

Khoday, Kishan; Perch, Leisa

Working Paper

Development from below: Social accountability in natural resource management

Working Paper, No. 91

Provided in Cooperation with:

International Policy Centre for Inclusive Growth (IPC-IG)

Suggested Citation: Khoday, Kishan; Perch, Leisa (2012) : Development from below: Social accountability in natural resource management, Working Paper, No. 91, International Policy Centre for Inclusive Growth (IPC-IG), Brasilia

This Version is available at:

<https://hdl.handle.net/10419/71833>

Standard-Nutzungsbedingungen:

Die Dokumente auf EconStor dürfen zu eigenen wissenschaftlichen Zwecken und zum Privatgebrauch gespeichert und kopiert werden.

Sie dürfen die Dokumente nicht für öffentliche oder kommerzielle Zwecke vervielfältigen, öffentlich ausstellen, öffentlich zugänglich machen, vertreiben oder anderweitig nutzen.

Sofern die Verfasser die Dokumente unter Open-Content-Lizenzen (insbesondere CC-Lizenzen) zur Verfügung gestellt haben sollten, gelten abweichend von diesen Nutzungsbedingungen die in der dort genannten Lizenz gewährten Nutzungsrechte.

Terms of use:

Documents in EconStor may be saved and copied for your personal and scholarly purposes.

You are not to copy documents for public or commercial purposes, to exhibit the documents publicly, to make them publicly available on the internet, or to distribute or otherwise use the documents in public.

If the documents have been made available under an Open Content Licence (especially Creative Commons Licences), you may exercise further usage rights as specified in the indicated licence.

DEVELOPMENT FROM BELOW: SOCIAL ACCOUNTABILITY IN NATURAL RESOURCE MANAGEMENT

Working Paper number 91 February, 2012

Kishan Khoday
UNDP

Leisa Perch
International Policy Center for Inclusive Growth (IPC-IG)

Copyright© 2012
International Policy Centre for Inclusive Growth
United Nations Development Programme

International Policy Centre for Inclusive Growth (IPC - IG)
Poverty Practice, Bureau for Development Policy, UNDP
Esplanada dos Ministérios, Bloco O, 7º andar
70052-900 Brasília, DF - Brazil
Telephone: +55 61 2105 5000

E-mail: ipc@ipc-undp.org ■ URL: www.ipc-undp.org

The International Policy Centre for Inclusive Growth is jointly supported by the Poverty Practice, Bureau for Development Policy, UNDP and the Government of Brazil.

Rights and Permissions

All rights reserved.

The text and data in this publication may be reproduced as long as the source is cited.
Reproductions for commercial purposes are forbidden.

The International Policy Centre for Inclusive Growth disseminates the findings of its work in progress to encourage the exchange of ideas about development issues. The papers are signed by the authors and should be cited accordingly. The findings, interpretations, and conclusions that they express are those of the authors and not necessarily those of the United Nations Development Programme or the Government of Brazil.

Working Papers are available online at www.ipc-undp.org and subscriptions can be requested by email to ipc@ipc-undp.org

Print ISSN: 1812-108X

DEVELOPMENT FROM BELOW:

SOCIAL ACCOUNTABILITY IN NATURAL RESOURCE MANAGEMENT

Kishan Khoday and Leisa Perch*

1 INTRODUCTION

We live in a time of transformational change, with society, economy, ecology and politics in a state of flux the world over. Of particular focus in this Working Paper are the implications for mineral-dependent economies of living in an increasingly resource-constrained world. Both countries for which growth depends on the extraction, refinement and export of such minerals, and those whose growth depends indirectly on the use of minerals in other resource-dependent industrial processes are considered. Attention is also placed on countries newly emerging as mineral-rich economies and for whom mineral exploitation will begin to play an increasing role in the structure and scale of growth. In the broader policy context, our focus is on the transition to a model of natural resource governance where goals of inclusion and sustainability are no longer secondary considerations but rather central ones.

The world is passing through a historic convergence of increasing demand for natural resources from emerging economies, historic prices across various commodity groups, a downward trend in resource supply and ecological stability, and the rise of inequality between those who develop and profit from such resources and the communities that host them. Together such factors have joined to create a break from cyclical factors that traditionally shaped commodity markets in the past, a 'new normal'. As governments and

* *Kishan Khoday* (kishan.khoday@undp.org) has served with UNDP since 1997, as UNDP Governance Advisor and Deputy Coordinator for Environment & Natural Resources in Indonesia (1997–2005), UNDP Assistant Resident Representative and Team Leader for Energy & Environment in China (2005–2009) and UNDP Deputy Resident Representative in Saudi Arabia (since 2009). *Leisa Perch* (leisa.perch@ipc-undp.org) serves as Policy Specialist/Team Leader for Rural and Sustainable Development with the International Policy Center for Inclusive Growth (IPC-IG) in Brasilia. She has served with UNDP since 2004, previously with UNDP Sub-Regional Office for Barbados and the OECS as Programme Manager for Poverty Reduction, Gender and HIV/AIDS.

The views and opinions expressed herein represent those of the authors alone, and do not necessarily represent the views or opinions of the UN, UNDP or its Member States. The authors would also like to express sincere appreciation for peer review received from a number of colleagues including: Michael Fakhri, Assistant Professor and Expert on Global Commodities, University of Oregon; Shelley Inglis, Team Leader, Rule of Law, Access to Justice and Security, UNDP, New York; Flora Kan, Senior Advisor, China Energy Research Society; and John Kielty, Corporate Responsibility Advisor, Mongolia.

corporations scramble to secure resources, investments into natural assets have surged 5000 per cent, from \$6 billion in 2000 to \$400 billion by 2010, while returns to extractive companies increased from \$3 billion to \$8 billion in the past decade (UNCTAD, 2011). Prices have also hit record highs in recent years. From 2003 to 2010, oil increased from \$30 to over \$100/barrel, iron ore rose from \$30 to \$210/dmtu, coal from \$27 to \$120/tonne, copper from \$1789 to \$9600/tonne, gold from \$364 to \$1421/tonne and aluminium from \$1431 to \$2470/tonne (Price Waterhouse Coopers, 2011). The increased financialisation of commodities creates various challenges, but it also presents an opportunity to maximise and better account for the contribution of natural assets to human development.

Much of the planet's remaining resources are located in rural areas where more than two thirds of the 1.4 billion people currently living in extreme poverty reside. The transparent, accountable and participatory governance of natural assets is now a key policy challenge which needs urgent attention. More so, as the discussion on the 'green economy' centres around 'green economic growth', which is intended to deliver both poverty reduction and equity. Equity needs special attention for many reasons including the fact that current growth is largely urban-centred while poverty is a highly rural phenomenon. Efforts targeting equitable and sustainable development must confront spatial and distributional inequities in growth and development benefits.

The 2011 *Human Development Report* found that after a certain level of maturity in growth, Human Development Index (HDI) levels show declines owing to inequity and ecological change. It highlighted the costs of ignoring the interdependencies between justice, equity and sustainability: chronic and structural poverty and income inequality; structural disempowerment, systemic exclusion and a lack of agency; and the instability and unsustainability of growth, often undermined by conflict, displacement and multiple deprivations. As recently noted in the IPC-IG *Poverty in Focus #23* (2011:7), "the integration of poverty and environment policies can have significant social rewards. Sustained interventions that keep structural realities in view, focus on impact, do not divorce themselves from the underlying causes of poverty, and invest in better governance in and greater efficacy of public policy are more likely to deliver the transformations necessary to anchor sustainable development" (IPC-IG, 2011).

Solutions to these challenges will require partnerships among government, business and civil society to rethink and transform the role of natural assets in development and craft new social compacts for inclusive, sustainable growth. This article suggests that social accountability is key to such efforts through a more active, engaged and effective civil society and processes to ensure inclusive participation and decision-making in natural resource policy formulation, implementation and benefit-sharing. Social accountability lies at the heart of this process, defined as the rights and duties that exist between people and state institutions, and social compacts on the nature of social and ecological trade-offs and the sharing of development benefits in society. This Working Paper seeks to stimulate further research in this area. Our focus is on development effectiveness in mineral-dependent economies and opportunities for delivering win-win solutions for both the environment and society through a renewed focus on sustainable human development—before another commodity boom goes to waste.

2 SOCIAL ACCOUNTABILITY: WHOSE NATURAL RESOURCES? WHOSE COMMON GOOD?

Alongside the increased gravitas given to sustainability and sustainable development, the world is witnessing a dramatic rise in social movements for inclusive, sustainable growth. In the midst of record commodity prices and record corporate profits, the gap is growing between urban industrialists and market speculators, on the one hand, and rural communities, on the other hand, who live on a treasure of natural assets but are often excluded from benefit-sharing while also suffering the impacts of ecological change.

Control over natural resources has been central to state legitimacy and corporate power around the world, shaping the nature of governance and influencing how sovereignty and statecraft function. Natural resources have always served as a base for human development; a foundation of post-colonial state-building and industrial growth strategies in developing countries around the world. Indeed, the last major commodity boom of the 1970s took place as developing countries asserted their sovereignty over natural resources as a key foundation of their broader vision for a New International Economic Order (NIEO), both enacted as global policies through landmark UN General Assembly Resolutions.¹ Today, with renewed attention by global market forces to the increasingly scarce resources of developing countries, calls for sovereignty and a sense of resource nationalism have returned.

Issues of resource security are now positioned as one of the core issues in the emergence of a new Multi-Polar World Order driven by emerging economies and their rising demand for resources. Unlike the commodity boom of the 1970s, current debates are driven not so much by post-colonial politics as much as by the rise of emerging economies at the centre of the world economy. Within this process a key driver of change has been the rise of a large and increasingly vocal middle class within resource-rich developing countries driving a new era of interest-based social-accountability politics, now pushing the political pendulum towards concerns of justice, equity and sustainability. In many ways 2011 was a 'breakthrough' year for social activism, from events across the Arab region, the USA and Europe, and in many countries in Asia, Africa and Latin America. Around the world, countries are experiencing a change in people's engagement with both the politics and economics of growth.

As foreseen by Amartya Sen in his classic *Development as Freedom*, the growing challenges of "inequality (especially that of grinding poverty in a world of unprecedented prosperity) and of public goods (that is, goods people share together, such as the environment) will almost certainly call for institutions that take us beyond the capitalist market economy" (Sen, 1999). Moving beyond the Washington Consensus trinity of liberalisation, privatisation and deregulation, today's agenda for change is characterised by the new G20 Development Consensus call for "policies that can counter the negative distributional impacts of market-oriented reforms and globalization" towards the "reconstruction of the world economy in a form conducive to sustainable, inclusive and resilient growth".

The balance point is shifting in favour of policy regimes that recognise natural assets as public goods and the role of social and environmental justice as key components of development.² Energised social movements are catalysing an evolution beyond traditional state-centric paradigms of sovereignty over natural resources towards a more rights-based, accountability-driven perspective. For rural and indigenous communities in particular, such accountability must lead not just to increased income and improved human development

indicators but also to increased access to information, participation and remedy in decision-making and remedies for injustice and abuse of power. This would mean a shift from a political economy of exclusion and ecological decline to a system conducive to the full participation of affected persons and communities in the growth process.

3 ISSUES, CHALLENGES AND THE CHANGING FACE OF PUBLIC POLICY

Natural resources are changing the geopolitical landscape of countries around the world. About 3.5 billion people live in 56 resource-rich developing countries where minerals make up more than half of export revenues. Sub-soil assets such as oil, gas, copper, iron ore and bauxite are essential to growth, particularly in emerging economies where demand has become voracious. South Africa is the highest ranking mineral-producing developing country, followed by Peru, India, Brazil, China and Chile, while among 98 least developed countries, Papua New Guinea ranks 18th, Zimbabwe 25th and the DRC 33rd. The Arab region largely dominates the oil sector alongside Brazil, Nigeria, Russia, Trinidad and Tobago, and Venezuela.

In sub-Saharan Africa, as highlighted by the 2011 African Union report *Minerals and Africa's Development*, investments in the extractive sector have risen in recent years, as progress is registered in economic competitiveness and basic infrastructure, as has global competition for the region's resources. The region now has the world's highest rates of return on investment, and is expected to see 7 per cent average growth in gross domestic product (GDP) in coming decades. The commodity boom has resulted in a doubling of economic output since 2000, with six African countries now in the world's top 10 fastest growing economies. According to the 2010 Commission for Africa report, 24 per cent of Africa's GDP is based on natural resources. Mining contributes 70 per cent to GDP in Angola, 29 per cent in Botswana, 21 per cent in Guinea, 20 per cent in Mauritania, 11 per cent in Namibia and 9 per cent in South Africa, while Gini Coefficients on social equity stood at 0.58 in Angola, 0.44 in DRC, 0.43 in Ghana and Guinea, 0.47 in Mozambique, 0.74 in Namibia, and 0.50 in Zambia and Zimbabwe (African Development Bank, 2011). Sub-Saharan Africa growth trends are increasingly driven by emerging-economy investments, whose investments into the region have seen a 13 per cent annual growth rate and are expected to surpass Organisation for Economic Co-operation and Development (OECD) investment levels by 2023.

Sub-Saharan Africa provides relatively undeveloped opportunities at attractive prices. While bringing much-needed capital and technology, community concerns have arisen that these new layers of investments could add to pre-existing challenges of social inequity and ecological change (Ernst & Young, 2011). In Central Africa, the copper belt accounts for over 20 per cent of global cobalt reserves and one-tenth of copper reserves traversing many conflict-affected states. Great attention needs to be paid to the value of equity and sustainability towards conflict prevention. West Africa has also emerged as a hotspot for commodity investments, with large iron ore deposits exist in Sierra Leone, Guinea and Liberia making the region a new focus for investments in the steel sector. Meanwhile, the region's energy sector is seeing a surge of new investments in Angola, Chad, Ghana and Nigeria. Across the region, an expanding middle class is expressing itself through calls for accountability and more equitable allocation of development dividends. Movements to reform resource regimes face off against entrenched interests, many of which retain strong remnants of the colonial era.

An African Mining Vision was endorsed in 2009 through the African Union calling for structural transformation of Africa's economies and a focus on governance challenges. As noted further below, many countries have since taken measures to achieve its goals.

In the Arab region, countries have succeeded over past decades in achieving one of the world's fastest rates of improvement on human development indicators. However, with many countries basing past development results heavily on oil-export revenues and oil reserves facing gradual decline over coming decades, the sustainability of this model is now under review. The energy sector remains central, making up approximately 40 per cent of the region's GDP and about 60 per cent of global oil reserves. But as reserves decline, countries across the region are now intensifying efforts to diversify their economies beyond oil exports. More equitable and sustainable use of resources will come into greater focus, with transformational changes now taking shape across the region, as communities demand more transparent, accountable and participatory use of the region's rich resources and an end to the squandering of its natural wealth. Issues include access and benefit-sharing between centre and periphery over oil resources in eastern regions of Libya; tensions between Sudan and the newly formed South Sudan, which hosts the majority of the area's oil reserves; large untapped oil reserves in the Kurdish north of Iraq; and continued tensions around gas reserves in Egypt's Sinai Peninsula, and centre-periphery relations related to mineral reserves in the resource-rich west and south of the country.

Across Latin America too minerals play a central role in development trends, with Mexico, Peru, Chile, Argentina and Brazil hosting 22 per cent of global investment in the minerals sector. In Brazil, the developing world's top iron ore producer, mineral production reached a record high of \$50 billion in 2011, with iron ore providing 80 per cent of total export value. Brazil has succeeded where others have not, with mineral-producing districts ranking well on the HDI. In Peru, GDP tripled since 2000, with mining accounting for 60 per cent of exports, and poverty dropping from 50% in 2000 to less than 33% in 2010.

In Asia, emerging economies such as China, India and Indonesia stand as world leaders in mineral production and are also seeing high growth in local consumption, given rapid growth rates, with their manufacturing sectors heavily reliant on aluminium, steel, copper, gold and rare earth elements. While all governments are expanding outward investments to secure resources, policymakers also seek to increase domestic resource security, with pressures mounting in resource-rich regions often hosted by indigenous communities. India has seen a surge of new investment to feed global and domestic growth. India has more than 20,000 mineral deposits and is the world's second largest producer of chromate, third largest producer of coal and lignite, and fourth largest producer of iron ore. India has experienced a doubling in produced mineral value from \$21 billion in 2006/2007 to \$40 billion in 2010/2011. Meanwhile, as almost all resources lie under forested areas in the tribal central and northeastern districts which also stand as India's poorest, issues of equity and sustainability are now major points of protest. Indonesia has major reserves of natural gas, timber and coal resources which have been at the base of 6 per cent GDP growth in recent years, while a surge of protests has risen in the eastern province of Papua with one of the world's largest copper-gold deposits, alongside one of the region's largest natural gas reserves, and a history of rights abuses and community impacts from ecological degradation.

In China, the new *12th Five-Year Plan* (2011–2016) highlights the need for resource security and calls for the share of local minerals in GDP to grow from 3 per cent today to 30 per cent by 2020, with a focus on western China, which hosts half of the country's minerals resources. A Western Development Strategy saw in its first phase (2000–2005) new infrastructure and a large-scale geological survey of the Tibetan plateau, showing over \$125 billion of iron ore, copper, gold, lead and zinc reserves. The second phase (2005–2015) has seen expanded investment; however, social movements have arisen, with resource governance now at the centre of calls by Tibetans for greater autonomy, respect for cultural traditions, prior informed consent and access to participation and remedy in decision-making in communities. Mongolia has also become a special focus for investment, particularly from neighbouring China, with the largest copper and gold reserves on the planet and one of the largest coal reserves. Meanwhile, in Afghanistan newly found reserves of rare earth metals may emerge as one of the world's largest, potentially transforming one of the poorest countries on earth with the right set of policies and partnerships, or serving as a catalyst for further conflict and political uncertainty. China has already taken the role as a lead partner for exploration and development of these new-found reserves.

Around the world, research has indicated that beyond dealing with the issues of Dutch disease, there are structural factors at work in explaining the limited lifespan and sustainability of the virtuous cycle between greater revenues and better development outcomes. These include limited social development gains in some mineral-dependent economies, ecological impacts, and the difficulties in sustainably financing human development in the context of complex and locally adaptive governance arrangements. In all regions, examples are now emerging to push forward innovations in policy and governance as well as respond to growing calls for social accountability.

4 REFORMS FOR A MORE INCLUSIVE, SUSTAINABLE GROWTH MODEL

Governments around the world increasingly suffer from the criticism that they lack accountability to and legitimacy from society; that public agencies are too easily subject to well-organised industry interest groups and that they are complicit with transnational business in exacerbating conditions of social exclusion and ecological decline. In some cases, the progressive erosion of trust in the nature of resource governance has led to a crisis of legitimacy. Around the world, higher expectations have emerged as to the potential for governance reform to enhance accountability in decision-making and establish more transparent, accountable and participatory use of natural resources as a public good. This is meant to combat corruption, prevent the squandering of natural wealth and preserve natural capital for future generations.

As noted below, law reform, indigenous autonomy regimes, corporate citizenship and south–south cooperation can play pivotal roles in setting the new boundaries of globalisation and social accountability. In particular, reform efforts should be informed by both good practice and lessons with regard to local governance and the role of informal institutions in complementing more formalised accountability mechanisms focused on rights, redress mechanisms and benefit-sharing opportunities. This can help bring about transformational change in resource management and reconciliation of poverty reduction with sustainable use of the environment.

4.1 REFORMING NATURAL RESOURCE LAW

Legal reform efforts seek to reset the balance between economic efficiency, social fairness and ecological sustainability, and shift the nature of resource governance from rent-based to interest-based negotiation and decision-making. In so doing, proponents of change pose questions on the nature of wealth and power in society. “To what ends and in whose interest do we regulate such resources? Can and should limits be placed on the use of resources to protect other social values?” (Barnes, 2009). The law is often challenged to find the right balance between public and private property rights, the role of Constitutions and international law in defining sovereignty over natural resources, and claims by indigenous peoples based on traditional use and justice. Property rights have a particularly important role in the law, defining fundamental issues of control and access as well as duties and liabilities; “a delegation of personal sovereignty, with property becoming a microcosm of law and the proprietor a mini-legislature” (McHarg et al., 2010). Beyond being a narrow, technocratic form of intervention, efforts are needed to ensure that the rule of law is known and utilised by the poorest and most marginalised people. Law reform is not a ‘quick fix’, and without investment in law and regulatory implementation (legal awareness, access to administrative legal protection, informal and formal institutions of justice and adjudication etc.) the upsurge in the extractive sector can bring serious social and ecological risks.

In sub-Saharan Africa, the Economic Community of West African States (ECOWAS) has issued a *Directive on Harmonization of Mining Policies*, Article 5 of which calls for standards of environmental integrity and community rights by 2014. Ghana, Guinea and Sierra Leone have made progress through new mining codes focused on increased tax and royalty policies, while Ghana, Liberia, Central African Republic, Nigeria and Niger are now compliant with the global Extractive Industries Transparency Initiative (EITI). In Niger, a *Charter of Good Governance* was issued with principles for resource governance, and Constitutional amendments in 2010 require transparency in resource contracts and revenues. Chad’s petroleum law sets 10 per cent of oil revenues for poverty reduction initiatives, while Ghana passed a new Petroleum Bill to regulate use of revenues from new reserves. Namibia is reviewing a possible declaration of minerals as strategic assets to be managed by state entities, while in Zimbabwe, with one of the world’s largest diamond reserves, a new Indigenization and Economic Empowerment Regulation was issued in 2011, calling for a 10 per cent share of operations for local communities. In South Africa, a Black Economic Empowerment policy and a revised *Mining Charter* of 2010 call for 15 per cent ownership of assets by Historically Disadvantaged South Africans, although recent development suggests that momentum on this is slowing down in an effort to maintain an attractive investment climate. In West Africa, a series of resource governance reforms are also emerging. In Nigeria, oil exports account for 80 per cent of budget revenues, and large social movements have arisen in recent years, with the Ogoni indigenous movement’s claims of toxic impacts and rights abuses catalysing a series of legal challenges in the courts.

In Asia, China has been active in defining new regulations related to energy resource management including new tax regime issued in 2011 for oil and gas to be extended in the future to coal, draft of a new Basic Energy Law, new regulations to improve the local share of resource revenues in western China, ways to reduce the environmental impacts through a new Strategic Environmental Assessment law and new Regulations for Public Participation in Environmental Impact Assessment and regulations to improve longevity and environmental sustainability of its rare earth mineral sector. India has embarked on overhauls to the Mines

and Minerals Act and the Land Acquisition Act which together could enhance prior and informed consent, recognition of rural land rights and benefit-sharing, local development funds, and sustainability of ecosystems. Mongolia is now reviewing ways to capitalise on its newfound position as a global minerals hub through new resource regimes and entry into the EITI, while Indonesia continues to seek ways to enhance implementation of legal reforms enacted during the past decade of post-autocratic reforms aimed at tackling corruption, improving tax and royalty systems in mining and energy sectors, addressing land rights abuses and impacts of toxic pollution on community welfare.

In the Arab region, law reform is at the centre of transformational change taking place across the region, and resource laws are likely to come into focus as a means of overcoming decades of autocratic forms of development. The much-debated Energy Law in Iraq stands as a prime example, seeking to reset the balance between centre and periphery and the nature of decision-making and benefit-sharing around the use of Iraq's vast oil reserves. Meanwhile, new post-reform eras are commencing in Libya, where the balance of natural resource use and benefits between regions will also be a central issue, while South Sudan—as the newest nation in the world—will need to develop a host of new laws including to regulate its oil reserves, one of the world's largest. In Egypt, the political shift underway could have consequences for resource laws as well, while in the oil-rich Gulf, countries such as the UAE and Saudi Arabia are issuing new clean energy policies and regulations to improve energy efficiency and expand use of renewable energy to conserve oil resources for the future.

In Latin America, social protests are leading to new efforts in Brazil to create a new Mining Regulatory Agency and new regulations on exploration, taxation and royalties and efforts in Peru through a draft Law on Prior Consultation for Indigenous Peoples alongside new legislation to expand tax and royalty systems. Neighbouring Chile, the world's top copper producer, has also responded to social demands with a new royalty regime, while Colombia and Paraguay are reviewing similar responses. Bolivia, with the world's largest reserves of lithium and the region's largest indigenous populations, is likewise reviewing further enhancements to its already proactive regulatory measures for community empowerment.

With many resource-rich countries moving ahead with reforms to natural resource laws, a need has also arisen for sharing good practices and comparative experiences through multilateral processes. One important effort is development of a global *Natural Resource Charter*, a civil society-led initiative that provides 12 principles based on good practices and lessons learned around the world that reflect key choices and strategies governments can pursue to address calls for social accountability and inclusive, sustainable growth in the extractive sector. Global initiatives such as the *Natural Resource Charter* can provide an important global platform to catalyse global constituencies for change. Another important effort underway is by the International Bar Association (IBA), which issued in 2011 a new *Model Mine Development Agreement* to serve as a reference for countries. The model agreements seek to support the efficient management of resources, effective regulatory frameworks to ensure accountability and transparency, addressing issues of land rights and tenure, and the effective role of government and administrative oversight mechanisms.

4.2 ESTABLISHING INDIGENOUS AUTONOMY REGIMES

Indigenous peoples have suffered for centuries from social, economic and political exclusion intimately connected to the appropriation by colonial and post-colonial regimes of the

resources which they host. In a time of high commodity prices and increasing resource scarcity, governments and corporations are now re-discovering the commercial potential of indigenous lands. A key priority must be to break from past eras of exploitation and empower indigenous peoples to effectively participate in and benefit from the process of resource governance. A particular priority is the use of indigenous autonomy regimes, legal frameworks specially tailored to recognise the unique history of indigenous peoples, their customary rights of ownership or access to resources, and the existence of customary laws of resource use. Communities take inspiration from the UN Permanent Forum on Indigenous Issues and the UN Declaration on Indigenous Rights passed in 2007 to recognise indigenous land rights, cultural autonomy and the need for prior and informed consent. It is in the land tenure area that implementation of resource governance and autonomy regimes have faced the greatest challenges.

In pushing their agenda for change, indigenous communities confront governance systems which have a history of complicity in generating the very exclusion and ecological change that indigenous peoples seek to address. The transformation from 'traditional' to 'modern' resource governance during colonial and post-colonial eras was a defining factor in the disempowerment of indigenous peoples. Through indigenous autonomy regimes indigenous peoples seek not only to secure access to and benefits from natural resources but also to reshape basic paradigms of progress and overturn the longstanding divide between 'civilised' and 'primitive' perpetuated by the modernist legal order. Legality and civilisation were seen as a triumph over rather than an expression of human nature, just as they were a triumph over external nature.

In many ways these paradigms continue to underlie today's systems of governance and development, which remain complicit in creating the inequity and ecological decay suffered by indigenous communities. Efforts to make overall natural resource governance more socially accountable will also depend on our ability to reconcile modern and traditional epistemologies. Through autonomy regimes, we recognise that, rather than being a thing of the past, traditional systems of resource governance exist in parallel to modern, statist systems. Indigenous autonomy regimes seek to engage the plurality of epistemologies that exist at the local level, with systems of governance existing as "nested structures of rules within rules, within further rules".

Examples of actions include those in India, home to the world's largest tribal population. A new Tribal Rights Act passed in 2007 recognised for the first time the historic injustices faced by tribal communities during colonial times and the unjust exclusion they have continued to face during the post-colonial era. The new law calls for prior informed consent before land acquisition and extractive-sector initiatives, recognises customary land rights based on centuries of occupation, and calls for respect for traditional customary laws and worldviews related to the natural environment. The new regime has faced challenges in its initial years but served as an important benchmark for social movements. Indonesia is another important case, hosting one of the world's most culturally diverse populations. This is particularly so in the eastern province of Papua, hosting one of the planet's richest levels of cultural and biological diversity. In response to tensions between communities and investments, a Special Autonomy Act for Papua was enacted in 2001, recognising for the first time their worldviews and traditions, and customary laws and institutions related to use of

the environment. It includes provisions for prior informed consent, special allocations of revenues from the extractive sector for local communities, and establishment of specialised indigenous courts to resolve conflicts with reference to customary law.

Latin America also provides leading examples of indigenous autonomy regimes targeting the governance of natural resources. Countries such as Brazil, Bolivia and Peru have for many years crafted such regimes as home to some of the world's largest indigenous populations. Peru has drafted a new Law on Prior Consultation for Indigenous Peoples meant to increase citizens' access to information, participation and remedy in decision-making, while Brazil has put in place new measures to expand protection of indigenous rights in the south of the country where new large-scale extractive-sector initiatives are set to take shape. Bolivia is also leading in this area, with Constitutional recognition of indigenous rights to land and resources and community access to participation and remedy in decision-making. This includes a new proposed Framework Law of Autonomies and Decentralisation, a far-reaching law that would deepen indigenous autonomy within public administration of natural resources among other areas.

New regimes for indigenous autonomy offer one of the greatest hopes for making progress on the principle of self-determination and can help frame the evolving boundaries of globalisation. Achieving prior informed consent principles in the early stages of extractive-sector investment projects is particularly important. Further, comparative lessons from the forestry sector highlight a need for caution. Mere consultation is not participation, and mere consent likewise does not lead to benefit-sharing. For example, prior informed consent policies related to the Reducing Emissions from Deforestation and Forest Degradation (REDD+) initiative have been of mixed success and often fall short of the level of participation and benefit-sharing reflected in one of the few global agreements defining these principles in practical terms, the 2010 Nagoya Protocol. Further, adaptation of autonomy regimes to account for mineral assets is of particular importance given the increasing value they hold in the process of development and the outright transformation of land and livelihoods that extractive industry entails. While autonomy regimes have commenced the process of politically and legally recognising rights of access and benefit-sharing over surface land and resources, further work is needed to guarantee rights over sub-soil assets; a historic opportunity for achieving inclusive, sustainable development in indigenous communities.

4.3 CORPORATE CITIZENSHIP

A key part of the challenge of achieving inclusive and sustainable growth is to infuse accountability into decision-making of transnational corporations (TNCs) and local business. In recent times, the top 40 extractive-sector TNCs recorded a 32 per cent annual increase in revenues, breaking \$400 billion for the first time in 2010, including a net profit of \$100 billion. This is notable in an era of protracted economic and fiscal crisis which was global and continues to persist. TNCs can bring much-needed capital, technology and innovation, but challenges remain to translate this into development results. Advocates for change point to a future in which the private sector plays a role as a global citizen integrating issues of social and environmental responsibility within their core business. The risks to communities from the increasing financialisation of commodities warrants heightened attention to corporate accountability—both regulatory and voluntary measures. The challenge is to craft a new global economy in which corporate citizenship can emerge as a force for human development.

New strategic partnerships can prevent conflicts between the mandates of public agencies, the interests of business and the values of civil society in defining the rules and boundaries of a rapidly changing world economy.

Towards this vision, the UN Special Representative on Business and Human Rights has recently established a new set of Guiding Principles on Business and Human Rights. The 'Ruggie Protect, Respect and Remedy Framework' was officially endorsed by the UN Human Rights Council in 2011. It focuses on the State's duty to **protect** against rights abuses by businesses and to promote responsible contracting between government and the private sector; corporate responsibility to **respect** human rights and prevent adverse impacts from investment; and providing access to **remedy** for victims against the State and corporations. These principles can infuse global and national initiatives, whether through corporate responsibility efforts or through regulatory channels.

An example of the latter is Canada's draft Law on Corporate Accountability for the Activities of Mining, Oil or Gas in Developing Countries. After social protests in Canada over rights abuses and environmental degradation around the world, in 2005 the Parliament issued a report entitled *Mining in Developing Countries and Corporate Responsibility*. If passed, it would require mining operations receiving government support to comply with certain human rights and environment guidelines, and would establish a citizen complaint and remedy mechanism. While facing narrow parliamentary defeat in recent times, it nevertheless serves as a model legal regime for enacting corporate citizenship frameworks. In addition to regulatory measures, several voluntary initiatives are playing important roles.

A prominent global initiative is the EITI, which seeks to set common policies across countries for transparency and access to information related to extractive-sector investments. Positive progress has been registered in many regions including in Africa, where Ghana, Liberia, Central African Republic, Nigeria and Niger have all become EITI compliant. Another important initiative is the Global Reporting Initiative (GRI). The GRI is a sustainability reporting framework to mainstream public disclosure on environmental, social and governance issues. A GRI Mining and Minerals Supplement covers exploration, mining and primary metal processing, including the complete project lifecycle from development through operational lifetime to closure and post-closure. It provides specific reporting frameworks on ecosystem services, emissions, indigenous rights and labour rights.

Many challenges remain in moving from principles to action. Increased attention to planning in the early lifecycle of investments is a promising step for mainstreaming social and environmental considerations throughout the mineral value chain. The ability of governments to negotiate and impose regulations on companies, particularly foreign-invested or foreign-owned companies, however, remains inconsistent. This challenge is particularly relevant to the African experience, where a new wave of nationalisation suggests that past efforts at public-private partnerships and corporate responsibility either failed or were of limited impact. Moreover, attention must be given to local companies, hybrid ownership arrangements and foreign-owned businesses as similar but potentially very distinct typologies which require specific frameworks and approaches.

4.4 SOUTH–SOUTH COOPERATION

In addition to progress on national policy reforms, issues of resource scarcity and the impacts of the extractive sector are often trans-boundary issues. Key to this is the rise of emerging economies as drivers of both supply and demand in commodity markets. Unless measures are put in place through partnerships among developing countries, emerging-economy investments into resource-rich developing countries may exacerbate pre-existing challenges of inequity and ecological change.

China in particular has become a main driver of change, with a surge of investments meant to achieve resource security. Outward Direct Investment (ODI) has grown from \$1 billion/year in 2000 to over \$5 billion/year today with cumulative stock of \$300 billion by 2010. Top destinations include South Africa, Kazakhstan, Mongolia, Nigeria, Myanmar and Zambia, while 75 per cent of ODI is to Asia and the Middle East (Ministry of Commerce, 2010). Chinese ODI to Africa grew from \$500 million in 2003 to over \$10 billion today, including \$6 billion for copper in Zambia, \$2.8 billion in metals in Congo, \$1.3 billion in iron ore in Guinea and \$1.2 billion into aluminium in Ghana in the period 2008–2010 alone. Other examples in the 2008–2010 period include \$10 billion into Brazil's oil sector and \$8 billion into Argentina's oil sector; \$7.5 billion for copper and \$1 billion for iron ore in Peru; \$4 billion, \$3.5 billion and \$3 billion into the oil sector in Iran, Syria and Iraq, respectively; \$3.5 billion into natural gas in Kazakhstan; \$1.9 billion and \$1.2 billion into iron ore in Chile and Brazil, respectively; \$1.2 billion into the steel sector in India; and \$1 billion into oil in Venezuela (Scissors, 2011).

Meanwhile, some Chinese investors are now engaged in initiatives to build local goodwill and reduce the social and environmental risks associated with their investments around the world. However, this is still a relatively new issue, and a need exists to introduce inclusive, sustainable growth solutions into investor policies and practices not only for China but for other emerging-economy outward investors as well. A role exists for multilateral entities to broker new south–south knowledge-sharing platforms and to engage emerging-economy investors in global initiatives for sustainable resource management.

One new multilateral forum to support dialogue among commodity producers and suppliers is the Global Commodities Forum facilitated by the UN Conference on Trade and Development (UNCTAD). The new Forum seeks to bring together government, business and civil society to discuss emerging challenges from the rapid commoditisation of natural assets, policy effectiveness in commodity-producing countries, and ways to effectively regulate increasing competition over resources. Another emerging process is the UN-backed Principles for Responsible Investment (PRI), which has sought to improve the understanding of environmental, social and governance (ESG) issues in commodity investments, with a view to promoting best practices. Responsible investment would see issues of equity and sustainability being incorporated into institutional investors' fiduciary duties of care and legal obligations to shareholders and clients so that issues of social inequity are taken into account in their investment decisions.

Furthermore, Sovereign Wealth Funds (SWFs) have become a strategic vehicle for outward investment and a focus of concerns over social and environmental risks in ODI. SWFs have brought about debates globally on the role of the State as a global investor, with fears arising about control over strategic resources. In response, a process has begun in recent years to review the prospects for integrating sustainable development issues into SWF decision-making. An International Working Group on SWFs has been launched in recent years

facilitated by the International Monetary Fund (IMF) and including members such as Botswana, Chile, China, Kuwait, Libya, Mexico, Qatar, Russia, Timor-Leste, Trinidad and Tobago, and UAE. Together the group has developed in recent years a set of generally accepted principles and practices constituted into the Santiago Principles, holding hope for integration of sustainability issues into SWF global investments.

5 CONCLUSION: PRIORITIES FOR INCLUSIVE, SUSTAINABLE GROWTH

The first decades of the 21st century will see an intense struggle for the world's remaining reserves of natural resources, and in the balance stands not only the well-being of ecosystems and society but the very nature of governance and development. As noted by Collier, with a view to ensuring greater inclusion through participation in and benefits from the growth process, governance becomes a critical ingredient through supportive institutional frameworks to help ensure compliance with law and policy, allocate responsibilities, and hold State actors and corporations accountable to the public (Collier, 2010). Alongside fiscal measures to better account for extractive-sector revenue, strong institutional frameworks and principles are needed to secure the long-term value of ecosystems, increase equity in access and benefit-sharing, sustain poverty reduction measures and prevent impacts on the poor, prevent conflict and generate new growth opportunities beyond resource-dependent sectors.

There are positive and negative trade-offs in politicising issues of production and consumption in a globalised world. As countries pursue policy reforms in the natural resource sector, there are significant geopolitical issues they confront with a quickly shifting global map of commodity supply and demand. In this rapidly changing arena, lines of social accountability are often blurred, particularly given the shift of production and consumption to emerging and developing countries, the dramatic rise of transnational corporations and the financialisation of the commodity sector in recent years. A challenge and opportunity moving forward is to connect nodes of influence and achieve greater coherence across jurisdictions by constructing bilateral and multilateral policy frameworks to infuse commodity markets with measures for inclusive and sustainable growth.

Key areas for urgent policy attention include:

- Legal and regulatory regimes focused on natural resources need to adapt to calls for social accountability. In particular, a need exists to reset the checks and balances between government, the private sector and civil society, expand access to judicial remedies, support maintenance of ecosystem services, means for accountability and transparency to citizens, equity in land rights and tenure and implementation, and enhanced oversight mechanisms.
- Expanded use of indigenous autonomy regimes recognises that, rather than being victims of the past, indigenous communities are agents of change in their own right, with their own vision for the future of development and the role of natural resources which they host. Although standard neo-liberal solutions hold the aura of scientific objectivity, they are politically contested projects that need adaptation to indigenous constructs of nature and society. Recognising indigenous autonomy helps achieve the principles of self-determination and the right to development.

- Taking principles of corporate responsibility forward, a need exists to integrate principles for responsible investment and improved environmental, social and governance performance into investment decision-making processes. This is combined with a need to consolidate the principle of accountability within contracting between government and the private sector; transparency to the public; integrating rights into investment agreements; and providing citizens with access to remedies.
- A need exists for new south–south knowledge-sharing platforms to engage emerging economies in ways to integrate equity and sustainability into outward investments. This can build on positive and negative experiences and lessons from developed countries, as well as catalyse innovative solutions. Multilateral platforms for south–south knowledge exchange can play an important role.

A number of policy-related research questions also need to be answered:

- How are emerging efforts to reform natural resource governance impacting the goal of social accountability? What measures can be made to consolidate the rise of civil society through institutions that increase social accountability through checks and balances on the State and corporations? How are they being tailored to the diverse categories of mineral resources?
- Within law reform processes, what role are countries developing for rights-based approaches? Are new resource governance regimes addressing the need for citizens' access to information, participation and remedy in decision-making? What kind of balance are new resource governance regimes striking between social equity and ecological protection?
- Are local efforts at indigenous autonomy regimes and land rights yielding tangible results for equity and sustainability? Beyond mere participation, how far do they go towards recognising historic injustices to indigenous communities and legitimising indigenous constructs of nature and society, and traditional regimes and customary law over resources?
- What successes have been registered in making economic diversification efforts pro-poor and pro-environment? As countries shift from commodity sectors to manufacturing and service sectors, what scope exists to integrate rural and indigenous communities into these new growth streams?
- What scope exists to integrate new green-economy and clean-technology approaches into the minerals sector to deliver social outcomes and less resource-intensive, toxic processes? What scope exists for increasing the use of resource-recycling to address increasing scarcity? What scope exists for growth of markets for commodities branded as socially and environmentally conscious?
- How are emerging efforts to certify as inclusive and sustainable the actions of transnational corporate and financial actors impacting the goal of social accountability? What prospects exist for implementing the new Ruggie

Framework? Are efforts at socially and ecologically responsible investment and corporate responsibility having tangible results in the commodity sector?

- Are emerging economies making progress in addressing goals of inclusive, sustainable growth within their outward investments? May innovative approaches emerge from the new interactions between emerging and developing countries that add value to the approaches attempted by developed countries in the past?

As we approach the 2012 Rio Earth Summit, a key focus should be to direct the emerging models for a green-economy approach towards the growing challenges of making the management of natural assets more socially accountable and ecologically sustainable. This can help address both rising levels of social inequity around resource use and the growing call for responsive global and local development policies. Beyond reactive and responsive modes of crisis management, a new model of growth and development could well emerge from this process, building on lessons of the past and new approaches to resource governance enabled by principles of inclusion and sustainability.

REFERENCES

- African Development Bank (2011). *Statistical Yearbook of Africa*. Tunis, AfDB.
- African Union and UNECA (2011). *Minerals and Africa's Development 2011 Report*. Addis Ababa, African Union.
- Barnes, R. (2009). *Property Rights and Natural Resources*. Oxford, Hart Publishing: 10.
- Collier, P. (2010). *The Plundered Planet: Why We Must – and How We Can – Manage Nature for Global Prosperity*. Oxford, Oxford University Press.
- Ernst & Young (2011). *It's Time for Africa: Africa Attractiveness Survey*. New York, E&Y.
- Heinberg, R. (2007). *Peak Everything*. Vancouver, New Society Press.
- IPC-IG (2011). *Poverty in Focus #23*. Brasilia, IPC-IG, <http://www.ipc-undp.org/pub/IPCpovertyInFocus23.pdf> (accessed 10 February 2012).
- McHarg A., B. Barton, A. Bradbrook and L. Godden (2010), *Property and the Law in Energy and Natural Resources*. Oxford, Oxford University Press: 31.
- Ministry of Commerce (2010), *Statistical Bulletin of China's ODI: 2009*. Beijing, MOFCOM.
- Nixon, R. (2011). *Slow Violence and the Environmentalism of the Poor*. Cambridge, MA, Harvard University Press.
- Price Waterhouse Coopers (2011). *Mining 2011: The Game Has Changed*. PWC, 23–25.
- Salidjanova, N. (2011). *An Overview of China's Outward Investment*. Washington, DC, USCC.
- Schrijver, N. (1997). *Sovereignty over Natural Resources*. Cambridge, Cambridge University Press.
- Scissors, D. (2011). *China Global Investment Tracker*. Washington DC, Heritage Foundation.

Sen, A. (1999). *Development as Freedom*. New York, Knopf, pp.366, ISBN: 0-19-829-758.

Smith, M. (2011). *Against Ecological Sovereignty: Saving the Natural World*. Minneapolis, University of Minnesota Press.

UNCTAD (2011). *Global Commodities Forum Report*. Geneva, UNCTAD.

UNDESA (2009). *State of the World's Indigenous Peoples*. New York, UNDESA.

UNDP (2010) *Fostering Social Accountability: From Principle to Practice*. New York, UNDP.

UN Global Compact Office (2011). *The Responsible Investor's Guide to Commodities*. New York, UN Global Compact Office.

NOTES

1. See Declaration for the Establishment of a New International Economic Order, UN Doc A/RES/S-6/3201 (1974); and General Assembly Resolution 1803 (XVII) on Permanent Sovereignty over Natural Resources, UN Doc A/5217 (1962).

2. 'Environmental justice' refers to the fair and just treatment of all people, including those who are poor or vulnerable, with respect to decisions that concern the environment and natural resources. It is often poor and vulnerable people that suffer the most from environmental degradation or from abuse of natural resources which they often host.



International Policy Centre for Inclusive Growth (IPC-IG)

Poverty Practice, Bureau for Development Policy, UNDP

Esplanada dos Ministérios, Bloco O, 7º andar

70052-900 Brasília, DF - Brazil

Telephone: +55 61 2105 5000

E-mail: ipc@ipc-undp.org ▪ URL: www.ipc-undp.org