

**ACCESS TO INFORMATION
AND
THE FIGHT AGAINST CORRUPTION
IN THE MINING & MINERAL SECTOR**

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IN THE MINING AND MINERAL SECTORS**

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# **ACCESS TO INFORMATION AND THE FIGHT AGAINST CORRUPTION IN THE MINING & MINERAL SECTOR**

## **Introduction**

Why is "access to information" an essential requirement in the fight against corruption in the mining sector? In what specific ways, can the sector assist in providing access to information that can be used in the fight against corruption? In order to answer these questions in a meaningful way, it is first necessary to understand the nature of corruption, the role NGOs are playing and corruption's relationship to Sustainable Development.

As someone who spent more than 23 years in the international mining industry, I would be the first to admit that the industry has an image problem with corruption. Mining companies have responded to this image problem with measures designed to attack the so-called 'supply-side' of Corruption. It is my view that, if the mining industry is going to make a difference on the anti-corruption front, and be seen to make a difference, it is going to need to build partnerships and coalitions, both within and outside the industry, to fight *both* 'supply-side' and 'demand-side' corruption. Access to information is an essential element in that fight.

Using the supply-side and demand-side terminology, allows us to examine the reasons for the behaviour of 'the payer' or 'the supplier' of corruption separately from that of 'the taker' or 'the demander'. The Mining industry is generally considered to be on the 'supply-side' of corruption and bureaucrats or politicians on the 'demand-side'. The nomenclature is not intended to indicate where the initial intention of corruption occurred, but only who supplies the private gain and to whom it passes. Either side can initiate a corrupt act.

## **Supply-Side Corruption**

In the absence of empirical evidence, the mining and mineral sector has been viewed as being high on the 'supply-side' of corruption. In response, corporate Codes of Business Conduct and associated Corporate Integrity Management systems have been developed by Mining companies to address this type of corruption. 'Supply-side' corruption has also been addressed by the Foreign Corrupt Practices Act in the U.S. and, more recently, by the national implementation of legislation passed by other countries to fulfil their obligations under the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions (1997).

## **Demand-Side Corruption**

Turning now to 'demand-side' corruption, many of the countries in which Mining companies operate have very poor ratings in the Transparency International Corruption Perception Index (Transparency International, 2001). Twenty-three of the 32 leading mining countries have scores below 5 out of ten on the Corruption Perception Index

(Marshall 2001, p.11). Traditionally, this has been taken to mean that such countries are perceived as being high on the 'demand-side' of corruption. This type of corruption appears to be much more complex and difficult to tackle than 'supply-side' corruption.

The high levels of perceived 'demand-side' corruption in many of the countries in which the Mining Sector operates, has led to questions as to whether the Sector itself is directly, or indirectly, responsible for these high levels? While there does not seem to be any research done on the Mining Sector *per se*, Leite and Weidman (1999, p.30) investigated the connections between natural resources, corruption and economic growth with the following results:

- 1) capital intensive natural resources are a major determinant of corruption;
- 2) the existence of corruption always reduced growth compared to the non-corruption case, but in less developed economies (where there is less likelihood of a significant industrial sector), this effect was more pronounced;
- 3) rapid growth (such as may be sparked by a resources boom) induces an increase in corruption;
- 4) the effectiveness of anti-corruption policies also depended on the state of development of the economy. Institution building, *i.e.* improvements in monitoring technology, tends to be more effective in developing countries, while stricter enforcement, *i.e.* increases in penalties, are predicted to be more effective in more developed countries.

They conclude that both their theoretical and empirical results:

...stress the importance of strong (or at least strengthened) institutions in the wake of natural resource discoveries as a way to curb the negative growth effects of corruption. This is especially true in less developed countries where natural resource discoveries have a much higher relative impact on both the capital stock and the extent of corruption, and are confronted with generally weaker and less adaptable institutions (*Ibid*,p.31).

What this research suggests is that while the existence of a large natural resource project can affect the level of corruption in a country, *other institutional factors* are also relevant. *Three* of these institutionally related factors are as follows.

#### *1) Legal Factors*

The quality of a country's legal system has, of course, a major influence. As always the probability of getting caught and punished has a deterring effect on those tempted to break the law. In some countries, the probability of that occurring is very low and corruption is widespread.

## 2) *Bureaucratic Factors*

Daniel Kaufmann (1998) of the World Bank Institute has made the following point about the relationship between bureaucracy and corruption. "The incidence of corruption appears to be *higher* where *state involvement in the economy and bureaucratic interventions* are at high levels. This is hardly surprising, as more Government rules and regulations provide a greater opportunity for exploitation by public officials for corrupt purposes."

The problem of ministerial and bureaucratic discretion deserves special mention in the context of natural resource legislation. "Corruption in the public sector has been described as a function of the size of the rewards under a public official's control, the discretion that official has in allocating those rewards, and the accountability that official faces for his or her decisions." (World Bank 1997, p.12). As discretion increases and accountability decreases, the potential for corruption grows. Reforming natural resources legislation so as to minimise discretion and *increase accountability* is therefore very important.

## 3) *Political Factors, including Transparency and Access to Information*

Even in the most developed of democracies, a change of Government often occurs when one political party has governed for a long time and the public perception is that sleaze and corruption are becoming rampant. A new Government is elected and attempts to clean up the corruption. Often, after a number of years the process repeats itself.

What is it that allows a mature democracy to renew its Government when corruption reaches unacceptable levels? There are many factors including strong democratic structures and institutions, but one essential is '*information*'. If the public doesn't know what is going on, they will not have an opinion on it, let alone a political position. In order to obtain information, citizens (individually or in organised groups, such as NGOs or opposition political parties) *and* the press, need to have access to information. Coupled with freedom of association and freedom of the press to publish what they discover, access to information is what allows democratic institutions to operate in a manner that keeps democratic governments accountable to the public.

Lack of transparency in government continues to be an obstacle to having an informed public. Freedom of Information legislation has been found to be an effective way of requiring more transparency in government. Since corruption always prefers to work in the *dark*, such legislation cannot but help to reduce corruption.

With the appropriate partners, a country-based coalition promoting Freedom of Information legislation could be the basis for collective action to fight demand-side corruption through easier access to information.

## Moving on to **The Effects of the "Global Village" and the Rise of NGOs**

The effect of modern technological improvements in communication and access to information has had a significant effect on the way business is carried on by multinational

companies. NGOs have taken advantage of the internet and the improvements in access to information to keep a close eye on the record of both business and Government from a wider perspective than the law. They have often focussed on social or moral responsibility. They have used their increased access to information to perform a watchdog function around the world. This has introduced a new era of global accountability. There is no place to hide in the 'Global Village'.

This increased *accountability* provided by NGOs has meant that multinational corporations must have global standards of conduct to avoid inappropriate activity in one part of the world causing problems in another part of the world. Without universal standards that are rigidly enforced, multinational companies now risk jeopardising their reputations in their home countries, and other markets that are important to them.

This applies to all aspects of a corporation's activities that may be judged on the basis of whether the corporation is meeting its social responsibilities. But is especially true in the area of corruption. The increased power of NGOs to report to the court of public opinion through improved communications, is a new reality that a modern international Mining company can only ignore at its peril. Indeed, since a single Mining company's failure to meet its social responsibilities with respect to corruption can often affect people's views of the whole industry, this new reality places increased pressure on the Mining industry to develop and agree on *minimum* international anti-corruption *principles* or standards for its members *i.e.* take collective action.

### **The Effects of the Sustainable Development Movement**

When I speak of 'Sustainable development', I mean *utilising resources today with respect for, or without compromising, the needs of future generations*. The Mining sector argues that they, in fact, practice sustainable development by endeavouring to achieve the most efficient and least wasteful level of production, the highest degree of environmental protection and the most equitable distribution of social benefits from their projects (Cooney 1995, p.5).

However, it needs to be said that Mining, historically, would not be viewed by an independent observer as having contributed effectively to sustainable development. There are various reasons for this including the fact that much of the wealth generated by mining has been squandered by corrupt Governments and especially by corrupt political leaders.

But who is to be the judge of whether a Mining company currently is meeting its social obligations? Partially as a result of the failure of Government to adequately protect citizens, NGOs are increasingly playing that role.

NGOs are often concerned about Mining projects in or near their communities. Aside from economic factors, communities' expectations also include meeting certain minimum standards of environmental and social responsibility. Sustainable development is perceived as being all about the equitable distribution of funds, stakeholder engagement and reaching agreement on what is equitable. Corruption is perceived as being

inconsistent with sustainable development since it skews the equitable distribution of benefits, often in the direction of the least deserving.

### **Specific Action and the Mining Sector**

If the Mining sector is going to move forward in addressing access to information issues and the fight against corruption, there must be a collective approach. First there must be a collective approach within the sector itself. The sector must organise itself before it can organise a collective approach to others (Marshall 2001, p.33). The formation of the International Council on Mining and Metals (or "ICMM") is an encouraging first step, but many difficulties remain in ensuring that ICMM truly represents the diverse participants involved in the industry. But assuming that those problems can be solved, what specific action can the industry take to improve access to information from within the industry so as to fight corruption?

#### 1) Access to Information Generated within the Mining Sector

- (a) An obvious first step would be to have ICMM establish an information exchange mechanism. This would be a repository where best practices, Codes of Conduct, Integrity Management Systems and Case Studies could be accessed. This could assist the industry in developing common principles, or at least prevent individual companies from "re-inventing the wheel".
- (b) The second step would be to provide a forum where the industry could attempt to agree on certain minimum principles of ethical conduct.
- (c) The third step would be to efficiently disseminate those principles and the relevant information to the employees of participating ICMM member mining companies through collective training and workshops. These first three steps would help fight 'supply-side' corruption.
- (d) Another step would be to establish an international repository (possibly administered by an international organisation like the World Bank) where mining companies would deposit information on all payments made to Government in the respective countries in which they operate. This could be made a condition of membership in the ICMM. Governments that do not want this information disclosed, would be presented with a common front from the world's major mining companies. NGOs could have access to this information so that it could be used to raise 'demand-side' corruption issues in their respective countries.

#### 2) Access to Information Generated within Government

Demand-side corruption is so widespread in many of the countries in which the Mining sector operates that one company, or even one industry, would have difficulty making any impact. As previously mentioned, probably the most effective way of fighting demand-side corruption in such countries is by strengthening their institutions to increase

transparency, accountability and, flowing from that, access to information. It is likely to be counter-productive if such an initiative is seen by the locals as "a bunch of foreign do-gooders telling us what to do". What is needed is a coalition with a local partner that can legitimately exert non-partisan domestic pressure.

In this context, it is my view that a local chapter of Transparency International (or "TI") would be a natural candidate for such a coalition or working relationship with ICMM. At this point, you should be aware that I am a member of the Board of Directors of the Canadian Chapter of Transparency International.

Formed in Berlin in 1993, Transparency International's mission is to curb corruption world-wide. However, it was recognised that what was needed was a coalition against corruption. TI seeks out the involvement of Government, civil society and the private sector both at the national and international level. It does so because it does not view corruption as a problem resting solely with any one of these three groups. Tackling corruption is very much a task we all have to take on *with each other*, rather than *against each other*.

TI faced the problem of how to get information about corruption and anti-corruption initiatives down from an international organisation to the people in a position to actually do something on a domestic level. The solution was to have two levels of organisation.

Internationally, the TI Secretariat works with the private sector and with international organisations, such as the OECD, to strengthen the policy and legal framework for international business. The Secretariat develops tools for advocacy and serves as a communication hub and information clearing-house for national chapters. To provide the knowledge base for reforms in the anti-corruption field, the Secretariat focuses on identifying and disseminating best practices and tools to contain corruption, including model laws, regulations and institutional frameworks. They maintain an on-line searchable data base which provides national chapters, and all those with an interest in corruption, with easy access to literature, documentation and information on corruption and related issues. They also co-ordinate Resource Persons in order to make volunteer international expertise available to national chapters.

However, 85 national chapters spearhead TI's grassroots involvement in their respective countries and are legally independent from the International Secretariat. They are also beneficiaries of much of the information collected by the TI Secretariat. TI's national chapters work to raise awareness of the damage done by bribery and corruption and to identify and contribute to constructive means of strengthening the "national integrity system" of their countries. The "national integrity system" refers to a holistic approach to transparency and accountability that embraces a range of institutions, laws and policies in order to prevent or control corruption. These instruments and institutions include democratic legislatures, independent judicial systems, government watchdog agencies, the media and civil society. The information hub run by the TI Secretariat sees as many good ideas come up from the National Chapters as go down to the Chapters from the Secretariat.

In summary, if the Mining industry decides to join the fight against 'demand-side' corruption by forming country-based coalitions, Transparency International would be a natural and willing partner. The World Bank, which has also done a lot of work on corruption, is another potential partner. But what specifically could such a partnerships do to increase access to government generated information needed for the fight against demand-side corruption?

Some examples of the types of projects that the industry may wish to explore are as follows:

- (a) Supporting initiatives to encourage the introduction of Freedom of Information legislation or improvements to such legislation.
- (b) Supporting initiatives for Civil Service Reform to increase accountability. This would necessarily involve putting in place systems to ensure that more information is made available to Civil Service managers about the activities of lower level civil servants.
- (c) Supporting initiatives to create or empower both a Public Accounts Committee of the national legislature to publicly review Government spending and an independent Auditor General to report to that Committee.

The list could go on, but the point is that *corruption prefers to work in the dark*. NGOs , the Media and other members of Civil Society can be good watch-dogs, but they need *access to information* to shed light on that darkness.

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