

Mining Companies and investors

Managing Risk

SUMMARY

In this document CAFOD, the development agency of the Catholic Church in England and Wales, addresses the issue of responsibility of mining companies and institutional investors with regard to the environment and communities affected by mining.

It argues that management of risks, particularly relating to human rights, the environment and local communities must be a central concern. It calls on institutional investors to confirm that mining companies have procedures in place to review these risks and that these are being followed in each of their operations.

CAFOD'S INTEREST IN MINING

CAFOD supports and works with partners in a number of countries where mining development threatens the livelihoods and way of life of local communities, small-scale farmers and indigenous people. The organisation has an extensive track record in socially responsible investment and ethical trade and is a founder member of the Ethical Trading Initiative and of Publish What You Pay which calls for mining and oil companies to disclose their payments to host governments.

CAFOD acknowledges that modern industrial societies could not function without metals and therefore without mining. At the same time few communities welcome mining on their doorsteps. It is disruptive, with huge and long-lasting social and environmental impacts: it can spark social conflict; displace communities against their will; damage the environment and water tables through poor planning or bad management and, in the worst cases, mining can be a direct or indirect cause of human rights abuses.¹

CAFOD supports partner organisations in Honduras, the Democratic Republic of Congo and the Philippines that work with local communities in their efforts to secure a fair deal from mining. Each of these communities has different specific demands, because

each mining project is different. However all are concerned with environmental impact, openness and transparency both from mining companies and host governments, the impact on water catchments and the right of communities to determine the type of development that affects them.

CURRENT CONTEXT

Growing demand: Mining companies all over the world are scrambling to find new mineral resources to satisfy growing demand and this puts increasing pressure on their projects, policies and practice. The current high price of metals means it is now profitable to develop mineral deposits previously regarded as marginal or uneconomic.

Increasing awareness and campaigning: At the same time, there is increasing awareness of the social, environmental and ethical issues relating to the global mining industry and growing demand for higher and more rigorously applied standards, in particular in relation to the impact on local communities and the environment. This is reflected in campaigns and initiatives relating to goldmining, including CAFOD's Unearth Justice campaign. Gold is a particular focus because of the use of cyanide for its extraction and because it is a store of value and a recognisable end product bought by consumers as jewellery. Yet all mining, especially large-scale open-cast mining, raises similar issues.

The *No Dirty Gold* campaign, which started in the US in 2005, has gathered considerable support from jewellery retailers who have begun to demand that the supply chain of gold should be fully traceable.² In 2006, CAFOD incorporated the 'Golden Rules', drawn up by *No Dirty Gold*, in its *Unearth Justice* campaign and these have now been adopted by seven major UK jewellery chains.³ Major international NGOs – CAFOD, ActionAid, Oxfam America, Human Rights Watch, SCIAF and Christian Aid among others – are also scrutinising mining operations as never before.

Voluntary initiatives are underway: The Initiative for Responsible Mining Assurance, set up in 2006, is a multi-stakeholder body bringing together mining companies, jewellery retailers, trade associations and NGOs, including CAFOD. Its aim is "to develop and establish a voluntary system to independently verify

CAFOD's partner work on mining: Goldcorp San Martín mine, Honduras

This mine, operated by Entre Mares S.A., a subsidiary of the US/Canadian company Goldcorp, is very near the end of its productive life. Since the mine opened in 1996 local communities have complained of depleted and contaminated water supplies. The government environment agency has found water sources near the mine were contaminated with cyanide and heavy metals.²⁴ These complaints have been central to a civil society campaign for reform of the mining law and have paralysed the Honduran government's system for approving new exploration and mining licences. CAFOD partner Caritas Tegucigalpa is a leading member of the campaign and the Catholic Bishops' Conference in Honduras has also called for a new mining law.^{25 26} People living near the San Martín mine and those who were relocated to make way for the mine say that their complaints have not been

addressed by Entre Mares.

There is now growing concern about the management of the mine site after production has ceased and about its continuing impact on the water catchment area. In a report on the San Martín closure plan commissioned by CAFOD, an international expert criticises the absence of contingency plans to address possible pollution of water after the closure.²⁷ Goldcorp is also encountering community opposition to its Marlin mine in San Marcos, Guatemala, where critics include the local Catholic bishop.

This is not an isolated example: the San Andrés mine near Santa Rosa de Copán, now owned by Yamana Gold, was responsible for an accidental cyanide spill in 2003²⁸ as well as subsequent discharges of treated cyanide solution owing to heavy rain.

compliance with environmental, human rights and social standards for mining operations" and is currently working to finalise these standards.⁴ The mining industry itself recognises that it needs to address environmental concerns and the issue of community opposition. It has started to do this with the ten principles for sustainable development, a code of practice drawn up in 2003 by the International Council for Metals and Mining.⁵

The international Council for Responsible Jewellery Practices was also set up in 2006. This is an industry only initiative, which brings together companies across the gold and diamond industries, from mining to retail, with the aim of promoting "responsible ethical, social, human rights and environmental business practices across every step of the diamond and gold jewellery supply chain".⁶

Social and environmental concerns are affecting investment decisions in practice: For example, in April 2007 shareholders in Newmont overwhelmingly approved a resolution sponsored by the Christian Brothers Investment Services asking the company to review how it engages affected communities and addresses opposition to its operations in Indonesia, Ghana, Peru, the United States and Romania.⁷

In February 2008, a number of US jewellers announced their opposition to the Pebble gold mine development in Alaska in which Anglo American had committed "up to \$1.425 billion to secure a 50 per cent stake".⁸ This was the first time that a particular project rather than a set of rules has been the focus of attention.⁹

In April 2008, in response to pressure from shareholders in Canada and Sweden, the Canadian company, Goldcorp, agreed to commission an independent human rights impact assessment of its operations in Guatemala.¹⁰ In the light of Goldcorp's failure adequately to address community concerns, Jantzi Research, a leading Canadian investment analyst, recommended that the company be considered ineligible for Socially Responsible Investment (SRI) portfolios.¹¹

European legislation is in place: The European Union directive 2006/21/EC, adopted in March 2006, sets stringent standards for the management of waste from extractive industries and requires companies in advance of any work to post a bond, which will guarantee that resources are available to manage waste and rehabilitate mine sites.¹²

MINING COMPANIES AND RISK

Mining companies are exposed to particular sorts of risk. Mines are expensive to develop and, once developed, can be obstructed or closed down at any stage in their operations by community opposition, civil strife or government decisions.¹³ The development of mining inevitably disrupts local communities, can divide them into pro- and anti- factions, and can provoke outright hostility that can be exploited by armed groups.

The leading companies are aware of these risks. They recognise that a good reputation for social and environmental responsibility will facilitate access to new resources in the future and a bad reputation will make it

CAFOD's partner work on mining: AngloGold Ashanti (AGA) mine, Mongbwalu, northeast Democratic Republic of Congo

AGA is preparing to exploit its rich gold concession in Mongbwalu, which is currently being mined by thousands of artisanal miners. The development of the site as a modern, industrial gold mine will depend on whether AGA can come to an agreement with the artisanal miners and the wider local community.

In recent years there have been clashes between militias in this area and, in 2005, AGA was accused by Human Rights Watch of providing logistical and financial support to the FNI militia group, then in control of Mongbwalu, in exchange for assurances of security. The National Integrationist Front (FNI) has been responsible for multiple, gross violations of human rights. AGA denied that it had made more than minimal payments to the FNI, and has now severed links with any armed groups.²⁹ The area is now reported to be peaceful.

The nascent local civil society committee, supported by CAFOD and Pax Christi Netherlands, is at an early stage of discussions with the company. It has asked AGA for details of its new, renegotiated contract with the government but so far has not received a response. Currently the only information available is on the government website which gives details of the old contract for the concession granted to a previous company. No later amendments to this contract have been published. Negotiations between AGA and the government are continuing.

In addition, in 2007 the National Bishops' Conference of DRC announced it would establish an Ad Hoc Episcopal Commission for the Monitoring of Natural Resources to look at the problems associated with resource extraction in the DRC.

harder to obtain new concessions and could ultimately undermine the financial viability of the company. Accordingly, in their published materials they refer to their responsibilities to host countries and local communities and the importance of securing their 'licence to operate', gained by mining companies, sometimes formally, but more often simply by being able to demonstrate their acceptability to both governments and communities. To earn this licence, they consult affected communities, make investments in community development and pay into community funds.

However while leading mining companies make much of their policies on corporate social responsibility, there is only patchy public evidence of policies on community consent or of reporting on community opposition.¹⁴ Examples of damage to companies caused by mishandling of community and environmental issues are given in the Appendix. (p.4)

Additional difficulties:

- **There is no one set of environmental or social standards to which mining companies have to adhere.** There is rather a patchwork of voluntary agreements¹⁵ and national and local legislation. The most comprehensive set of standards is put forward by the Framework for Responsible Mining – "a joint effort by NGOs, retailers, investors, insurers and technical experts working in the minerals sector." The authors of the Framework stress that their proposals are recommendations and that "...further

dialogue among stakeholders is necessary to develop a common and accepted approach to environmentally and socially responsible mining."¹⁶

- **Acting within the law does not guarantee good practice.** Permissions granted by governments regarded as illegitimate or corrupt may subsequently be challenged, renegotiated or revoked by a new regime. Even where there are democratically elected and properly constituted governments, legislation governing mining may be weak or deficient.
- **Lax or inconsistent enforcement due to lack of political will or of resources to effectively monitor the operations of mining companies, to carry out environmental testing and to ensure full compliance with regulations and the law.** Central governments may be more interested in receiving the tax revenue produced by mining projects than the welfare of poor communities or the environment in remote parts of their countries. Therefore, it is often local communities, municipalities and civil society organisations that respond most vigorously to mining projects. By default, therefore, it is the companies' responsibility to ensure that they are acting in accordance with the highest possible standards.

RECOMMENDED NEXT STEPS

Attention to the activities of mining companies from development and environmental groups, the public

CAFOD's partner work on mining: TVI Pacific mine, Mindanao, Philippines

CAFOD works with Catholic and community groups on the island of Mindanao, supporting communities affected by this mine. Mining on the Zamboanga peninsula of Mindanao has a history of controversy, mainly involving the operations of Canadian company, TVI Pacific. This company began operations in the Philippines around 2002, but failed to get consent from rightful indigenous leaders in the area, as required by law. There has been significant community opposition, largely because this mine is located on Mount Canatuan, a sacred site for the Subanon indigenous people. Some of those opposed to the mine have experienced violence and been forcibly displaced.^{30 31 32} It has also been the subject of several complaints raised by Filipino NGOs to UN committees. In recent months TVI has struggled to win financial backing for the development of this project. At present, construction of the next phase remains temporarily suspended and several hundred employees have been laid off.

and retailers will continue to increase rather than diminish. In this context, CAFOD believes that a key issue for mining companies and their institutional investors is how those companies manage the risks of adverse impacts on communities and the environment. Awareness of potential problems and how mining companies are addressing them are indicators of the quality of their overall management and, for this reason, will be of concern to institutional investors with an interest in long-term value. Community relations, therefore, should be managed at the highest levels of the company. Investors rarely have the opportunity to visit or meet site managers, but do meet with senior management. If senior management had close oversight of community issues, investors would be in a better position to evaluate mining companies' commitment to these issues.

CAFOD, therefore, calls on mining companies to:

- be completely open with the communities that will be affected by mining development in their areas, in order to secure a moral and practical licence to operate. The terms of contracts negotiated with central government and other relevant authorities must be made available to local communities and to the wider society, so they can weigh up the costs and benefits of mining and more effectively hold their governments to account.
- take all necessary steps to ensure that communities are fully informed about the likely impacts of mining in their area and freely assent to mining development. Since it is difficult to grasp the full extent of the impact of a mine before mining has started, processes for reviewing community agreement must be put in place at all stages of the mining operation.
- ensure that all sub-contractors and exploration companies working for them operate to standards at least as high as their own corporate social responsibility principles.

- protect the water supply of local communities both for drinking and agriculture.
- ensure that mine wastes are not dumped into the ocean, rivers, lakes or streams.
- operate at least in accordance with standards set by the competent authorities in their own countries of origin, for example, European Union standards for companies listed on European stock exchanges.
- provide prior financial guarantees to cover all rehabilitation work agreed before the beginning of mining and revise these periodically during the life of the mine. These will include obligations relating to closure and after-closure and take into account the future use of rehabilitated land. These requirements are set out in detail by European Union directive 2006/21/EC.

APPENDIX – EXAMPLES OF RISK

Conflict: Rio Tinto's Panguna mine in Bougainville in Papua New Guinea was shut down in May 1989 by conflict, sparked by simmering resentment against the mine's operations, which ultimately became a civil war. The mine has not reopened since. Bougainville islanders started litigation against Rio Tinto in 2000 and in April 2007 the US Ninth Circuit Court of Appeals upheld their right to pursue class-action litigation against Rio Tinto.

Reputational risk: Vedanta Resources, with operations in India and Zambia, was excluded from the Norwegian Pension Fund in November 2007 after its Ethical Council found that "...environmental damage and complicity in human rights violations, including abuse and forced eviction of tribal peoples, [were] well founded."¹⁸ Two other mining companies, DRDGold and Freeport McMoran, have also been excluded on the grounds of environmental damage.¹⁷

Community opposition: In February 2006 Meridian Gold, now owned by LSE-quoted Yamana Gold, had to

The Catholic Church and mining

The Catholic Church and Catholic agencies in mineral-rich countries have also played a prominent direct advocacy role on mining. Bishops and priests have defended the interests of local communities and have accused mining companies and their own governments of riding rough-shod over these communities.

Peru

- Bishops in northern Peru are supporting local communities' objections to Monterrico's development of the Rio Blanco mine. In a locally organised referendum, with a 60 per cent turnout, all but 984 of the 17,971 votes cast were against the mine.³³ Three bishops have called on the Peruvian government to take account of the fragility of local ecosystems and declare the area unsuitable for mining.³⁴
- Archbishop Pedro Barreto of Huancayo commissioned a study by the St. Louis University School of Public Health, which found that most of the children in the neighbourhood nearest the La Oroya smelter had high levels of lead, cadmium and other metals in their blood. Church workers have been threatened for their efforts to pressure Doe Run Peru, a subsidiary of the US-based Renco Group, to clean up pollution from this smelter that has caused extensive lead poisoning among residents.³⁵

Bolivia

- In Bolivia, Brother Gilberto Pauwels has complained that Inti Raymi, a company in which Newmont is the majority stakeholder, has started mining within the city limits of Oruro. The concession overlaps a wetland that has been designated a Ramsar site, a classification that gives it international recognition but no official protection.³⁶

Guatemala

- In Guatemala, Bishop Alvaro Ramazzini has complained that acid rock drainage from Goldcorp's Marlin mine in San Marcos is contaminating the Tzala river.^{37 38}

The Philippines

- Bishop Dinualdo Gutierrez, Bishop of Marbel in the Philippines, has pleaded with successive owners of the Tampakan concession – Western Mining Corp, Sagittarius Mines Inc. and now Xstrata – to withdraw on the grounds of community opposition and environmental impact.³⁹
- In 1998 and 2005 the Catholic Bishops' Conference of the Philippines issued statements critical of the Philippines Government's mining policy and called for the repeal of the Mining Act.⁴⁰

write down the value of its Esquel project in Argentina by US \$379 million after abandoning all attempts to proceed.¹⁹ Meridian mishandled almost every aspect of its relations with the community of Esquel and responded to gathering community opposition with a public relations campaign, which again failed to address community concerns.²⁰

Community opposition: The Minera Yanacocha Gold Mine Project in Peru, owned (51%) by Newmont, is one of the largest and most profitable gold mines in the world. There was little opposition when the mine opened in 1992 and high hopes that it would bring much-needed employment and other improvements to the area. However, as the mine expanded and impacts on the community multiplied, local people became convinced that the mine's owners were acting in an increasingly high-handed way. Discontent became outright opposition when Newmont embarked on plans to exploit the US \$2.23 billion gold reserves of

nearby Cerro Quilish. In 2004 Newmont had to abandon plans to exploit Cerro Quilish and publicly apologised for its actions.²¹

Community opposition: Rio Tinto started exploration for gold and copper in the Zamboanga peninsula, Mindanao in the Philippines in 1995 but withdrew four years later. The Philippines Mining Code contains a clear requirement that, where mining development is proposed on ancestral lands, the free, prior and informed consent of the affected indigenous peoples must be secured before the project can proceed.²² Companies' attempts to win approval for mining have divided communities and provoked opposition to the extent that, in the case of Rio Tinto, it withdrew in November 1999 and permanently closed its Philippines office. TVI Pacific, a Canadian company, continues to develop projects in the Zamboanga peninsula.²³ Facilities owned by several companies working in Mindanao have been attacked by armed opposition groups.

¹ Mining companies, like many other companies, use specialist security companies to safeguard their property. In situations where mining companies are in dispute with local communities or artisanal miners who have been displaced by their operations, there is a danger that poorly-trained security guards will use coercive methods or excessive, even lethal, force against protestors. There is an even higher risk to human rights in conflict-prone areas where companies have dealt with militia groups in *de facto* control of mining areas. See, for example, accounts of security guards bulldozing houses and shooting at protestors at the TVI Pacific mine site in the Philippines. CIDSE, *Recommendations to reduce the risk of human rights violations and improve access to justice* – Submission to the UN Special Representative on Business and Human Rights, Brussels. p43 (2008)

² See www.nodirtygold.org/supporting_retailers.cfm for the list of US and UK jewellery retailers which have signed up to the Golden Rules.

³ See www.cafod.org.uk/campaigning/unearth-justice/golden-rules for the Golden Rules which call on mining companies to meet certain basic standards in their operations.

⁴ www.responsiblemining.net

⁵ Mining, Minerals and Sustainable Development Project final report *Breaking New Ground*, London (2002)

⁶ www.responsiblejewellery.com/about.htm

⁷ Reuters, *Big US miners becoming socially conscious?* (29 April 2007)

⁸ Alaska Daily News, *CEO Cynthia Carroll outlines our [Anglo American] commitment to Alaska in developing the Pebble Project in the Compass opinion column.* (1 December 2007)

⁹ Los Angeles Times, *Jewelers oppose Alaska Mine*, (12 February 2008)

¹⁰ CNW, www.newswire.ca/en/releases/archive/April2008/24/c9323.html (24 April 2008)

¹¹ www.jantziresearch.com/downloads/Goldcorp.pdf

¹² <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2006:102:0015:0033:EN:PDF>

¹³ BBC, *Mining deals cancelled in Congo – The Democratic Republic of Congo is to cancel "many" mining contracts and renegotiate others, a minister says.* (20 March 2008)

¹⁴ For example the UK quoted companies, Vedanta and Yamana Gold, do not report on engagement with communities apart from the briefest statements of business principles. While Anglo American, BHP Billiton, Rio Tinto and Xstrata do talk about consultation with and investment in communities, their corporate social responsibility policies, published on their websites, do not explicitly address the issue of community consent.

¹⁵ See, for instance, the International Council on Metals and Mining ten principles, www.icmm.com/icmm_principles.php

¹⁶ Miranda, M, Chambers, D and Coumans, C *Framework for Responsible Mining*, (October 2005) This document also notes the prediction that half of the gold mined between 1995 and 2015 will come from indigenous lands (p. 49), which enjoy special protection under international law.

www.frameworkforresponsiblemining.org/index.html

¹⁷ Mineweb, *9th Circuit upholds Bougainville residents' right to sue Rio Tinto, PNG in the US*

www.mineweb.com/mineweb/view/mineweb/en/page68?oid=19676&sn=Detail (17 April 2007)

¹⁸ Council on Ethics: Government Pension Fund – Global, p.2 www.regjeringen.no/upload/FIN/Statens%20pensjonsfond/Recommendation_Vedanta.pdf (Recommendation of 15 May 2007)

¹⁹ Herz, S, La Vina, Antonio and Sohn, J; *Development without Conflict: The Business Case for Community Consent*, World Resources Institute, Washington D.C. p.2 (2007)

²⁰ *Ibid.* pp 27-29

²¹ *Ibid.* pp 40-44

²² Cariño, J, *Indigenous Peoples' Right to Free, Prior, Informed Consent: Reflections on Concepts and Practice*, The Arizona Journal of International and Comparative Law Online, Volume 22 – number 1; p. 27 (2005)

²³ de Leon, Dr Josie Hernandez; *Canadian Mining Companies in South East Asia*, The Institute for Northern Ontario Research and Development, http://inord.laurentian.ca/SoutheastAsia/JHDL_Jan%2015.htm

²⁴ Dirección de Evaluación y Control Ambiental technical report 441-2006 www.elheraldo.hn/nota.php?nid=86636&sec=12&fecha=2007-11-02 (22 August 2006)

²⁵ CAFOD has a long-standing partnership with Caritas Tegucigalpa, the development agency of the Catholic archdiocese of Tegucigalpa, which has been advising residents of the Siria valley on environmental and health issues in relation to the San Martín mine.

²⁶ Conferencia Episcopal de Honduras; statement www.derechos.org/nizkor/honduras/doc/obispos.html (10 June 2004)

²⁷ Younger, Prof. Paul L. Review of *Plan de Cierre Mina San Martín 2007*, Newcastle University, UK. (21 April 2008). Available on request from CAFOD

²⁸ Tribunal Centroamericano del Agua (6 January 2003, see verdict 19 March 2004) www.tragua.com/es/archivostla/audiencias/02/verdictos/verdicto_rio_lara.pdf

²⁹ Human Rights Watch, *The Curse of Gold: Democratic Republic of Congo*, Chapter VI, pp. 54-78, New York (2005) <http://hrw.org/reports/2005/drc0505/drc0505text.pdf>

³⁰ Rights and Democracy, *Philippines, Mining a Sacred Mountain, Human Rights Impact Assessment*, pp. 37-59 (2007) www.dd-rd.ca/site/_PDF/publications/globalization/hria/full%20report_may_2007.pdf

³¹ Columban Fathers, *Mining in the Philippines. Concerns and conflicts. Report of a Fact-Finding Trip to the Philippines* www.eccr.org.uk/dcs/MininginthePhilippines-ConcernsandConflicts.pdf (2007)

³² Letter from the UN High Commissioner for Human Rights to the Philippines Ambassador to the UN in Geneva www2.ohchr.org/english/bodies/cerd/docs/early_warning/Philippine_s070308.pdf (7 March 2008)

³³ The Economist, *Revolt in the Andes* (20 Sept 2007)

³⁴ National Catholic Reporter, *Catholics line up against mining operations in Peru* (25 January 2008)

³⁵ *Ibid.*

³⁶ *Ibid.*

³⁷ Moran, Dr Robert E. *CAO Marlin Mine Assessment: Technical Responses* www.miningwatch.ca/updir/Marlin_CAO_Response.pdf (28 September 2005)

³⁸ Prensalibre.com, *Alerta de contaminación por actividad minera en San Marcos Guatemala* www.prensalibre.com/pl/2007/enero/06/160115.html (6 January 2007)

³⁹ Asia Times Online, *Why Philippine ores stay underground* www.atimes.com/atimes/Southeast_Asia/JB22Ae01.html (22 February 2008)

⁴⁰ www.cbconline.net/statements/statementonmining.html

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