

CHAPTER 9 – www.eisourcebook.org

9.6 Summary and Recommendations

Comprehensive social and environmental impact assessments (ESIAs) and mitigation plans should be required of all EI sectors projects. Governments should also work to ensure the institutional capacity to enforce SEIAs and related regulations. The reasons for this are clear enough. EI sector projects can have significant externalities or spin-off impacts – both positive and negative – on society, and on the physical environments.

Sustainability in the extractives sector has become a matter of maximizing the social and economic benefits from an investment while at the same time minimizing the negative impacts on communities and the environment. For the former, there are now various ways of leveraging extractives projects for wider development gains: resources for infrastructure arrangements, resource corridors and local content initiatives. An attraction of these is that they envisage a partnership relationship between the host government and the investor(s), and is therefore less legalistic.

Attempts to tackle the long-standing enclave character of mining and oil and gas projects are well underway with resource corridors being one of these, aimed at transforming and leveraging a large but enclave commercial project or industry investment and its needs for infrastructure and goods and services into a sustainable and diversified economic space. Key features in this are the creation of a viable financial structure based on expected government revenues as a result of the EI Activity and the establishment of government, private sector and civil society capacities to develop and implement agreed plans. Currently, resource corridors have been constrained by a lack of proper ex-ante consideration of environmental and community factors, by insufficient government capacity to plan in an integrated fashion and by a lack of political rationale based on sound economic grounds.

Project-specific decommissioning and closure plans should be available for each operation. If a commercial scale operation does not have, or is not required to have, a decommissioning and closure plan, then this should be corrected and an initial plan prepared without delay. A decommissioning and closure plan is essential even for an operation at the start of production or for an operation with many decades of remaining life since even a conceptual or highly preliminary plan will inform present operating practices and planning and indicate possible benefits of reducing both short-term and long-term land and water course disruption, and undertaking ongoing reclamation and restoration.¹

¹ INTOSAI Working Group on Environmental Auditing (WGEA), *supra* note 232, at pp.17-20.

9.6.1 Summary of Good Practice

Good practice suggests a number of general principles to be respected by investors and governments alike in responding to social and environmental issues. A checklist of the main considerations is presented in summary form below:

Stakeholder Involvement Involve all key stakeholders – government, investor, civil society, and affected communities – to the maximum extent feasible in critical decisions with respect to EI sector project development. All key documents that are submitted to government for approval by investors and operators, as well as data collection, impact assessments and management plans, should also be made available to communities in the local language. Where communities are largely illiterate, meetings should be held to present the documents and findings to communities verbally – especially to the poorest and most vulnerable segments of communities. Finally, approved documents should be provided to communities. If needed, this should include summaries in local language or understandable form for all the community members.

Grievances and Disputes While much attention is given to broad community support at project approval, there is often less attention during project implementation and operation. Thus, governments, and ideally also companies, should ensure that there are easily accessible and affordable environmental and social grievance or dispute resolution mechanisms that address the needs of the community, and give an effective voice to the poorest and most vulnerable.

Building Trust Communities are often concerned about the following: – will the tailings impoundment collapse and harm those living below it; will local water sources be polluted or poisoned; will they lose their food self-sufficiency and livelihoods because of deforestation and soil degradation? Participatory community monitoring can go a long way to reducing community concerns about environmental risks and building broad-based support for the EI sector operation through social accountability.

Early and Continuous Engagement Engage with stakeholders in a consultation process as early as possible, beginning at, or before, license award and continuously through the EI sector project cycle.

Maximum Access to Information To make intelligent decisions or contributions and to make those decisions or contributions politically legitimate, stakeholders must have access to information relative to the EI sector project: historical, current, and forecast.

Legal Context Legislation, regulations, and guidelines setting out required responses to social and environmental impacts in line with international practice should be in place, together with credible assurances of enforcement, including penalties for non-compliance.

Capacity Development and Technical Assistance Governments should build domestic capacity to deal with social and environmental impacts; and pending completion of that process, seek technical assistance from qualified international consultants.

Recognition of the Long Term Stakeholders should recognize that social and environmental safeguarding of a project is a long-term process, given project lives of 30 to 50 years.² Stakeholders should likewise recognize that environmental and (negative) social impacts must be addressed even after the resource has been depleted, and should continue through the sensitive phase of project decommissioning or closure. Land sterilized by mining could be used for other purposes, such as renewable energy production sites, horticulture, and water treatment plants. This would enable active site management on a long term basis.

Fair Trade and ASM Fair Trade has been defined as "a trading partnership, based on dialogue, transparency and respect that seeks greater equity in international trade. It contributes to sustainable development by offering better trading conditions to, and securing the rights of, marginalized producers and workers – especially in the South. Fair Trade organisations (backed by consumers) are engaged actively in supporting producers, awareness raising and in campaigning for changes in the rules and practice of conventional international trade³." The Communities and Small-Scale Mining (CASM) document "Certification and Artisanal & Small-Scale Mining"⁴ (Washington DC, 2008) considers a detailed analysis of ASM in the context of Fair Trade, including practical detailing steps for community-based mining engagement and drivers. The report considers issues of: definition; extent; participation; certification; and next steps.'

² Id., at p. 7.

³ <http://wfto.com/fair-trade/definition-fair-trade> (last visited 11 May 2016)

⁴ <http://www.eisourcebook.org/cms/Feb%202013/Certification%20and%20Artisanal%20&%20Small-Scale%20Mining.pdf> (last visited 11 May 2016)