the highest rates of adoption.

Figure 1. Top 100 Multinational Enterprises with Policy Statements on Environment, Health and Safety

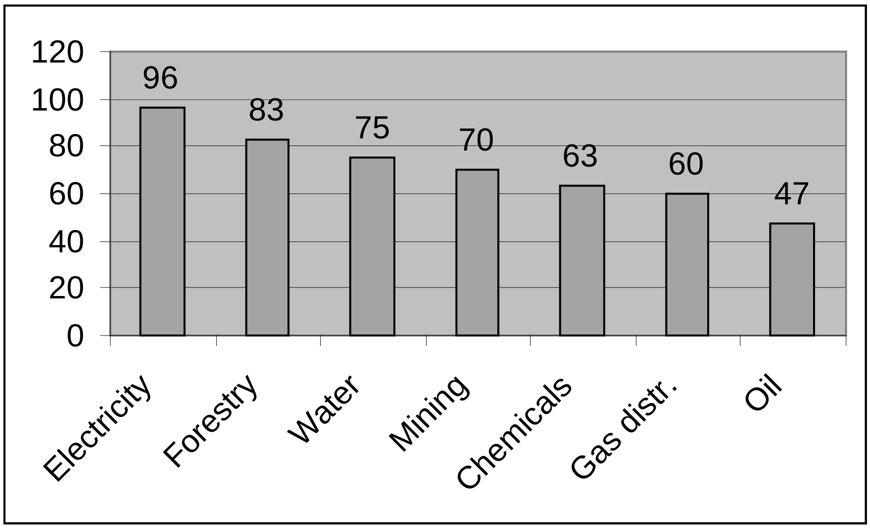
(per cent of UNCTAD's list of top 100 multinational enterprises)



Source: OECD.

Figure 1. Figure 2. EMS Adoption by European Companies in High Environmental Impact Sectors

(per cent adopting a formal environmental management system)



Source: OECD/EIRIS (Ethical Investment Research Service) OECD Secretariat aggregations using data compiled by EIRIS on the environmental practices of 1650 companies from FTSE-Europe index. 424 companies are from high environmental impact sectors (*Corporate Responsibility: Private Initiatives and Public Goals*, OECD 2001).

- *Emerging standards*. Standards in support of improved non-financial accountability and performance have been developed and these are now being used, refined and tested through day-to-day use by companies. For example, about two-thirds of the high environmental impact companies shown in Figure 2 use a standard environmental management system (either ISO 14001 or EMAS). Other examples of standardisation are the Global Reporting Initiative for corporate reporting in support of sustainable development and the Voluntary Principles on Security and Human Rights.

8. Of course, not all of the news is good -- globalisation has raised legitimate public concerns about some aspects of business conduct. Some OECD-based multinational enterprises, including some in the mining sector, are perceived as being party, sometimes inadvertently, to serious problems -- corruption of public officials, human rights abuses and serious environmental degradation. Further progress is needed in building a governance framework -- incorporating both domestic and international elements -- that will allow these difficult issues concerns to be addressed.

Corporate responsibility and host country relations -- the extractive industry voice

> *The mining industry wants to better organise its voice to enable it to contribute more positively to public debate on sustainable development, which provides a coherent framework in which to address diverse issues.* --- *Global Mining Initiative leaflet "An Industry in Transition"*

9. Extractive industries companies help to convert non-renewable resources into products that enhance the living standards of much of the earth's population. While exploring for, extracting and distributing mineral or petroleum deposits, these companies often find themselves investing in what one of them describes as "some of the most difficult operating environments in the world." In extreme cases, these include places where violence, corruption and human rights abuses are common and where basic government services (law enforcement, social protection and regulation) are not available or not functioning well. As a result, these companies must often deal with some of the most daunting corporate responsibility challenges around -- serious human rights issues (e.g. management of security forces, resettlement), environment and nearly every aspect of the fight against corruption. In dealing with these issues, extractive industry companies face a patchwork of regulatory and legal frameworks that reflect various pressures coming from both host and home countries. Home country pressures can be quite strong -- these stem from NGO campaigns, from threats of litigation or criminal charges (e.g. on human rights or bribery of public officials). Customers, business partners and employees can also exert pressure.

10. The OECD Secretariat has conducted a survey of how multinational enterprises in extractive industries view their roles and contributions in host societies. The sample consists of 59 extractive industry companies -- 29 oil companies and 30 mining companies. It covers a range of enterprises types, including very large, visible companies and medium-sized firms with little public visibility. The mining companies in the sample operate in dozens of countries and in some very difficult investment environments (e.g. Angola, Colombia, Congo, Indonesia and Zambia). The Annex describes the methodology. Selected results are presented in Figure 3.

Oil versus mining and medium-sized versus large companies

11. Thirty-eight per cent of the petroleum companies and 13 per cent of the mining companies make extensive statements about their roles in host societies. Forty-three per cent of the mining companies make no statement whatsoever on these issues (compared with 3 per cent of the oil companies). The amount of

material provided appears to be strongly correlated with the size and the public visibility of the companies. For example, all of the major oil companies except one have issued extensive policy statements and declarations. In mining, the so-called "seniors" (large companies) are much likelier to make public statements containing detailed explanations of policies and practices than the "juniors" (smaller, less visible companies).

12. The difference between oil and mining companies is striking. Because the oil companies often have a retail presence that mining companies would not usually have, this finding seems to support the view that consumer pressures and other pressures linked to high public visibility are important drivers of corporate responsibility initiatives in extractive industries. Because the analysis used the same set of textual attributes for mining and oil, this interpretation assumes that the relevance of the attributes is the same for the two sectors and, hence, that the corporate responsibility challenges facing them are largely similar (which may not be the case).

Provision of local social services and infrastructure

13. Perhaps the most striking finding is the importance these companies place on the social services they provide in host countries. The survey suggests that large companies in extractive industries are heavily involved in the provision of social services and that they view these as being among their important contributions to host societies. Community development is mentioned by 55 per cent of the oil companies and 40 per cent of the mining companies. Education and medical services/infrastructure are the most frequently cited activities in this area -- 52 percent of the oil companies and 27 percent of the mining companies mention the building of schools and medical facilities. The development of drinking water infrastructure (31 per cent and 13 per cent, respectively) and of agri-food projects (31 per cent and 10 per cent, respectively) are also mentioned.

14. According to one study of mineral taxation, service and infrastructure provision has been a feature of mining company activities for over a hundred years[1]. This may be due, in part, due to the fact that many of their operations are located in remote regions or that (in the absence of fiscal mechanisms for revenue sharing with local populations) they may need to "buy" the support of local communities in other ways. Finally, according to some NGO and press analyses[2], the attention given to these services' in companies' public statements reflects a "paternalistic" model of corporate social responsibility and a reluctance to face some important underlying issues.

Human rights, security forces and resettlement

15. Thirty-five per cent of the petroleum companies and 17 per cent of the mining companies discuss respect of human rights as a business issue. Security issues are by 14 per cent of the oil companies and 3 per cent of the mining companies. A few companies -- almost all of them oil companies -- provide detailed information on how they manage security. The statements sometimes include vivid descriptions of violent incidents, involving employees, security forces or local people as well as explanations of how the incidents came about and how it was dealt with employees. Many of these incidents took place in Nigeria, but there are also descriptions of incidents in a few other countries. Three companies note that they are at times the target of extortion attempts.

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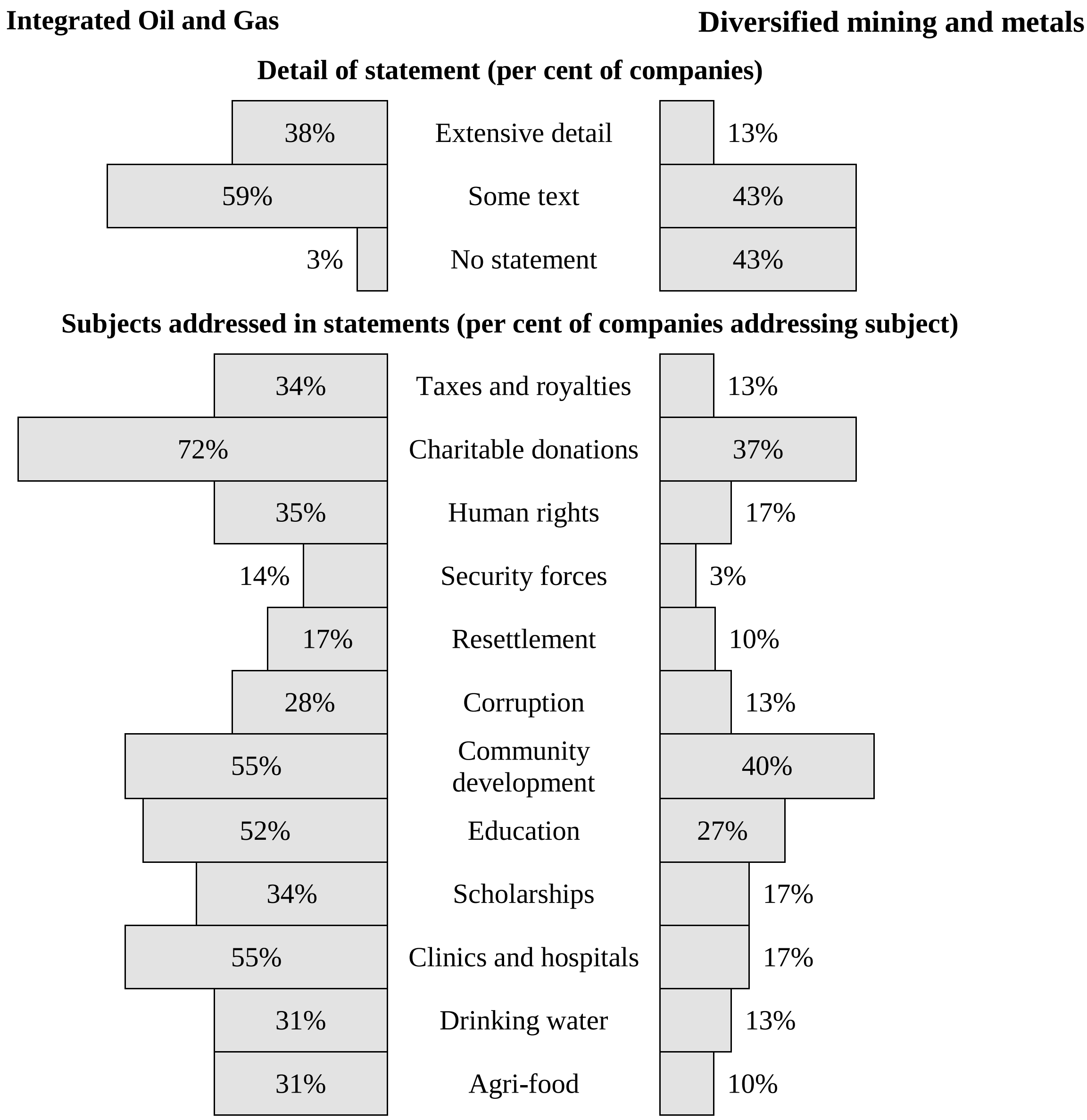
1 . See Otto, James (1995) *Taxation of Mineral Enterprises*, Graham and Trotman/ Martinus Nijhoff. London, Dordrecht, Boston.

2 . See, for example, "Silence Total" in Vivant Univers Myanmar ou Birmanie? Pages 22-29.

Figure 3. Extractive Industry Firms: How They See Their Roles in Host Societies



Source: OECD.

16. Seventeen per cent of petroleum companies and ten per cent of mining companies mention resettlement operations and compensation principles. Two companies cite the World Bank Resettlement Guidelines and a few describe their compensation and resettlement practices in particular situations.

Other host country issues -- revenue use and transparency

17. This analysis shows that extractive industry firms are keenly aware of the potential contribution that their (often-large) tax and royalty payments can make to the economic development of host countries. Thirty-four percent of the petroleum companies and thirteen percent of the mining companies mention it. Overall, revenues paid to governments rank among the benefits most commonly cited by extractive industry firms.

18. However, approaches to this issue vary. Most statements simply acknowledge that the payments made to governments are large and that they constitute a major benefit for host societies. In contrast, a few of the largest companies provide detailed discussions of the concern that, in some host countries, little of this money makes its way to the broader population. Two oil companies describe partnerships with international financial organisations (IMF and World Bank) designed to "clarify how the income from … oil production is spent and accounted for." In the statements made by the sample companies, the situations in three countries are discussed in oil company statements -- Nigeria, Angola and Chad. Although there are industry wide initiatives to look at corruption issues in the mining sector, the issue of revenue use and transparency of host is not an important feature of their descriptions of host country relations, even among very large mining companies. The diamond industry -- where "conflict diamonds" and revenue use were the subject of a major NGO campaign -- is an exception, as the quote from the chairman of DeBeers (not in the Secretariat's sample) illustrates.

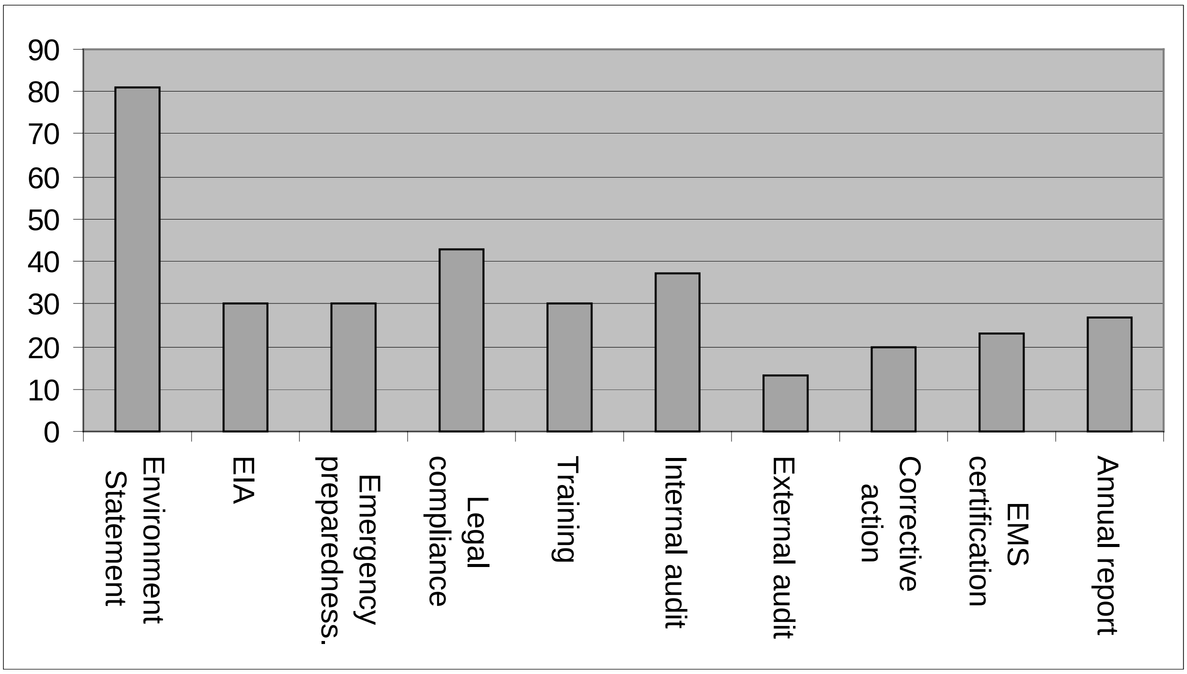
Environmental statements

19. It is worth noting that, in a separate textual analysis of the same 59 company sample, mining companies were more likely to discuss environmental management than oil companies (81 per cent of mining companies and 63 per cent of the oil companies discuss this issue; Figure 4). The Secretariat performed a detailed analysis of the environmental statements of the mining companies. 57 per cent of the mining companies provided detailed statements of their environmental management practices. Environmental impact statements and emergency preparedness are mentioned by 30 per cent of the sample. Half of the mining companies have EHS management systems and 23 per cent of these are certified. In terms of management tools used for compliance, employee training (30 per cent) and internal audit (37 per cent) were the most frequently cited. Thirteen per cent of the mining companies mention the use of external audits. Twenty per cent mention procedures for non-conformance and corrective action. 27 per cent issue an annual report on their environmental performance.

20. Mining companies appear to be more comfortable with environmental issues than with some other issues of host country relations (human rights, corruption, and resettlement). They are more likely to discuss these issues at length and they speak with considerable assurance on these matters. This is probably because they are (justifiably) proud of their accomplishments -- the development of managerial expertise and of behavioural and management standards -- in this area. The apparent assurance and relative willingness to take public positions on environmental matters may also reflect the fact that, while mining companies are in control of their internal environmental practices, the host country issues involve areas where the role and potential contribution of mining companies is necessarily only partial.

Figure 4. Content of Environmental Statements by Mining Companies -- Selected Attributes

(Per cent of companies mentioning attribute)



Source: OECD.

Assessment -- strategic issues for mining companies

We need responsible government before we can have responsible business….

Survey respondent from Ghana -- "Corporate Social Responsibility: Making Good Business Sense" World Business Council for Sustainable Development January 2000.

21. This exploration of the corporate responsibility initiatives of OECD-based multinational enterprises in extractive industries gives grounds for hope, but also for some fundamental concerns. The hope stems from the impressive progress that companies have made in some areas of corporate responsibility. Many companies have accumulated managerial expertise and contributed to the emergence of standards. OECD research indicates that progress in the area of environmental management has been particularly strong and that mining companies have contributed in important ways to this progress. The analysis of public statements suggests that mining companies speak with considerable confidence about their environmental initiatives and tend to use a common vocabulary when describing their management principles.

22. The concerns stem from some intractable governance issues -- especially domestic governance in some host countries (corruption, protection of basic rights, etc.). Private initiatives in mining are essential complements to regulation, law and other forms of social control of business, but they cannot replace them. The environmental performance of mining companies cannot be disassociated from the quality of the signals and incentives they receive from host societies. Despite the significant progress these companies

have made in devising principles and practices for managing their operations, they still need appropriate regulatory, legal and "softer" inputs from host societies. All countries have governance problems, but these seem to be more acute in some countries than others. As extractive industry companies themselves acknowledge in their public statements, they invest in some of the most difficult operating environments in the world. Corruption -- including not only bribery, but misuse of public funds and self dealing in other areas of public management (privatisation, regulation, etc.) -- is particularly harmful to the quality of governance and to the prospects for reform[3]. A basic question for international mining companies is -- to what extent do they feel they have a role to play in helping some host countries to improve their governance frameworks?

23. The survey of mining companies' public statements suggests that they focus primarily on environmental issues and on their provision of social services and infrastructure. Many of them mention the tax benefits that host countries receive in general terms. However, most of them avoid broader governance issues, such as the use and transparency of tax and royalty payments or other aspects of company-host country relationships. This is understandable -- dealing with such issues casts them in unaccustomed roles and takes them into areas where the amount of control they have is limited.

24. The way that mining companies think about these issues is important. They are often among the best informed outside actors in some countries and they help frame the debate on the development agenda. At the same time, the influence that mining companies have in host countries, while often significant, does have limits. In addition, public governance problems in these countries are sometimes so severe that trying to act responsibly can be a serious competitive handicap (especially in such areas as combating corruption). Yet, many multinational enterprises recognise that it is in their interest to contribute to the search for solutions. There is some evidence that some extractive industry companies have begun to act on broader governance issues. The OECD study shows that a few very large oil have made detailed public statements on host country revenue use and transparency. Mining industry associations have been looking at such issues as corruption and revenue use in host societies, but, judging from their public statements, individual mining companies have relatively little to say.

25. The search for improved governance will not be an easy one and will require action on many fronts. It will be prudent for companies to act in partnership with each other, with host and home governments and with international organisations. It will be necessary to join forces in trying to help these countries establish a sound institutional basis for sustainable growth. The role of extractive industry companies can play in this process is an important one, but it is necessarily only partial.

26. Fortunately, co-operative action in this area will benefit from growing consensus. Recognition of the importance of public and private governance in raising economic, social and environmental welfare now seems to have taken hold and to enjoy considerable support in many circles. For most countries, the next frontier is actually doing it. The OECD, through its distinctive peer review process and its experience in consensus-based "soft" rule making, is well positioned to help.

3 . See, for example, "The Causes and Consequences of Corruption: Economic Analyses and Lessons Learnt" by Jean Cartier-Bresson. In *No Longer Business as Usual*. OECD 2000.

The OECD contribution -- peer review and soft norms

> *… the OECD is uniquely placed to contribute to the building of a better world… [It] can move quickly and act flexibly in fields where the advanced countries of the world are able to provide leadership in tackling new global problems like corporate governance, corruption and money laundering... It can help us understand issues better, encourage best practices and, when more formal action is called for, it can be a forum for developing rules of the game.*
>
> *Donald Johnson, Secretary General of the OECD*
> *"Fostering International Investment and Corporate Responsibility" March 2000.*

27. The OECD helps governments improve policy across many fronts. The two pillars of OECD activity are its distinctive peer review process and the creation of consensus-based, non-binding behavioural norms for governments and private actors. The latter instruments do not generally have the force of law[4], but they provide international benchmarks for public policy and private conduct. They complement and reinforce the private initiatives just described.

28. Peer reviews take place in relation to many aspects of public policy -- macroeconomic, international investment, competition and regulatory reform and taxation, to name but a few. In the area of anti corruption, the peer review processes in support of the OECD Bribery Convention, the anti-money laundering initiative[5] and work promoting integrity of public management are particularly noteworthy.

29. Norms have been developed in such areas as fiscal management, competition policy and tax policy and enforcement. While these are not binding, they do provide benchmarks for evaluating various aspects of public sector operations. A particularly important example is the OECD Corporate Governance Principles. These provide guidance, relevant for any country with formal financial markets, on the private governance characteristics that law and regulation should be attempting to foster among private enterprises. Also noteworthy is the OECD's Development Assistance Committee's development of guidelines on conflict prevention. A compilation of guidance and policy statements on work in this area has just been published as *Helping Prevent Violent Conflict* which includes a chapter on "Working with Business".

30. Of course, private companies are also important actors in this. Working with business and labour representatives and with NGOs, the OECD members -- together with six non members[6] -- are working to promote the OECD Guidelines for Multinational Enterprises (see Box for more detailed description). These are non-binding recommendations for business conduct covering such areas as labour relations, environment, combating bribery and consumer protection). Although observance of the Guidelines is voluntary for companies, they represent a binding commitment for the 36 adhering governments -- they agree to see that they are understood and observed by multinational companies operating in or from their territories. The Guidelines are part of the Declaration on International Investment, an OECD instrument

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4 . The OECD Bribery Convention is an important exception. The 35 signatories of the Convention are required to align their national legislation with the principles established in the Convention.

5 . The Financial Action Task Force (FATF) is responsible for this initiative. FATF is housed within the OECD, but that has a somewhat different membership.

6 . Argentina, Brazil, Chile, Estonia, Lithuania and Slovenia have adhered to the OECD Declaration. Latvia, Singapore and Venezuela have asked to adhere.

that provides a comprehensive and balanced approach for governments' treatment of foreign direct investment and for enterprises' activities in adhering countries. The Declaration enshrines the OECD's core investment values -- transparency, non-discrimination and investment protection[7]. Finally, the Corporate Governance Principles, in addition to being relevant for public policy makers, also provide guidance on governance for private-sector actors.

31. These processes are not the preserve of the OECD countries alone and, increasingly, non-members are associating themselves with all aspects of OECD work. Non-members participate in the work of most OECD Committees. Six non-member countries (including some with major mining interests) have adhered to the OECD Declaration on International Investment. Non members are also involved in the OECD's work on combating bribery and in anti-money laundering.

Conclusions and next steps

32. So, in conclusion, where does this leave us? Mining companies have made much progress in controlling their environmental outcomes and no doubt this progress will continue. Their efforts are an essential component of any overall system designed to get better environmental outcomes from mining activities. However, these measures cannot be effective if the overall framework in which they operate is working poorly. Given the problems in the governance framework in some countries important for mining, credibility may prove to be elusive for many mining company initiatives. No amount of external verification of codes, no amount of multi-stakeholder dialogue -- valuable as these might be -- can make up for political processes that are perceived as illegitimate or corrupt, or for societies where basic rights aren't respected. A fruitful way forward on this is for mining companies to deal with the question of governance head on and to be seen, not as solving, but as contributing to the search for solutions for what are often very deeply rooted, stubborn problems.

33. Mining companies have an important, but necessarily only partial, role to play in improving host country framework conditions. In responding to this challenge, they have sponsored anti-corruption activities in their industry associations and have begun to look at what happens to mining tax revenues once they enter public financial systems and at the transparency and design of the financial arrangements that link them to host countries. This is useful. For the future, mining companies could usefully act to deepen their co-operation with other companies, with international organisations such as the OECD and with home and host governments to advance an overall governance agenda that already enjoys widespread consensus among all these actors. OECD experience shows that, even with general agreement on the desirable thrust of policy reform, the difficulty always lies in doing it. Mining companies can help by creating momentum for reform and the OECD hopes to work with them and with non-member actors in building governance systems that will foster equitable distribution of the benefits and management of the costs of mining sector investment.

7. The OECD Declaration on International Investment and Multinational Enterprises comprises, in addition to the OECD Guidelines, the following instruments: 1. The National Treatment Instrument in which adhering countries commit to treating foreign- controlled enterprises operating in their territories no less favourably than domestic enterprises in like situations; 2. Conflicting requirements instrument, which calls on countries to avoid or minimise conflicting requirement imposed on multinational enterprises by governments of different countries; 3. An instrument on international investment incentives and disincentives, which provides for efforts among adhering countries to improve co-operation on measures affecting international direct investment.

Box -- The OECD Guidelines for Multinational Enterprises

The Guidelines are recommendations addressed by governments to multinational enterprises operating in or from adhering countries (the OECD members plus Argentina, Brazil, Chile, Estonia, Lithuania and Slovenia). They provide voluntary principles and standards for responsible business conduct in a variety of areas including employment, human rights, environment and information disclosure. Although many business codes are now publicly available, the Guidelines are the only multilaterally endorsed and comprehensive code that governments are committed to promoting. The Guidelines' recommendations express the shared values of governments of countries that are the source of most of the world's direct investment flows and home to most multinational enterprises (MNEs). The aim to promote the positive contributions that multinational companies can make to economic, environmental and social Progresso.

It is possible to read these recommendations as an approach to the Development agenda that is now confronting the international community. The approach of the Guidelines is not one of regulation; rather it favours co-operation and accumulation of expertise in order to enhance further the benefits of international investment. A few illustrations:

- *Technology and human capital*. In their chapters II, IV and VIII, the Guidelines recommend a series of steps that MNEs should take to facilitate technology diffusion and human capital accumulation in host countries – two areas which have long been recognised as central to growth and productivity increases in less developed countries;

- *Local communities*. In their chapter II and others, MNEs are asked to co-operate with local communities, keeping in mind the distinctive needs of different communities as well as their cultural diversity;

- *Refrain from seeking exemptions*. The Guidelines also ask MNEs to refrain from seeking or accepting exemptions from host country regulatory requirements in areas such as environment, labour or financial incentives. This echoes efforts by developing countries to avoid being trapped into some kind of a "race to the bottom" or in a zero sum game of incentive-based competition to attract FDI, which in the long run benefits no country;

- *Labour management practices*. The Guidelines cover all core labour standards and underline the importance of capacity building in host countries through local employment and training. The recommendations draw on an agreed body of international thought on labour rights, most of it developed in the International Labour Organisation. Far from imposing inappropriate labour standards on developing countries, the Guidelines enhance the positive role that multinational enterprises can play in helping to eradicate the root causes of poverty, through their labour management practices, their creation of high-quality jobs, and their contribution to economic growth.

- *Fight against bribery*. Chapter VI enlists MNEs in the fight against bribery and corruption in host countries – an area which, we know, an increasing number of developing countries' governments now consider central to their reform efforts;

- *Disclosure*. Chapter III on disclosure promotes business transparency on the basis of the standards set forth in the OECD Principles of Corporate Governance. Further global dissemination of these standards will promote development by strengthening the effectiveness and robustness of financial systems everywhere.

- *Human rights*. The Guidelines also contain provisions asking MNEs to respect the human rights of all people affected by their operations. While the countries adhering to the Guidelines recognise that governments play the primary role in protecting human rights, companies can help in a number of important ways. Respect of human rights is increasingly viewed as the most fundamental feature of successful market systems. Thus, the business community's assistance in promoting human rights will not only help reduce the suffering caused by human rights abuses, but will promote economic development.

The implementation of the Guidelines relies on National Contact Points (NCPs). The NCP, often a government office, is responsible for encouraging observance of the Guidelines in its national context and for ensuring that the Guidelines are well known and understood by the national business community and by other interested parties. Because of the central role it plays the NCP is a crucial factor in determining how influential the Guidelines are in each national context.

In addition to making sure the Guidelines are well known in their countries, the NCPs also oversee something called "specific instances." This provides for what can be thought of as a soft whistle-blowing facility. Any interested party may call alleged non-observance by companies of the Guidelines recommendations to the attention of a National Contact Point. However companies cannot be forced to participate in this process nor are any formal sanctions provided for. The spirit of the Guidelines is not one of punishment or retribution. Rather, the National Contact Points seek to reinforce individual companies' understanding of and commitment to the recommendations set forth in the Guidelines**.** The first annual report on the Guidelines, made public this fall, shows that numerous specific instances have been considered or are under consideration. The second annual meeting, to be held in June 2002, will provide the first insights as to how well these institutions are working and as to how they might be improved.

The Guidelines have a distinctive contribution to make and they are complementary to other global instruments for corporate responsibility, such as the UN Global Compact. The OECD Guidelines, are firmly rooted in inter-governmental and national government processes and are informed by extensive consultations with business, labour and civil society.

Annex. Methodology

The objective of the textual analysis is to capture extractive industry companies' views of their roles in less developed countries. For this purpose only publicly available statements by companies or company officials were taken into account and, in particular, only those available on their websites. These statements include anything available on the sites -- policy statements, codes of conduct, descriptions or explanations of activities, speeches by company officials, news releases. Public statements by a group of companies identified by a well-known, on-line financial information service (Hoovers) in the petroleum and mining sectors were collected.

The subject areas covered were role and contributions to host societies, human rights, taxation, relations with local communities including provision of services (e.g. education or health) and infrastructure (e.g. water and medical), political relationships, the fight against corruption, environment. The content of these statements was then coded into a database using the following attributes: The analysis looks for specific mention of the following attributes: human rights; reference to external texts (Universal Declaration, Global Sullivan Principles, UN Global Compact, OECD Guidelines, and others); relations with local communities; compensation for land and relocation; security forces management; use of private security forces; paying government forces; extortion; contributions to economic development; importance of taxes and other payments to governments; jobs; investment; community development; providing infrastructure; hospitals or medical clinics; sanitary initiatives; schools/teaching; drinking water; agri-food development; scholarships; employee involvement; legal compliance; charitable donations; dollar amounts spent on these activities; corruption; transparency; relations with NGOs; political contributions; external audits; training; signing of commitments by employees; ethics committee or senior officer involvement; whistle-blowing; internal control/compliance systems; environment. The selection of textual attributes is based on publications dealing with corporate social responsibility in extractive industries (citations) and an initial reading of the public statements.

The sample of companies covers two sectors defined on the Hoovers corporate financial information website: "integrated oil and gas"; and "diversified mining and metals". The sectoral and business unit definitions are those used by Hoover in organising their financial analysis of these companies. Integrated oil and gas is defined as "major international energy companies engaged in the diverse aspects of oil and gas operations including crude oil and gas exploration, production, manufacturing, refining, marketing and transportation." All of the companies covered are publicly quoted. (For a list of companies by sector, see www.hoovers.com/company/dir/0,2116,6118,00.html.) The oil companies include 7 US companies, 3 UK companies, 12 from continental Europe, one from Japan and 6 from other countries. Diversified mining and metals is defined as major international mining companies engaged in the ownership of mining properties and the mining and processing of a variety of minerals.