

# *Model Mining Development Agreement-Transparency Template*

---

*Prepared by Sustainable Development Strategies Group*

*Howard Mann  
Luke Danielson  
Kristi Disney  
Mark Phillips  
Marketa Zubkova*

*May 2012*



© 2013 The International Institute for Sustainable Development  
Published by the International Institute for Sustainable Development.

---

## *International Institute for Sustainable Development*

The International Institute for Sustainable Development (IISD) contributes to sustainable development by advancing policy recommendations on international trade and investment, economic policy, climate change and energy, and management of natural and social capital, as well as the enabling role of communication technologies in these areas. We report on international negotiations and disseminate knowledge gained through collaborative projects, resulting in more rigorous research, capacity building in developing countries, better networks spanning the North and the South, and better global connections among researchers, practitioners, citizens and policy-makers.

IISD's vision is better living for all—sustainably; its mission is to champion innovation, enabling societies to live sustainably. IISD is registered as a charitable organization in Canada and has 501(c)(3) status in the United States. IISD receives core operating support from the Government of Canada, provided through the International Development Research Centre (IDRC), from the Danish Ministry of Foreign Affairs and from the Province of Manitoba. The Institute receives project funding from numerous governments inside and outside Canada, United Nations agencies, foundations and the private sector.

### **Head Office**

161 Portage Avenue East, 6th Floor, Winnipeg, Manitoba, Canada R3B 0Y4  
Tel: +1 (204) 958-7700 | Fax: +1 (204) 958-7710 | Website: [www.iisd.org](http://www.iisd.org)

---

### **Model Mining Development Agreement - Transparency Template**

May 2012

Prepared by Sustainable Development Strategies Group

Howard Mann, Lead Author, Narrative

Luke Danielson, Lead Author, Template

Kristi Disney, Lead Researcher

Mark Phillips, Marketa Zubkova, Contributors

## *Table of Contents*

Executive Summary .....	1
MMDA Template .....	2
Introduction.....	2
Mining Agreements .....	2
Relationship to Exploration Agreements.....	3
Community Level Agreements.....	3
Conclusion.....	3
General Descriptions of MMDA Sections .....	4
Definitions in MMDA 1.0* .....	19
Explanatory Narrative on Key Sections of the MMDA 1.0 .....	23
Transparency: 30.1 This Contract a Public Document .....	33
Oil & Gas Form/Model Agreements Research.....	35
Methodology .....	35
Findings.....	35
Conclusions.....	38
Annex I .....	40

## *Executive Summary*

This report was prepared by Sustainable Development Strategies Group under World Bank Contract No. 7162315, titled “Model Mining Development Agreement – Transparency Template.”

It consists mostly of a detailed analysis of the International Bar Association Mining Law Committee’s Model Mining Development Agreement, or MMDA 1.0.<sup>1</sup> See [www.mmdaproject.org](http://www.mmdaproject.org).

The MMDA was prepared based upon a detailed analysis of several dozen existing mine development agreements, and after a considerable process of consultation with stakeholders and experts in mining law and policy in many countries.

This report consists of four documents. The first is this executive summary and the table of contents. The second is a “template,” which sets out each of the sections or headings in the MMDA, with a brief description of its subject matter and the issues it is designed to address. Attached to this is a similar template that focuses solely on the definitions section of the MMDA, highlighting some of the key definitions and why they are regarded as important.

Third is a lengthier narrative that explains in somewhat more detail the issues involved in a limited number of individual clauses selected because they are regarded as very important to the rights of the contracting parties, or are particularly controversial.

Finally there is a brief report on the limited search undertaken for widely accepted or “model” oil and gas development agreements that could serve as the basis for a similar exercise in the petroleum sector. It concludes that there is no such document at present, but that one could be constructed from the materials gathered in this work, and validated through a consultative process.

---

<sup>1</sup> The MMDA is in the final stages of IBA review.

## *MMDA Template*

### Introduction<sup>2</sup>

The following product is an attempt to distill what is already a distillation. The International Bar Association Mining Law Committee's Model Mining Development Agreement (MMDA) Version 1.0 is the product of a laborious process of analyzing the contents of many existing mine development agreements, identifying their common elements, and producing a table of contents that is widely accepted as including the "right" mix of elements for a modern mine development agreement.

The MMDA is also the product of an exhaustive process of circulation of drafts, and public and private comment by various interest groups, and leading experts in the field.

It is worth noting that this process, as much as it did achieve, has not reached the point of a single answer or single approach to the many difficult and controversial questions. The MMDA provides a set of "lead clauses," but it also provides, on almost every subject, a series of alternative clauses taken from existing agreements.

Since the modern mining industry produces over 100 different commodities, each with its own characteristic geology, production processes, markets and economics, and because countries vary dramatically in their levels of legal, policy and regulatory development, it may very well be impractical or even pernicious to try to develop a form contract that covers everything everywhere.

The attached template tries, in the interest of clarity and simplicity, not to deal with actual contract language, but simply to describe the key kinds of provisions in agreements in a direct and perhaps oversimplified form.

It is intended to give a clear overview of the principal issues raised by such agreements. Successful mine development agreements can benefit investors by creating greater conditions of security and stability around investment. They can also benefit host countries by ensuring that development of the industry is always done with an eye to maximizing its contribution to the sustainable development of countries and communities.

### Mining Agreements

Many have suggested that developing nations should move away from mining agreements and toward investment based on clear legal codes: mining codes, tax codes, environmental laws and other generally applicable legal dispositions that apply equally to all that come. Many participants in the MMDA process agreed philosophically with this position.

But agreements continue to be used in a number of jurisdictions, and some countries even seem to be moving away from code systems to contract arrangements.

Some have also suggested that the expectations of what mining investment is supposed to bring to a country have increased so dramatically that many codes simply do not deal adequately with such issues as the desires of local communities, social aspects of closure, or dispute resolution, to name a few, and that agreements will always be necessary to supplement codes, which are slow and cumbersome to change.

---

<sup>2</sup> Much of this Introduction is based on and paraphrases the International Bar Association's own introductory material to the MMDA, which appears at [www.mmdaproject.org](http://www.mmdaproject.org).

## Relationship to Exploration Agreements

“Development of a mining project by necessity can only occur after a mineral deposit has been identified through exploration.”<sup>3</sup> The right to explore for mineral resources is often established in an exploration phase agreement; the possibilities for the mine development agreement may to some extent already be limited by the content of the exploration agreement.

## Community Level Agreements

There is a very strong current interest in Impact Benefit Agreements or Community Development Agreements between mining companies and communities.

The MMDA is not such an agreement. It is a template for use in negotiations between the national government of the host country and the mining company. “Some sections of MMDA 1.0 refer to community agreements, but MMDA 1.0 itself is not a community development agreement.”<sup>4</sup> These are two different instruments, which may sometimes need to be used together. But the appropriate contents of these two kinds of agreements are two quite different subjects.

## Conclusion

“Many of the concerns expressed about the clarity, quality and balance of mining agreements are at bottom concerns about imbalance of resources and capacity of the parties who negotiate the agreements. To some extent, comments also suggest that negotiation of effective mining development agreements is a very complex task that requires multidisciplinary help from accountants, tax specialists, mining lawyers, geologists and perhaps others. Some developing countries have difficulty fielding such negotiating teams and there is a feeling that they are therefore disadvantaged in negotiation,”<sup>5</sup> regardless of the content of any proposed clauses, form or model.

---

<sup>3</sup> International Bar Association, MMDA 1.0: Model Mining Development Agreement at iv – v, available at [http://www.mmdaproject.org/presentations/MMDA1\\_0\\_110404Bookletv3.pdf](http://www.mmdaproject.org/presentations/MMDA1_0_110404Bookletv3.pdf).

<sup>4</sup> *Id.*

<sup>5</sup> MMDA, *supra* note 2.

## General Descriptions of MMDA Sections

### Preamble to Agreement

The prefatory clause of MMDA 1.0 reads as follows:

*"Whereas, the Company has completed exploration activities in compliance with Applicable Law and is therefore entitled to obtain the right to develop, produce and sell Minerals within the Mining Area, and*

*Whereas, the Parties recognize that this Agreement is of fundamental public importance and that it is and by its nature ought to be freely and publicly available on request to any person requesting it; and*

*Whereas, the objective of this Agreement is to develop the Minerals in a manner to promote long term stability in the conditions of mining investment and contribute to the sustainable development of the State and its communities through a process in which the production and use of non-renewable natural resources takes place in an equitable framework; and*

*Whereas, the Parties to this Agreement believe that the Project can be developed, economically operated, and closed while protecting the natural environment of the State and the productivity of its ecosystems, and while managing adverse environmental impacts to eliminate, minimize, or mitigate them to acceptable levels, and compensating for any remaining impacts..."*

Whether or not this precise language is used, the prefatory section should express the importance of making the agreement *freely and publicly available*; of developing minerals in a manner that promotes *stable conditions for mining investment* and contributes to *sustainable national and community development* within an *equitable framework*; and promoting the *protection of the natural environment and its ecosystems*.

The subject of publicly available information about the project is treated in detail in sections 30.1 and 30.2, discussed below.

### Definitions and Interpretation

#### 1.0 Definitions and Interpretation

The Definitions are critical to mutual understanding between the parties. We call particular attention to the importance of definition of terms and the need to study and understand how the precise language of definitions may have considerable importance for the most important rights and obligations of the parties.

<b>1.1 Definitions</b>	<i>There is a separate template of definitions immediately following this document that contains more detailed discussion of definitions. See also the accompanying Narrative Section for some more general comments regarding definitions.</i>
<b>1.2 Interpretation</b>	A number of very basic principles for interpretation of the Agreement should be set forth.
<b>1.3 Existing Rights</b>	Preexisting rights of both parties survive and are to be respected unless they are expressly ended or modified by the Agreement. <i>But</i> see 37.1 below.

### Tenure

#### 2.0 Development of Mining Area

This section deals with the important questions of what rights the investor company receives, its rights of access to the mining area, how long those rights last, the extent to which they are subject to conditions, and the events that would cause the tenure to end or expire. The question of security of tenure is obviously a central issue for investors and their lenders. The question of having mineral rights tied up for long periods of time when no development is occurring is of fundamental importance to states. See *Narrative Section on this topic*.

<p><b>2.1 Term of This Agreement</b></p>	<p>Where there is a very large investment of capital, and it may be many years before there are any profits, and even longer before capital is recovered, investors clearly want to be guaranteed that their rights will not expire until they have had an opportunity to earn a return.</p> <p>The state has at last two clear interests. One is an interest in not seeing its mineral resources tied up for excessive periods of time by investors who are making no progress toward developing them.</p> <p>The other is a concern that as society develops over time, it may become clear that some portions of the agreement are no longer workable or no longer correspond to the social reality or expectations of the nation. Thus the state may want there to be some limitation on the term of the agreement, particularly where there is no clear progress toward development of an operating mine.</p> <p>Most agreements seem to provide that the initial term of the agreement is extended to some degree so long as there is commercial production of minerals, or that there is a series of renewals. Questions include whether any renewals are exclusively at the company's option or must be in some form agreed to by the state, and whether renewals are on precisely the same terms as the original agreement, or there is some room for renegotiation of terms.</p>
<p><b>2.1.1 Grant of Mine Development Rights</b></p>	<p>One major issue in this clause is the extent to which the investor is allowed to displace other uses of resources and land within the concession area. Is the mining right superior to forestry concessions, fishing rights, small scale exploitation of sand and gravel by local residents or a host of other uses? Traditionally, mining companies have wanted complete control over the concession area and a cessation of all other activities. Now that the full cost of displacing other economic activities, both to society and the company, is becoming clear, there is a trend to greater accommodation.</p> <p>A second big issue is the extent to which the mining right carries with it the right to use other resources in development and operation of the mine, such as timber, gravel sand or construction materials. The most controversial of these is the question of whether mining can appropriate water without going through whatever priority system is in place under the applicable water law, <i>i.e.</i> whether the water demands of mining are superior to existing uses of water.</p>
<p><b>2.1.2 Grant of Access of Rights</b></p>	<p>This clause defines the investor's right of access to the project area.</p>
<p><b>2.2 Exclusivity</b></p>	<p>In many cases the investor wants exclusive rights to mine any minerals within the concession area, though there might be situations in which the right to mine is limited to specific kinds of minerals and the state reserves the right to grant other minerals in the same area to some other mining operator. There are both "all minerals" concessions and concessions limited to specific minerals.</p> <p>The state has an interest in ensuring that any additional minerals that may be found in the project area are produced and create economic benefits, or at least that these incidental minerals are not wasted.</p> <p>The MMDA also attempts to deal with the thorny problem, frequent in some areas, of "invasion" or occupation of the concession by artisanal miners. Sometimes, artisanal miners, who may or may not have rights recognized by the law, are already on the site when the deposit is discovered. Indeed, it is not unheard of that the interest of major companies in a site is first attracted by the presence of small-scale miners, and the international mining company is in some sense the "invader." There is a long history of conflict between small-scale miners and larger industrial mining operations, and it has proven at times very problematic for them to coexist.</p>
<p><b>2.3 Legal Title to Minerals</b></p>	<p>There have been far too many cases where minerals have been taken illegally and used for improper purposes including the financing of armed conflict. Uncertainty as to who owned the minerals at any given point, and thus who was the victim of the theft, has concerned some prosecutors. The MMDA makes it clear that the title to the minerals is in the state prior to severance, and in the investor company once they are severed, even if third parties illegally do the severance.</p>



<p><b>2.4 Obligations Prior to Construction</b></p>	<p>The question of the sequence and timing of the various studies and reports that companies typically need to prepare or contract and submit to government for approval is resolved in the lead clause.</p> <p>The following subsections describe the contents of each of these documents in some detail. In practice, the quality of the Feasibility Study, Environmental Assessment and Environmental Management Plan, Social Impact Assessment and Action Plan, Financing Plan, and Closure Plan will have a great deal to do with the quality of the project and the development benefits it yields.</p>
<p>2.4.1 Feasibility Study</p>	<p>This clause requires the company to produce a Feasibility Study, prepared by, or at least verified by, an independent third party who will ensure use of good industry practice, including, but not limited to, an estimation of reserves, the overall mine plan, and the estimated date commercial production will begin.</p>
<p>2.4.2 Environmental Assessment and Environmental Management Plan</p>	<p>It is essential that the Company have an Environmental Assessment and Environmental Management Plan. This plan, which should be publicly available, should aim to prevent and mitigate environmental harm, including avoidance of greenhouse gas emissions; protection of public health and safety; and preservation of water quality and quantity. The plan should be prepared by, or verified by, an independent third party. The plan should follow good industry practice, including IFC Performance Standard 1. Furthermore, the plan should include procedures for temporary or permanent mine closure, and procedures that ensure the mining area can safely be put to beneficial use by future generations.</p>
<p><b>2.4.3 Social Impact Assessment and Action Plan</b></p>	<p>It is essential that the Company have a Social Impact Assessment and Action Plan, adhering to IFC Performance Standards, specifically including Performance Standard 5, that prevents or minimizes potential adverse impacts of the mining project on persons living in and around the project area, as well as persons who could be affected by transportation corridors or processing of minerals from the mine. The plan should respect the customs of the local population, and should avoid involuntary resettlement or displacement of persons. When resettlement appears to be unavoidable, the Company should conduct a full consultation with the local government and local persons who could be displaced or relocated by the project.</p> <p>The Social Impact Assessment and Action Plan should ensure compensation for damage to crops or other property, and to holders of surface rights to any land within the mining area. The plan should also recognize the rights of surface owners and occupiers to use land in the project area for subsistence purposes, provided that such use is safe and does not interfere with mining operations. Where the mining area is occupied by artisanal or small-scale miners, the Company should develop procedures, in consultation with the affected miners, that treat those miners who had occupied the area before the effective date as displaced persons.</p> <p>The Social Impact Assessment and Action Plan should also include a longer-term transition plan of the project area to a post-mining economy.</p>
<p>2.4.4 Financing Plan</p>	<p>The Company should have a financing plan, consistent with commercial requirements and good industry practice.</p>
<p>2.4.5 Compliance with Law; Requested Changes by State</p>	<p>The State should promptly conduct a review of the studies and plans produced pursuant to the mine development agreement and inform the company of any failure to conform to applicable law or other issues. The State may also provide comments on the studies and plans produced pursuant to the mine development agreement, to ensure that the plans contribute to national and local needs. This clause requires the parties to develop a procedure, with reasonable timeframes, through which the State may request changes, and the parties may come to an agreement or resolve any disputes related to requested changes.</p> <p>What is a reasonable time for review depends critically on government capacity. It is important that the review be thorough and informed, which may be difficult where government organs lack technical or financial resources. On the other hand, companies have a right to expect some outer limit on the time this process will take. The obvious solution is providing greater resources to public agencies.</p>

<b>2.5 Requirements to Obtain Permits</b>	The Company should be required to obtain necessary permits, licenses and approvals from State agencies as required under the mine development agreement or applicable law, in advance of the activities for which permission is sought.
<b>2.6 Construction</b>	<p>Governments often want companies to submit a detailed schedule for the performance of all planned activities during the construction period, and for the State to have an opportunity to comment on and request explanation of this schedule. Some clauses require the company diligently to pursue construction of the project, and to submit regular updates to the State regarding the construction schedule.</p> <p>Companies often want provisions that are more flexible to allow them to be attuned to market conditions, and believe that where demand is strong there is no need for government to try to force the pace of construction. Conversely, where demand weakens, companies may well want to slow the pace of investment.</p>
<b>Financial</b>	
<p><b>3.0 Annual Rental</b></p> <p>This clause covers the traditionally modest fee that will apply on a per hectare basis regardless of production, income, or lack thereof. The rental requirement is often said to be designed to prevent speculative land holding. It has the advantage of providing needed revenue to government in the early stages of project development, and the disadvantage to companies of starting at a time when there may be no project revenues against which to offset the cost.</p>	
<p><b>4.0 Royalty</b></p> <p>Royalties can in many circumstances provide three advantages over income-based taxes, at least in the mineral sector: 1) they provide more stable revenues, as they are levied every year there is production; 2) they may provide revenues more quickly, as royalties begin when production begins—not when profitability is reached, and; 3) they are generally easier to administer and verify than other forms of taxes, particularly income tax.</p>	
<b>4.1 Calculation of Royalty</b>	<p>Section 4.1 examines four types of royalty instruments, which vary in how they distribute risk between the company and the state.</p> <p>The first is the Profit-Based Royalty. This tax is calculated by multiplying the Royalty Rate by the Net Profits derived from the mineral. This instrument is most sensitive to mineral price fluctuations, but also slower to provide revenue to the state as there is no tax until an enterprise is profitable.</p> <p>The second is the Value-Based Royalty (Gross Value). This is calculated by multiplying the Royalty Rate by the gross market value of the mineral produced as calculated by a pre-determined entity. This royalty provides a steady revenue stream and is easy to administer, but it is not sensitive to price fluctuations.</p> <p>The third instrument is the Value-Based Royalty (Net Value). This tax, often in the form of a Net Smelter Return Royalty, allows deduction of certain production and selling costs, such as smelting and refining. This instrument provides some sensitivity to fluctuations in mineral price, as the Net Smelter Return is calculated by subtracting applicable costs from Gross Market Value. As that value drops, so will the tax.</p> <p>The final alternative contemplated by this section is a straight Unit-Based Royalty. Because of its fixed nature, this royalty is often thought to be most appropriate for industrial minerals and certain minerals sold in bulk, like coal. These unit- or value-based tax instruments charge a fixed price per pound, kilo, ton, or other unit of production.</p> <p>Additionally, the text discusses a “Sliding-Scale Royalty,” where periods of high profitability for the company would result in increased royalty payments. These instruments are generally regarded as difficult to administer.</p>
<b>4.2 Royalty on Other Mineral Materials</b>	This clause establishes that mineral materials, other than those defined in the Agreement, which may be derived from the Mining Area will be subject to a royalty established by Applicable Law or an agreement between the state and company. See Clauses 2.1.1 and 2.2 above.

<b>4.3 Production Statement</b>	The Production Statement is submitted by the company to the state as the basis for determining royalty liability. Required information includes amount of Minerals produced and sold, changes in the size of Minerals stock, and calculation of the royalty due. The statement must be prepared according to Applicable Law and Good Industry Practice.
<b>4.4 Payment of Royalty</b>	This necessary and important clause covers the procedures for payment of the royalty.
<b>4.5 Disputes Regarding Royalty Payments</b>	The lead clause contemplates use of an independent expert to decide royalty payment disputes quickly and definitively.
<b>5.0 Customs Duties and Reimbursement</b> <i>See comments pertaining to specific sub-sections below.</i>	
<b>5.1 Customs Duties</b>	Customs Duties raise difficult questions, as companies often desire exemptions on imports of products required for the project but unavailable in the State. Governments are increasingly questioning the need for such exemptions. The clause provided assumes exemptions for the supplies, equipment, and materials necessary to carry out the project, including products imported by contractors. The State is still allowed to maintain a minimal customs fee for the health and safety inspections of imported goods.
<b>5.2 Reimbursement of Import Duties</b>	This clause provides for payment of import duties on products previously imported under a customs exemption, if those items are not re-exported or consumed and or turned over to the state. The payment will be based on current fair market value.
<b>6.0 Insurance</b> There is a requirement that some forms of insurance for the project be purchased and maintained by the company.	
<b>7.0 Taxation</b> <i>See Narrative Section on this topic.</i>	
<b>7.1 Taxation - General</b>	This clause lays out some general taxation principles, including that the company is subject to all existing financial legislation except for validly granted exceptions. It also lays out requirements for submission and certification of Company financial statements.
<b>7.2 Income Tax</b>	Because tax issues are so often responsible for the resort to arbitration, it is important clearly to set out expectations from the start of project planning. This clause is designed to clarify the calculation of overall corporate income tax, including taxes on the payment of dividends or interest.
<b>7.3 Deductions in the Computation of Company Income Tax</b>	This clause covers the deductions the Company may apply to its income tax burden. Some notable deductions are exploration and development costs, royalties and local taxes, interest incurred under the Financing Plan, and depreciation.
<b>7.4 Value-Added Taxes and Project Activities</b>	Because of the specialized nature of mining equipment, mining companies generally disfavor paying VAT to import equipment required for the project. Therefore, the lead clause suggests that no VAT be applied to capital items, consumables, supplies, and equipment exclusively and necessarily required for the project during the exploration and development phase. After the Date of Commercial Production, imported goods are subject to VAT on a non-discriminatory basis.  Certainly not all countries agree to the exemption approach, and the MMDA is not prescriptive.
<b>7.5 Property Taxes</b>	This clause provides that real property taxes must be applied on a non-discriminatory basis and without taking into account the value of the minerals or improvements above or below the land.
<b>7.6 Taxes on Expatriate Employees</b>	Because of the long development timeline for mine projects, the lead clause envisions different tax regimes for expatriate employees during the exploration and development phase and after Date of Commencement of Commercial Production.

<b>7.7 Taxes on Non-Resident Contractors</b>	<p>Prior to the Date of Commencement of Commercial Production, the State must exempt all expatriate contractors from any applicable income tax on their fees derived from Project operations.</p> <p>After the Date of Commencement of Commercial Production, the Company must withhold from the gross payments made by it to non- State resident contractors for services performed by those contractors and their subcontractors in the State, withholding tax in accordance with Applicable Law.</p>
<b>7.8 Withholding Tax Obligations</b>	This clause provides options for withholding tax obligations.
<b>7.9 Provisions Relating to Other Taxes and Levies</b>	A major concern for mining companies is the imposition of additional taxes through the form of local fees or new State taxes. This clause would require that State and local governments not apply additional taxes except as in accordance with the agreement and applicable tax law.
<b>7.10 Local Government Taxes and Levies</b>	As above, the issue of new, unexpected local taxes is a cause of worry for mining companies. This clause obligates the State to prevent local government from imposing such taxes, except as allowed under applicable law. Any local taxes that may be levied must be non-discriminatory. The viability of this approach may well depend on the willingness of national government to share revenues it receives with local government.
<b>8.0 Financing</b>	
<i>See comments pertaining to specific sub-sections below.</i>	
<b>8.1 Security Interest</b>	The company has the right, with the prior consent of the State, which consent shall not be unreasonably withheld, to encumber all or part of its interest in the Project under various conditions.
<b>8.2 Debt-Equity Ratio</b>	In this section, the parties agree to a limitation on the acceptable debt-equity ratio and provide some guidance for its calculation.
<b>8.3 Foreign Currency Remittance and Availability</b>	In most circumstances, interest, dividends and all other payments for goods and services are freely remittable. If foreign currency is required, foreign currency will be made available to make such payments. The Company has the right freely to repatriate earnings abroad without any barriers and freely to dispose of all proceeds.
<b>8.4 Role of State in Financing</b>	Among other obligations, the State must use its best efforts to assist the Company to obtain financing for the Project, including entering into agreements and providing formal documents that the lenders reasonably require.
<b>8.5 State Guarantees</b>	The State guarantees the Company against discriminatory treatment and guarantees that the investor's capital, property and assets shall not be expropriated except for public purposes or interest, and only in accordance with due process of law on a non-discriminatory basis, and with the condition of prompt, adequate and effective compensation; the State is to protect the investor's capital, and other interests against nationalization, confiscation, liquidation, or requisition, unless in accordance with Applicable Law.
<b>9.0 Financing Records and Statements, Accounting Standards and Currencies</b>	
Access to financial records is essential if tax revenues are to be properly calculated, collected, and accounted for. Laying out proper procedures to guarantee this occurs is part of building the mutual trust required for successful projects.	
<b>9.1 Payments and Exchange Rates</b>	It is essential to specify the types of currency that can be used for various payments, to allocate currency risks, and to attempt to avoid losses to either party caused by exchange rate fluctuations.
<b>9.2 Financial Records and Financial Statements</b>	This clause provides the standards for the presentation and compilation of financial, technical, and commercial records, reports, and books. The MMDA envisions an agreement that chooses a specific standard like U.S. Generally Acceptable Accounting Practices (US GAAP) or the International Financial Reporting Standards and requires the State to maintain such records within the host country.

<i>Rights and Obligations</i>	
<b>10.0 Mutual Obligations</b> <i>See Narrative Section on this topic.</i>	
<b>10.1 Information to Local Government</b>	Both the State and the company should be required regularly to inform local governments about activities under the agreement.
<b>10.2 Applicability of IFC Performance Standards and Equator Principles</b>	There is a recognition that both parties will apply IFC Performance Standards, even where applicable law is less stringent.
<b>10.3 Parties' Commitment to Protecting Human Rights</b>	The proposed clause requires both parties to collaborate in protecting human rights as articulated in the United Nations' 1948 Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social, and Cultural Rights, and applicable law. The parties, in security matters, should also follow the Voluntary Principles on Security and Human Rights. The lead clause also requires parties to procure an independent human rights impact assessment.
<b>10.4 Prevention of Corruption</b>	Both parties should commit to conduct activities in a way that prevents corruption.
10.4.1 Obligations of the Company	The Company and its officers, directors, and employees should acknowledge and agree to be subject to applicable law regarding anti-bribery and anti-corruption.
10.4.2 Obligations of the State	The State should agree that its officials at all levels of government are subject to applicable law regarding anti-bribery and anti-corruption.
10.4.3 Other Applicable Norms	Transparency is a key to preventing and reducing corruption, promoting more stable investments, and ensuring that revenues are utilized responsibly and in ways that promote social and economic development. The MMDA thus provides that all payments made by the company to the State are public information, consistent with provisions of the norms developed by the Extractive Industries Transparency Initiative.
10.4.4 Understanding of the Parties	This section may be utilized to form an agreement between the parties that the State will prosecute acts of corruption and bribery in accordance with applicable anti-bribery and anti-corruption laws.
<i>State Rights</i>	
<b>11.0 State Access to Project</b> The State should be granted the right, at a reasonable time and subject to any agreed notice requirements, to inspect the mining area, at its own cost and risk	
<b>12.0 Inspection of Books, Records and Information, Independent Audit</b> The State should be granted the right to audit the company's books, records and accounts, at its own cost and risk, through a technical inspector or independent audit. The State should be required to ensure that the inspector or auditor utilizes information gained from the audit only for purposes of the audit, and maintains the confidentiality of all information obtained through the audit.	
<i>State Obligations</i>	
<b>13.0 State Assurances and Obligations</b> The State should make reasonable efforts to promote the success of the project, as further detailed in the sections below.	
<b>13.1 Legislation to Approve Agreement</b>	The suggested clause provides that the State will make its best efforts to adopt legislation necessary under Applicable Law to ratify the agreement.

<b>13.2 Tax Stabilization Clause</b>	<i>See Narrative Section on this topic.</i>
<b>14.0 Fair and Economical Project Obligations</b> <i>See Narrative Section on this topic.</i>	
<b>15.0 Permits</b> The State should establish efficient procedures, in accordance with applicable law and the mine development agreement, for approval of permits required for the mine project. Such approval should not be unreasonably withheld or delayed. The issue again is capacity. Trying to force government organs with very limited resources to make decisions by arbitrary dates may create a very high risk of inadequate review prior to approval. On the other hand very long delays may create great obstacles to investment.	
<b>16.0 Expatriates</b> The State should allow expatriates employed by the company, and their immediate family members, to freely enter into and depart from, work and reside in the State in connection with the project, as long as such expatriates comply with applicable law.	
<b>17.0 Infrastructure</b> This section covers use of, and access to, infrastructure. When feasible, infrastructure such as electrical energy, potable water, communication, and roads should be utilized in ways that are beneficial to both the company and to local communities, promoting community development.	
<b>17.1 Availability of Existing Infrastructure</b>	The parties may, when reasonable, agree to utilize existing infrastructure.
<b>17.2 Access to Infrastructure</b>	When commercially feasible, the company should plan and develop infrastructure in a way that facilitates use by others and that contributes to sustainable social and economic development. The State should be prohibited, except in cases of emergency, from closing any road to the mining area without the company's written consent.
<b>18.0 State Obligations Re: Local Governments and Landowners</b> The State should be required to cooperate with the company in verifying rightful land ownership and prior occupation or use of the mining area; regularly informing and consulting with local government and local communities regarding the activities under this agreement; resolving disputes; and reporting on any revenue sharing agreements with local governments.	
<b><i>Company Rights</i></b>	
<b>19.0 Company Rights</b> This section relates to the company's rights, as provided under applicable law, reasonably to purchase goods and services through affiliates, hire employees, provide security for its staff and maintain the security of the mining area, in accordance with Voluntary Principles on Security and Human Rights and applicable law.	
<b>19.1 Affiliated Company Transactions</b>	This clause covers leases, licenses, and transfers of goods and services between the company and its affiliates, requiring such transactions to be at an arm's length fee basis negotiated between the parties, according to principles and guidelines such as those set forth in the Organization for Economic Cooperation and Development's <i>Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations</i> .  This clause also limits discounts and commissions in transactions between the company and its affiliates to no greater than the prevailing rate so as not to reduce net proceeds. The company should agree, upon request by the State, to provide documentation to the State regarding affiliated company transactions.

<b>19.2 Company Hiring Decisions</b>	The company's hiring decisions can have a substantial impact upon the local community and its social and economic development. While this clause allows the company to choose its employees, including non-citizens of the State, it requires the Company to ensure expatriate employees are acquainted with applicable law and customs. The State may also reasonably require employment and training of local citizens, as elaborated in clause 24.0 below.
<b>19.3 Security</b>	While security serves an important function in mining operations, if handled improperly, security measures may have serious human rights implications that may damage the reputation of both company and government. The company should have the right, as permitted under applicable law, to establish and maintain a security force to protect staff and maintain security of the mining area, but such security force should not have the power of interrogation, should be monitored by the company at all times, and should comply with the Voluntary Principles on Security and Human Rights and applicable law relating to apprehension, detention and human rights.
<b>Company Obligations</b>	
<b>20.0 Development Obligations</b> <i>See Narrative Section on this topic.</i>	
<b>21.0 Use of Local Goods and Services</b> <i>See Narrative Section on this topic.</i>	
<b>22.0 Local Community Development</b> <i>See Narrative Section on this topic.</i>	
<b>22.1 Community Development Agreement</b>	Communities are increasingly expecting the negotiation and execution of Community Development Agreements to increase local benefits and manage short and long-term impacts from mineral development, and to enhance their rights and abilities successfully to resolve any conflicts that may emerge related to mine activity. This clause requires the company to enter into consultation and negotiations with communities impacted by the project, and to develop and implement one or more Community Development Agreements. Such agreements should promote sustainable development, enhance the general welfare and quality of life of the local community, and respect the rights, customs, traditions and religion of affected persons. The company should cooperate with the State and community to implement Community Development Agreements.
<b>22.2 Relationship of This Agreement to Community Development Agreement</b>	This clause controls how parties are to address any inconsistencies between the Community Development Agreement and the mine development agreement. Where the mine development agreement does not specify otherwise, the Community Development Agreement should control. Furthermore, a breach of the Community Development Agreement should constitute a breach of the mine development agreement.
<b>22.3 Local Business Development Plan</b>	This clause provides a framework for the company and the State to cooperate in developing a local business development plan that promotes economic development in communities impacted by the project.
<b>23.0 Community Health</b> <i>See Narrative Section on this topic.</i>	
<b>24.0 Employment and Training of Local Citizens</b> <i>See Narrative Section on this topic.</i>	
<b>24.1 Minimum Employment Levels</b>	This clause deals with the company giving preference to qualified nationals for positions as professional staff, as well as skilled and semi-skilled labour. This topic is also addressed in clauses 19.2 and 16.0.
<b>24.2 Investment in Skills of Local Work Force</b>	This section gives definition to the obligation of the company to develop and implement an annual training plan, in line with the company's human resource plan, that upgrades employee skills and experience, including, where practical, enrollment in relevant educational programs within or outside the state.

<b>24.3 Labour Training and Capacity Enhancement</b>	The Company is to develop and implement a comprehensive training program for national personnel and carry out such program for training and education in order to meet the requirement for various classifications of skilled and semi-skilled labour.
<b>24.4 Management Training and Capacity Enhancement</b>	The Company is expected to: (a) Establish and operate a vocational and training institute; (b) Furnish on-the-job counterpart training, to the extent reasonably feasible in the offices of the Company in order that the beneficiaries may receive training in the overseas aspects of the Company's shipping, marketing and accounting functions; (c) Provide scholarships for inhabitants of affected communities to pursue studies, including advanced studies in the State or abroad; and (d) Enhance such training and educational opportunities as already exist in the vicinity of the local community.
<b>25.0 Labour Standards</b> This section covers labour and health and safety standards, requiring the Company to adhere to applicable law, good industry practice, and internationally recognized standards, such as the IFC Policy Statement on Forced Labour and Harmful Child Labour of March 1998.	
<b>25.1 Labour Standards</b>	<i>See Narrative Section on this topic.</i>
<b>25.2 Health &amp; Safety</b>	The Company is to observe Good Industry Practice for the protection of the general health and safety of its employees; shall install and utilize such recognized modern safety devices and observe such recognized modern safety precautions as are provided and observed under Good Industry Practice. The Company shall maintain in a safe and sound condition for the duration of this Agreement all infrastructure and equipment. Finally, the Company is to train its employees in accordance with generally accepted health and safety procedures and practices.
<b>26.0 Mining Closure/Post-Closure Obligations</b> <i>See Narrative Section on this topic.</i>	
<b>26.1 Closure Plan and Closure Obligations</b>	The mine closure plan is amongst the most important in a mine development agreement. This clause requires the company to prepare the closure plan, in consultation with communities in the project area, and deliver it to the State; to ensure that the plan is consistent with related Community Development Agreements and with the International Council on Mining and Metals Planning for Integrated Mine Closure Toolkit; and to update the closure plan and resubmit it to the State every 5 years. This topic is also covered in Clause 2.4.
<b>26.2 Guarantees for Closure Expenses</b>	This clause requires the company to provide a guarantee for closure expenses to the State, for purposes of ensuring the completion of the company's closure plan. The amount of the guarantee should be updated at any time the closure plan is updated, to ensure that it is sufficient to complete the closure plan.  This clause also requires the State to return the guarantee to the company within a reasonable set amount of time after the State has verified that the company has fulfilled all obligations of the final closure plan. The State should be allowed to use any mine guarantee monies to implement the closure plan, should the company fail to do so, but should be prohibited from using the guarantee monies for any other purpose.
<b>26.3 Post-Closure Monitoring</b>	In Consultation with local community leaders, the Company agrees to develop and implement a post-closure monitoring committee, with the mandate to supervise the monitoring of geophysical stability, water quality, and rehabilitation of contaminated sites and restoration of land for post-closure use.
<b>27.0 Rights of Citizens of the State</b> <i>See Narrative Section on this topic.</i>	



<b>27.1 Company Grievance Mechanism</b>	This clause provides for a grievance mechanism, in consultation with affected communities, to resolve concerns and grievances. The company should respond at its own expense to community concerns related to the mining project, and in doing so should adhere to IFC Performance Standard 1. The grievance mechanism may be established as part of a Community Development Agreement.
<b>27.2 Forum for Claims and Disputes Involving Citizens of the State</b>	This clause allows a natural citizen of the State to submit a claim or dispute for resolution under applicable law and requires the company to consent to the jurisdiction of local institutions for such purposes.
<b>Other Terms &amp; Conditions</b>	
<b>28.0 Obligations of Contractors and Subcontractors</b> See comments pertaining to specific sub-sections below.	
<b>28.1 Applicability of Obligations to Contractors and Their Subcontractors</b>	At many mines, a considerable portion of the work force is made up by contractor employees, and issues may arise where contractors refuse to acknowledge or be bound by the promises of the Company, or the Company disputes its responsibility for acts of contractors. The MMDA suggests language that provides that:  (a) Any agreement between the Company and contractors or subcontractors shall contain appropriate terms by which the contractor or subcontractor shall acknowledge the terms of the Agreement.  (b) The Company shall ensure that its supervision is sufficient to inform it when the practices of its contractors may place them, or the Company, at risk of violating the Agreement.  (c) Nothing in this contract exempts the Company from obligations under the Agreement despite its delegation of such obligations to a contractor.
<b>28.2 Applicability of Obligations to Parent Company, and Affiliates</b>	The Company is to ensure that its Affiliates comply with the terms of the Agreement as if they were party to it.
<b>29.0 Assignment</b> <i>See Narrative Section on this topic.</i>	
<b>29.1 Affiliated Company Assignment</b>	The Company has the right to assign all (but not less than all) its rights under the Agreement to an Affiliate, <i>provided that</i> the Affiliate acknowledges and agrees to assume all of the obligations of the Company, has the capacity to perform, and that the Parent Company guarantee the obligations of the Affiliate.
<b>29.2 Third Party Assignment</b>	The Company shall have the right, with the prior written approval by the State, which shall not be unreasonably withheld, freely to assign all its rights and interest under the Agreement to a third party, <i>provided that</i> the third party acknowledges and agrees to assume all of the obligations of the Company under the Agreement, and has the capacity to perform those obligations.
<b>29.3 Capacity of Successors and Assigns</b>	No assignment of the Company's rights hereunder shall be made if the assignee lacks the technical, financial and managerial capacity to honour the obligations in the Agreement.
<b>29.4 Release</b>	On any effective assignment of this Agreement to a third party approved by the State, the Company and the Parent Company shall be released from liabilities to the extent assumed by the third party.
<b>29.5 No Assignment by State</b>	The State shall not transfer its rights and obligations.
<b>30.0 Availability of Information</b> See comments pertaining to specific sub-sections below.	

<b>30.1 This Contract a Public Document</b>	<p><i>See Narrative Section on this topic.</i></p> <p>The Agreement spells out certain locations where a complete file of publicly available information is to be kept and open to inspection and copying during reasonable business hours.</p>
<b>30.2 Certain Information Confidential</b>	<p>The Agreement, the various studies related to it, and other information related to it are public and freely available. There are exceptions for certain information that can be kept confidential. That information includes:</p> <ul style="list-style-type: none"> <li>(a) Information that is by law confidential under Applicable Law;</li> <li>(b) Personnel matters, health records of individual employees, or other documents in which employees or others have a reasonable expectation of privacy and other matters that involve the privacy of individuals;</li> <li>(c) Confidential technical or proprietary information regarding equipment, process innovations, or business secrets;</li> <li>(d) Confidential legal matters, including advice from attorneys;</li> <li>(e) The Company's intellectual property related to the Project, including geological information and mineral reserves;</li> <li>(f) Information (other than Confidential Information) obtained in the course of an audit as set forth in Section 11.0 above;</li> <li>(g) Information disclosed to the other Party to this Agreement designated as "Confidential" by Notice to the other Party at the time of its initial disclosure to such Party, provided that such designation shall be deemed to be a representation that the disclosing Party has reasonably determined after review of such information that maintaining the confidentiality of such information is necessary to protect business secrets or proprietary information.</li> </ul> <p>There is also a list of materials that may not be designated confidential, including information that:</p> <ul style="list-style-type: none"> <li>(a) Becomes publicly available without wrongful disclosure;</li> <li>(b) Was obtained by a Party from a Third Party who is not known by the obtaining Party to be under any obligation of confidentiality with respect to such information;</li> <li>(c) Is required to be disclosed by Applicable Law, by any law to which the Company or its Affiliates is subject, by any court proceeding or arbitral award, or by any applicable rule of a stock exchange;</li> <li>(d) Is disclosed to Affiliates, professional advisers, potential providers of finance, bona fide potential purchasers; or</li> <li>(e) Confidential Information specifically related to any part of the Mining Area that is relinquished from the provisions of this Agreement.</li> </ul> <p>Finally, the parties agree to abide by EITI transparency standards with respect to all payments and reporting to be made by either of them pursuant to the Agreement.</p>
<p><b>31.0 Force Majeure; Suspension of Operations for Market Conditions</b></p> <p>See comments pertaining to specific sub-sections below.</p>	
<b>31.1 Obligations of Party in Event of Force Majeure</b>	<p>No Comment</p>
<b>31.2 Extension of Agreement</b>	<p>The term of the Agreement shall be automatically extended for the period of the Force Majeure.</p>

<b>31.3 Negotiation in Event of Force Majeure</b>	If an obligation is suspended by reason of Force Majeure for more than one year, the Parties shall enter into good faith negotiations to revise the terms of the Agreement.
<b>31.4 Suspension of Operations for Market Conditions</b>	<p>Where the Company proposes to suspend Mining Operations due to market conditions, the Company shall notify the State thirty Days in advance. The State, upon determining that the reason for suspension is reasonable, shall approve the suspension for up to six months in the first instance, and for a further period not exceeding twelve months. The State may terminate the Agreement if the Company suspends all Mining Operations for more than thirty-six months.</p> <p>In the event of temporary closure or a cessation of Mining Operations, the Company shall be responsible for performing any and all environmental management of the Mining Area as set forth in the Environmental Management Plan. Should the State terminate the Agreement as a result of a suspension of Mining Operations, the Company shall be required, following the approval of the State, to implement the Closure Plan, and the Company shall, adjust the amount of the mine closure guarantee required under this Agreement.</p>
<b>32.0 Cooperation, Dispute Resolution and Arbitration</b> <i>See Narrative Section on this topic.</i>	
<b>32.1 Cooperation</b>	<p>The Parties agree to seek amicable resolution of any disputes concerning the interpretation or application of the Agreement;</p> <p>To submit any controversy or dispute relating exclusively to technical matters to an Independent Sole Expert.</p> <p>The decision of such Independent Sole Expert must be rendered within 30 Days. Such decision shall be final, and not subject to appeal.</p>
<b>32.2 Arbitration</b>	<p>All disputes, controversies or claims arising out of or related to the Agreement, or the breach thereof, shall be submitted to the International Center for Settlement of Investment Disputes (“ICSID”).</p> <p>This clause also contains a partial waiver of sovereign immunity, and certain stipulations about conduct of arbitration.</p>
<b>33.0 Surrender and Termination</b> <i>See comments pertaining to specific sub-sections below</i>	
<b>33.1 Surrender</b>	<p>The Company may surrender its rights by Notice to the State signed on:</p> <p>(a) Sixty Days Notice at any time before the Date of Commencement of Commercial Production; and</p> <p>(b) Six months’ Notice after the Date of Commencement of Commercial Production.</p> <p>Once an effective surrender is made, the Company shall have no obligations except as specifically provided to the contrary.</p> <p>The Company shall remain liable for all obligations accrued before the effective date of the surrender and for the obligations that must be fulfilled after termination.</p>
<b>33.2 Termination by the State</b>	<p>The State may terminate this Agreement if:</p> <p>(a) The Date of Commencement of Commercial Production does not occur on or before the end of [X] month;</p> <p>(b) The Company fails to make a required payment within sixty Days after the State gives a Notice of delinquency;</p> <p>(c) The Company dissolves, liquidates, becomes insolvent, or commits an act of bankruptcy, or</p> <p>(d) the Parent Company dissolves or liquidates or becomes unable to perform its obligations.</p>

<b>33.3 Termination by the Company</b>	The Company may terminate the Agreement if the State commits a material breach and neglects diligently and consistently to pursue a course of action that is reasonably intended to remedy that breach within sixty Days.
<b>33.4 Retention of Assets on Surrender, Expiration or Termination by the State</b>	On the expiration of the Agreement, its termination by the State, or its surrender by the Company, the State has the option to acquire any or all other property of the Company not otherwise required by the Company for mining operations at the lesser of net depreciated book value for income Tax purposes, or at fair market value.  The State may require the Company to remove any property not acquired by the State or otherwise comply with the environmental rehabilitation plan for the Mining Area.
<b>33.5 Retention of Books and Records</b>	No books and records of the Company may be removed from the State on the expiration, surrender or termination for a period of [X years] without the consent of the State.
<b>33.6 Access following Expiration or Termination</b>	On the expiration, termination, or surrender of the Agreement, the Company shall have the right to access and use the Project Area for as long as the Company reasonably determines access is necessary to permit it to exercise, fulfill, or discharge its accrued rights and obligations.
<b>33.7 Obligations Following Expiration, surrender or Termination</b>	On the expiration, surrender or termination of the Agreement, the Company must:  (a) Make the Mining Area safe to the reasonable satisfaction of the State so as to prevent injury to persons, livestock or other property, and to prevent offsite damage;  (b) Comply with the Environmental Management Plan or the Closure Plan as required to avoid imminent damage to the environment; and  (c) Otherwise comply with Applicable Law.
<b>34.0 Notices</b> See comments pertaining to specific sub-sections below.	
<b>34.1 General</b>	No Comment
<b>34.2 Change of Address</b>	No Comment
<b>34.3 Delivery Methods</b>	No Comment.
<b>34.4 Effective Time of Delivery</b>	No Comment.
<b>35.0 Applicable Law</b> The Agreement is to be governed by and construed in accordance with the laws of the State, including international treaties and bilateral investment treaties to which the State is a party (collectively, the "Applicable Law").	
<b>36.0 Periodic Review</b> Mine development agreements often span several decades, during which markets, competition, and local and national expectations can change dramatically. This leads to periodic demands for renegotiation of agreements. "Reopener" clauses understandably create considerable concern for investors, though the investors have at times been the parties asking for renegotiation. The MMDA view of this is that changing circumstances will generally create such pressures, and that it is better to have a structured, orderly process for discussion of modification than to try to draft a contract provision that can somehow stem the tide.	
<b>36.1 Modification and Review</b>	The lead clause provides for periodic review once every five years for the purpose of good faith discussions to consider any proposed modification as may be necessary or desirable in the light of any substantial changes in circumstances. The Parties agree always to be open to discussing any matter which may help maximize the positive development benefits of the Project, or minimize its undesirable impacts.

<b>37.0 Ancillary Provisions</b>	
See comments pertaining to specific sub-sections below.	
37.1 Entire Agreement	The agreement contains the entire understanding of the Parties with respect to the subject matter and supersedes all prior agreements and understandings. <i>But</i> see 1.3 above.
<b>37.2 Survival of Certain Provisions</b>	Certain specified clauses survive any termination and remain effective as to any matters that are the subject of the Agreement. Any termination shall be without prejudice to rights, duties and obligations that have accrued prior to termination.
<b>37.3 Amendment</b>	The Agreement shall not be amended, modified, or supplemented except by an instrument in writing signed by the Parties.
<b>37.4 Severability</b>	If any portion or any one provision or portion thereof is held to be inoperative or unenforceable in any jurisdiction then the remainder of the Agreement shall remain binding.
<b>37.5 Limitations on Waiver</b>	Delay in exercising or non-exercise of any right is not a waiver of that right.
<b>37.6 Indemnification by Company and by the State</b>	See comments pertaining to specific sub-sections below.
37.6.1 Indemnification for Breach of Agreement	Any breach of any obligation provided for in this Agreement, shall entitle the Party aggrieved to be indemnified by the defaulting Party in an amount equal to the damage suffered by the aggrieved Party.
37.6.2 Indemnification of the State by Company	The Company shall at all times indemnify the State from all claims for death or injury to persons or damage to property arising out of Mining Operations to the extent that the same arises from its failure to comply with any Applicable Law to which it is subject or with the terms of this Agreement.
<b>37.7 Conflicts of Interest</b>	[Covered by Section 10.4]
<b>37.8 Governing Language</b>	No comment.
<b>37.9 Further Acts</b>	No comment.
<b>37.10 Duplicate Originals</b>	No comment.
<b>37.11 Representation and Warranties</b>	No comment.
<b>38.0 Good Faith</b>	
The Parties to this Agreement shall have a simple obligation to act in good faith in all matters related to this Agreement.	
<b>Annexes</b>	
Annexes to the agreement should include, but are not limited to, the legal description of the <i>mining area</i> , including coordinates and maps; and a legal description of the <i>project area</i> , including coordinates and maps, roads, ports, infrastructure and the physical area to be impacted by the project. Annexes should also include all related community development agreement(s) and any other plans developed in consultation with local communities.	

<b>Definitions in MMDA 1.0*</b>		
<b>TERM</b>	<b>COMMENTS &amp; ADDITIONAL INFORMATION</b>	<b>IN THE MMDA 1.0</b>
<b>Affiliate</b>	<i>"For purposes of this definition, "control" means ownership of greater than 50% of the share capital of a company and/or the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of an entity, whether through the ability to exercise voting power, by contract or otherwise."</i>	Referenced in Section 7.1 (Taxation-General); 8.5 (State Guarantees); 14.0 (Fair and Economical Project Operation); 19.1 (Affiliated Company Transactions); 25.1 (Labour Standards); 28.2 (Applicability of Obligations to Parent Company, Affiliates); 29.1 (Affiliated Company Assignment); 30.2 (Certain Information Confidential)
<b>Applicable Law</b>	This means the law of the State, as further defined in Section 35.0	<b>Further defined in</b> Section 35.0
<b>Central Bank</b>	This is the Central Bank of the State.	
<b>Closure Plan</b>	No comments.	<b>Defined in</b> Section 26.0
<b>Company</b>	No comments.	
<b>Commercial Production</b>	Under many agreements reaching this stage triggers very important obligations. In some of the MMDA lead clauses, commercial production is linked to stability periods and disclosure requirements among others. This level is achieved when the mine is producing at 60 percent of designed capacity over a three-month period.	<b>Referenced in</b> Section 26.1 (Closure Plan and Obligations); 26.3 (Post-Closure Monitoring); 33.1 (Surrender); 33.2 (Termination by State)
<b>Community Development Agreement</b>	The CDA is a consultation-based agreement between the company and the local communities affected by project activities that will address both how the community can take advantage of development gains offered by the project and how impacts from the project may be mitigated. The Agreement must address social, environmental, and economic impacts of the project and project closure.	<b>Defined in</b> Section 22.1 <b>Referenced in</b> Section 7.3 (Deductions in the Computation of Income Tax); 22.2 (Relationship of This Agreement to Community Development Agreement); 27.1 (Company grievance mechanism) <b>See also:</b> Annex B (CDA Objectives)
<b>Confidential Information</b>	Confidential information includes information so defined by law, proprietary/technical information, legal advice, intellectual property related to the project, and audited information. Certain information that would otherwise be regarded as confidential may lose that designation if required by applicable law.	<b>Defined in</b> Section 30.2
<b>Consultation</b>	<i>"an open, inclusive, and non-coercive process, conducted in the native language of the participants, for exchange of information, ideas and viewpoints about the potential benefits and impacts of the Project.</i>  <i>Consultation shall strive to include, in socially and culturally acceptable forms, all social elements in the area affected by the subject matter under consideration, including both men and women. Where Indigenous or Tribal Populations are part of the Consultation, the Parties shall refer to international guidelines as to the appropriate ways to proceed."</i>	<b>Referenced in</b> Section 2.4.3 (Social Impact Assessment and Action Plan); 22.1 (Community Development Agreement); 26.1 (Closure Plan and Closure Obligations); 26.3 (Post-Closure Monitoring); 27.1 (Company Grievance Mechanism); 30.1 (This Contract is a Public Document)  <b>See also:</b> Annex B

\* We note that we have not commented on every definition but only on those where we believe some comment to be helpful to the reader.

<b>Date of Commencement of Commercial Production</b>	The first day of the calendar quarter after the calendar quarter in which Commercial Production first occurs.  This triggers obligations related to production statements, taxes, stabilization, and development.	<b>Referenced in</b> Section 4.3 (Production Statement); 7.3 (Deductions in the Computation of Income Tax); 7.4 (Value-Added Taxes and Project Activities); 7.6 (Taxes on Expatriate Employees); 7.7 (Taxes on Non-resident Contractors); 13.2 (Tax Stabilization Clause); 20.0 (Development Obligations)
<b>Day</b>	No comments.	
<b>Debt</b>	No comments.	<b>Defined in</b> Section 8.2
<b>Documents</b>	When used in the MMDA 1.0, "Documents" collectively refers to the major documents the company must submit to the state (Feasibility Study, Environmental Assessment and Environmental Management Plan, Social Impact Assessment and Action Plan, Financing Plan, and Closure Plan). The Documents are to be public.	<b>Defined in</b> Section 2.4 <b>Referenced in</b> Section 2.6 (Construction); 20.0 (Development Obligations); 30.1 (This Contract a Public Document)
<b>Effective Date</b>	No comments.	<b>Defined in</b> Preamble
<b>Environmental Assessment</b>	This means a systematic study of the environmental character of the Mining Area to establishing a baseline of existing environmental conditions, and assessing the Project-related environmental effects and impacts.	<b>Referenced in</b> Section 2.4 (Obligations Prior to Construction)
<b>Environmental Management Plan</b>	The EMP document presents the company's plan for the management, remediation, rehabilitation and control of all environmental aspects of the Project.	<b>Defined in</b> Section 2.4.2 <b>Referenced in</b> Section 26.1 (Closure Plans and Obligations); 33.7 (Obligations Following Expiration, Surrender, or Termination)
<b>Equity</b>	No comments.	<b>Defined in</b> Section 8.2
<b>Feasibility Study</b>	This study, carried out or verified by an independent party, analyzes the potential project from the estimated mineral reserves and costs for an Environmental Management Plan, to planning electricity supply and construction timetables.	<b>Defined in</b> Section 2.4.1 <b>Referenced in</b> Section 2.1.1 (Grant of Mine Development Rights); 2.4 (Obligations Prior to Construction); 2.6 (Construction); 13.2 (Tax Stabilization Clause); 20.0 (Development Obligations)
<b>Financing Plan</b>	Financing Plan will be consistent with Good Industry Practice.	<b>Defined in</b> Section 2.4.4 <b>Referenced in</b> Section 7.3 (Deductions in the Computation of Company Income Tax); 8.4 (Role of State in Financing); 13.2 (Tax Stabilization Clause)
<b>Force Majeure</b>	No comments.	

<b>Good Industry Practice</b>	<p>Defining Good Industry Practice is a particular concern—many recent development agreements make some mention of “best practice” or “international standards” with little substantive definition. Therefore, the MMDA 1.0 suggests seeking guidance from the International Council on Mining and Metals and the IFC Performance Standards.</p> <p>MMDA defines “good industry practice” as:</p> <p><i>[T]hat degree of skill, diligence, prudence and foresight which would reasonably and ordinarily be expected to be applied by a skilled and experienced person engaged in the international mining industry and includes but is not limited to the guidance provided, as applicable, by the International Council on Mining and Metals, by the IFC Performance Standards, and by ISO 14001 standards.”</i></p> <p>We would suggest that “good industry practice” can be considered as flowing from the body of materials identified in Annex I below.</p>	<p><b>Referenced in</b> Section 2.1.1 (Grant of Mine Development Rights); 2.4.1 (Feasibility Study); 2.4.2 (Environmental Assessment and Environmental Management Plan); 2.4.4 (Financing Plan); 4.3 (Production Statement); 6.0 (Insurance); 7.0 (Taxation); 7.3 (Deductions in the Computation of Company Income Tax); 7.4 (Value-Added Taxes and Project Activities); 9.2 (Financial Records and Financial Statements); 14.0 (Fair and Economical Project Operation); 20.0 (Development Obligations); 25.1 (Labour Standards); 25.2 (Health and Safety);</p>
<b>State</b>	No comments.	
<b>ICSID</b>	Disputes out of or relating to the agreement between state and company will be submitted to the International Center for Settlement of Investment Disputes.	<b>Defined in</b> 32.2
<b>IFC Performance Standards</b>	The International Finance Corporation’s Performance Standards on Social and Environmental Sustainability.	
<b>Independent Sole Expert</b>	<p>A disinterested individual from either a mining consulting company, or an environmental/ social consulting company.</p> <p>This expert is envisioned as resolving certain kinds of disputes related to the agreement</p>	<b>Referenced in</b> Section 2.4.1 (Feasibility Study); 4.5 (Disputes regarding Royalty Payments); 32.1 (Cooperation)
<b>Indigenous or Tribal Populations</b>	Includes, but is not limited to, peoples so identified in accordance with ILO Convention 169, Convention Concerning Indigenous and Tribal Peoples in Independent Countries.	<b>Referenced in</b> Section 2.4.3 (Social Impact Assessment and Action Plan); 18.0 (State Obligations Re: Local Governments and Landowners)
<b>Local Government</b>	No comments.	
<b>Minerals</b>	No comments.	
<b>Mining Area</b>	Specific area defined by the agreement.	<b>Defined in:</b> Annex A-1

“ The general objection to such clauses is that there is no universal agreement as to what constitutes “international best practice” or the like and that the clauses as simply designed to make it look as if the company is committing to something while in fact implying only the loosest of commitments. The MMDA solution does include some serious and concrete commitments, even if it falls short of all that is in Annex I, below.



<b>Notice</b>	Notice shall be written. MMDA 1.0 lays out proper delivery methods for notice.	<b>Defined in</b> Section 34.0 <b>Referenced in</b> Section 2.4.5 (Compliance with Law, Requested Changes by State); 4.3 (Production Statement); 4.5 (Disputes regarding Royalty Payments); 11.0 (State Access to Project); 26.1 (Closure Plan and Closure Obligations); 30.2 (Certain Information Confidential); 31.0 (Force Majeure; Suspension of Operations for Market Conditions); 32.1 (Cooperation); 33.0 (Surrender and Termination)
<b>Parent Company</b>	No comments.	
<b>Parties</b>	No comments.	
<b>Party</b>	No comments.	
<b>Project</b>	The development, production, and reclamation of the Mining Operation under the agreement. Includes all activities taken in connect with the Mining Operation.	
<b>Project Area</b>	Area defined by Annex and may be modified in response to the Environmental Assessment, Environmental Management Plan, or Social Impact Assessment and Action Plan.	
<b>Royalty Rate</b>	No comments.	<b>Defined in</b> Section 4.1
<b>Social Impact Assessment and Action Plan</b>	This study, prepared with guidance from the IFC Standards, shall take provision to prevent or minimize impacts on persons and communities affected by the Project. This includes a plan for the transition of the Project Area economy to post-mine life.	<b>Defined in</b> Section 2.4.3 <b>Referenced in</b> Section 2.4.5 (Compliance with Law, Requested Changes by State)
<b>Stability Period</b>	<i>See discussion in narrative section of this Report.</i>	<b>Referenced in</b> Section 13.2 (Tax Stabilization Clause)
<b>State Official</b>	Anyone who is an elected, appointed or career official, or employee, of any central or local government, central or local government-owned or central or local government-controlled enterprise, company or organization, who is an individual acting for any such a central or local government, enterprise, company or organization, official of a political party or candidate for political office.	
<b>Tax</b>	Any levy imposed by the State under Applicable Law on income, goods and services, and the employment, health and welfare of persons.	
<b>Tax Law</b>	No comments.	

## *Explanatory Narrative on Key Sections of the MMDA 1.0*

### *Definitions: 1.1 Definitions*

Most contracts have a definitions section. These are definitions for terms that are used in the contract itself, designed to give more specific content to the terms used than they would have in normal usage. A term not used in the contract should therefore not be included in the definitions. Nor should words be included that the contract employs in their plain and ordinary meanings. The definitions will have to be tailored to the specific legal environment of the state involved in order to ensure the contract and the local law are properly harmonized. Local legal knowledge is important for this.

In the MMDA, some of the definitions introduce concepts that are deployed in the contract that either may not have been common in other agreements or have been loosely used without any rigorous understanding of what they require. These included “consultation,” “Environmental assessment,” “Good Industry Practice,” “Social impact assessment,” “Indigenous and Tribal Populations,” and “Stability Period.” In each case, the MMDA utilizes these terms in one or more provisions. They are part of the provisions that seek to ensure the balance of rights and obligations of all parties from a sustainable development perspective. At the same time, the definitions section sets out the definition but not the related substantive obligations. Those must be located in the balance of the contract.

The MMDA is consciously designed to harmonize with and link to the emerging international body of standards and requirements, such as the Voluntary Principles on Security and Human Rights, the Extractive Industries Transparency Initiative, and the International Finance Corporation (IFC) Performance Standards. This puts a premium on using the same definitions that are found in these bodies of international practice standards.

It is essential to focus on the definitions section, because it has such a clear impact on the scope and value of the rights and obligations conferred in the rest of the Agreement.

### *Tenure: 2.0 Development of Mining Area*

A grant by a government of land tenure to a mining company is, for most developing countries, a critical act of sovereign authority. It is one of the central features of any mining development agreement for all stakeholders.

For investors, the legal title to use the land for its intended purpose is essential. Without it, there is no capacity to mine or to raise funds for the mine construction or operations. The exclusivity of such title and any exceptions to such exclusivity must be carefully set out. The original period of time of the contract, and the provisions governing renewal of the contract, are also critical.

For communities in the mine area, it is essential to know the scope of the land and resources the mining company will control, its exact location or locations, the positions of access roads or other infrastructure, the natural geography in question, and the extent to which the tenure is exclusive or shared, in order to be able to understand the likely impacts of the mine.

For governments, the land base is usually subject to certain rental levels or other fiscal arrangements. And of course, governments that assume land tenure obligations towards one company cannot then provide competing rights to another company.

For all actors, issues such as resettlement resulting from mine construction are critical, as are factors relating to environmental and social impact assessments. The precise location and boundaries of the land are critical for all these purposes.

As a result, land tenure provisions must, when fully constructed:

- indicate the precise land area involved in terms of area and the boundaries on all sides
- identify the rents payable, if any, and to whom
- identify any previous landowners impacted, who must be paid
- specify the scope of the rights of the mining company above the ground
- set out the degree to which use by the mining company is exclusive
- specify what mineral or other rights the company has below the ground (what minerals can be extracted, etc.)
- provide legal guarantees of undisturbed use to the extent the government can reasonably do so

There may also be certain limitations set out on the implementation of these rights. For example, the MMDA text states that the government is not obligated to use force to remove artisanal miners from the concession area. Similarly, the contract is expressly stated not to override the need to obtain any permits or licenses otherwise required by the generally applicable law prior to gaining title or exercising the mine development rights, as the case may be.

Because land tenure is so fundamental to the entire contract, there will also be a number of very important ancillary provisions that are closely related to the land tenure provision. These will likely include, at a minimum:

- those provisions that set out the preliminary obligations of the investor prior to title taking effect (noted in detail in Section 2.4 of the MMDA, thus highlighting the need to make these connections)
- resettlement obligations
- responsibility for impact on subsistence resources
- environmental obligations
- socio-economic and human rights obligations relating to the location and use of the land
- land reclamation and closure obligations

### ***Prior Obligations: 2.4 Obligations Prior to Construction***

There may be different results here, depending on specific circumstances. The question is whether matters such as those set out in Section 2.4 should be concluded prior to completing the contract or prior to commencing any construction. The MMDA used the construction period for several reasons, including the concern that investors be understood to have certain rights that they will be able fully to exercise once the obligations are met, instead of lose them to another potential competitor having done all the background work. Nonetheless, the inclusion of the provision shows the critical importance attached in the process to sound, accurate information prior to construction and prior to potentially irreversible decisions being made.

The relevant factors may include generally applicable domestic law, costs, competitiveness issues, bidding processes for certain concessions, etc. Thus, while the MMDA places the issues listed below as needing resolution prior to construction, others may place them as needing to be resolved prior to contracting. In either event, what is clear is that certain steps must be taken by the investor and the government prior to any actual construction commencing. These steps include, but may not be limited to:

- the project feasibility study, to be updated regularly;
- the environmental impact assessment and environmental management plan;
- the social impact assessment and action plan;
- the financing plan; and
- a closure plan.

These minimum steps are set out in detail in the subsequent subsections of the MMDA, which envision that existing international standards for such matters are respected as floor standards. A key feature is to ensure not just that the financial elements be completed, but also that all of the needed environmental and social steps be completed as well.

It may easily take 10 years for a mine to go from a vision, to exploration, to assessment, to a feasibility study and on to possible production. The environmental and social impacts should be understood and addressed in comprehensive and binding documents and decisions during this same time period, not as an afterthought.

### ***Royalty: 4.0 Royalty***

Payment of royalties on production or sales is one of the main sources of income and potential development benefits for the host state and is a major component of costs for the mining company. It is a critical component of the development equation, and a major factor in how other stakeholders, citizens and others will assess the equity of the mining contract and mining operations.

Royalties are always paid on production and sales. Thus, by definition, they do not materialize as part of government revenues until a mine is in production; one important development issue is that government is called on to manage so many impacts of project development before this revenue stream starts to flow. There are four principal models of royalty provisions described in the MMDA. Selecting one or more approaches is a critical issue. Balancing the final result is equally critical. The MMDA discusses:

- a profit-based royalty, looking at the cost of production versus the price of sales per unit;
- a gross value-based royalty per unit sold;
- a net value-based royalty; which may include additional value added factors in the equation; and
- a simple fixed unit-based royalty.

The amount of government revenues will depend on the choice of options, the volume of sales, production costs, etc. Some of these models are more frequently used with particular commodities. A key issue in choosing among them is the difficulty, risk, and cost inherent in smelting, refining, or other beneficiation. Where processing risks and costs are high, companies are much more likely to want profit based measures.

Variations on each theme are noted, as are key elements for the articulation of each different approach. Whichever approach is adopted, it is critical for the royalty provisions to be considered with other taxation provisions. While these are different financial mechanisms, the articulation each can have a monetary impact on the payments made or due under the other. How a royalty on sales, for example, is treated for tax purposes will have a certain impact, positive or negative, on the amount of income taxes paid on net income.

The use of different mechanisms (tax, royalty, land rent fees, etc) should be seen in totality, and in the context of using different mechanisms to generate a consistent flow of revenues at a relatively predictable level, both for company planning and for government revenue planning and management.

The MMDA raises but does not fully address the controversial issue of “windfall profit royalties.” The MMDA focus on equity in the lifecycle of the contract and mining operations, as part of its concept of sustainable development, highlights the need to address this question. It can be complex, and its implementation can be complicated. But these factors in themselves should not be a deterrent to discussing and resolving the issue, which may be easier to do in the context of a specific agreement for a specific project producing a known commodity than in the generic context of an agreement like the MMDA.

The practical imperative in this area is that the full economic deal must work on an ongoing basis for both sides, the company and the investor, and for the community. Clearly thought out windfall profit taxes or royalties are one mechanism to achieve this. Basic principles of equity and a rejection of win-lose negotiating paradigms in favor of win-win paradigms are very much at the heart of the MMDA approach.

Given the above, the royalty sections must be read with the taxation sections in any agreement. At the end of the day, the company is interested in knowing its full liabilities to government, in all its forms. The government is likewise interested in knowing this full liability or “government take” clearly; it is often at the heart of the national political debate. Any land rents may also be an ongoing factor. How all these will fit together is absolutely critical. The transparency provisions are considered to be an essential element of the full financial deal; the perception is that, without these, instability of investment conditions is unacceptably increased.

### ***Taxation: 7.0 Taxation***

Where taxation is dealt with by contract rather than in the tax code, or the contract supplements the tax code, it must be dealt with clearly in order for all sides to understand properly their rights and obligations. Change in taxation levels is a frequent source of dispute as mining operations mature, markets shift, and profit levels change in one direction or another. Fully 25% of international investment treaty arbitrations relate to the mining and oil and gas sectors, and the bulk of those cases relate to tax or tax-related issues.

Both the level and timing of taxation matter. For example, it is now understood that many taxation provisions have been designed with large cost carry-forward provisions that can effectively mean a company pays little to no tax for many years of profitable commercial production, sometimes as long as twenty years. This leaves no government revenues except the royalties, and as noted above these will depend on how revenues and profits are assessed for royalty purposes.

It is very important to be clear on whether the generally applicable law will prevail or the contract. The default position should in general be to apply the generally applicable law except as altered by a special provision of the law or the contract, assuming the contract can legally do so or is otherwise passed into legislation by the parliament. Variations from generally applicable law should be carefully considered not just from a legal perspective, but a social perspective as well.

Corporate income tax is closely related to royalty payments and other payments under the contract. Whereas royalties are based on production or sales or profits from sale, income tax is based more broadly on the corporate profits that are made over the course of the year-to-year operations of the mine. Ensuring that these two types of payments are properly coordinated is important.

Other elements that need to be considered include:

- Taxes on dividends to non-resident companies or shareholders, in particular the investors or related companies: It is important that all the profits not simply be siphoned off in the form of dividends to foreign shareholders, leaving no profits subject to income tax in the host state;
- The payment of value added taxes before and after the mine is in commercial production, and on imported versus domestic goods and services, should all be addressed;
- Real property taxes: who can levy them and at what value, and the role of the improvements made by the company in evaluating the tax levels are important issues;
- Taxes on expatriate employees both before and after the mine is operational are important as well;
- The capacity of local governments to tax the mining company, and at what levels, can be very important and may, in some cases, require a further agreement with the different levels of tax authorities;

Finally, it is very important to address the issue of transfer pricing. While transfer pricing practices are often illegal and subject to tax scrutiny in many jurisdictions, it is useful to highlight this specifically in the agreement and ensure proper calculation mechanisms are available to the government. The more vertically integrated mining company operations are – and many state-owned mining companies are highly integrated in terms of all mining inputs being sourced within the company and all outputs sold to other branches of the company – the more critical it is to get mechanisms in place establishing fair market value or arms length transaction rules for royalty and tax purposes.

A further, and often critical, related issue is the inclusion or exclusion of a stabilization agreement and period for taxation. It is essential that this issue be clearly approached, but it is no longer a given that such a provision must be included.

If a tax stabilization clause is included, its limitations in terms of types of taxes, levels and time period must be clear. Blanket stabilization clauses for the entire period of the contract should be avoided. We return to this issue under the heading of “Stabilization” below.

### ***Rights And Obligations: 10.0 Mutual Obligations***

One of the major attributes of a sustainable development focused approach to mining contracts is the need to recognize mutual obligations in certain areas of conduct. The intent is to reflect the common interest in ensuring that certain behaviors take place, and that certain other behaviors do not. Equal and consistent obligations on each party are one tool for doing this.

Too often things that everyone agrees need to be done do not get done because there is a dispute as to whether government or the private sector is responsible for accomplishing them. If we assume that a successful mining project is in the interest both of the state and the company, then the interests of both are injured when the project is put at risk by failure to observe human rights, or failure to keep local interests apprised of developments that are going to affect them. This is the basis for regarding such matters as common responsibilities.

Among the objectives promoted in the MMDA is the obligation to keep local communities informed of all major progress and changes related to the mine development and operations. There are also common commitments to use international standards, such as the IFC Performance Standards, as floor standards where domestic law in the host state is less stringent. This common commitment overrides traditional concerns over sovereignty through a joint position that is forward looking and to the benefit of all stakeholders. This is a fundamental part of developing win-win solutions for governments, investors and stakeholders. The same goes for the common commitment to protect and promote human rights.

A final area where common obligations have been set out in the MMDA is in relation to corruption. Corruption is widely recognized as a significant barrier to the achievement of sustainable development. The expression of common obligations to avoid corruption is an express recognition that both government and the private sector are jeopardized by corruption and share a need to ensure it does not occur. The standard is clear and unambiguous, and penalties can be as high as the cancellation of the contract.

The common obligation provisions set out certain expected and prohibited activities. As with other provisions, they do not live alone. For example, the obligation to use international standards as a floor plays out elsewhere in the obligation of the investor company to have a properly designed environmental management plan. Such plans, when developed to international standards, require continued updating of environmental technologies. This meshes with the view that any stabilization rules should not extend to future environmental laws of general application. All sides have already recognized in the contract an obligation to maintain and improve upon their environmental performance.

Other related provisions include those that promote local economic development, recognize community needs, and the provisions on transparent documents and reporting to the community. Thus, the general obligations find further detail in these types of more specific obligations in the text.

### ***Fiscal Stabilization: 13.2 Tax Stabilization Clause; 14.0 Fair and Economical Project Operation***

The issue of stabilization should be broken into its two critical dimensions, fiscal and non-fiscal. This is not the space for a detailed review of the history and difficulties around these provisions. A very short note follows that digests the specific solutions proposed to the difficult issues in the MMDA.

On fiscal stabilization, the issues include whether generally applicable law will prevail in tax and royalty matters or the contract will prevail, or there may for distinct issues be a “mixed” provision.

The MMDA does not regard it as a given that there should be a fiscal stabilization clause. But where a fiscal stabilization provision is agreed upon, if it follows the MMDA model, will be specific and limited to the designated “stability period.” Thus, it would not be all encompassing, but specific and time limited. The approach adopted is also one of seeking to renew the economic equilibrium prior to the adoption of the new tax measures through a negotiated agreement. Only after such efforts does a provision on compensation become operative. So the provision overall is carefully constructed,

nuanced, and seeks negotiated solutions rather than formal disputes as the primary means of addressing the inevitable changes in economic balances.

This approach is in distinct opposition to the notion of open-ended tax stabilization for the full period of the contract. Such a provision was not included as a lead clause because it was believed to be overly broad and largely unrealistic. It also raises significant issues of equity, balance, and instability over the life of a contract.

On non-fiscal issues, areas of so-called political risk such as environmental, health and safety and labor laws, the key provision rejects the principle of stabilization. Rather, it applies first a principle of non-discriminatory regulatory measures as a protection for the company. Second, the provision recognizes that even here a measure may specifically address a single investor when it is reasonably intended to protect the safety, health, welfare or security of the state and its citizens. An additional notation on the legitimacy of implementing a state's international obligations is also added. The provision expressly rejects an economic equilibrium stabilization clause in such cases: "The Company shall be bound by all non-discriminatory changes in Applicable Law concerning health, safety, the environment, and to address the proximate human rights impacts of mining operations." A key proviso is then added: "provided that the changes in social and environmental standards are reasonable and achievable under good industry practice." This gives a protection against true political risk of unreasonable or inappropriately targeted measures, while leaving scope for governments to take legitimate measures at least to levels seen in other jurisdictions where good industry practice can also be found.

In short, the provisions shift away from stabilization to tests of non-discrimination, reasonableness and good industry practice, putting the burden on a company to argue that any new measures breach these standards, instead of creating an automatic claim to the non-application of such measures, or to economic compensation for adopting them. This provides both a level of protection for an investor, and a level of security for a host state that it should not have to compensate every investor for taking new public interest measures.

The result described above has also been adopted, or very closely so, in the work of John Ruggie, in his position as Special Representative of the Secretary General on Business and Human Rights.

### ***Development Obligations: 20.0 Development Obligations***

A common concern in much of the mining and development literature is the ability of mining companies to gather permits, licenses and contracts but then sit on the properties without making any investments or beginning operations. The mine development obligation addresses this. It requires the company to comply with the development schedule it sets out in its plans, and ensure timely development to operational stages of the mine.

Recall that mining companies pay minimal amounts to governments until production starts and profits can begin to be realized. This provision is put in place to ensure that the royalty and tax revenues, the government "take" will flow in the time frame reasonably anticipated. To the extent that social and economic development flow from the utilization of the mining revenues, there is a clear connection here from the operations to the development benefits.

This provision relates back to the planning documents submitted by the company. Thus, the timetable is essentially set by the investor in its documents. The present provisions are one means for enforcing the undertakings in such documents, with room for adjustments where changed circumstances make them reasonable.



### ***Local Purchasing: 21.0 Use of Local Goods and Services***

A critical part of any development matrix is to ensure that the positive economic reach of developing and operating a mine is felt in local communities. While there is a risk of creating too much dependency on a single economic engine, the failure to establish economic linkages with the local community is a singular recipe for poor relationships with those communities.

This article calls for a concerted effort to ensure as much local input into the goods and services needed by the mine as possible. It recognizes the need for quality and timely delivery, but does not regard this as an opening for the company to ignore the local preference requirement. Rather, training and skills upgrading are foreseen as part of the community development agreement and local business development plan set out in other provisions.

In this way, the purchasing of local goods and services is not set out as a static one-off obligation, but a more integrated training and capacity building that will continuously improve options to access local goods and services.

### ***Local Community Development: 22.0 Local Community Development***

All major actors in the mining sector today recognize the need for a “social license to operate,” or strong linkages between the mining company and the community. A preferred means to ensure purpose and clarity in this relationship is a community development agreement between the company and local government or local community representatives.

The goals of such agreements include setting out concrete local benefits to be supported by the company, mechanisms for ongoing and transparent communications and reporting, accountability for any projects undertaken with the community, and so on. These agreements are seen as ongoing, living processes with the community, rather than one-off events.

As already noted, this is linked to the purchase of local goods and services through a local business development plan that should seek to develop such linkages through ongoing training and other forms of apprenticeship and capacity building.

The potential scope of such agreements is set out in an Annex to the MMDA. A critical issue is the impact of any breach of a community development agreement on the main mining agreement. Here, critically, there is a direct link suggested: a breach of the community agreement is made tantamount to a breach of the main agreement. It is thus subject to the same enforcement standards and processes, and in some circumstances of a material breach, to unilateral termination of the main agreement by the government.

This signals the importance given to achieving not just on paper but in practice a win-win-win solution to mining developments. The elevation of the community development agreement to equal status for all enforceability purposes as the main contract is an important signal and tool for this purpose.

### ***Health: 23.0 Community Health***

The issue of health care has become associated with many conflicts in mining areas. HIV-AIDS prevention and care is but one such example.

Companies have established extensive health care facilities and services for employees and in some cases their families. In other cases, companies have assisted states in meeting their own obligations for health care of the general population without taking on the full responsibility for doing so.

The MMDA provisions reference the need for the company to assist the state in meeting more community-based health care obligations, but does not go so far as to make the mine the legally obligated health care services provider. In this way, the resources of the mining company are called upon for the community benefit, while minimizing the corporate liability if local services are not adequate. This approach, based on cooperation rather than replacement of responsibilities, may leave the company exposed at times to community suggestions that it is not doing enough.

In the end, however, what the provision is really seeking is a mutual responsibility to be acted upon, including both the state and the company. This respects the need for companies not to become government agencies or act in lieu of government structures, but to assist them in meeting their duties.

### ***Employment: 24.0 Employment and Training of Local Citizens***

Employment is usually cited as the most anticipated and important benefit of mining investments. Yet it has become increasingly clear that one must look behind raw numbers to assess what type of employment is occurring and at what levels of skills and technology. Minimum wage jobs may be relatively abundant during construction, but there may be little access by locals to higher value added jobs. And employment levels will probably not be maintained during operations. Increasingly, as in other sectors, mining jobs are being replaced by more efficient technologies, lowering the anticipated positive employment impact of investments; the required skill levels are constantly increasing, making jobs less accessible to local workers.

The proposed MMDA provision calls for priority in hiring to be given to nationals of the host states for all levels of jobs where qualified people are available. This runs from executive to semi-skilled personnel requirements. This is similar to what is seen for local purchasing of goods and services. As in the previous example, the text calls for ongoing training programs to upgrade local skills so that higher value jobs will be available to local employees. Various forms of training and capacity building programs for employees and the local population are envisaged, as a requirement. Precise design is left for the company, preferably working with the community.

The requirement to design and implement programs to increase the capacity of local workers is therefore an ongoing development-oriented requirement. It is intended to lead to higher value added work and skills and technology training among local and state workers, adding additional value to the investment to the society at large, while creating a broader pool for companies to choose from for future human resource needs.

The obligation is further supported by the annual reporting requirements in the contract.

### ***Labour: 25.1 Labour Standards***

There is a great reluctance in many cases to mention labor issues in mining contracts. The MMDA moves beyond this reticence.

One of the anticipated benefits of foreign investment that is often cited in the literature is the higher labour standards that foreign owned enterprises are expected to deploy. This anticipated benefit is made more likely and more concrete through four mechanisms contained in this provision:

- A requirement that the company comply with the locally applicable labor law. There is no exclusion for the company from any applicable labor law rules, existing or future.
- There is a legal requirement to apply the International Labour Organization conventions that the host state is a party to, as well as the ILO core labour standards. These are non-derogable. The right to unionize is protected.
- There is a requirement for the company to apply internationally adopted standards for labour management practices.
- There is a broad anti-discrimination provision for the employer to apply.

Stating these elements clearly achieves one of the objectives of the MMDA, to move from anticipated benefits toward real benefits.

This provision of course also links to other provisions already noted, on employment training, skills development and so on. In addition, there will be opportunities for employees to raise grievances with the company through the local grievance mechanism. Hence, there is once again not a static obligation, but one that is living, progressive and can be reviewed for compliance.

### ***Mine Closure: 26.0 Mining Closure/Post-Closure Obligations***

Mine closure is a critical issue in every mining context. The issues include the social, economic and environmental future of the local communities. The contract requires several steps to be taken in this regard.

First, we note that the closure process in fact starts at the outset: a closure plan must be developed as part of the original set of support documents to accompany the contract.

Second, continued updating of the closure plan is required, and at a maximum of 5 years after any previous update. Community engagement in the process is required.

Third, a final plan is then required to be finalized prior to the beginning of the final year of commercial production, with community engagement.

Fourth, the contract references the ICMM international standard on Planning for Integrated Mine Closure as a required guidance tool.

Fifth, there is a requirement for periodic reporting on the implementation of the closure plan once the mine has ceased operations, and for the government to inspect the closure to ensure it has met the closure plan obligations.

Sixth, there is an obligation for the company to provide a financial guarantee to the government for the anticipated costs of implementing the closure plan. This ensures that a company cannot complete the mining operation and simply leave the clean-up costs to the local government and community.

Finally, the government is required to establish a longer term monitoring process post-closure to ensure that any latent environmental impacts that may arise do not go untreated.

The linkage of the closure plan obligations back to the very beginning of the contract process shows the importance attached to it. The comprehensive nature of the process, with its reference to international standards, highlights the rigor now anticipated in this area.

### ***Citizen Complaints: 27.0 Rights of Citizens of the State***

In order to address grievances that may arise over the course of the mine construction and operation, the company is obligated to establish a transparent grievance mechanism that will operate within the community. This mechanism is intended to allow local citizens a low cost opportunity to raise issues of concern. Such issues can concern individualized impacts of the mine operation, such as house damage from blasting, or loss of clean water due to run-off. Or they may concern impacts being felt more broadly within the community such as loss of irrigation water or excessive noise or dust. They may also extend to concerns with non-compliance with obligations under the applicable law or contract as well. The concept is intended to be consistent with the grievance mechanism requirements in the IFC Performance Standards.

The main goal is to have an early opportunity to raise issues prior to their escalation into major concerns.

In addition, this provision makes it clear that the company also must submit to the local courts or local customary law judicial practices in the event a citizen seeks judicial recourse for matters related to the mine. This ensures that local citizens can have access to judicial remedies when warranted. This of course does not in any way imply that the company is liable for any given claim, merely that it recognizes the obligation for the claim to be heard on the merits.

This approach is consistent with the recommendations of Professor John Ruggie on improved relationships between communities and companies in support of the protection of human rights.

### ***Assignment of Contracts: 29.0 Assignment***

There is a long understood concern that a mining company will commit to various obligations, but then sell or otherwise transfer control of the mine to another company, which does not consider itself bound. Sales of companies and properties and changes of management are frequent in the industry. This provision allows changes of control, ownership and management, but subject to a requirement of approval by the government in most cases, and a requirement for the new owner expressly to agree to be bound by all of the obligations of the original company. Thus, a new owner or operator cannot argue the rights have been shifted to it without the obligations.

This leaves the company with the ability to sell the property, but not to do so in a way that diminishes the rights of other stakeholders or the obligations of the operator. The provision is not complex but is clear and closes a significant potential loophole.

### ***Transparency: 30.1 This Contract a Public Document***

The preambular statements note the need for transparency in the course of mining investments. Specific application to this principle is found in this article, which calls for the contract itself to be a public document, as well as the ancillary documents such as the environmental and social impact assessment studies, closure plan, etc., and all updates to this material. The principle is simple: all relevant information concerning the mine contract, its construction and operation, and its closure should be in the public domain. It should be accessible to members of the local community at all times.

This principle is then limited by an allowance for legitimate confidential or proprietary business information to be withheld. This redaction process can be initiated by the company, but is subject to specific rules set out in the text and a process for resolving disputes. Thus, there is no opportunity for this provision to become an unwarranted escape from the principle of transparency.

This provision is signaled in the preamble, as already noted. It is also related to the implementation of the Extractive Industries Transparency Initiative.

Disputes: 32: Cooperation, Dispute Resolution and Arbitration

The dispute settlement process set out here is increasingly common:

- cooperation and mediation when a dispute is not readily settled;
- the use of an independent technical expert when the issue in dispute is exclusively related to technical matters; and
- the use of arbitration if the company or government is not satisfied that the dispute is resolved.

This approach, while now common, also raises a concern that local courts can be set aside in favor of international arbitration. Several states have begun to reject this approach in favor of reinforcing the role of domestic courts as the primary forum for resolving disputes.

## Oil & Gas Form/Model Agreements Research

SDSG conducted a short-term search for any existing forms or templates of Production Sharing Agreements (PSAs) or other host government – investor oil and gas contracts, with the objective of identifying any agreements that could serve as a “model” oil and gas contract with international application.

One purpose for this exercise was to evaluate the feasibility of using some existing, broadly accepted agreement as a “template” for evaluating the typical contents of such agreements, much in the way we have in this project used the International Bar Association’s Model Mining Development Agreement (MMDA). Our conclusion on that score is that we are still a step away from that stage. There are a considerable number of national form oil and gas agreements, but none with a broad enough international acceptance to serve as the basis for a template analysis. Such a template could be constructed, if it is wanted, on the basis of the materials identified below and other readily accessible materials.

### Methodology

This research was conducted through outreach to prominent oil and gas experts and via database searches. We contacted oil and gas experts individually and collectively, including through the Transnational Dispute Management “OGEMID” listserv and the MMDA Project listserv. We received a gratifying and generous response.

We searched databases of model contracts provided by leading international oil and gas professional associations and research centers, including the Association of International Petroleum Negotiators (AIPN);<sup>6</sup> Barrows Company;<sup>7</sup> the Resources and Energy Law Association (AMPLA);<sup>8</sup> the Center for American & International Law (CAIL);<sup>9</sup> Oil, Gas & Energy Law Intelligence (OGEL);<sup>10</sup> and the Rocky Mountain Mineral Law Foundation (RMMLF).<sup>11</sup>

### Findings

#### *Investor – State Form Agreements and Form PSAs<sup>12</sup>*

We were able to locate investor – state form agreements and form PSAs from the following countries, obtained via e-mail listservs and outreach to legal experts, and through database research. These agreements vary widely in quality; by listing the agreements, we do not indicate that they are “models” to be followed widely.

- Afghanistan Model Exploration and Production Sharing Contract (2009, \*2005 *draft*, 2004 *draft*)
- Albania Model Production Sharing Contract (\*1998)
- Algeria Model Production Sharing Contract (\*2004, \*2001)
- Angola & Cabina Model Production Sharing Agreement (2008, \*2006, \*2005, \*1999, \*1997, \*1996, \*1993, \*1991, \*1986)

<sup>6</sup> See <http://www.aipn.org/>.

<sup>7</sup> See <http://www.barrowscompany.com>.

<sup>8</sup> See <http://www.ampla.org/scripts/cgiip.exe/WService=AMPLA/ccms.r>.

<sup>9</sup> See <http://www.cailaw.org/index.html>.

<sup>10</sup> See <http://www.ogel.org/>.

<sup>11</sup> See <https://www.rmmlf.org/>.

<sup>12</sup> Agreements marked (\*) available via Barrows Company at <http://www.barrowscompany.com>. Other agreements on file with Sustainable Development Strategies Group. Please contact Kristi Disney at [disney@sdsg.org](mailto:disney@sdsg.org) to request copies.

- Argentina (Mendoza, undated), *Sample terms and conditions and general terms for Unión Transitoria de Empresas (a type of joint venture) agreements.*
- Argentina (Neuquén, undated), *Sample terms and conditions for renegotiation of a concession area.*
- Bangladesh Model Production Sharing Agreement (\*2008, \*1999, \*1997, \*1996, \*1995, \*1993, \*1989, \*1988)
- Belize Model Production Sharing Agreement (2007, \*1995, \*1994, \*1993)
- Benin Model Production Sharing Contract (\*2002)
- Cameroon Model Production Sharing Agreement (\*2008, \*2007)
- Colombia Exploration & Production Contract (undated)
- Congo Model Production Sharing Contract (1997, 1996, 1995)
- Cote D'Ivoire Model Production Sharing Contract (\*1996, \*1993, \*1990)
- Croatia Model Production Sharing Agreement (\*undated)
- Cuba Model Production Sharing Contract (\*1999, \*1993)
- Cyprus Model Production Sharing Agreement (\*2012, 2007 *includes guidance notes*)
- Ecuador Model Production Sharing Contract (\*2003, \*2002, \*1994)
- Egypt Model Production Sharing Agreement (\*1973 *summary only*, \*1981)
- Eritrea Model Production Sharing Contract (\*2009, \*1997, \*1996, \*1995)
- Ethiopia Model Production Sharing Agreement (\*1994, \*1986)
- Equatorial Guinea Model Production Sharing Contract (\*2006, \*2002, \*1981)
- Gabon Model Production Sharing Contract (\*1993, \*1988)
- Ghana Model Petroleum Contract (2002, 2000 \*1995)
- Greece Model Production Sharing Agreement (\*1978)
- Greenland Joint Operating Agreement (2010)
- Guatemala Model Production Sharing Contract (\*2005, \*1985)
- Guinea Model Production Sharing Agreement (\*1981)
- Guyana Model Production Sharing Agreement (\*1986)
- India Model Production Sharing Contract(\*2010, \*2009, 2007, \*2005, \*2003, \*2002, \*2001, \*2000, \*1999, \*1997, \*1992, \*1986)
- Indonesia Model Production Sharing Contract (\*2003, \*1986, \*1981, \*1979, \*1972)
- Iraq Model Development & Production Service Contract (2010, \*2007, \*2006, 2001, \*1998)
- Jamaica Model Production Sharing Agreement (\*2011, \*2007, \*2004)
- Jordan Model Production Sharing Agreement (\*2010, \*2009, \*2008, \*2007, \*2005, \*2001, \*1995, \*1988)
- Kazakhstan Model Production Sharing Contract (\*1998)
- Kenya Model Production Sharing Contract (\*2008, \*1999, \*1989, \*1984)
- Kurdistan Regional Government of Iraq (2007)
- Laos Model Production Sharing Contract (\*1999)

- Liberia Model Production Sharing Agreement (\*2009, \*2007)
- Libya Model Exploration & Production Sharing Agreement (\*2007)
- Madagascar Model Production Sharing Contract (\*1997, \*1995)
- Mali Model Production Sharing Contract (\*2004)
- Malta Model Production Sharing Contract (\*2003, \*2001, \*1997, \*1991, \*1988)
- Mauritania Model Production Sharing Contract (\*1994, \*1981)
- Mexico Model Production Sharing Agreement (2003)
- Mongolia Model Production Sharing Contract (\*2003, \*2001, \*1997)
- Mozambique Model Production Sharing Agreement (\*2000, \*1999)
- Myanmar Model Production Sharing Contract (\*2002, \*1995, \*1993)
- Nepal Model Production Sharing Agreement (\*2003, \*2002, \*1994)
- Netherlands Model Production Sharing Contract (\*1998, \*1988)
- Nigeria Model Production Sharing Contract (\*2005, \*2004, \*1991)
- Oman Model Exploration & Production Sharing Agreement (\*2006, \*1998)
- Pakistan Model Petroleum Concession Agreement (\*2011, 2009, 2001)
- Philippines Model Production Sharing Contract (\*2005, \*1993, \*1988)
- Romania Model Production Sharing Contract (\*1996)
- Sao Tome & Principe Model Production Sharing Contract (\*2009)
- Senegal Model Production Sharing Contract (\*2006, \*1997)
- Somali Republic Model Production Sharing Agreement (\*2007)
- Sri Lanka Model Production Sharing Contract (\*1979, \*1977)
- Sudan Model Production Sharing Agreement (\*1990)
- Tanzania Model Production Sharing Agreement Addendum for Natural Gas (2010)
- Tanzania Model Production Sharing Agreement (2008, 2004, \*2001, 1995, \*1989)
- Timor-Leste Model Production Sharing Contract (\*2006, \*2005, \*2004)
- Togo Model Production Sharing Contract (\*1999)
- Trinidad Tobago Production Sharing Contract (\*2011, 2010, \*2009, 2006, \*2005, \*2000, \*1996, \*1995, \*1995, \*1994, \*1992, \*1974)
- Turkmenistan Model Production Sharing Agreement (\*2000, \*1999, 1997)
- Uganda Model Production Sharing Agreement (\*1999, \*1993)
- Vietnam Model Production Sharing Contract (\*2004, \*1993)
- Yemen (North & South) Model Production Sharing Agreement (\*2008, \*2007, \*2006, \*1999, \*1990)
- Zambia Model Production Sharing Agreement (\*1986, \*1985)



### ***General Guidance for Negotiating Investor – State Form Agreements, Joint Ventures and PSAs<sup>13</sup>***

We located the following useful guidance regarding negotiation and drafting of investor – state agreements, Joint Ventures and PSAs. A compilation of such guidelines would provide a useful framework for discussions on good practice and stakeholder experiences with oil & gas agreements.

- AIPN, *The Host Government Contract Handbook (for the International Petroleum Industry)* (1999), vol. 1.
- AIPN, *The Host Government Contract Handbook (for the International Petroleum Industry)* (2009), vol. 2.
- AMPLA, *Model Petroleum Joint Operating Agreement* (2011), available at <http://www.ampla.org/lib/pdf/Model%20Documents/WEBSITE%20Petroleum%20JOA.pdf>. This agreement is focused on non-complex oil and gas contracts onshore in Australia.
- J. Barnes, *Host Country Granting Instruments: Outline of Issues* (2010).
- *Extractive Industries Sourcebook: Good-Fit Practice Activities in the Oil, Gas & Mining Industries* (2012), available at <http://www.eisourcebook.org/>.
- IIED, *How to Scrutinise a Production Sharing Agreement* (2012), available at <http://pubs.iied.org/16031IIED.html>, this is a useful guide, particularly for civil society, with a focus on revenues. This guide, originally published in Russian, and now available in English, draws from experiences in Kazakhstan.
- USAID, *Sheberghan Gas Field Development Project Model Contracts Package* (2011), available at <http://www.afghaneic.org/Sheberghan%20Files/AEI%20-%20SGFDP%20--%20Model%20Contracts%20Package.pdf>. This guide contains a model production sharing agreement.
- V. Vivoda, *International Oil Companies and Host States: A New Bargaining Model, OGEL 5* (2011), [www.ogel.org](http://www.ogel.org).

This is not a comprehensive list of all relevant materials, but is indicative of what is available. Most of this material focuses on the laws and legal structures of individual countries; obviously these have influenced each other as countries and companies have imported concepts and language from one context to another, but there is no “transnational” or international consensus form.

## **Conclusions**

While we found a number of national level form contracts and generally useful guides for contract negotiation, we did not find any form or “model” contracts with international application. We did, however, find useful guidance toward development of such contracts.

At least one organization, AIPN, has attempted to develop an internationally applicable model oil & gas development agreement without successful results. This is at least partially attributed to the unique characteristics of each host country and each contract negotiated; there is no perfect model for every particular agreement.

Despite such unsuccessful attempts, we find that developing a general list of topics that should be considered in an agreement, a general clause for each topic with a variety of alternatives to each clause, and general guidelines regarding good international practices could be very helpful aids in promoting more stable, transparent and equitable oil and gas agreements that focus more on the development outcomes of oil and gas investment.

<sup>13</sup> Documents on file with Sustainable Development Strategies Group. Please contact Kristi Disney at [disney@sdsd.org](mailto:disney@sdsd.org) to request copies.

The value of any such model depends heavily on the extent of the consultation around it; consultation is necessary to both the perception and the reality of balance among the competing interests. We recommend that the development of any such template or model involve substantial input from stakeholders.

The success of the International Bar Association’s Model Mining Development Agreement (MMDA),<sup>14</sup> for example, is largely attributed to the years of stakeholder consultations that informed the agreement’s content. Stakeholder input from multiple sectors not only improved the quality of the contract, but increased public confidence and the balance of interests represented in MMDA “Version 1.0.”

We find that additional research on available model oil and gas agreements, the success and failures of such agreements, their impact on development issues in host countries, and good international practice regarding such agreements is feasible, and could be done in a reasonable time. We suggest that any such effort include a consultative agreement process that involves stakeholder input and ongoing feedback on drafts.

---

<sup>14</sup> The MMDA “Version 1.0” and related documents are available at <http://www.mmdaproject.org>.

## Annex I

### *Baseline for Generally Accepted International Best Practice in the Mining and Minerals Industries<sup>15</sup> Report of the Mining Minerals and Sustainable Development Project*

In 1999, key leaders in the minerals industry, government and civil society initiated what became a three-year process of consultation, research and dialogue, the Mining Minerals and Sustainable Development Project. The report of that effort, submitted at the World Summit on Sustainable Development in Johannesburg, is widely recognized as a base line for performance in the minerals industries.

The final report, **breaking new ground**,<sup>16</sup> is available on the website of the International Institute for Environment and Development at <http://www.iied.org/sustainable-markets/key-issues/business-and-sustainable-development/mining-minerals-and-sustainable-development>

### *Extractive Industries Review*

In 2002, the World Bank began a three-year review of its policies in the extractive industries under the leadership of Indonesia's former Environment Minister, Dr. Emil Salim. While the World Bank failed to accept all of its recommendations, the EIR's final report, **striking a better balance**,<sup>17</sup> is a widely recognized source of best practice.

### *International Council on Mining and Metals Principles*

The website of the International Council on Mining and Metals, [www.icmm.com](http://www.icmm.com), contains the "ICMM Principles," widely regarded as a consensus statement of expectations for the social, economic and environmental performance of mining companies. <http://www.icmm.com/our-work/sustainable-development-framework>

### *International Council on Mining and Metals Toolkits*

The International Council on Mining and Metals Toolkits are widely recognized as best practice guidance on the subjects that they address. These include Planning for Integrated Mine Closure, Indigenous Peoples and Mining, Mining: Partnerships for Development, and many more.<sup>18</sup>

### *Global Reporting Initiative*

The Global Reporting Initiative (GRI) is a network-based organization that produces a comprehensive sustainability reporting framework of principles and Performance Indicators that organizations can use to measure and report their economic, environmental, and social performance. It (and its Mining and Metals Sector Supplement) is the base line for reporting on environmental, social and economic performance in the minerals industries. <http://www.globalreporting.org/Home>

<sup>15</sup> There are other authoritative statements of practice applying to specific issues affecting particular segments of the minerals industries. Examples are the Kimberly Process (diamonds) and the Cyanide Management Code (for processing employing cyanide).

<sup>16</sup> International Institute for Environment and Development, *Breaking New Ground: Mining, Minerals, and Sustainable Development* (2002).

<sup>17</sup> World Bank Group Management Response, *Striking a Better Balance—The World Bank Group and Extractive Industries: The Final Report of the Extractive Industry Review* (2004).

<sup>18</sup> See <http://www.icmm.com/library>.

### ***Extractive Industries Transparency Initiative***

The Extractive Industries Transparency Initiative (EITI) is a set of principles and procedures aimed at strengthening accountable and transparent governance in resource-rich countries through the verification and full publication of company payments and government revenues from oil, gas and mining. It is a coalition of governments, companies, civil society groups, investors and international organizations. See <http://eiti.org/>

### ***Voluntary Principles for Security and Human Rights***

The Voluntary Principles for Security and Human Rights provide a broad framework that can help companies operate in ways that provide security to their facilities while respecting human rights and fundamental freedoms. Unveiled in December 2000 by the US State Department and the Foreign and Commonwealth Office of the United Kingdom, after a yearlong process involving government officials, oil and mining companies, and NGOs. The Principles provide guidance to companies operating in zones of conflict or fragile states. [http://www.voluntaryprinciples.org/files/voluntary\\_principles\\_english.pdf](http://www.voluntaryprinciples.org/files/voluntary_principles_english.pdf)

### ***IFC Performance Standards***

The Performance Standards of the International Finance Corporation are applicable to all projects supported by IFC and MIGA, arms of the World Bank Group. <http://www.ifc.org/ifcext/sustainability.nsf/Content/PerformanceStandards>

They are also applicable broadly to projects supported by most private financial institutions through their adherence to the Equator Principles. <http://www.equator-principles.com/>

The Performance Standards have recently been revised considerably. <http://prizmablog.com/2011/05/24/updated-ifc-performance-standards-and-changes-to-equator-principles/>

### ***Human Rights***

UN's Guiding Principles on Business and Human Rights, which now represent the UN's official position on corporate duties toward human rights. Guiding Principles: <http://www.business-humanrights.org/media/documents/ruggie/ruggie-guiding-principles-21-mar-2011.pdf>. The Special Representative's website/portal is: <http://business-humanrights.org/SpecialRepPortal/Home>

OECD Guidelines for Multinational Enterprises

The OECD Guidelines for Multinational Enterprises were updated this year to incorporate human rights into corporate duties. <http://www.oecd.org/dataoecd/43/29/48004323.pdf>

### ***Indigenous Communities and Extractive Industries***

James Anaya, the United Nations Special Rapporteur on the Rights of Indigenous Peoples, issued a preliminary report on August 30, 2011, which can be found at <http://unsr.jamesanaya.org/notes/annual-report-to-the-human-rights-council-with-preliminary-assessment-of-extractive-industries-operating-in-or-near-indigenous-territories>

The Special Rapporteur's website contains a variety of useful national studies: <http://unsr.jamesanaya.org/index.php>

### ***Akwe-Kon Guidelines***

The Akwe-Kon Guidelines prepared by the Secretariat of the Convention on Biological Diversity are designed to set out accepted processes for consultation of indigenous communities where development may impact indigenous lands and resources. <http://www.cbd.int/doc/publications/akwe-brochure-en.pdf>

### ***Framework for Responsible Mining***

The Framework for Responsible Mining is a joint effort by NGOs, retailers, investors, insurers, and technical experts working in the minerals sector. It outlines environmental, human rights, and social issues associated with mining and mined products. <http://www.frameworkforresponsiblemining.org/>

### ***The Natural Resource Charter***

The Charter is a set of principles for governments and societies on how to best harness the opportunities created by extractive resources for development. <http://www.naturalresourcecharter.org/>

### ***Extractive Industries Sourcebook***

A website that attempts to collect widely recognized statements on current best practice in the 'extractive industries,' of oil, gas and mining, is at the Centre for Energy, Petroleum and Minerals Law and Policy at the University of Dundee, the Sourcebook. <http://www.eisourcebook.org/>

Published by the International Institute for Sustainable Development.

International Institute for Sustainable Development

Head Office

161 Portage Avenue East, 6th Floor, Winnipeg, Manitoba, Canada R3B 0Y4

Tel: +1 (204) 958-7700 | Fax: +1 (204) 958-7710 | Website: [www.iisd.org](http://www.iisd.org)