# Annex 6. Views of Academia and International Organizations

The Extractive Industries Review (EIR) has received and reviewed inputs from academia and international organizations, by way of contributions from representatives invited to regional workshops, written contributions, or topical research studies from specially commissioned researchers and the EIR team.

It is important to set the EIR in the proper context: the World Bank Group (WBG) is only a small player in the extractive industries, and many other international bodies, bilateral donor agencies, U.N. agencies, and intergovernmental task forces are equally involved, trying to find answers to resolve the same problems, often with the participation of the WBG itself. The work of academics contributes to these global efforts.

This Annex attempts to give some insight into this broader arena of ongoing work and important initiatives by international organizations. Furthermore, it attempts to present some of the academic debate and insights into topics discussed in this report from a neutral perspective. It by no means claims to be a comprehensive summary of the manifold views of academia, or of other relevant work being conducted; rather, it hopes to give useful background to support and inform the entire report.

## Promoting Pro-poor Development

Academics and institutional actors alike have tried to shed light on the question of why many resource-rich nations have under-performed compared with resource-poor nations.[1] (See Annex Box 6–1.) This phenomenon, known as the "resource curse" or the "paradox of plenty," generally begins with a sudden increase in income for the resource-rich country following the discovery or expanded development of a natural resource or a surge in world prices. Although this sudden wealth can provide a rapid source of foreign exchange, attract foreign capital, provide raw materials for processing, and create a market for manufactured goods, time and again countries have been unable to capitalize on the economic opportunities that open up to them and survive the boom-and-bust cycles of unstable global commodity prices.[2]

Academic enquiry predominantly tackles the nature of the link of resource dependence and growth, often only indirectly alluding to the fate of the poor. Ross, however, discusses the link between developing countries' resource dependence and their weak performance in poverty alleviation and other development indicators.[3] A number of economic, political, and institutional theories have been advanced for why resource-rich countries might suffer from the resource curse, and whether this is related to the natural resources themselves. In general, experts have found that it is not the resource abundance per se that leads to slower growth, but the way in which governments manage and invest their resource wealth. It is only through efficient and foresighted management and use of funds that countries can maintain their economic health when the inevitable bust follows a resource boom.[4]

**Annex Box 6–1. Resource Curse Explanations**

The most common economic theory used to explain the resource curse is what is known as Dutch Disease—indeed, the two terms are often used interchangeably to describe poor economic growth in resource-rich countries.

Dutch Disease refers to a situation where a sudden surge in income from natural resources drives up a country's real exchange rate, thus reducing the relative prices of goods from other sectors, such as manufacturing, and making them less competitive than the resource sector. As a result, labor and capital are drawn from manufacturing and other nonresource sectors to the resource and the nontradable sectors, such as infrastructure, public works, or defense. At the same time, the government spends windfall profits from the natural resource in the nontradable sectors, does not invest in maintaining manufacturing, agriculture, or other productive industries, and may borrow heavily against its resource wealth.

The lack of investment in manufacturing, agriculture, and other productive sectors means that the country will not have a way to replace its income stream when the resource boom eventually subsides, either because of a drop in world prices or a decline in available reserves. And the tradable goods that they do still produce will be less competitive on the world market because of the high exchange rate.

It has also been suggested that the shift away from manufacturing means a loss of human capital because the manufacturing sector is a key source of technological progress, knowledge, and skills. Another theory is that because natural resources are often produced in enclave developments, are extremely capital-intensive, require a small work force, and often use imported inputs, they do not have the productive linkages to the rest of the economy that a healthy manufacturing sector might have. This is especially true if foreign multinationals dominate the industry and repatriate their profits or if a state company fails to foster those linkages.

Another economic explanation of the resource curse has been termed a "debt overhang." In the 1970s, when commodity prices were high, many resource-rich countries used their resource wealth as collateral to borrow heavily on international markets. When prices fell, they found themselves deeply in debt, leading to severe economic problems.

Economic factors are only part of the explanation for the resource curse, however. Various political behaviors—from shortsighted use of profits to corruption, damaging rent-seeking actions, and adverse effects on institutional quality—contribute to the chain of events that lead to poor development performance in resource-rich countries.

Booms may make it difficult for governments to exercise the necessary political and economic restraint required for prudent economic management. Faced with a sudden surge in revenues from a resource boom, governments often choose to begin making major expenditures on large-scale public works, social services, defense, and other nontradable sectors—spending too much, too fast. Much of this spending is inefficient investment in inappropriate industries or projects that are beyond the capacity of the country to maintain. The surge in wealth from a necessary economic reforms or to continue inefficient programs of protection or subsidies. When the boom subsides and income drops, it is often difficult or impossible to reverse that spending initiative or make needed economic reforms.

Sources: Sarraf and Jiwanji 2001, pp. 4–7; Ross 1999, pp. 301, 305, 306; *Economist* 1998; Mikeselll 1997, pp. 193–94; Wright 2001, p. 21; Manzano and Rigoban 2001. p. 1; Sala-I-Martin and Subramanian 2003.

## The Importance of Governance

In order to help countries avoid the resource curse, international actors and academics advocate a combination of measures aimed to improve the quality of governance through sound revenue management, including higher transparency of revenue flows, improved economic governance to achieve sound macroeconomic management and institutional and policy framework development, forward planning including economic diversification, regional planning, and closure planning, as well as activities pertaining to the strengthening of democratic structures, such as increased public participation and improved access to information by all.

### *Revenue Management and Distribution*

Who controls the revenues and decides how benefits and costs will be borne is often the most critical determinant of whether society as a whole or just a fortunate few benefit from resource extraction. Governments have an important role to play, assuring equitable revenue allocation and using royalties to compensate local communities for the relatively higher cost they bear throughout the life of a project and potentially beyond.

A U.N. Conference on Trade and Development (UNCTAD) workshop on Mineral Wealth, Human Capital, and Sustainable Resource-based Development in March 2001 highlighted the need for "institutional mechanisms that could manage mineral revenue over the long-term and function independently of the political process."[5] Resource funds are an example of resource management of this nature. (See Annex Box 6–2.)

UNCTAD's regional workshop on Growth and Diversification in Mineral Economies in November 2000 acknowledged the importance of the distribution of regulatory authority and of mineral revenues between different levels of government and between regions as an important problem for mineral economies.[6] Conference participants suggested a number of measures aimed at assuring appropriate revenue management and distribution:

- Countries should negotiate with companies the royalties to be paid to local communities as a contribution to their development and mitigation of any damage to their environment.

- Follow the national budget unity principle to assure equitable allocation of resources among regions according to their respective development priorities.

- Try to achieve a balance regarding both spatial revenue distribution among regions and temporal distribution between generations through investment and savings.

- Preserve the important role of national government in ensuring the provision of basic socioeconomic infrastructure, while agreed revenue quotas at different levels of decentralized government should help local communities mitigate negative effects of mining activities on their livelihoods.

**Annex Box 6–2. Resource Funds**

Nonrenewable resource funds (NRF) can be used to direct resource revenues toward social development and economic stabilization. They can provide additional funding for environmental and social programs and can ensure savings from resource revenues for the time when reserves and resource income eventually run out, helping to avoid the pitfalls of the "resource curse."

There are three main types of resource funds:

- Stabilization or contingency funds use pre-set accumulation and withdrawal rules to regulate the economy and avoid economic shocks.
- Savings funds save revenues so that future generations can reap some benefits when the resource eventually runs out.
- Virtual funds deposit money directly into national accounts to help finance the current state budget.

The three key criteria for successful governance of a resource fund are clear goals for the fund, high levels of transparency, and accountability.

In many cases, a non-renewable resource fund (often called an oil fund or a mining fund) can be the most effective tool for ensuring the fair and effective distribution and use of resource revenues.

Government needs to define clearly the goals that it expects the resource fund to fulfill; its accounts and management decisions need be publicly disclosed and the diversion of funds needs to be prevented through a good reporting system. Rules governing the management of a natural resource fund need to include provisions to improve accountability through appropriate representative bodies and other state agencies that have overlapping lines of supervision. Meritocratic human resource practices are an additional, essential component of good governance of resource funds.

*Sources:* Stern 2001, Heilbrunn 2002.

### *Corruption and Government Accountability*

Huge profits from a resource boom may provide a serious temptation for corruption, rent-seeking behavior, and patronage among government officials. Resource income provides the ruling elites with the means to remain in power by extending their control through a wide-reaching system of patronage and by oppressing opponents. Furthermore, relatively “light” taxation might lead business partners to turn a blind eye to the absence of government accountability.[7]

Where benefits from resource extraction do not reach beyond the ruling elite’s networks of patronage, large parts of the population do not gain from resource development. The wealth that is going to individual businesses or people is not invested in productive sectors or back into the resource sector, so it does not promote sustainable development within the country. The empowered sectors and classes may also favor certain growth-impeding policies—such as import-substituting industrialization at the expense of export promotion—for their own good or that of their supporters.[8]

### *Transparency in Revenue Flows*

Transparency in revenue flows provides a clear step in the direction of assuring that revenues earned from extractive resource development go toward eliminating poverty and promoting sustainable development. At present, corporations do not in general report publicly any payments made to individual countries, although this is done on occasion with the agreement of the governments concerned. For example, with the agreement of the Nigerian Government, the Shell company in Nigeria reported 2000 and 2001 payments to government in its 2002 “People and Environment” report. Even where corporations may wish to do so, they are often bound by confidentiality clauses that require the agreement of all partners (usually including the national oil company) before information can be disclosed. In addition, there is no obligation for governments to disclose payments received from corporations or to make budgetary and fiscal information fully transparent.

Increased transparency over payments and revenues can achieve greater accountability and reduced risk of conflict and political instability through more equitable distribution of resources and a business environment that is conducive to investment.

The Publish What You Pay campaign, a coalition of at least 130 nongovernmental organizations (NGOs) led by Global Witness and the Open Society Institute, advocates transparency in the extractive sectors with the aim of helping citizens hold governments accountable for the management and distribution of resource-related funds. This campaign places the onus on home-country governments (such as the United States and the United Kingdom) to require extraction companies to publish net taxes, fees, royalties, and other payments made so that civil society can more accurately assess the amount of money misappropriated and can lobby for full transparency in local government spending.[9] This would not in itself provide full transparency of the oil revenues flowing to host governments, however, since it ignores the sums derived by national oil companies from selling their equity crude in production sharing or other agreements.

Efforts to increase transparency in the oil, gas, and mining sector gained momentum when U.K. Prime Minister Tony Blair launched the Extractive Industries Transparency Initiative (EITI) at the World Summit on Sustainable Development in September 2002.[10] This initiative has been led by the U.K. Department for International Development (DFID) since then, in consultation with a multistakeholder group involving governments; publicly traded, private, and state-owned extractive companies; international organizations; NGOs; and others.

The EITI initially proposed a range of options for establishing disclosure mechanisms, including unilateral disclosure, the Global Reporting Initiative (modified and strengthened), International Accounting Standards (modified for extractive industries), disclosure rules for securities markets (modified and strengthened), International Monetary Fund (IMF) Article IV, and international financial institutions' donor conditionality. Two stakeholder meetings on this were held in February and June 2003. Resource-rich developing countries have yet to sign on to the EITI. At the June workshop, however, a number of them agreed to continue discussions about adopting the initiative's principles: Azerbaijan, the Democratic Republic of Congo, East Timor, Equatorial Guinea, Ghana, Indonesia, Kazakhstan, Mozambique, Sierra Leone, and Trinidad and Tobago. In addition, the Nigerian Government has committed to proceed with the initiative.

The Group of Eight (G8) issued a declaration at its 2003 summit entitled "Fighting Corruption and Improving Transparency," committing governments to take action against corruption and mismanagement of public resources and to support more transparency.[11] With specific reference to the oil, gas and mining sectors, the G8 governments "agreed to pilot on a voluntary basis an intensified approach to transparency: [encouraging] governments and companies, both private and state-owned, to disclose to the IMF or another agreed independent third party such as the World Bank or Multilateral Development Banks, in a consistent fashion and common format, revenue flows and payments from the extractive sectors. This information should be published at an aggregated level, in accessible and understandable ways, while protecting proprietary information and maintaining contract sanctity."

G8 governments will "work with participating governments to develop and implement agreed action plans for establishing high standards of transparency with respect to all budget flows (revenues and expenditures), and with respect to the awarding of government contracts and concessions, . . . assist those governments that wish to implement this initiative with capacity-building assistance; [and] encourage the IMF and the World Bank to give technical support to governments participating in the initiative and to develop linkages with other elements of this Action Plan."

## Planning for Sustainability

Extractive industries can have huge impacts on their surroundings: on communities that live near project sites, on the economic landscape in which they operate, and on the environment. Coping with these impacts, as well as preparing for life after the finite life span of extractive industry projects, requires forward planning by authorities at all levels.

### *Economic Diversification*

Academics argue that resource-abundant countries tend to rely longer on their natural resources and can delay diversification into manufacturing and the development of competitive industrialization. These countries often develop factional or predatory states that transfer wealth from the resource sector into a huge nontradable sector and an overextended state bureaucracy, with few incentives for efficient investment. The countries then become trapped in dependency on the resource wealth, which will one day run out.[12]

At the level of macroeconomic planning, sustainability requires assuring that the economy does not grow overly dependent on a finite resource that, through altered price and exchange rate structures, may further impede competing and alternative industries. Resource dependence makes countries more vulnerable to price shocks and governments more dependent on small but powerful interest groups. They become more independent of the citizen body and ultimately unsustainable.

The UNCTAD workshop on Growth and Diversification in Mineral Economies made several recommendations for resource-rich countries that are trying to exploit their resources in a sustainable way.[13] Participants recommended measures to enhance sound macroeconomic and revenue management, good governance and participation, and diversification and value-added processing:

- Countries should achieve good macroeconomic conditions and management through negotiating with the donor community the conversion of debt into an Economic Diversification Fund, investing mineral revenues in international financial markets during boom periods to generate income for use in bust periods and allocating capital efficiently through the market to the projects showing the highest expected return. Good management can be enhanced by establishing a dialogue between government, legislatures, and civil society on the management and investment of revenues and by establishing legal and institutional mechanisms to prevent corruption.

- Countries should maximize benefits from these industries by using a portion of mineral revenues to develop the private sector through a credit scheme to small- and medium-sized industries, using the World Trade Organization forum to negotiate effective policing of anti-dumping measures that industrial countries tend to use to discourage imports of value-added products and to deter the use of non-tariff measures, encouraging labor-intensive mining activities.

Another international body working to assist diversification in transition countries in Eastern Europe is the United Nations Economic Commission for Europe (UNECE), through its activities in Industrial Restructuring, Energy, and Enterprise Development. (See Annex Box 6–3.)

**Annex Box 6–3. Industrial Restructuring, Energy, and Enterprise Development Division of the U.N. Economic Commission for Europe**

The UNECE objectives in the area of industrial restructuring and enterprise development include assisting governments in establishing an enabling environment for new private enterprises and entrepreneurial activities and establishing partnership and involving civil society in new ways to tackle the negative effects of restructuring.

Many countries in the region urgently need to restructure and to diversify their economies for sustained economic growth. While opening up their economies to international trade, they are still exporting primary products and raw materials. They need to diversify and improve the composition of their exports. They can do this by creating modern facilities to manufacture their raw materials locally instead of reimporting them.

Within the ECE, the Industrial Restructuring and Enterprise Development subprogram is implemented through the exchange of experiences gained by industrial market economies and economies in transition and through meetings of expert groups, resulting in the development of policy recommendations in different areas.

The Working Party on International Legal and Commercial Practice promotes reform and capacity building on the legal, institutional, and regulatory frameworks in the transition economies. It helps countries enforce guidelines on best legal and commercial practices and carries out technical assistance programs and training courses in countries at their request.

The Working Party on Industry and Enterprise Development promotes entrepreneurship, industrial restructuring and a sustainable business environment in the region. It organizes the exchange of relevant information and experience; helps to promote best practice in innovation and the application of new electronic technologies; collects, processes, and disseminates statistical and other information related to enterprise development and industrial restructuring; studies the relevant economic, technical, and regulatory issues; and makes recommendations for government action.

Methods include:

- Creation of a network of government officials responsible for enterprise restructuring and development within the Ministries of Economy, Trade, Industry, and Finance.
- Expert groups and advisory bodies assisting governments in dealing with key challenges.
- Training and education of policymakers in implementing business development strategies and in creating modern institutions for promoting entrepreneurship, using research studies, guides, and analytical reports.
- Implementation of standards through establishing international benchmarks for transition economies in such areas as infrastructure financing mechanisms, property rights valuation and enforcement, quality management systems, and Internet-based entrepreneurship.

*Source*: UNECE Web site, at http://www.unece.org/ie/ir/intro.html.

### *Regional Planning*

Dependence on extractive industries can be much higher at the regional than the national level, highlighting the need for regional forward planning. Local and regional authorities need to plan ahead to mitigate negative social and environmental impacts at the project level, such as in-migration and the resulting stress on local infrastructure, as well as ensure that local economic benefit is maximized.

UNCTAD is promoting sound regional planning as part of the overall governance of resource-rich countries, at this point through training activities for macroeconomic policy management in mineral economies, establishing pilot demonstration planning models in selected regions, and training local authorities.[14] UNCTAD proposes a framework for regional planning that entails a simulation model of regional dynamics, a geographical information system, an institutional mechanism for decisionmaking among stakeholders, and joint monitoring of implementation and impacts.

### *Closure Planning*

The question of whether an extractive industry project can promote poverty alleviation and sustainable development depends crucially on how development of the resource benefits society beyond the life of a project, which generally covers 10–30+ years. Societies and local communities often leave traditional livelihoods behind in search for opportunities at the project and then lose access to those economic activities at closure. Unmitigated environmental footprints may render traditional livelihoods impossible, as these depend on healthy local ecosystems. Societies are also left to deal with loss of community services, long-term environmental risks, and unresolved grievances as a legacy of extractive industry projects at closure.

A particular problem and challenge for closure planning is to secure sufficient funds for implementing the plan. Mine closure, for example, can happen rapidly and early in the life of a mine, when changes in commodity price can make the mine unprofitable.

Business Partners for Development (BPD) suggests that multistakeholder partnerships have a role to play in closure planning: investment should be aligned with regional public policy for economic development from the outset, for instance, through convening a multistakeholder, regional-level forum at the time of project planning (involving government, other businesses, and civil society groups) and continuing the dialogue at intervals throughout the project's life.[15] The strategic objective of such a forum is to integrate the project with sustainable economic regional development while concurrently building local capacity to maintain the project's infrastructure legacy in the longer term.

Such a forum has at least two functions: to align the direct employment, supply-chain, and distribution opportunities presented by the investment with other economic opportunities and markets in the wider region and with public sector programs for enterprise development and vocational training and to facilitate the development of local partnerships between the operating company, district-level government agencies, and community groups in order to align parts of the operational infrastructure and fixed assets of the business with the strategic infrastructure needs of the region.

In cases where closure plans have not been prepared from the outset of the project, partnerships can assist in retrofitting measures to manage the transition. BPD suggests that a regional- or district-level partnership forum dedicated specifically to closure issues, can be convened as a way to rapidly agree on a closure plan. The components of such a forum include a steering committee, consisting of the company, government officials (from provincial and national levels), and legitimate community leaders, and theme-based Working Groups covering such topics as site use and asset transfer, environmental risk management and rehabilitation, local business development, and regional sustainable development.

BPD also promotes the establishment of grievance mechanisms. The onset of project closure often triggers the emergence of past grievances among the local population, which in part can be managed through partnerships. BPD suggests first implementing a dedicated and mutually agreed process of grievance resolution, with the aim to generate sufficient trust for the disputing parties to be willing to work together and with others to develop a closure plan.

### *Capacity Building*

Sound governance of resource development requires government capacity at the national, regional, and local level. Furthermore, the extent to which local communities benefit from such development depends crucially on local capacity to engage in economic activities directly or indirectly related to such projects. Civil society groups require capacity building in order to fulfill their role of protecting the weakest in society.

Many international organizations and bilateral donor agencies work on strengthening the capacity of actors involved in and affected by extractive industries. At UNCTAD's March 2001 workshop on Mineral Wealth, Human Capital, and Sustainable Resource-based Development, participants proposed capacity building projects including creating a network open to all interested parties for the exchange of information, experiences, and opinions; establishing information centers that can provide local people with access to information, communication, and Internet facilities; training for local authorities; and regional planning frameworks.

The U.N. Environment Programme and UNCTAD have set up a Capacity Building Task Force on Trade, Environment and Development (CBTF) to strengthen the capacities of countries, particularly developing countries and economies in transition, to address trade-environment-development issues effectively. The CBTF approaches capacity building through partnerships. Its activities include thematic research, country projects, training, policy dialogue, and networking and information exchange.

One example of the thematic research is "The Utilization of Economic Instruments to Encourage the Sustainable Use of Natural Resources and to Internalize Environmental Impacts Resulting from Globalization Processes" in Indonesia.[16] Through this, the government seeks to manage its natural and environmental resources more effectively using economic instruments while enhancing its competitiveness in international markets through an improved environmental image. The project will involve cooperation between the Ministry of Environment, other government institutions, universities, NGOs, and major stakeholder groups in the private sector. A country case study will be published that outlines the opportunities, benefits, challenges, and costs of wider use of economic instruments at the national level and discusses the implications for Indonesia's international trade relations. This report will become a resource tool for the CBTF to support country projects and policy dialogue activities, and it will be disseminated as a reference source through the CBTF networking and information exchange mechanisms.

DFID and Capacity Building

In September 2001, DFID published a strategy paper entitled “Making Government Work for Poor People: Building State Capacity” that analyzed the measures needed by the international community and DFID to help developing countries improve governance in order to achieve the 2015 target of halving poverty. Examples of current activities fall into six key categories:

- *Political Institutions:* In Cambodia, DFID is contributing to a multidonor program to help build the capacity of local government and improve its accountability to support local democratic structures. DFID’s work in Tanzania has focused on helping the government implement its poverty alleviation strategy through a long-term commitment to budget support, supplemented by technical assistance to strengthen capacity for economic management and delivery of public services, support private sector development and pro-poor growth, and strengthen the demand for government accountability from civil society.

- *Financial Management:* In Ghana, a project to review large government tenders in order to improve efficiency has helped the government to identify more than $6 million in direct savings, repaying the cost of the project many times over.

- *Fiscal Reform:* In 2001, Value Added Tax was introduced in Rwanda with help from DFID. During its first year of operation, the collection target was exceeded. This has helped the government achieve its overall revenue target agreed with the International Monetary Fund after several years of disappointing revenue performance.

- *Personal Security and Justice:* In 2001/02, implementation of a £35 million sector-wide initiative to improve safety, security, and access to justice was initiated in Malawi. In the Balkans, DFID is working with other government departments to implement a conflict prevention strategy that includes community safety and dispute resolution elements. In Nigeria, a £30m program will support reforms in the justice sector. Countries where consultations on new initiatives are under way include Ghana, South Africa, Lesotho, and India. In Jamaica, DFID is supporting government efforts to develop national social policy and strengthening government capacity to have impact on issues relating to crime and poverty.

- *Corruption:* In January 2002, DFID established a resource center with Germany, Norway, and the Netherlands to advise on anti-corruption issues. The Anti-corruption commission in Sierra Leone, established with DFID support, has investigated almost 200 cases. DFID was also a major partner with the Organisation for Economic Co-operation and Development and the Asian Development Bank in the November 2001 launch of an anti-corruption initiative in the Asia region, initially involving 17 countries.

- *Post-conflict Capacity Building:* DFID is providing capacity building support in connection with development partners to East Timor, Afghanistan, and Iraq.

United Nations Capital Development Fund

The United Nations Capital Development Fund (UNCDF) provides grants and technical assistance with the aim of supporting the democratization of development planning and financing. UNCDF's Local Development Programmes (LDPs) provide funds to newly elected officials to govern and invest locally in projects characterized by open local planning processes involving ordinary people in the decisions that affect their lives. UNCDF also works with NGOs and civil society to develop the checks and balances needed to keep local governments accountable. In doing this, UNCDF tries to create a climate of engagement and dialogue among technical authorities, local government, and the people they serve.

Projects all have a focus on directly achieving poverty alleviation, focusing on local public and community investments in social and economic infrastructure and services and on improved natural resource management. Projects aim at promoting more participatory approaches, using seed capital to develop capacities of local government and community institutions, and so on—not just through training, but through more effective planning and management systems and procedures and through greater awareness and communication.

Projects aim to engage national government partners and other donors in dialogue with a view to promoting reform and development of the national policy and institutional framework for decentralization and good local governance.  Beyond their local impact, many of these LDPs have already had upstream impact on national policy and on statutory and regulatory frameworks for decentralization, and in many cases LDPs have been cofunded or replicated by other larger donors.

### *Participation in Decisionmaking*

A crucial ingredient in sustainable resource development appears to be the participation of society in decisionmaking, especially people living near a project site. (Some commentators claim, however, that resource wealth—notably oil—may hinder the development of democratic government; see Annex Box 6–4.)[17] For participation to be meaningful, people need access to adequate information, and participation needs to be representative of society or a community at large. Various agencies work on building participatory processes.

**Annex Box 6–4. Resources and Authoritarian Government**

Three possible reasons have been set forth for the link between oil exports and authoritarian rule: under the rentier effect, governments with a lot of oil revenues use them to invest in social programs and benefits, such as lowering taxes and providing social services, thus avoiding any pressure or demands for greater accountability from the people. These governments may also use the revenues to increase patronage payments or to block the formation of independent groups who might demand change. The repression effect results when oil wealth allows governments to spend more on internal security, so the people cannot demand change or democracy even if they want to. Finally, under the modernization effect, resource wealth does not necessarily lead to higher education levels and increasing occupational specialization, which are said to be necessary for democracy to evolve. Michael Ross finds that in general these effects hold true for oil-rich nations, particularly poor states and not just in the Middle East. In addition, he also finds that the rentier effect and some aspects of the modernization effect hold true for non-fuel mineral wealth.

*Source:* Ross 2001, pp. 332–36, 356.

The U.N. Department of Economic and Social Affairs (UNDESA) pursues activities with the goal of promoting an integrated, cross-sectoral and broadly participatory approach to sustainable development, and its implementation at the local, national, regional and global levels, placing emphasis on the importance of active and continuous dialogue with governments, civil society and other international organizations aimed at building partnership to solve key issues and problems related to sustainable development.

UNDESA's Division for Social Policy and Development provides substantive support to governments in developing policy measures and initiatives to promote inclusive "societies for all," where each individual has rights and responsibilities regardless of economic or social status, age group, disability, or cultural or religious affiliation. The aim is to ensure that individuals and communities are enabled to participate in society and contribute to national development while enjoying basic human rights and fundamental freedoms.

The Division provides advisory services and undertakes capacity building for member states, upon their request, to translate social development policy resolutions into strategies and programs to attain the commitments made at the Copenhagen World Summit for Social Development in 1995. It also provides support in the area of social assessment, promoting training and research in participatory methodologies designed to enhance development planning and evaluation and to build capacity to implement and monitor socially sensitive policies.

### *Access to Information*

Any meaningful participation in decisionmaking, as well as public accountability, requires timely access to relevant information. Recently, reporting on an organization's economic, environmental, and social performance in relation to its operations products and services has been pursued by a number of international actors, including the Global Reporting Initiative (GRI).[18] Reporting standards are voluntary at this point in time.

The GRI is a new independent international institution with the mission to develop, promote, and disseminate globally applicable Sustainability Reporting Guidelines. Performance indicators are both quantitative and qualitative and include economic indicators showing an organization's impact on the economic resources of its stakeholders and on economic systems at the local, national, and global level; environmental indicators show an organization's impacts on living and non-living natural systems, impacts on biodiversity, waste generation, and use of hazardous materials; and social indicators, which include labor practices, human rights, and broader social issues affecting communities, consumers, and other stakeholders.

AccountAbility has developed a means of evaluating the credibility of published reports, the AA1000, which is designed to complement the GRI and other standards, as well as company-specific approaches to reporting and disclosure.[19] The institute also produces the AA1000 series, which provides guidance to organizations wishing to establish systematic accountability processes that involve stakeholders in the generation of strategies, policies, and programs.

Social Accountability International's SA 8000 is a standard that covers all core International Labour Organization (ILO) conventions, the International Declaration of Human Rights, and the UN Convention on the Rights of the Child. The organization's Corporate Involvement Program helps retailers, companies, suppliers, and others ensure that goods are made under just and decent working conditions by seeking SA 8000 certification of production facilities.[20]

Access to information, public participation in decisionmaking, and access to justice in environmental matters are the subject of UNECE's Aarhus Convention, which links environmental rights and human rights and acknowledges an obligation to future generations. (See Annex Box 6–5.)

**Annex Box 6–5. The Aarhus Convention**

The Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters was adopted at UNECE's Fourth Ministerial Conference, "Environment for Europe," in Aarhus, Denmark, on 25 June 1998, and came into force on 30 October 2001. It has been signed by 40 countries and the European Union, and ratified by 25 countries.

The Aarhus Convention is a new kind of environmental agreement. It links environmental rights and human rights. It acknowledges an obligation to future generations. It establishes that sustainable development can be achieved only through the involvement of all stakeholders. It links government accountability and environmental protection. It focuses on interactions between the public and public authorities in a democratic context, and it is forging a new process for public participation in the negotiation and implementation of obligations owed by Parties to one another, the Aarhus Convention focuses on the obligations owed by Parties to the public.

The preamble to the convention emphasizes two main concepts: environmental rights as human rights and the importance of access to information, public participation, and access to justice to sustainable and environmentally sound development. Article 1 requires Parties to guarantee the rights of access to information, public participation in decisionmaking, and access to justice in environmental matters in order to contribute to the protection of the right of every person of "present and future generations" to live in an environment adequate to his or her health and well-being.

The Aarhus Convention stands on three "pillars" that depend on each other for full implementation of the Convention's objectives:

*Pillar I—Access to information:* This has two components. The "passive" part concerns the right of the public to seek information from public authorities and the obligation of public authorities to provide information in response to a request. The "active" part concerns the right of the public to receive information and the obligation of authorities to collect and disseminate information of public interest, without the need for a specific request.

*Pillar II—Public participation in decisionmaking:* This has three parts. The first part concerns participation by the public who may be affected by or are otherwise interested in decisionmaking on a specific activity. The second part concerns the participation of the public in the development of plans, programs, and policies relating to the environment. The third part covers participation of the public in the preparation of laws, rules, and legally binding norms.

*Pillar III—Access to justice:* This enforces both the information and the participation pillars in domestic legal systems and strengthens enforcement of domestic environmental law. The justice pillar also provides a mechanism for the public to enforce environmental law directly.

*Source:* UN/ECE (2000). *The Aarhus Convention: An Implementation Guide.* New York and Geneva: United Nations.

## Sustainable Human Lives

### *Human Security*

The understanding of human well-being has evolved to embrace many different aspects. Securing basic human well-being goes beyond conventional requirements of security and the absence of conflict. The Commission on Human Security, established following the 2000 U.N. Millennium Summit, defined human security as "protecting the vital core of all human lives in ways that enhance human freedoms and human fulfilment." Human security, thus described, provides a link between conceptions of security, development, and human rights. (See Annex Box 6–6.)

**Annex Box 6–6. Human Security**

Human security is concerned with reducing and—when possible—removing the insecurities that plague human lives. By contrast, traditional conceptions of security have focused on external threats and the protection of the State—its territory, people, and institutions—from external attacks. Human security complements state security in four respects:

- Its concern is the individual and the community rather than the state.
- Menaces to people's security include threats and conditions that have not always been classified as threats to state security, such as environmental pollution and infectious diseases.
- The range of actors is expanded beyond the state alone to include, for example, NGOs and international organizations.
- Achieving human security includes not just protecting people but also empowering people to fend for themselves.

Human development is concerned with removing the various hindrances that restrain and restrict human lives and prevent their full realization. The idea of human development has a powerfully buoyant quality, since it is concerned with progress and augmentation. Development literature has tended to concentrate on "growth with equity." Human security complements the optimism of the human development perspective by focusing on "downside risks"—the insecurity of exposure to risks that imperil human life and dignity, such as pestilence, conflict, environmental degradation, or economic downturns.

There is a similar link between human rights and human security. Respecting human rights is at the core of protecting human security. Human rights typically involve a demand that certain basic freedoms of human beings be respected, aided, and enhanced. This normative approach leaves open the question of which freedoms are crucial enough to count as human rights that society should acknowledge, safeguard, and promote. A focus on human security can make a significant contribution by identifying the importance of freedom from basic insecurities.

*Source:* Commission on Human Security. 2003. *Human Security Now*. New York

### *Security in the Conventional Sense: Armed Conflict*

Control over resources and discontent with the distribution of rent can also be the cause of conflict and the outbreak of war. Separatist conflicts were often caused by grievances over distribution of resource wealth.[21] Auty points out that even benevolent governments may have to trade off sound long-term policy choices in favor of mitigation of social tensions that may arise from resource competition.[22] Ross also finds that social, economic, and environmental upsets related to resource extraction such as land expropriation, environmental damage, in-migration of labor, and distributional inequalities can contribute to conflict and civil war.[23]

Armed conflict has historically often been related to natural resources: conflict arises over resources themselves, but resources also perform the role of financier of both governments and rebels in armed conflict.[24] More recently, the end of the cold war led to a sharp decrease in foreign assistance and financing available for many governments and rebel groups, forcing these to mobilize new sources of private financing, including revenues from trading of minerals.

Several recent studies have discussed the correlation between conflict and resource dependence.[25] The causes of this significant correlation are complex, however, and the direction of the relationship is not immediately clear: it may, for instance, be the presence of conflict that renders a country more resource-dependent, as the manufacturing sector leaves the conflict area and leaves the country with the naturally immobile natural resource. Studies also show that primary commodity exporting countries are empirically at a higher risk of armed conflict.[26] Historical examples of resource-abundant countries that realized their potential in peaceful ways do exist, however, such as Norway and Botswana.[27]

Collier and Hoeffler find that conflict may be more strongly related to economic gain, or funding options for rebel groups, than to grievances such as ethnic and religious divisions.[28] According to this "looting mechanism," rebel groups that can extract funds through selling resources, or extorting money from those who do, are more likely to start conflict.

Private armies, militia, and warlords may grow by using resource rents extracted from companies operating in remote areas with weak state control. These predator groups may then in turn stir civil unrest or cause civil war. Once conflict breaks out, resources play a number of roles. The duration of conflict can be determined by which side controls resources. Situations in which the weaker party has access to resource wealth may lead to prolonged conflict; access to resource wealth by the stronger side may allow the weaker side to be crushed more quickly and thus shorten the conflict.[29]

Perceptions of resource wealth in wartime versus peacetime may influence the likelihood and stability of a peace settlement. Resource rent availability (as opposed to financing from abroad that may easily be controlled by the leading ranks) may also interfere with lines of command and lead to earlier breakdown of a party's fighting capacity and thus an earlier peace settlement. Warlords' power is determined by a war economy and its ability to produce revenues, which in turn often includes its integration into international commercial networks.[30] Where a market for post-combat resource rights exists, this may prolong a conflict by giving combatant groups access to financing.[31]

Intensity of combat may be influenced by resource presence through fighting over resources, the possibility of pre-emptive repression, or, conversely, early settlement of conflict in light of possible cooperation and rent seeking possibilities. Ross finds that the presence of unlootable resources such as oil, natural gas, and deep-shaft minerals leads to shorter non-separatist conflicts, though it may cause separatist conflicts.[32]

The problem of diamonds providing resources to fund and fuel conflict has been addressed by the Kimberley process, which aims to break the link between legitimate trade in diamonds and conflict diamonds—rough diamonds used by rebel movements or their allies to finance conflict aimed at undermining legitimate governments. The trade in conflict diamonds has resulted in gross human rights violations in the affected areas. The Kimberley Process was launched in May 2000 in the city of Kimberley, South Africa. The Kimberley process started out as a consultative process, but later became a negotiating process that culminated in the adoption of the Kimberley Process Certification Scheme at a Ministerial Meeting in Interlaken, Switzerland, in November 2002. This system sets an international benchmark for national certification schemes to be implemented by each participant country through national legislation, which will pave the way for systematic monitoring of adherence to the scheme by all participants.

***Human Rights and Development***

Academics and international institutions, along with civil society, are increasingly developing the theory of a rights-based approach to development. In this approach, which has been led by the writings of Nobel-laureate Amartya Sen, human development is seen as the means of expanding peoples' choices by enlarging their capabilities and functions, giving them the freedom to live as they wish.[33] Human rights, as an expression of peoples' capabilities, cannot be excluded from development theory; rather, they are integral to the process. Rebutting claims to subjugate civil and political rights to the "goal of development," Sen writes: "Political rights . . . are not only pivotal in inducing social responses to economic needs, they are also central to the conceptualization of economic needs themselves."[34] The new approach shifts the discourse of development by transforming objectives and goals into rights and entitlements.

Kofi Annan articulated this change in approach in his 1998 Annual Report: "The rights-based approach to development describes situations not simply in terms of human needs, or of developmental requirements, but in terms of society's obligation to respond to the inalienable rights of individuals. It empowers people to demand justice as a right, not as charity, and gives communities a moral basis from which to claim international assistance where needed."[35]

Certain countries, such as the United Kingdom and Sweden, have also expressed a commitment to a rights-based approach to development.

In May 2002, President Wolfensohn requested WBG staff to draft a Human Rights Strategy. While positioning itself as a champion of economic and social rights, the Bank has tried to avoid issues relating to civil and political rights. Article IV/10 of the Articles of Association of the International Bank for Reconstruction and Development (IBRD) prohibits it from interfering in the political affairs of borrowing countries: "The Bank and its officers shall not interfere in the political affairs of any member; nor shall they be influenced in their decisions by the political character of the member or members concerned. Only economic considerations shall be relevant to their decisions, and these considerations shall be weighed impartially."

Over the years, Bank staff have interpreted this narrowly as a prohibition on considering political and civil rights issues in borrowing countries as a criteria for making loans.[36] Accordingly, the Bank has drawn criticism for making loans to authoritarian and dictatorial regimes like Mobutu's Zaire.

Many academics have attacked the Bank's position on human rights as an abdication of responsibility. The Bank's rationale behind making loans to dictatorial regimes—that the populace would suffer more without them—was singled out for particular criticism.[37] Instead, it was argued that the Bank could use human rights conditionalities to encourage good behavior, in the same way that the HIPC initiative rewards sound governance.

Several authors highlighted the absence of any reference to human rights abuses in the Project Appraisal Document for the Chad/Cameroon Pipeline Project, which instead praises Chad for establishing "democratic political institutions." Following the project approval, President Derby of Chad arrested all six opposition candidates for the May 2001 elections. One of them, Ngarledjy Yorongar, who was badly tortured, was released only after Bank President Wolfensohn was alerted by an NGO and personally intervened. This is cited as an example of how the Bank has the power to raise standards if it gets involved.[38]

A number of academics have highlighted the inconsistency in the Bank's attitudes toward human rights. Brodnig argues that the Bank has oscillated between hiding behind its charter, expansion into new human rights territory, and de facto adoption of certain human rights conditionalities into its operations.[39] As late as 1990, for example, a proposal to work on an anti-corruption code of conduct was rejected as a political affair, outside the Bank's mandate. Today, however, good governance is seen as one of the major platforms for development. Where many scholars see human rights and development as indivisible, the Bank is criticized for being out of step with current thinking.[40]

Another example of inconsistency is the Bank's stance on the adoption of the ILO's Core Labour Standards. While the International Finance Corporation and the Multilateral Investment Guarantee Agency have adopted the standards on child labor and forced labor, IBRD and the International Development Association have not yet formally adopted any standards. The Bank document "Core Labor Standards and the World Bank" highlights the work done by the Bank to promote these standards, while restating that the Bank is forbidden from interfering in the political affairs of borrowing countries.[41]

Many academics who attack the Bank's distinction between civil and political rights on the one hand and economic, social, and cultural rights on the other hand have presented three basic arguments for the incorporation of all human rights issues into operational policies:

- *Human rights have become part of the Bank's mandate.* Academics making this argument claim that world circumstances today are radically different from those imagined by the creators of the Bretton Woods institutions. Many of the issues associated with development, such as environmental and social issues, were not apparent when the Bank was established, while human rights have become far more important to the international community in the past few decades. A growing body of thought links human rights inextricably with sustainable development. Accordingly, Article IV/10 should be interpreted very narrowly, to allow human rights, including civil and political rights, to be taken into consideration by the bank.[42]

- *Human rights are an economic consideration.* The Bank's former Chief Consul, Ibrahim Shihata, has written that where human rights have a direct economic impact, they fall within the Bank's mandate. Shihata argues, however, that this impact must be clear and unequivocal.[43] Other academics argue that while the link between human rights and development is less explicit, it does exist.[44] There is evidence, for example, of a positive correlation between civil liberties and economic growth.[45] Alternatively, there are studies that link the adoption of the ILO Core Labour Standards to economic growth.[46] Many academics accordingly argue against a narrow interpretation of economic considerations, thus permitting the Bank to take civil and political rights into account.

- *Human rights are international concerns, not political affairs.* This argument starts from the premise that Article IV/10 is similar in intent to Article 2(7) of the UN Charter, drafted during the same era, which states: "Nothing contained in the present Charter shall authorize the United Nations to intervene in matters which are essentially within the domestic jurisdiction of any state or shall require the Members to submit such matters to settlement under the present Charter." Both articles were designed to prevent outside interference in areas that were seen as within the domestic affairs of states. The scope of Article 2(7) has been limited, however, by subsequent developments within international law. The Permanent Court of International Justice had already stated in an advisory opinion that "the question whether a certain matter is or is not solely within the jurisdiction of a State is an essentially relative question; it depends upon the development of international relations."[47]

  Subsequent to the establishment of the UN, the International Court of Justice (ICJ) asserted in the Barcelona Traction case that a state has certain obligations, including the protection of "the basic rights of the human person," in which "all States can be held to have a legal interest" and that some of these obligations have a universal or quasi-universal aspect.[48] In the Namibia case, the ICJ held that a violation of "fundamental human rights," as detailed in the Universal Declaration of Human Rights, constitutes a breach of a state's obligations vis-à-vis the international community.[49] These decisions, as well as the development of customary international law regarding human rights, have led many scholars to conclude that human rights issues are not within the domestic jurisdiction of states; therefore, the Bank cannot hide behind Article IV/10 as an excuse for ignoring human rights.[50]

### *Human Rights Violations at the Project Level*

Wherever vast amounts of resource revenue exist, wrangling over control of the resources can lead to egregious violations of human rights. Company relationships with private or state security forces can lead to human rights abuses, and control of resources are possible violations of land rights or the resettlement of indigenous peoples. It is argued that in the case of severe human rights violations, such as torture or murder, businesses have a positive obligation to prevent such abuses from occurring.[51]

In this context, the Voluntary Principles on Security and Human Rights drafted by the U.S. State Department and U.K. Foreign and Commonwealth Office, in conjunction with a number of multinationals and NGOs, are seen as a positive step. (See Annex Box 6–7.) In addition, the case of *Doe v. Unocal* set a precedent for businesses associated with human rights violations: a Californian Court of Appeals held that a business could be liable for human rights committed by another party (in this case, the Burmese military) even where the business was not directly controlling the abuse, provided that the business was knowingly complicit in the violation. The case also marks the first instance in which a U.S. company was brought to trial for alleged violations outside the United States.

**Annex Box 6–7. Voluntary Principles on Security and Human Rights**

The Voluntary Principles provide guidance to companies in the areas of risk assessment and interaction with public and private security forces.

*Risk Assessment*

Companies should identify security risks resulting from political, economic, civil, or social factors in order to be able to take measures to minimize risk and assess whether company actions heighten risk. Potential for violence should be assessed using multiple sources, including government and civil society. Risks assessments should consider the human rights record of security forces as well as their capacity to react to security threats in a lawful manner. Further, the local authority's capacity to enforcement human rights should be assessed. Root causes of local conflict and adherence to human rights standards by local actors should be assessed and used to develop strategies for managing relations between involved actors. Where equipment is provided, public or private security forces should consider fully and mitigate the potential risk of such transfers, such as misappropriation or diversion of equipment, which may lead to human rights abuses.

*Interactions Between Companies and Public Security*

Principles that should govern a company's relationship with public security forces touch upon their security arrangements, deployment and conduct of forces, consultation and advice, and response to abuses.

<u>Security Arrangements</u>: Such arrangements should be subject to ongoing consultation with local communities and authorities; companies should communicate their policies regarding ethical conduct and human rights to such forces and encourage host governments to permit making such arrangements transparent and accessible to the public.

<u>Deployment and Conduct</u>: Public security forces should maintain the rule of law and be competent and appropriate and proportionate to the threat. Companies should use their influence to promote the following principles with public security: individuals credibly implicated in human rights abuses should not provide security services for companies; force should be used only when strictly necessary and to an extent proportional to the threat; the rights of individuals should not be violated while exercising the right to exercise freedom of

rights of company employees as recognized by the Universal Declaration of Human Rights and the ILO Declaration on Fundamental Principles and Rights at Work. In cases where physical force is used by public security, such incidents should be reported to the appropriate authorities and to the company. Where force is used, medical aid should be provided to injured persons, including offenders.

Consultation and Advice: Companies should hold structured meetings with public security on a regular basis to discuss security, human rights, and related workplace safety issues. Companies should also consult regularly with other companies, host and home governments, and civil society to discuss security and human rights. Where companies operating in the same region have common concerns, they should consider collectively raising those concerns with the host and home governments. Companies should support efforts by governments, civil society, and multilateral institutions to provide human rights training and education for public security, as well as their efforts to strengthen state institutions to ensure accountability and respect for human rights.

Responses to Human Rights Abuses: Companies should record and report any credible allegations of human rights abuses by public security in their areas of operation to appropriate host-government authorities. Where appropriate, companies should urge investigation and that action be taken to prevent any recurrence. Every effort should be made to ensure that information used as the basis for allegations of human rights abuses is credible and based on reliable evidence. The security and safety of sources should be protected. Additional or more accurate information that may alter previous allegations should be made available as appropriate to concerned parties.

*Interactions Between Companies and Private Security*

Private security should observe the policies of the contracting company regarding ethical conduct and human rights; the law and professional standards of the country in which they operate; and emerging best practices developed by industry, civil society, and governments. They should promote the observance of international humanitarian law.

Conduct: Private security should act in a lawful manner. Private security should have policies regarding appropriate conduct and the local use of force (e.g., rules of engagement), which should be monitored by companies or independent third parties. All allegations of human rights abuses by private security should be recorded. Credible allegations should be properly investigated. Consistent with their function, private security should provide only preventative and defensive services and should not engage in activities exclusively the responsibility of state military or law enforcement authorities.

Private security should not employ individuals credibly implicated in human rights abuses to provide security services, should use force only when strictly necessary and to an extent proportional to the threat, and should not violate the rights of individuals exercising their right to freedom of association and peaceful assembly, collective bargaining, or other related rights of employees as recognized by the Universal Declaration of Human Rights and the ILO Declaration on Fundamental Principles and Rights at Work.

the incident to the company. Private security should refer the matter to local authorities or take disciplinary action where appropriate. Where force is used, medical aid should be provided to injured persons, including offenders.

Limitations on Private Security Providers: Private security should maintain the confidentiality of information obtained as a result of its position as security provider. Where possible, companies should include the principles outlined above as contractual provisions in agreements with private security providers and require investigation of unlawful or abusive behavior and appropriate disciplinary action. Agreements should also permit termination of the relationship by companies where there is credible evidence of unlawful or abusive behavior by private security personnel.

Monitoring: Companies should consult and monitor private security providers to ensure they fulfill their obligation to provide security in a manner consistent with the principles outlined above. Companies should review the background of private security they intend to employ, and, where appropriate, exchange information about unlawful activity and abuses committed by private security providers with other companies.

*Source:* http://www.state.gov/g/drl/rls/2931.htm

Another important human rights concern at the project level is forced resettlement. International law grants the rights of self-determination to all peoples, giving them the right to "freely determine their political status and freely pursue their economic, social and cultural development."[52] The position of minority groups is disputed by academics. On the one side, it is argued that "people" is context-dependent, and minority groups could have a right to self-determination.[53] The alternative view is that self-determination is exercised at the level of the state, and minorities have no separate rights except in the case of indigenous peoples or where gross, systematic human rights violations occur.[54] It is acknowledged that resettlement is often targeted at minority groups for political purposes.

The Special Rapporteur of the U.N. Commission of Human Rights has stated that for population transfers to violate international law, a number of conditions must be met: they are collective in nature, affecting a group of persons; they are carried out by force or threat of force; they are involuntary, without the full informed consent of the affected population; they are deliberate on the part of the party carrying out the transfer; they are systematic, forming a pattern of policy or practice; they are discriminatory, affecting a distinct population or distinct populations; and they take place without due process.[55]

Moreover, there may be other human rights violations associated with involuntary resettlement, including murder, torture, or cruel and inhuman treatment. WBG policy on involuntary resettlement is governed by OP 4.12, which replaced OP 4.30 in 2002. The policy revision has been criticized as lowering standards for the WBG to follow, for example by reducing the status of those without formal legal title to lands they inhabit.[56]

### *Community Development*

Beyond doing no harm, the key to assuring that extractive industries alleviate poverty and are sustainable is to maximize local benefits and create sustainable livelihoods.

Academics point out that projects can offer the opportunity to create social capital and benefit host communities through improved infrastructure. For example, any infrastructure development related to the project, such as electricity generation, water supply, or sanitation, can be coordinated with community needs.[57] Community development programs should be designed, implemented, and managed with the goal of long-term sustainability. To avoid the phenomenon of "ghost towns" after a project has ended, development has to be coupled with a long-term development strategy.[58]

It is important that such community development plans are designed in close consultation and participation of the communities themselves. Participation is a key process for building trust and managing expectations. The company should involve affected parties, in cooperation with the government, throughout all stages of the project. Relevant stakeholders include not just those who are affected, but also those who have a strong interest in the project or have the capacity and power to affect a project positively or negatively. Communities should be provided with unbiased, clearly understandable information about the project, the industry, the potential impacts, and their rights under national or international laws.

The process, goals, and timeline of a consultation process or social development program should be developed cooperatively by the company together with the community, government officials, and other relevant stakeholders. Formal, two-way channels of communication for addressing concerns and resolving conflicts should be established to enable dialogue to continue even when formal consultation events are not occurring.[59]

Moreover, throughout the project and well after it ends, community development programs should be monitored and evaluated against pre-set goals to measure results and effectiveness.[60]

Academics are making the business case for community development. Earning a "social license to operate" will allow a company to enjoy a better working environment, avoid conflict, foresee and prevent potential problems, forge local partnerships, and improve its global business reputation. Good performance in one location may also mean greater access to other opportunities elsewhere or an increased likelihood of approval for any proposed expansions or changes to a project.[61]

### *Indigenous Peoples and the World Bank*

Many academics argue that the special status and rights of indigenous peoples form an emerging norm of international customary law.[62] (See Annex Box 6–8 for definitions of indigenous peoples.) This argument is based on a body of statement and practice that includes:

- *International Instruments referring directly or indirectly to indigenous peoples:* ILO Convention Number 169 concerning Indigenous and Tribal Peoples in Independent Countries (1989); Declaration on the Rights of Persons belonging to National or Ethnic, Religious and Linguistic Minorities (1992); Convention on Biological Diversity (1992); Vienna Declaration and Program of Action (1993); Report of the International Conference on Population and Development (1994); Durban Declaration and Program of Action (2001).

- *Draft International Instruments:* UN Draft Declaration on the Rights of Indigenous Peoples (1994); Proposed American Declaration on the Rights of Indigenous Peoples (1997).

- *State Practice:* A number of states have recognized the special status of indigenous peoples within their borders, including Australia, Bolivia, Brazil, Canada, Chile, Colombia, Ecuador, Finland, Japan, Malaysia, Mexico, New Zealand, Nicaragua, Norway, Philippines, Sweden, and the United States.

- *Decisions of International Courts and Tribunals:* The Inter-American Court on Human Rights in the *Mayagna (Sumo) Indigenous Community of Awas Tingni v. the Republic of Nicaragua* Case; *Mary and Carrie Dann* case; the ICCPR Human Rights Committee in *Lovelace v. Canada.*

- *Jurisprudence of International Institutions*: Reports and Proceedings within International Institutions, including the U.N. Human Rights Committee; U.N. Sub-Commission on the Promotion and Protection of Human Rights; Inter-American Commission on Human Rights (IAHCR).

**Annex Box 6–8. Indigenous Peoples – Identification**

There have been a number of different attempts to define ‘indigenous’ peoples in international law. Article 1 of ILO 169 uses several definitions, including self-identification:

1. This Convention applies to:
   (a) Tribal peoples in independent countries whose social, cultural and economic conditions distinguish them from other sections of the national community, and whose status is regulated wholly or partially by their own customs or traditions or by special laws or regulations;
   (b) Peoples in independent countries who are regarded as indigenous on account of their descent from the populations which inhabited the country, or a geographical region to which the country belongs, at the time of conquest or colonisation or the establishment of present State boundaries and who, irrespective of their legal status, retain some or all of their own social, economic, cultural and political institutions.
2. Self-identification as indigenous or tribal shall be regarded as a fundamental criterion for determining the groups to which the provisions of this Convention apply.

The Working Group of the UN Draft Declaration consciously decided to forego any attempt at a definition.[63] Self-identification is provided for in Article 8: "Indigenous Peoples have the collective and individual right to maintain and develop their distinct identities and characteristics, including the right to identify themselves as indigenous and to be recognized as such."

In the *Mary and Carrie Dann* case, the IAHCR stated that "general international legal principles applicable in the context of indigenous human rights" include: the right of indigenous peoples to legal recognition of their varied and specific forms and modalities of their control, ownership, use, and enjoyment of territories and property; the recognition of their property and ownership rights with respect to lands, territories, and resources they have historically occupied; and where property and user rights of indigenous peoples arise from rights existing prior to the creation of a state, recognition by that state of the permanent and inalienable title of indigenous peoples relative thereto, and to have such title changed only by mutual consent between the state and respective indigenous peoples, when they have full knowledge and appreciation of the nature or attributes of such property.[64] This also implies the right to fair compensation in the event that such property and user rights are irrevocably lost.

These arguments are supported by a number of scholars.[65] It has also been argued that much of ILO 169 represents customary international law.[66]

Prior Informed Consent

The position of prior informed consent regarding extractive industry activity on indigenous peoples' land is ambiguous; the initial standard required consultation before any changes to the use of indigenous lands took place, but it is argued that an emerging norm of international law requires prior informed consent.

Article 15(2) of ILO 169 states that: "governments shall establish or maintain procedures through which they shall consult these peoples . . . before undertaking or permitting any programs for the exploration or exploitation of such resources pertaining to their lands." This should be read in conjunction with Article 6, which requires consultation with indigenous peoples, and Article 7, which requires participation of indigenous peoples in any development activity that affects them directly.

The IAHCR has stated that "general international legal principles applicable in the context of indigenous human rights" include the right to "recognition by that state of the permanent and inalienable title of Indigenous Peoples relative thereto and to have such title changed only by mutual consent between the state and respective Indigenous Peoples when they have full knowledge and appreciation of the nature or attributes of such property."[67]

Academics also point to the requirement of prior informed consent in Article 30 of the U.N. Draft Declaration, which states: “Indigenous Peoples have the right to determine and develop priorities and strategies for the development or use of their lands, territories and other resources, including the right to require that states obtain their free and informed consent prior to the approval of any project affecting their lands, territories and other resources, particularly in connection with the development, utilization or exploitation of mineral, water or other resources.”[68]

Involuntary Resettlement

A number of strong arguments are made against involuntary resettlement of indigenous peoples. The extremely strong link between indigenous peoples and their land is stressed time and again by commentators. Thus the U.N. Sub-Commission observed that “where population transfer is the primary cause for an Indigenous Peoples' land loss, it constitutes a principal factor in the process of ethnocide” and “for Indigenous Peoples, the loss of ancestral land is tantamount to the loss of cultural life, with all its implications.”[69] The IAHCR has observed that forcible relocation amounts to a violation of human rights “essential to the life of peoples.”[70]

Given this close link between indigenous peoples and their native lands, international law prohibits involuntary resettlement without prior informed consent.[71] Thus, Article 16(2) of ILO Convention 169 states that: “Where the relocation of these peoples is considered necessary as an exceptional measure, such relocation shall take place only with their free and informed consent”. Article 10 of the U.N. Draft Declaration on the Rights of Indigenous Peoples states that “Indigenous Peoples shall not be forcibly removed from their lands or territories. No relocation shall take place without the free and informed consent of the Indigenous Peoples concerned and after agreement on just and fair compensation and, where possible, with the option of return.”

The World Bank and Indigenous Peoples’ Rights

The current World Bank policy regarding indigenous peoples is contained in OD 4.20. The broad objective of the policy is to “ensure that the development process fosters full respect for their dignity, human rights and cultural uniqueness.”[72] The policy includes provisions to secure the legal recognition of indigenous peoples’ land tenure and resource rights, and the requirement to undertake detailed baseline studies to determine indigenous peoples’ priorities and concerns. The policy has been criticized for failing to meet international standards on indigenous peoples’ rights, for example the right of self-identification, the right to free and prior informed consent, and the prohibition on forced relocation. Complaints, however, have been focused more on the lack of effective implementation and a system of redress.[73]

The Bank is currently in the process of drafting a revised policy on indigenous peoples: OD 4.10. This revision has been criticized by academics, as well as by NGOs and indigenous groups, as weakening the current policy and falling further behind international standards on indigenous peoples’ rights.[74] Criticisms include the loss of provisions to secure the legal recognition of indigenous peoples’ land tenure and resource rights, the requirement that borrowers only "give particular attention" to these issues, the loss of the requirement to undertake detailed baseline studies, the failure to incorporate self-identification as a definition of indigenous peoples, the failure to incorporate rights to prior informed consent, and the failure to prohibit forced relocation.

## Environmental Sustainability

Extractive industries can have profound environmental impacts near a mine site, but also at the regional and global level. A project's environmental sustainability at the local level depends on whether its impacts remain within the carrying capacity of the surrounding ecosystem. Impacts at the local and regional level include pollution, waste and toxic substance management, and acid rock drainage.

Environmental impacts are best avoided; where this is impossible they need to be mitigated throughout the project cycle: in environmental impact assessments, reporting and accountability mechanisms, and emergency planning in a project's emergency response capacity. The World Bank Group has a direct impact on the environmental practices of the projects it is involved in, but it also affects industries at the national level, through its advisory work for governments and structural adjustment lending.

The impact of environmental quality on the poor is very direct: they are often the most hurt where exploitation of resources results in a degraded environment and destroys traditional livelihoods dependent on functioning ecosystems, such as fishing and farming. Poverty from environmental degradation is further exacerbated when extractive projects do not result in sustainable local economic activities, offering no alternatives for lost livelihoods. Adequate protection of ecosystems is thus a pro-poor policy.

### *Protected Areas and "No-Go" Zones*

Some ecosystems are so valuable and fragile that they require special protection, such as through the establishment of protected areas or "no-go" zones. There are about 44,000 protected areas globally (see Annex Box 6–9), covering 10 percent of the land's surface (and 1 percent of the marine environment).[75] Most protected areas are established under national legislation, with varying degrees of prohibition regarding mining in those areas. The effectiveness of protection varies from area to area in practice; in many cases, resources for enforcement are inadequate. In addition, many governments have allowed EI companies to operate in protected areas despite the existence of legislation forbidding such activities.[76]

Extractive industries can have a number of direct and indirect consequences for protected areas, including environmental pollution from EI operations; impacts due to open access via roads, railways, and pipelines, which permit illegal hunting and habitat invasion; secondary effects of human immigration in response to real or perceived economic opportunities associated with EI operations; and impacts on indigenous populations, which may alter the pattern of sustainable development within the areas.

According to the World Conservation Union–IUCN, conflict over EI activity and protected areas is becoming more common due to the increasing numbers of protected areas and technological advances that allow profitable EI activity in previously inhospitable locations. The expected expansion of protected areas in the developing world may be increasingly challenged by economic interests, including mining, which would see opportunities for expansion constrained.

IUCN reports that in recent years there have been a string of controversial cases involving mining operations affecting a number of the World Heritage Sites. If even these sites—among the most highly prized of the world's protected areas—are subject to pressures from mining, it can be assumed that problems of mining affecting protected areas occur regularly.[77] In addition, a number of studies have highlighted the frequent incursions of oil and gas operations into protected areas.[78]

**Annex Box 6–9. IUCN Categories of Protected Areas**

The IUCN has classified protected areas into six different categories according to their main management objectives. Its position regarding mining operations is based on the different classifications.

| | |
|---|---|
| Category I | *Strict Nature Reserve/Wilderness Area*: protected area managed mainly for science or wilderness protection. |
| Category II | *National Park*: protected area managed mainly for ecosystem protection and recreation. |
| Category III | *Natural Monument*: protected area managed mainly for conservation of specific natural features. |
| Category IV | *Habitat/Species Management Area*: protected area managed mainly for conservation through management intervention. |
| Category V | *Protected Landscape/Seascape*: protected area managed mainly for landscape/seascape conservation and recreation. |
| Category VI | *Managed Resource Protected Area*: protected area managed mainly for the sustainable use of natural ecosystems. |

IUCN wants mining companies to commit to not conducting any mining activities in zones classified within Categories I–IV. The IUCN World Congress adopted a resolution to that effect in Amman, Jordan, in 2000. The resolution also called for state governments to adopt legislation to prohibit mining in such protected areas. The same resolution calls for tight controls over any mining activities in Categories V and VI. The WBG could participate in this process by adopting the same standards for any mining operations in which it participates.

At the same time, IUCN and other organizations acknowledge that more needs to be done through international or market-based mechanisms to make biodiversity and protected areas pay—for example, through debt-for-nature swaps. The WBG, particularly through its participation in the Global Environment Facility, could have a role to play in helping establish such mechanisms.

In addition, potential conflict between protected areas and indigenous peoples' rights has been highlighted. Legislation creating national parks may prohibit indigenous peoples from hunting in areas they have traditionally claimed as their territory.[79] IUCN states that to resolve any conflict of interest, the rights of indigenous peoples to pursue traditional activities within protected areas should be preserved when these areas are established.[80] The World Bank could act to ensure protection of indigenous peoples' rights in connection with any role it has in the establishment of protected areas.

<u>Mining and Biodiversity</u>

IUCN and the International Council on Mining & Metals are engaged in a dialogue on Mining and Biodiversity that was launched at the World Summit on Sustainable Development in August 2002.  The work program of this dialogue was focused on preparations for the fifth IUCN World Parks Congress in September 2003.

In the longer term, cooperation is intended to develop greater understanding of potential biodiversity risks and impacts of exploration and mining activities; to create an inventory of issues and positions as the basis of a joint policy statement on mining and biodiversity; and to identify and assess case studies with the aim of developing a basis for developing best practice guidelines. Furthermore, the Mining and Biodiversity dialogue will compile and analyze the experience of existing decisionmaking processes, in order to develop integrated and transparent approaches to land use planning, biodiversity conservation, and mining, including no-go areas.

<u>Energy and Biodiversity Initiative</u>

The Energy and Biodiversity Initiative (EBI) was convened in 2001 by The Center for Environmental Leadership in Business at Conservation International to develop tools and guidelines for integrating biodiversity conservation into oil and gas development, with the participation of energy companies and conservation organizations. Stakeholders from industry, academia, and the environmental community have been consulted.

Four working groups have addressed the business case for biodiversity conservation, biodiversity conservation practices, metrics (developing performance indicators), and site selection. The EBI has completed its work and a report was published in 2003.

### *Climate Change*

The Third Assessment Report of the Intergovernmental Panel on Climate Change (IPCC), in 2001, states that increased concentrations of greenhouse gases (GHG) in the atmosphere since the Industrial Revolution, primarily from the burning of fossil fuels, agriculture, and changes in land use, have led to increasing global temperatures. Atmospheric concentrations of GHG are predicted to rise over the course of the twenty-first century, leading to further increases in temperature. The impact of global warming is uncertain but is likely to fall most heavily on developing countries and the poor in industrial countries.

Impacts are expected to include risks to human health—through increased incidence of disease, heat waves, storms, and flooding and through reduced yields from agriculture—concentrated in tropical and subtropical areas, as yields in colder climates are predicted to increase; damage to human environments from flooding, rising sea levels, desertification and water shortages; damage to natural habitats through rising sea levels, flooding, desertification, and alterations in natural conditions caused by temperature and precipitation changes; and potential catastrophic and irreversible changes, such as major melting of ice sheets or changes in ocean currents. The latter are reported as unlikely to occur during the twenty-first century, based on current projections.

Industrial countries currently account for the dominant share of energy consumption and GHG emissions, but the share of developing countries is projected to increase over the next decades. The International Energy Agency predicts that overall energy-related carbon dioxide emissions will be 70 percent higher in 2030 than in 2000, while emissions from developing countries will have overtaken those from industrial ones.[81] Renewable energy sources play a small role in current energy generation, and the share of renewable sources is not expected to increase significantly in the next few decades.

Emissions Reduction versus Adaptation

Academic opinion is divided over the cost of climate change and the relative costs and benefits of emissions reduction versus adaptation. The debate ranges from arguments in favor of immediate substantial emissions cuts, based on the precautionary principle, to arguments for limited cuts in the short and medium term, on the grounds that the costs of adaptation are less than the costs of emissions reduction.[82] The Second Assessment Report of the IPCC estimated the costs of a doubling of GHG concentrations in the atmosphere to be in the range of 1-1.5 percent of gross domestic product (GDP) for industrial countries and 2–9 percent of GDP for developing countries. Subsequent academic studies have estimated the costs to be lower.[83] On the other hand, several studies have estimated that only limited GHG controls should be imposed over the next 20–30 years, as the costs of emissions reduction outweigh the benefits, given current technology.[84] There is a consensus, however, that sooner or later emissions will have to be cut in order to stabilize atmospheric GHG concentrations.

Burden Sharing

Under the terms of the Kyoto Protocol of December 1997, industrial countries agreed to binding commitments to reduce their collective GHG emissions by an average of 5 percent from 1990 levels by 2008–12. In Annex II of the Protocol, however, developing countries did not commit to any emissions reduction targets. The negotiations for the Protocol were contentious, with industrial countries arguing that other countries would account for an increasing share of emissions in future years and should have to assume a share of the burden, while developing countries responding that industrial nations are primarily responsible for current GHG emissions and it is unfair for countries that have already industrialized to target countries that are still developing.

The Kyoto Protocol contains mechanisms to share the burden of emissions reductions, including emissions trading and the Clean Development Mechanism (CDM), in which industrial countries may invest in projects in developing countries, contributing funds and technology in exchange for emissions reduction credits. Academics have suggested a number of ways to share the burden of emission reductions in future agreements. These include using per capita emissions or carbon intensity of GDP as a baseline for reduction, adopting a framework based around a number of indicators (population, historic emissions, wealth, energy efficiency), or adopting an approach based on commitment to use clean technology (in power projects, for instance) upon reaching a certain per capita income (in purchasing power parity).[85]

Strategies for Developing Countries

There is a consensus among academics that developing countries need to increase their overall energy use as part of their economic development, and it is accepted that this will lead to an increase in GHG emissions.[86] The debate is more concerned with the degree to which developing countries need to follow the same path used by industrial nations, or whether they can adopt a strategy for development that encompasses a lower level of GHG intensity.

Academic participants at the EIR workshops stressed that renewable energy should play an important role in economic development.[87] Renewable sources of energy have a large potential, particularly in many areas of the developing world that are blessed with abundant resources for solar, wind, and hydropower. At the present time, however, investment costs for renewable energy are higher than for fossil fuel sources. Generation costs for renewable energy are also higher, primarily due to subsidies for traditional power generation in many developing countries. Traditionally, developing countries and the institutions that lend to them have favored large power projects rather than small renewable sources of power.

Use of renewable energy sources can be encouraged in developing countries through regulatory measures, for example by reducing the distortions caused by subsidies to fossil fuel generation. In addition, industrial countries can help by sharing advanced technology. The CDM established by the Kyoto Protocol is one method highlighted to facilitate this process. This mechanism, as well as providing for investment in renewable technology, can also be used to encourage the use of low-emissions technology in fossil fuel generation and for energy efficiency projects.

Many policy analysts also argue for the gradual adoption of a global market for GHG emissions trading.[88] This is provided for in Kyoto, but it will not be implemented until the Protocol comes into effect. Developing countries should be encouraged to take advantage of the opportunity to participate in GHG emissions trading systems.

Role of the World Bank

The WBG could enhance its role in removing barriers to implementing climate change policies, including capacity building, regulatory reform, and technology transfer. The WBG could increase the share of lending devoted to small-scale renewable projects and energy efficiency, and away from large fossil fuel projects. The WBG could encourage the development of market-based mechanisms for sharing the burden of emissions reduction, for example through the use of emissions permits.

***Submarine Tailings Disposal***

The issue of submarine tailings disposal (STD) was discussed at the EIR workshop in Bali.[89] STD refers to the placement of mine tailings deep in the sea and can involve more than 100,000 tons a day.[90] Academics point out advantages and disadvantages of this option for disposing of mine tailings, which they expect to be used in numerous Asia and Pacific mines over the coming decade. They recommend that the WBG require site-specific risk assessments and comprehensive environmental assessment, and they note that more research is needed to fully understand all risks associated with STD.

The advantages of this waste disposal option are that mine sediments sink rapidly to great depths, where they deposit on the ocean floor in areas of relatively low biological activity; that STD eliminates many of the risks associated with alternatives (using confinement structures that need to be perpetually maintained and can be subject to natural disasters such as floods and earthquakes, as well as engineering error and vandalism); and that the characteristics of deep-sea water (alkaline, low temperature, low oxygen concentrations) can help maintain the chemical stability of tailings perpetually.[91]

The dangers and disadvantages of STD include the contamination of marine resources (real and perceived) hurting the local fishing industry; increased human health risk through direct and indirect exposure to mining wastes; reduced marine tourism potential; degradation of habitat affecting large and often endangered marine life, including whales, dolphins, and turtles; and operational risks, including the potential for pipe leaks and breakages. Further controversial areas are plume shearing, thermoclines, and up-welling.[92]

Academics point out the need for further research to fill the knowledge gaps about STD, as well as the need to develop "improved . . . evaluation and monitoring techniques to assess and demonstrate conclusively where and when this form of tailings placement is environmentally safe, where it is the preferred and lowest risk option, and where and when it is not acceptable." A multistakeholder process that is underway will identify knowledge gaps, conduct independent research, and provide all stakeholders with scientific answers to assess the value of STD.[93]

In the meantime, academics stress that STD should be considered as a last option rather than a default technology. The decision of how to dispose of mine tailings should be taken with consideration of the specific characteristics of each mine site. A site-specific assessment should appraise the balance of risk of the various tailings disposal options and should be carried out by all stakeholders involved, including the mining company, the permitting agency, the funding agencies, and resource users locally, regionally, and nationally.[94]

Notes

[1] Sachs and Warner 1995.
[2] Mikesell 1997, p. 192.
[3] Ross 2001.
[4] Sarraf and Jiwanji 2001, p. 1; Mikesell 1997, p. 191; Wright 2001, p. 3; Ross 1999, p. 307.
[5] UNCTAD 2001.
[6] UNCTAD 2000.
[7] Le Billon 2001.
[8] Ross 1999, p. 312; Auty 1997, p. 651.
[9] http://www.publishwhatyoupay.org.
[10] http://www.dfid.gov.uk.
[11]http://www.g8.fr/evian/english/navigation/2003_g8_summit/summit_documents/fighting_corruption_and_improving_transparency_-_a_g8_declaration.html.
[12] Auty 1997.
[13] UNCTAD 2000.
[14] Chambers 2000.
[15] http://www.bpdweb.org and http://www.bpd-naturalresources.org.
[16] http://www.unep-unctad.org/cbtf.
[17] Ross 2001a.
[18] Global Reporting Initiative 2002.
[19] *AccountAbility Assurance Standard AA1000, AA1000 Overview Framework 1999, AA1000 Overview*, available at http://www.globalreporting.org/about/iniaa1000.asp.
[20] http://www.cepaa.org and http://www.globalreporting.org.
[21] Ross 2002, p. 33.
[22] Auty as quoted in Le Billon 2001.
[23] Ross 2001c, p. 9.
[24] Le Billon 2001, p. 562.
[25] Ross 2001c, Collier and Hoeffler 2002b.
[26] Collier 2000.
[27] Le Billon 2001.
[28] Collier and Hoeffler 2002b.
[29] Ross 2001c.
[30] Le Billon 2001.
[31] Le Billon 2001, Ross 2001c.
[32] Ross 2002.
[33] Sen 1998.
[34] Sachs and Warner 1995.
[35] Annan 1998, Ch. 5, Section 174.
[36] Brodnig 2002.
[37] Clark 2002, Horta 2002, Uriz 2001.
[38] Horta 2002, Uriz 2001, UNCTAD 2001.
[39] Brodnig 2002.
[40] Ibid, note 4.
[41]http://wbln0018.worldbank.org/HDNet/HDdocs.nsf/0/65510796ed04ac1685256961004c6e7c?OpenDocument
[42] Brodnig 2002; Sarraf and Jiwanji 2001, p. 1; Mikesell 1997, p. 191; Wright 2001, p. 3; Ross 1999, p. 307; Uriz 2001; UNCTAD 2001; Sen 1998; Sachs and Warner 1995.
[43] Shihata 1991.

[44] Brodnig 2002; Sarraf and Jiwanji 2001, p. 1; Mikesell 1997, p. 191; Wright 2001, p. 3; Ross 1999; p. 307; Mackay 2002.
[45] Sen 1998; Sachs and Warner 1995; Kormedi and Meguire 1985; Isham, Kaufmann, and Pritchett 1997.
[46] Bivens and Weller 2003.
[47] *Nationality Decrees Issued in Tunis and Morocco*, 1923 P.C.I.J (ser.B) No 4, quoted in Brodnig 2002.
[48] *Barcelona Traction, Light and Power Co., Ltd. (Belgium vs. Spain)*, 1970 I.C.J. 3, quoted in Brodnig 2002.
[49] *Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) Notwithstanding Security Council Resolution 276*, 1971 I.C.I. 16 3, quoted in Brodnig 2002.
[50] Brodnig 2002.
[51] Ratner 2001.
[52] 1966 International Covenants, Article 1, at http://www.unhchr.ch/html/menu3/b/a_ccpr.htm.
[53] Crawford 1988.
[54] Steiner and Alston 1996.
[55] UNCHR 1997.
[56] Downing 2002.
[57] Nigam 1999.
[58] Ali and Behrendt 2001.
[59] Nigam 1999, Whiteman and Mamen 2001.
[60] Whiteman and Mamen 2001.
[61] Nigam 1999.
[62] Much of the information in this section has been taken from Forest Peoples Programme and the Tebtebba Foundation 2003. On the special status and rights of indigenous peoples, see Anaya and Williams 2001, Wiessner 1999, Torres 1991.
[63] Wiessner 1999.
[64] Inter-American Commission on Human Rights 2002.
[65] Wiessner 1999, Torres 1991, Anaya and Williams 2001, Mikesell 1997.
[66] Anaya 1996, Forest Peoples Programme and the Tebtebba Foundation 2003.
[67] Inter-American Commission on Human Rights 2002.
[68] UN 1994.
[69] UN 1993a.
[70] UN 1986.
[71] Mikesell 1997.
[72] OD 4:20 on Indigenous Peoples, 1991, para 6.
[73] Downing and Moles 2001.
[74] MacKay 2002, Downing and Moles 2001.
[75] "Protected Areas," at http://www.iucn.org/news/pambrief.pdf.
[76] Bowles et al. 1999, Aginam 2002, Umrani 1999.
[77] Phillips 2000.
[78] Sachs and Warner 1995.
[79] Aginam 2002, Sachs and Warner 1995.
[80] Beltran and Phillips 2000.
[81] Energy Information Administration 2002.
[82] Shogren and Toman 2000.
[83] Tol et al. 2001.
[84] Shogren and Toman 2000.
[85] Cazorla and Toman 2000.

[86] Toman, Jemelkova, and Darmstadter 2002.
[87] Murdiyarso 2003, Mallon 2003.
[88] Toman, Jemelkova, and Darmstadter 2002.
[89] In the absence of an accepted definition of STD, the Australian Centre for Mining Environmental Research uses the definition of "the placement of tailings discharged below the euphotic zone (zone where there is less than 1% of the light at surface), below the upper mixed layer or upwelling zone, and where the bulk of the tailings deposits at a depth that will represent a low risk to the productivity of any utilised resource (generally considered as a deposition at greater than 400 m depth)" (ACMER 2002).
[90] Ellis 2002.
[91] ACMER 2002.
[92] Kahn 2003, Shearman 2003.
[93] ACMER 2002.
[94] Ellis 2002, Shearman 2003.