

**SUSTAINABLE DEVELOPMENT POLICY AND  
SUSTAINABILITY PLANNING FRAMEWORK FOR  
THE MINING SECTOR IN PAPUA NEW GUINEA**

# **GREEN PAPER**

**DEPARTMENT OF MINING**

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## ACRONYMS

|       |   |
|-------|---|
| BPS   | Baseline Planning Study                               |
| CSDP  | Community Sustainable Development Plan                |
| DEC   | Department of Environment and Conservation            |
| DMCP  | Draft Mine Closure Policy                             |
| DPC   | Development Planning Committee                        |
| EIA   | Environmental Impact Assessment                       |
| EIS   | Environmental Impact Statement                        |
| MPPC  | Mining Policy and Planning Committee                  |
| MRA   | Mineral Resources Authority                           |
| MRDC  | Mineral Resources Development Company                 |
| MRSF  | Mineral Resources Stabilisation Fund                  |
| MSISP | Mining Sector Institutional Strengthening Project     |
| MSPC  | Mining Sustainability Planning Committee              |
| MTDS  | Medium-Term Development Strategy                      |
| NEFC  | National Economic and Fiscal Commission               |
| NSC   | National Steering Committee                           |
| OECD  | Organisation for Economic Cooperation and Development |
| OTML  | Ok Tedi Mining Ltd                                    |
| PNG   | Papua New Guinea                                      |
| PST   | Project Support Team                                  |
| SPA   | Special Purposes Authority                            |
| SPB   | Sustainability Planning Branch                        |
| WMA   | Wildlife Management Area                              |

# 1 A POLICY FOR SUSTAINABLE DEVELOPMENT

## 1.1 WHY THE MINING SECTOR NEEDS THIS POLICY

1.1.1. When the Independent State of Papua New Guinea (PNG) came into existence in 1975, its mineral policy framework was widely regarded as **one of the best to be found in the developing world**. This was mainly because of the way in which it sought to reconcile the interests of the foreign investor with those of the host nation. The National Government's aim was to encourage foreign investment in a small number of large-scale mining projects, but then to invest its own share of the proceeds in the creation of a **diversified national economy** in which the mining industry would only play a minor part. The Government was also keen to use its mineral revenues to develop the country's **human resources**, through the provision of health and education services, and to progressively reduce the extent of its dependence on **foreign aid** to fund its overall development program.

1.1.2. For several years after Independence, foreign mining companies were apparently keen to invest in PNG, because the country was known to possess a **wealth of mineral resources**, it had a **stable and democratic political system**, and the Government's policies were **clear and consistent**. This situation changed in the years following the forced closure of the Bougainville copper mine in 1989. The amount of money spent on exploration for new mineral reserves began to fall, while potential investors began to hesitate over the development of reserves which had already been discovered during the earlier boom in mineral exploration. There was growing evidence of **domestic discontent** over the distribution and consumption of mineral revenues, which was partly responsible for the increasing frequency of changes to the mineral policy framework, which was in turn partly responsible for the industry's growing reluctance to invest in the sector. Meanwhile, the **environmental damage** caused by the Ok Tedi mine became the focus of a global campaign to force the mining industry to clean up its act, and PNG acquired a new reputation as a country in which the industry has been unusually irresponsible in this respect.

1.1.3. Despite these problems, PNG still has a **mineral-dependent economy**. The hard-rock mining industry currently accounts for about 50% of the country's exports and 20% of its Gross Domestic Product, which is much the same as the contribution which it made at the time of Independence. This means that the ambitions of the policy makers at that time **have not been realised**. The country's mineral wealth has **not** been successfully applied to the creation of a more diversified national economy, **nor** has it served to reduce the country's dependence on foreign aid. Indeed, for all its problems, the mining industry, along with the oil and gas industry, has continued to function as the **major engine of economic growth** for the last 25 years, while most other sectors of the economy have stagnated or declined, and the overall rate of economic growth has barely kept pace with the rate of population growth.

1.1.4. The National Government's failure to apply its own share of mineral revenues to a broader national process of economic and social development has contributed to the growing demand for a **greater share of these revenues to be distributed to the provinces, districts or communities** which host the large-scale mining projects from which these revenues are derived. This is often expressed as a demand for local people to be compensated for the social and environmental impact of these mining operations. But if the national share of mineral wealth has so far failed to contribute to a broader national process of social and economic development, there is no obvious reason to believe that a bigger **local** share of mineral wealth will contribute to a broader **local** process of economic and social development. If anything, the problem of dependency is more acute at the local level than it is at the national level. The more that local people come to depend on a single mining project for their incomes and general welfare, the more they are likely to lose when the mine closes. It is therefore even more important that the local share of mineral wealth should be effectively managed and invested for the benefit of **future generations** (see Box 1).

**Box 1:** The distribution and investment of mineral revenues.

In the 20 years from 1982 to 2001, four large-scale mining projects (Ok Tedi, Misima, Porgera and Lihir) generated around K3.6 billion in direct benefits to PNG. Approximately one third of this amount accrued to stakeholders within the four host provinces, and roughly half of this one third share was captured by local landowners. The National Government has returned more than one quarter of its mineral revenues to the host provinces in the form of royalties, Special Support Grants, other mining grants, the Tax Credit Scheme, and dividends on project equity [see Working Paper 2, Chapter 6]. Over the next 10 years, it is estimated that a further K750 million should flow to provincial and local-level governments, and a further K450 million to local landowners and mine-affected communities, from existing mining projects. But **the National Government now finds that it is unable to meet the commitments** which it has already made to the host provinces, partly because of the changes recently made to the fiscal regime in the mining and petroleum sectors, and partly because its other sources of domestic revenue have been shrinking rapidly. Meanwhile, **provincial governments and landowner organisations suffer from an obvious lack of capacity to manage their own share of the benefits or to plan their application to the goal of sustainable development** [see Working Paper 6, Chapter 7]. For example, the Fly River Provincial Government has very little to show for over K200 million which it has derived from the Ok Tedi mine since 1984. **The National Government must find ways to develop this capacity** instead of allocating more of its own financial resources to unsustainable forms of expenditure in the host provinces.

1.1.5. Calculations of the social and economic benefits of mining for national stakeholders are normally confined to specific forms of mineral wealth **at their point of derivation**, as initial income streams, without proceeding to any assessment of the way in which these flows of mineral wealth are subsequently utilised. If there is growing evidence that the mineral wealth derived from successive mining projects has not produced sustainable development outcomes, this will add weight to the argument that the social and environmental costs of mining will not have been worth the sacrifice, and the barriers to new mining investment are then likely to be raised. An assessment of these social and environmental costs therefore needs to be framed by an assessment of **how to sustain the social and economic benefits of mining throughout and beyond the life of each mine**.

1.1.6. PNG is still **highly prospective** from a geological point of view, but the amount of money spent on mineral exploration continues to decline (it was barely 10 million US dollars in 2001), and it is proving increasingly difficult to finance the development of reserves which have already been identified. As three of the four large-scale mines are due to close within the next decade, it seems that the industry may now be in decline. This is not only, or even primarily, because PNG has the wrong policies. Global spending on mineral exploration has been falling for the last five years, as part of a cycle of expansion and contraction which is a familiar feature of the mining industry. Global demand for mineral commodities will continue to grow, and as proven reserves are depleted, spending on exploration is bound to revive. What PNG now has is a sort of **breathing space** in which to review the whole of its mineral policy framework in order to establish the conditions under which the mining industry can make a more significant contribution to achievement of sustainable development outcomes than it has done in the past. It is not a question of restoring the old mineral policy framework, because the world has changed since 1975, so has the mining industry, and so has PNG. **The challenge now is to promote the more sustainable use of the benefits still to be derived from existing mines, and a form of investment in new projects which will produce more sustainable outcomes in the future**.

## 1.2 STEPS IN DEVELOPMENT OF THE POLICY

1.2.1. The recently published report of the 'Mining, Minerals and Sustainable Development Project' [see Working Paper 1] has rightly said that a sustainable development policy for the mining sector will not be worthy of the name unless it is developed through a **democratic and participatory process**. Papua New Guinea has too many laws and policies which have been drafted in haste, without proper public consultation, and which then create more problems than they solve. This Green Paper is part of a process of public consultation which has already begun, but which has not yet been completed [see Working Paper 7, Chapter 1].

1.2.2. This Green Paper is the result of a process of consultation and analysis which began in March 2002, when a **National Steering Committee** (NSC) was established to supervise the work of a team of consultants engaged by the Department of Mining under the terms of the Mining Sector Institutional Strengthening Project. The NSC has comprised representatives of those national government agencies whose support is essential for the successful implementation of a Sustainable Development Policy and Sustainability Planning Framework for the mining sector in PNG. These agencies or their representatives comprise one of the two main groups of **primary stakeholders** in this policy process.

1.2.3. The first stage in the actual process of consultation was to collect information and ideas from a variety of **project area stakeholders** around each of the four large-scale mining projects which are currently operating in PNG – Ok Tedi, Porgera, Misima and Lihir [see list of organisations consulted]. These people were understood to be the second group of primary stakeholders who had to be consulted over the development of a new policy and planning framework because of their familiarity with the everyday operation and impact of large-scale mining projects.

1.2.4. After this first round of fieldwork, a **national workshop** was convened in June 2002 to present the initial findings and recommendations to some of the project area stakeholders and to discuss policy issues and options with them. This was immediately followed by a **second national workshop** to discuss a draft policy and planning framework with members of the NSC. The principal outcome of this second workshop was an instruction by the NSC for the Department of Mining to proceed with the development of the Sustainable Development Policy and Sustainability Planning Framework for presentation at the '**Mining and the Community II**' **conference** to be held in Madang in September 2002.

1.2.5. In preparation for this conference, the consultants identified **ten key policy issues** [see Section 1.4] which had emerged from the first round of consultation with project area stakeholders, and began a second round of consultation with members of the NSC about the range of **policy options** available to address these issues, and the likely reaction of individual Government agencies to some of these options. The results of this second round of consultation were presented to participants in the Madang conference, including a number of **secondary stakeholders** who had not previously been engaged in the policy process, as well as a significant proportion of the primary stakeholders who had already been consulted. On the third day of the conference, participants divided into **six working groups** to examine the options available to address one or more of the ten key policy issues which had already been identified. The results of this exercise were duly incorporated into the first draft of the Green Paper which was produced immediately after the conference.

1.2.6. A separate meeting was then arranged in Port Moresby with representatives of several **non-government organisations**, especially those which had not been represented at the Madang conference. The purpose of this meeting was to explain the policy process, and to flag the next stage of public consultation which would follow from production of a Green Paper.

1.2.7. A **Green Paper** is **not** a statement of government policy, but a **public discussion paper** which:

- is produced and distributed by government;
- describes one or more policy issues to be addressed;
- outlines a number of proposals for dealing with these issues; and
- invites public comment on the merits of these proposals.

1.2.8. This Green Paper puts forward a number of issues, proposals, and arguments which are primarily the outcome of consultation with what are here called the **primary stakeholders** in the formation and implementation of a Sustainable Development Policy and Sustainability Planning Framework for the mining sector in PNG. The next stage in the policy process is a period of wider public consultation, with both primary **and secondary** stakeholders, over the content of the Green Paper. The Department of Mining will take full account of the results of this second round of consultation before drafting a **White Paper** for approval by the National Executive Council and the National Parliament. The White Paper **will** be a statement of government policy, and will be accompanied by recommendations for the amendment of existing legislation.

1.2.9. A total of eight Working Papers (see Box 2) have been produced by the team of consultants engaged by the Department of Mining to produce this Green Paper. The Green Paper makes reference to the findings and recommendations of the Working Papers at several points. However, responsibility for the views expressed in these papers rests with the individual authors, and not with the Department of Mining or any other organisation or institution involved in the policy process. While the Working Papers have been used to guide the proposals contained in the Green Paper, this does not mean that all of the findings and recommendations contained in the Working Papers have been referenced or adopted.

**Box 2:** Working Papers produced as background material for the Green Paper.

1. Implications of the 'Mining, Minerals and Sustainable Development' Project.
2. Benefit Stream Analysis.
3. Business Development, Training and Employment.
4. Public Infrastructure and Cost Analysis.
5. Landowner Equity Case Studies.
6. Institutional Analysis.
7. Analysis of Ten Key Policy Issues.
8. International Best Practice in Sustainable Development.

### 1.3 DEFINITION OF 'SUSTAINABLE DEVELOPMENT'

1.3.1. According to the World Commission on Environment and Development (1987):

*Sustainable development is development that meets the needs of the present without compromising the ability of future generations to meet their own needs.*

1.3.2. This definition of ‘sustainable development’ was foreshadowed in the Fourth Goal of PNG’s National Constitution (1975), which is:

*for Papua New Guinea’s natural resources and environment to be conserved and used for the collective benefit of us all, and be replenished for the benefit of future generations.*

It might be argued that this goal does not apply to the use of **mineral** resources, because these are **non-renewable**, and therefore cannot be ‘**replenished**’. This is why people sometimes say that ‘mining is unsustainable’.

1.3.3. However, the first of three Directive Principles appended to the Fourth Goal is clearly meant to cover the development of mineral resources. This calls for:

*wise use to be made of our natural resources and the environment in and on the land or seabed, in the sea, under the land, and in the air, in the interests of our development and in trust for future generations.*

1.3.4. The ‘wise use’ of mineral resources should also pay due consideration to the other two Directive Principles attached to the Fourth National Goal, which call for:

*the conservation and replenishment, for the benefit of ourselves and posterity, of the environment and its sacred, scenic and historical qualities; [and for] all necessary steps to be taken to give adequate protection to our valued birds, animals, fish, insects, plants and trees.*

1.3.5. In its application to the mining sector, the Fourth Goal can thus be read as a call:

*for Papua New Guinea’s mineral resources to be used wisely, for the collective benefit of us all, in the interests of our development, and for the benefit of future generations, without compromising the capacity of our natural ecosystems to supply the needs of those future generations.*

This is a definition of the way in which mining should contribute to sustainable development in Papua New Guinea.

1.3.6. There is now widespread acceptance of the idea that sustainable development has three distinct aspects -- economic, social and environmental -- but there is still some argument about the way in which each of these so-called ‘pillars’ of sustainability should be defined and measured. For present purposes, it is suggested that:

- Mining contributes to the sustainability of national **economic** development if it creates a lasting addition to the stock of national capital whose value is greater than that of the natural capital which is removed or depleted in the process, or if it serves to improve the standard of living and quality of life of the national population to an extent which would not have been possible if this natural capital had not been exploited.
- Mining contributes to the sustainability of national **social** development if mineral wealth is used in ways which add to the stock of human capital within the country (by improving the health and education of the population), and if the social impact of mining does not entail a loss of ‘social capital’ (by weakening the norms, values and institutions which hold the host society together).

1.3.7. It is not possible to make a similar statement about the contribution of mining to the sustainability of the **natural environment**, because mining (like many other economic activities) normally does entail a certain amount of environmental damage, which means a reduction in the supply of natural goods and services from local ecosystems. That is why the environmental or ecological sustainability of mining needs to be defined and measured in terms of the limits imposed on the extent of such damage or disruption over different time scales.

1.3.8. The report of the ‘Mining, Minerals and Sustainable Development Project’ argues that the conventional distinction between the economic, social and environmental aspects of sustainable development needs to be supplemented by recognition of a fourth aspect, which it calls ‘**transparent and democratic governance**’ [see Working Paper 1, Chapter 3]. If mining has a negative impact on the governance of the countries in which it occurs, then it is unlikely to make a positive contribution to the other three pillars of sustainable development. This argument is also consistent with the values embodied in Papua New Guinea’s National Constitution.

1.3.9. The Second Goal of the National Constitution, which is concerned with the values of ‘Equality and Participation’, includes a Directive Principle which calls for:

*every effort to be made to achieve an equitable distribution of incomes and other benefits of development among individuals and throughout the various parts of the country.*

If mineral resources are to be used for ‘**the collective benefit of us all**’, then **all four** pillars of sustainable development need to be established in **each part of the country** where mining occurs, and for **each section of the national population** which experiences the impact of mineral exploration and development. The Constitution does not countenance the sort of ‘trade-off’ in which the country as a whole is allowed to benefit at the expense of a minority of its citizens. Sustainability and equity are therefore two sides of the same coin.

## 1.4 OUTLINE OF KEY POLICY ISSUES

1.4.1. Through the initial process of consultation described in Section 1.2 [above], the Department identified ten key issues and questions which need to be addressed in a Sustainable Development Policy for the mining sector (see Box 3). **Issues 1-5** are primarily concerned with the **principles** which should guide **relationships** between stakeholders in the production, distribution, investment and consumption of the nation’s mineral wealth. These ‘**Principles for Sustainable Development**’ are discussed in **Part 2** of this Green Paper. **Issues 6-10** are primarily issues of **practice** or **implementation** which are framed as ‘role-and-responsibility’ issues for the different stakeholders. The ‘**Sustainability Planning Framework**’ is understood to be a set of proposals or measures to address this second set of issues, as described in **Part 3** of this Green Paper.

1.4.2. Although the division between Parts 2 and 3 of this Green Paper is partly based on a distinction between **statements of principle** and **proposals for action or implementation**, each of the ten issues involves some questions of principle, some questions of policy, and some problems of action or implementation. Questions of principle are addressed at greater length in Part 2 than in Part 3, while problems of implementation are addressed at greater length in Part 3 than in Part 2. The overall aim is to spell out the **practical implications** of adopting certain principles or policies, because it is much easier to produce broad statements of principle than to show how sustainable development outcomes can be achieved in practice, given the institutional constraints on the successful implementation of government policies [see Working Paper 6].

**Box 3: Ten key policy issues for the mining sector in PNG**

1. The **industry viability** issue asks: ‘What principles should govern relationships between **private investors, the National Government, and civil society** in order for the mining industry to be sustained in a form which makes the most effective possible contribution to sustainable development?’
2. The **stakeholder engagement** issue asks: ‘How should **project area stakeholders** in the mining sector be **identified and classified**, and how should their **interests be accommodated** throughout the different stages of the mining project cycle, from exploration through to closure and beyond?’
3. The **collective benefit** issue asks: ‘What principles should guide negotiations about the distribution of **mineral wealth** between people who belong to the **current generation** of the national population in order for mineral wealth to make the most effective possible contribution to sustainable development?’
4. The **future generations** issue asks: ‘What principles should guide negotiations about the distribution of **mineral wealth** between the current generation and **future generations** of the national population in order for mineral wealth to make the most effective possible contribution to sustainable development?’
5. The **decentralisation** issue asks: ‘What principles should guide negotiations about the distribution of **mineral revenues** between different **levels of government** in order for mineral revenues to make the most effective possible contribution to sustainable development?’
6. The **project planning** issue asks: ‘What should be the roles and responsibilities of developers, government agencies, and other stakeholders in **planning the contribution of individual mining projects** to sustainable development in PNG throughout the different stages of the mining project cycle?’
7. The **benefit management** issue asks: ‘What should be the roles and responsibilities of developers, government agencies, and other stakeholders in **managing the investment of mineral wealth** for purposes of sustainable development in the provinces or areas which host major mining projects?’
8. The **transparency** issue asks: ‘What should be the roles and responsibilities of developers, government agencies, and other stakeholders in **disseminating information about the distribution and management of mineral wealth** in order for mineral wealth to make the most effective possible contribution to sustainable development?’
9. The **dispute resolution** issue asks: ‘What should be the roles and responsibilities of developers, government agencies, and other stakeholders in **resolving disputes arising from the development of major mining projects** in order for the mining industry to make the most effective possible contribution to sustainable development?’
10. The **capacity building** issue asks: ‘What should be the roles and responsibilities of developers, government agencies, and other stakeholders in **building the capacity of national and local institutions to manage the mining industry and mineral wealth** for the achievement of sustainable development outcomes?’

1.4.3. This Green Paper could have been arranged to deal with **each of the four aspects or ‘pillars’** of sustainable development as a separate issue, in which case there would have been one part dealing with ecological sustainability, one with economic sustainability, one with social sustainability, and one with questions of good governance. However, this way of dividing up the problem of sustainable development encourages the belief that each aspect can be addressed without reference to the others, which is clearly not the case. Each of the ten key issues which have emerged from the process of consultation with the primary stakeholders involves a mixture of ecological, economic, social and political problems. The analysis of each issue aims to highlight the way in which these problems are related to each other.

1.4.4. The four aspects of sustainable development are reflected in **ten cross-cutting ‘hot button’ issues** which are discussed at various points in the Green Paper and in the Working Papers on which it is based. These cross-cutting issues – **national economic development, local economic development, good governance, environmental management, social impact, community participation, poverty alleviation, gender equity, mine closure, and future generations** – are understood to be topics of major concern for some of the stakeholders in the policy process. (Although the ‘future generations’ issue is one of the ten key issues already listed in Box 3, analysis of this issue has been absorbed into a broader analysis of ‘benefit distribution’ in Part 2 of the Green Paper.) The Green Paper and supporting documentation have been made available in a form which enables the reader to quickly locate the points at which each of these cross-cutting issues is addressed.

1.4.5. There are some issues which would certainly count as distinctive policy issues in some countries, but which are not included in either the list of key policy issues or the list of ‘hot button’ issues addressed in this Green Paper because they are not considered to be major issues for the mining sector in PNG at this point in time. For example, the abuse of **human rights** in mine-affected communities is not treated as a problem in its own right because it is not a problem which arises from a fundamental imbalance of power between these communities and the agents of the State. While there have been incidents of violent conflict over the development of major mining projects, these are due to the absence or failure of the institutions which ought to **resolve disputes** between project area stakeholders. And if men abuse the rights of women in mine-affected communities, this is best addressed as a problem of **gender equity** which demands some affirmative action as part of the project planning process.

1.4.6. Given the nature of the process of consultation by which the ten key policy issues have been identified [see Section 1.2], it also needs to be recognised that these are primarily issues which have arisen from the development of **large-scale** mining projects. This is not to deny the existence of a large population of small-scale and artisanal gold miners whose activities involve significant environmental risks and health hazards. However, the Department of Mining has established a separate program of action to address these issues, and does not believe that a new policy is required to make this program more effective (see Box 4). The presence of artisanal miners also poses a distinctive set of problems for the developers of large-scale mines at all stages of the mining project cycle, from exploration through to closure. A Sustainable Development Policy for the mining sector should focus on the management of these problems by means on an **integrated project planning framework** which includes the process of mine closure planning.

**Box 4:** Management of the small-scale mining sector in PNG.

It is estimated that there are as many as 60,000 **small-scale and artisanal gold miners** in PNG, although many of them only work on a part-time basis. Between them, they produce approximately 70,000 ounces of gold each year which is exported through legitimate channels, and perhaps half as much again which is exported without licence. At current prices, this means that their production is worth more than the combined value of the copra, tea and rubber industries, or roughly half the value of the coffee industry. Their activities are known to pose a variety of environmental and physical hazards, most notably those arising from the use of mercury. However, while there is always room for improvement, this sub-sector is already managed and regulated more effectively in PNG than in most other developing countries, despite the limited amounts of revenue which it contributes to the Government's coffers. The Government has also received (and continues to receive) donor support for its management regime, and is about to embark on a major program of environmental education for artisanal miners which is funded by the European Union.

## 2 PRINCIPLES FOR SUSTAINABLE DEVELOPMENT

### 2.1 INDUSTRY VIABILITY

What principles should govern relationships between **private investors, the National Government, and civil society** in order for the mining industry to be sustained in a form which makes the most effective possible contribution to sustainable development?

#### 2.1.1 Principles for a viable industry

2.1.1.1. The mining industry currently accounts for **about 50% of the country's exports and 20% of its Gross Domestic Product**. The National Government derives more than 20% of its domestic revenues from taxes levied directly on the industry (see Table 1), and the industry's linkages to the rest of the national economy probably mean that it is responsible for **about one third of domestic revenues** from all sources. These figures take no account of the independent contribution of the oil industry to national exports and government revenues. But even if there were no oil industry, they would still mean that PNG has a mineral-dependent economy and a government whose budget is substantially dependent on the collection of mineral revenues.

**Table 1:** Direct mineral revenues (K'000) derived from four large-scale mining projects.

|                       | 1995         | 1996         | 1997         | 1998         | 1999         | 2000         | 2001         | Total          |
|-----------------------|--------------|--------------|--------------|--------------|--------------|--------------|--------------|----------------|
| Ok Tedi               | 63.5         | 127.9        | 114.5        | 98.8         | 163.5        | 215.2        | 230.6        | <b>1013.9</b>  |
| Misima                | 102.7        | 58.5         | 15.2         | 44.3         | 26.0         | 33.2         | 27.7         | <b>307.5</b>   |
| Porgera               | 172.9        | 125.5        | 103.9        | 111.0        | 123.6        | 112.3        | 101.8        | <b>850.8</b>   |
| Lihir                 |              |              |              | 40.2         | 54.2         | 49.6         | 60.7         | <b>204.7</b>   |
| <b>Total</b>          | <b>339.1</b> | <b>311.8</b> | <b>233.5</b> | <b>294.3</b> | <b>367.2</b> | <b>410.3</b> | <b>420.7</b> | <b>2377.0</b>  |
| Internal revenue      | 1261.2       | 1413.2       | 1613.1       | 1444.4       | 2332.0       | 1962.0       | 1926.0       | <b>11951.9</b> |
| <b>% from 4 mines</b> | <b>26.9%</b> | <b>22.1%</b> | <b>14.5%</b> | <b>20.4%</b> | <b>15.7%</b> | <b>20.9%</b> | <b>21.8%</b> | <b>20.3%</b>   |

2.1.1.2. During the course of the next decade, **government revenues** derived, directly or indirectly, from the mining and petroleum sectors are projected to fall to **less than 20% of their current levels** if no new major projects are developed. The Misima, Porgera and Ok Tedi mines will have closed, and current oil reserves will have been exhausted. Even if the Gas-to-Queensland Project and the Ramu Nickel Project proceed to development in the next 5 years, government revenues from the mining and petroleum sectors are still projected to fall to **less than 40%** of their current levels by 2012. Since direct and indirect revenues from these two sectors account for 40-50% of the Government's total revenues from domestic sources, and there is no prospect of any increase in revenues from other sources, the Government can expect an average annual decline of 3-4% in its domestic revenues over the next decade. This poses problems of **macro-economic planning and management** which are clearly beyond the scope of a Sustainable Development Policy for the mining sector. However, these projections or scenarios have to be taken into account in the design of such a policy.

2.1.1.3. The projected decline of the mining industry, and the consequent decline in government revenues from the mining sector, is not entirely due to the past failings of government policy. The average **rate of return** on mining investment is at historically low levels. The **costs of mining** in PNG are already high by international standards, partly because of perceptions of political risk, but also because of the physical terrain and the lack of economic infrastructure. Any further increase in the total cost of mining as a result of changes to government policy will pose a further threat to the sustainability of a local industry whose viability is already questionable. The mining industry will not be able to make a continuing contribution to the sustainable development of the country as a whole, or the sustainable development of those areas or communities where mining projects are located, **if the industry itself proves to be unsustainable**.

2.1.1.4. During the 1990s, the PNG Government was **continually changing the fiscal regime** which applied to the mining industry. These changes added to the uncertainty of the investment climate, and were partly responsible for the rapid decline in mineral exploration activity during this decade. They were imposed during a period when gold and copper prices were falling, while the risk of investment was seen to have risen as a result of the Bougainville rebellion and the growing problems of law and order in both urban and rural areas. The National Government made these changes in an effort to sustain its own share of mineral revenues while dispensing a larger share to landowning communities and provincial governments as the price of their support for the development of major mining projects. The companies found that they also had to spend more to purchase local political support for their operations, regardless of any increase in the amount which they paid in tax to the Government. The Government has since made a series of policy decisions which are intended to stabilise the fiscal regime in the hope of attracting new investment to the sector [see Section 2.1.3]. Any subsequent increase in the overall rate of tax on the mining industry would only make sense if the Government were to assume that there is **no realistic prospect of new mining projects being developed** over the course of the next decade.

2.1.1.5. Discussion of the **mining industry's contribution to national economic development** has mainly been concerned with the total share of mineral wealth which ought to be appropriated by the Government as mineral revenues, and on the way in which these revenues should be divided between input-based taxes (such as import duties), output-based taxes (such as royalties), and profit-based taxes (such as corporate income tax). It has not taken sufficient account of the way in which these revenues are subsequently redistributed, managed or invested. And it has not taken sufficient account of the other ways in which mineral wealth is captured and used by national beneficiaries, without first passing through the Government's accounts. As a result, arguments about the fiscal regime have become a zero-sum game between the National Government and the mining industry, in which each side can only gain at the expense of the other. These arguments need to be transformed into a more productive dialogue about the principles which should govern relationships between private investors and **all national beneficiaries** (including the Government), and the way in which the industry and the Government should **agree to divide the costs of achieving sustainable development outcomes for the nation as a whole** [see Working Paper 8].

2.1.1.6. It is sometimes argued that PNG should **leave its mineral resources in the ground** until it has developed the capacity to manage the process of resource development more effectively and apply its mineral wealth to the pursuit of sustainable development. This argument is partly based on a misunderstanding of the **relationship between mineral resources and mineral reserves**. The nation cannot know what mineral resources are available for development without a process of mineral exploration to determine the existence of its mineral reserves (see Box 5). The Government does not have the resources or capacity to undertake this process of exploration, and private investors will not do so unless they are assured of the right to develop the reserves which they discover. The decline in mineral exploration over the past decade means that PNG's mineral reserves are now contracting, when they might otherwise have been expanding. Yet PNG has accumulated experience and expertise in the management of mineral exploration and development which may rapidly be lost if these activities grind to a halt. **These capacities are unlikely to be sustained and renewed if there is no mining industry and no mineral wealth to be managed**.

**Box 5:** Mineral resources, mineral wealth, and mineral revenues.

**Mineral resources** are located in the earth's crust in quantities which can only be guessed at. **Mineral reserves** are those mineral resources whose existence and estimated volume have been established by a process of exploration which is largely financed by private companies, but partly subsidised by governments (through geological surveys). **Economic reserves** are those mineral reserves which are deemed to be worth developing at current market prices. For the purpose of this Green Paper, mineral reserves are held to exclude oil and gas reserves.

**Mineral wealth** is the combination of incomes, revenues and benefits which are derived from **mineral resources** through the process of exploration and development. A **nation's** mineral wealth is the combination of incomes, revenues and benefits which national stakeholders derive from the exploration and development of their country's mineral resources.

**Mineral revenues** comprise the share of mineral wealth which is appropriated by governments through various forms of taxation. **Direct** mineral revenues are collected directly from the mining industry and its employees. **Indirect** mineral revenues are collected from other industries or individuals whose own incomes are derived from goods and services supplied to the mining industry.

2.1.1.7. It may be argued that PNG can no longer afford to worry about the viability of the large-scale mining industry, because it cannot hope to create the conditions required for new investment to take place, or because the industry is responsible for unacceptable levels of environmental damage, or because the flow of mineral wealth creates a culture of corruption and dependency, at both the national and the local level, which can never be reconciled with the values of sustainable development. However, these arguments need to be balanced by consideration of the social, economic and environmental impacts of any alternative form of large-scale development which might be expected to replace the incomes presently derived from major mining projects (see Box 6). If these alternatives are unrealistic or unacceptable, it is necessary to ask whether the economic activities of smallholders (including small-scale alluvial miners) can sustain the levels of public expenditure which people are still demanding, or whether it would be better for the Government and the country to be even more dependent on foreign aid for the flow of public goods and services.

**Box 6:** The choice between extractive industry and agricultural development.

It may be argued that PNG should accept the inevitable decline and eventual extinction of its large-scale mining industry and plan for the replacement of mineral exports and revenues by additional agricultural exports and revenues. But what would this mean in practice? In 2001, the area planted to oil palm was 111,773 hectares, and the value of palm oil exports was K347 million. The value of gold and copper exports in that year was K2,974 million. In order for palm oil exports to replace the value of gold and copper exports, almost 1 million hectares (or 10,000 square kilometres) of forest would have to be cleared and planted to oil palm. Even the most ardent supporters of large-scale agricultural development would concede that this is not a feasible prospect for the medium term, given the constraints imposed by the prevalence of customary land tenure.

2.1.1.8. Many of the costs incurred by the developers of major mining projects in PNG, and many of the benefits which national stakeholders derive from these projects, have not been given sufficient public recognition, either in this country or overseas. The Government is aware of the need to **reduce the indirect costs of mining** which are currently borne by the industry but which do **not contribute to sustainable development**, while recognising and rewarding those companies which incur **additional indirect costs** (or which internalise more of their external costs) in the pursuit of sustainable development objectives (see Box 7). But the Government can hardly expect the industry to internalise more of its social and environmental costs, or to sustain the range of social and economic benefits which it provides to the people of PNG, unless the Government itself can support a realistic calculation of the way in which these costs and benefits are distributed between the different stakeholders involved in the mining sector.

**Box 7:** The direct, indirect and hidden costs of mining.

**Direct costs** are those which are necessarily incurred by mining companies in the process of discovering, producing and selling mineral commodities with the techniques or technologies which are currently available.

**Indirect costs** are those which companies incur through the payment of taxes to the host government, the purchase of risk insurance, the mitigation of environmental damage, the management of community affairs, and so on and so forth.

**Hidden (or external) costs** are those borne by other stakeholders (including the natural environment) which do not figure in a company's bottom line.

2.1.1.9. The world's biggest mining companies are under considerable pressure to demonstrate their commitment to sustainable development in all of the countries where they operate [see Working Paper 1, Chapter 2]. Their '**social licence to operate**' is being questioned by a variety of stakeholders based in the developed countries which consume most of their products. This means that **the industry has an incentive** to support and comply with sustainable development policies adopted by the governments of developing countries, even if these governments have only limited capacity to implement or enforce such policies. The PNG Government now has an opportunity to redevelop its former reputation as the owner of a mineral policy framework which ranks with the best in the world. This means that the Government needs to show a sceptical foreign audience that its policies are for the good of the country, and not just for the good of the industry. At the same time, the Government will encourage all investors in the mining industry to follow international standards of best practice in demonstrating the **extent of their own commitment or contribution** to sustainable development, both for the areas where they operate or for the country as a whole.

2.1.1.10. The Government's reputation as a regulator of the mining industry has suffered as a consequence of its insistence on taking an **equity stake** in large-scale mining projects. It is one thing to promote investment in the mining sector and to tax the profits made by mining companies. But when the Government participates in the development of mineral resources as a joint venture partner, it can no longer claim to act as a **neutral arbiter** in disputes between the mining industry and elements of civil society. If the Government intends to exercise its constitutional responsibility to ensure that the industry contributes to sustainable development at both the local and the national scale, it should **not** be seen to **compromise its independence** by investing directly in the industry on its own account. It should instead make sure that civil society is fully engaged in an informed debate about the design and implementation of a Sustainable Development Policy.

## 2.1.2 Scope of Sustainable Development Policy

2.1.2.1. The Department proposes to remove the distinction currently drawn in policy and legislation between **large-scale** mining projects, with a projected capital development cost of more than US\$75 million, and projects of medium or small scale, and replace this with a distinction between **major** and **small-scale** mining projects. A major mining project may either be defined as one whose projected capital development cost exceeds US\$10 million or as one which is classified as a 'Level 3 Activity' under the terms of the *Environment Act* (2000) because it 'may result in serious environmental harm'. **The Sustainable Development Policy is intended to apply to major mining projects defined by one or other of these criteria.**

2.1.2.2. The Department therefore proposes that Development Forums should be convened, Mining Development Contracts should be signed, and Special Mining Leases should be issued for all major mining projects. It also proposes that a **single tax regime** should apply to all such projects, and that the State should abandon its option to purchase an equity stake in such projects, except insofar as a limited option is exercised on behalf of landowning groups or communities with customary rights over the relevant mining lease areas [see 2.3.4.1].

2.1.2.3. This proposal is **not** intended to create additional barriers to investment in medium-scale mining projects, but to simplify and harmonise those aspects of the national policy framework that apply to mining projects which involve a certain level of investment or a certain degree of environmental impact. The Department will seek to ensure that this framework has the **flexibility** to accommodate wide variations in the scale, impact and local circumstances of each major mining project, without compromising any of the general principles established by the Sustainable Development Policy.

### 2.1.3 Fiscal stabilisation

2.1.3.1. **The fiscal regime for the mining and petroleum sectors was the subject of a major review in 2000.** This concluded that the overall level of tax would need to be reduced and stabilised to encourage further foreign investment in both sectors. The Government is aware that mining is a risky business, and it is now committed to the maintenance of a competitive fiscal regime for both sectors which is sufficient to attract new capital for exploration and development. The Department of Mining believes that the mining industry can only contribute to sustainable development if mining projects can be developed within a predictable financial environment which makes adequate allowance for long-term profits to be made on substantial capital investments.

2.1.3.2. The **2001 and 2002 Budgets** contained a number of measures which had the effect of reducing the effective rate of tax on the mining industry from 72.3 percent to 52.6 percent. The 2003 Budget contained a number of measures intended to stimulate new investment in the mining sector. These were:

- the abolition of the Additional Profits Tax, which was considered by the industry to be one of the most significant of the remaining disincentives to investment;
- further relaxation of the so-called ‘ring-fence’ in order to allow the developers of existing projects to deduct exploration expenditures in other parts of the country from their liability to company tax, and to allow a double (200%) deduction of exploration expenditures which result in the development of a new mining project;
- allowance for accelerated depreciation of all assets used in the development of a new mining project, which will raise the net present value of the project and simplify the administration of the tax regime; and
- removal of the maximum 20-year time limit on loss carry forward, which will also simplify the administration of the tax regime.

2.1.3.3. The Department favours the **complete abandonment of the State’s current option to purchase a 30% interest in a new mining venture** at the sunk cost of exploration. The Department believes that the existence of this option has been one of the two most significant disincentives to mineral exploration (along with the Additional Profits Tax). The exercise of this option ties up limited government funds which can be better spent on the achievement of broader development goals and creates an enduring conflict of interest between the Government’s roles as regulator and investor. A degree of national ownership can still be secured through a requirement for 5 percent of a project’s equity to be offered to the public through the Port Moresby Stock Exchange, and separate provision can still be made for local communities to purchase a 5 percent share of project equity [see Section 2.3.4].

2.1.3.4. The Department will maintain its support for a fiscal regime which places more weight on **profit-based taxes** than on those forms of taxation which add to the industry’s operating costs. This can be justified as a contribution to sustainable development because it has the effect of encouraging a more efficient exploitation of mineral resources and minimising resource wastage by lowering the ‘cut-off grade’ at which the processing of mineral ores ceases to be an economic proposition.

2.1.3.5. The *Resource Contracts Fiscal Stabilisation Act* (2000) restricts the Government's right to impose additional taxes on new resource projects after the development agreements have been signed. The 2001 Budget also contained an undertaking that mining companies would henceforth have the right to negotiate **fiscal stability clauses** into their Mining Development Contracts with the State. It is proposed that fiscal terms will remain fixed, either for a period of 20 years after a contract has been signed or for the period of initial project financing, whichever is the shortest. The 2003 Budget includes a requirement for the developers of new projects to pay a premium of 2 per cent of company tax payable to the Government if they wish to make use of the provisions of the *Fiscal Stabilisation Act*.

2.1.3.6. In order to ensure that the costs of **mine closure and environmental rehabilitation** are covered in a manner which contributes to sustainable environmental outcomes, the Department proposes to establish a financial surety mechanism under the terms of a separate **Mine Closure Policy** [see Section 3.1.8]. It is envisaged that payments made by developers to a rehabilitation trust will be tax-deductible.

2.1.3.7. The Department is proposing a number of changes to **the way in which mineral revenues are distributed between national stakeholders** in order to promote the achievement of sustainable development outcomes [see Section 2.3]. These proposals do not entail any addition to the tax burden imposed on developers, but are intended to create an operating environment which should be more secure in the long term, and should therefore have the effect of reducing the operator's costs.

## 2.1.4 Mutual accountability

2.1.4.1. The Department is aware of the **growing public pressure on the mining industry** to improve its own standards of social and environmental performance, to demonstrate a greater commitment to the values of corporate social responsibility, and to make provision for independent audits of its contribution to sustainable development. The Department is also aware that many of the mining companies which are based in developed countries are now wary of investing in developing countries whose own problems of governance make it difficult for the foreign investor to demonstrate this kind of commitment.

2.1.4.2. The Department will henceforth expect any mining company proposing to invest in the development of a major mining project in PNG to include in its **Proposal for Development** a clear statement of the principles or standards of best practice for which it is prepared to be held accountable if the proposal is approved (see Box 8). In return, the investor will be expected to hold the PNG Government accountable for upholding the principles and standards of good governance to which it is committed by its own laws and policies, and by its ratification of numerous international conventions. It is proposed that an agreement by the Government and the proponent to hold each other accountable for adherence to these standards and principles should be included as an **annex to the Mining Development Contract**, and that this annex should be a **public document**.

**Box 8:** Derivation of principles or standards of best practice for sustainable development.

There are several sources for the principles or standards for which the Government of PNG and investors in major mining projects should be held jointly and mutually accountable in their development agreements. Aside from the National Constitution, these include:

- international conventions ratified by the National Government, such as those which are derived from the Universal Declaration on Human Rights, or those which are derived from the World Summit on Sustainable Development;
- inter-governmental initiatives, such as the OECD Guidelines for Multinational Enterprises, the International Organisation for Standardisation's standard ISO 14001, the Global Reporting Initiative developed by the Coalition for Environmentally Responsible Economies, and the Global Compact sponsored by the United Nations;
- the so-called 'safeguard policies' of the World Bank group, notably those relating to Natural Habitats, Environmental Assessment, Indigenous Peoples, and Involuntary Resettlement.; and
- voluntary codes of practice adopted by industry peak bodies, such as the International Council on Mining and Metals or the Minerals Council of Australia.

2.1.4.3. The Department therefore proposes a **revision of the standard template** for Mining Development Contracts to include a draft version of this public annex, and welcomes suggestions from the industry or from other interested parties on the form which this might take. The Department is also keen to ensure that the draft makes adequate provision for **third party audit** of the extent to which each of the main parties has adhered to its own set of standards and principles.

## 2.1.5 Environmental management

2.1.5.1. The environmental damage caused by the **disposal of waste and tailings from the Ok Tedi mine** has done enormous damage to the international reputation of the mining industry in PNG, and to the international reputation of the PNG Government for responsible environmental management. However, the Department of Mining does not believe that the series of planning decisions which led to the present configuration of the Ok Tedi mine is one that could have been repeated under the current environmental planning framework, nor is it likely to be repeated in future. The Department considers that all the other major mining projects which are currently operating in PNG have been subjected to a far more rigorous process of impact assessment under the provisions of the *Environmental Planning Act (1978)*, and that the operators have managed the approved method of waste and tailings disposal with due diligence. Nevertheless, there is always room for improvement as the frontiers of scientific knowledge move forward.

2.1.5.2. The impact of the Ok Tedi mine on the Fly River catchment is widely cited as a case in point by those who argue that all responsible governments and mining companies should commit themselves to abandon the practice of **riverine tailings disposal**. The PNG Government has approved this practice in the case of the Porgera and Tolukuma mines, and the resulting impact on the respective river systems and catchments has been far less severe than in the case of Ok Tedi. It is important to remember that this approval was based on consideration of PNG's **peculiar geophysical environment**, in which the combination of high rainfall and geological instability makes for a situation in which the construction of tailings dams or other methods of terrestrial storage can pose unacceptable long-term hazards. The Department believes that specific techniques or technologies for waste and tailings disposal cannot be evaluated in abstraction from such environmental considerations, and notes that the specific nature of PNG's geophysical environment has advantages, as well as disadvantages, because local ecosystems which have been damaged by mining operations have the capacity to regenerate at much higher rates than in the case of stable but dry environments where large-scale mining operations have left a far more devastating legacy. Nevertheless, the Department accepts that the practice of riverine tailings disposal is one that should not henceforth be contemplated except in the most exceptional circumstances, and that any evaluation of tailings disposal options should always be guided by the application of the **precautionary principle**, which means planning for the worst-case scenario.

2.1.5.3. There is also a certain amount of negative publicity attached to the practice of **submarine tailings disposal**, although this commonly fails to recognise the significance of the distinction between disposal of tailings into shallow coastal waters and the practice of **deep sea tailings displacement**, which is the method of disposal approved for the Misima and Lihir mines in PNG. This latter practice is approved in many countries apart from PNG, and those parts of PNG's coastline which adjoin the Bismarck and Solomon Seas are especially conducive to this practice because of the steep slope of the seabed. Nevertheless, the Department is aware of the need to ensure that approval of this practice continues to be based on the most rigorous scientific assessment of its environmental impact, and will work with the Department of Environment and Conservation to ensure that the latest scientific evidence is given due consideration in any future process of Environmental Impact Assessment for a major mining project which proposes to adopt it.

2.1.5.4. There has been a good deal of debate, at a global scale, on the question of whether mineral exploration and development should be permitted in **areas of high conservation value**, especially those which are officially designated as protected areas and recognised as such by the World Conservation Union. Although the Department of Environment and Conservation has an established interest in the identification of areas with high biodiversity values, the Government's capacity to restrict development activities in such areas is constrained by the prevalence of customary land tenure. The only type of protected area currently found on customary land in PNG is a Wildlife Management Area (WMA) gazetted under the *Fauna (Protection and Control) Act*, whose designation and management remains the responsibility of its customary owners. Those WMAs which have already been gazetted have widely variable conservation values from a strictly scientific point of view, and the customary owners of these areas might or might not wish to exclude them from any prospect of mining. The only way for the Government to exercise effective control over land use options on customary land is for all relevant government agencies to be party to an **integrated land use planning framework** for which the Department of Planning and Rural Development would most likely be the responsible central agency. Even so, the customary owners will have the final say in the matter. The Department of Mining therefore considers that the best guarantee of environmental protection on customary land lies with a process of negotiation which makes full provision for the **prior and informed consent** of the customary owners to mineral exploration or resource development [see Section 2.2.6].

### 2.1.6 Establishment of Mineral Resources Authority

2.1.6.1. The Department of Mining has received no significant increase in funding in kina terms since 1992. The rapid devaluation of the kina means that the real value of the budget is around 25% of what it was a decade ago, and it now accounts for less than 0.5% of the value of the country's mineral exports. As a consequence, staffing is half what it was in 1992. This means that **the Department's capacity to service and regulate the mining industry has been greatly reduced**

2.1.6.2. A proposal has therefore been put forward to replace the Department with a statutory corporation to be known as the **Mineral Resources Authority (MRA)**, which will be funded directly by a tax-creditable levy on non-alluvial mine production. The mission of the MRA will be to **'effectively regulate and promote a healthy, sustainable mineral industry for the long term benefit of Papua New Guinea'**.

2.1.6.3. There is no reference to sustainable development in the corporate development objectives of the Department as it is currently constituted. But **the implementation of a Sustainable Development Policy for the mining sector will be one of the key functions of the MRA**. This is essential to counter any public perception that the process of corporatisation will create an entity which functions as an agent of the mining industry rather than the public interest.

2.1.6.4. **All references to the role of the Department of Mining in this Green Paper should be understood as references to the role of the MRA once the Government approves the proposal to establish this new body.** However, the Department proposes to finalise and implement the Sustainable Development Policy, even in the event that the Government does not approve the process of corporatisation.

## 2.2 STAKEHOLDER ENGAGEMENT

How should **project area stakeholders** in the mining sector be **identified and classified**, and how should their **interests be accommodated** throughout the different stages of the mining project cycle, from exploration through to closure and beyond?

### 2.2.1 Principles for stakeholder engagement

2.2.1.1. The main vehicle for stakeholder engagement in the negotiation and development of major mining projects in PNG is the **Development Forum** prescribed under Section 3 of the *Mining Act* (1992), which was initially devised (in 1988) as a mechanism for resolving disputes over the development of the Porgera mine. The Development Forum acknowledges the right of the **host provincial government** and representatives of the **local landowning community** to play an active role in negotiating agreements over the distribution of mine-related benefits before the National Government approves the development of the project. It is an institution which has received international recognition as a model for local participation in the development process. However, it is not sufficient, by itself, as a means to accommodate the interests of **all project area stakeholders throughout** the different stages of the mining project cycle.

2.2.1.2. **‘Project area stakeholders’** are understood to include the developer (or proponent) of the mining project, the host provincial government(s) and local-level government(s), and the **‘communities’** or people of the project area. A Sustainable Development Policy should establish which **types of local community** or which **groups of local people** are to be engaged in the development process. This determination should be based on an understanding of the ways in which different groups or communities are affected by the process of development, and therefore have different interests in the negotiation and achievement of sustainable development outcomes.

2.2.1.3. The National Government recognises that it has a particular responsibility to **facilitate the process of communication** between project area stakeholders throughout the different stages of the mining project cycle, and will ensure that the Department of Mining (or its successor) is provided with the authority and the resources to exercise this responsibility. A Sustainable Development Policy for the mining sector should spell out the ways in which the subject of ‘sustainable development’ is to become the **focal point** for this process of communication.

2.2.1.4. The National Government should play an **active role** in the process of stakeholder identification, especially the identification of local groups and communities whose interests need to be articulated and accommodated, from the **earliest stages** of mineral exploration. The National Government should also accept responsibility for providing **clear guidance** to private companies on the question of how to identify and relate to local groups and communities during the period of exploration, **without** imposing an additional cost burden which will act as a disincentive to exploration.

2.2.1.5. The Government recognises, as a matter of principle, that the development of mineral resources located under customary land should not take place without the **prior and informed consent** of the customary owners of that land. The Government is prepared to extend this principle to all groups or communities whose customary land is likely to **suffer significant damage** from the development of a major mining project, as part of the negotiation to compensate them for such damage. The Government believes that application of the principle of prior and informed consent by the owners of customary land is essential to the process of **minimising the environmental damage** caused by major mining projects.

2.2.1.6. The priority which the National Government assigns to the interests of groups or communities with customary title to land affected by large-scale mining operations is due to the fact that these are the people who will have to live with the long-term legacy of mining. At the same time, the Government recognises that it has a special duty to **safeguard the interest of future generations**, even within these landowning communities, because it cannot necessarily assume that members of the present generation will always do so.

2.2.1.7. The Government will seek to ensure that all project area stakeholders pay due respect to the **local customs and traditions** of the project area, but will **not** countenance the use of arguments in defence of local custom to **exclude the participation** of any significant section of the local population -- especially the poor, weak or vulnerable -- in the process of planning or negotiating the development of a major mining project. The Government will also do its best to ensure that institutions established to represent the interests of local communities in the development process are **truly representative** of those interests.

## 2.2.2 Landholders and landowning communities

2.2.2.1. The Department proposes to retain the use of the term **'landholder'**, rather than **'landowner'**, to refer to **individuals** who hold rights **either** to customary land **or** to land leased from the State. This usage is broadly consistent with that already contained in Section 2 of the *Mining Act* (1992). The point is to emphasise that individuals hold rights to the use of customary land by virtue of their **membership of customary groups**, and the phrase 'customary landowner' should therefore be understood to refer to such **landowning groups**, and not to their individual members. A minor amendment to Section 2 of the *Mining Act* would serve to clarify this point.

2.2.2.2. The Department proposes to recognise three types of customary landowning community whose component groups or individual members are to be counted as stakeholders in the development of a major mining project:

- **mining lease communities** are those which include groups owning customary land within one of the areas leased to the project developer;
- **mine-affected communities** comprise mining lease communities and other landowning communities whose members are directly affected by the development of a major mining project;
- **project area communities** comprise mine-affected communities and other landowning communities whose members can have a positive or negative impact on the viability of mining operations by virtue of the geographical location of their land.

The assumption here is that the project area communities associated with a major mining project include all the communities directly affected by that project, and that these mine-affected communities include all the mining lease communities.

2.2.2.3. Where a company holds an Exploration Licence, but has not yet been granted approval for the development of a major mining project, the Department will recognise:

- **exploration licence communities** as those which include groups owning customary land within the relevant licence area; and
- **potential mining lease communities** as those which include groups owning customary land within the areas proposed for inclusion in a development lease.

It is assumed that all exploration licence communities will become mine-affected communities or project area communities once a project has been approved for development.

2.2.2.4. The Department is aware that major mining projects are liable to create **other types of ‘community’**, whose members are not bound together by their common ownership of customary land in the area affected by the project. Notable amongst these would be the **‘mining community’** whose members are defined by their dependence on wages derived from employment on the project, or the ‘community’ of people who **migrate into the area** to secure some benefit from the project, even if this benefit does not take the form of employment with the mining company or its contractors. Both of these could be described as ‘mine-affected’ or ‘project area’ communities. However, the Department proposes to **restrict the use of the word ‘community’ to landowning communities**, as previously defined [see 2.2.2.2]. This is partly to avoid confusion, and partly because of a recognition that most Papua New Guineans retain a strong attachment to one landowning community or another, and would recognise that the interests of those who are the customary owners of land in the area affected by a major mining project should take precedence over the interests of those who are not. The ‘outsiders’ who come to reside in the area because of the development of the project can still be recognised as **project area stakeholders** with a specific interest in sustainable development outcomes, without being formally recognised as members of specific communities.

2.2.2.5. The Department is aware that the social and economic impact of a major mining project may be such as to weaken the ties that traditionally unite the members of mine-affected communities. In this context, use of the word ‘community’ is intended to underline the Department’s intention to ensure that ‘landowner representatives’, be they individuals or organisations, are actually **held accountable to the wider landowning community** for their role in negotiating the conditions, or distributing the benefits, of mineral resource development.

### 2.2.3 Development Forum

2.2.3.1. The Department proposes to require the application of a Development Forum to all **major mining projects** [as defined in 2.1.2.1], and to require the Minister to invite the representatives of the relevant local-level government(s) and ‘any other persons or organisations which the Minister considers would be affected by the mining project if the application is granted’. These requirements are consistent with Section 115 of the *Organic Law on Provincial Governments and Local-level Governments* (1995) and follow the example already set by Section 48 of the *Oil and Gas Act* (1998). The Department intends to manage the Forum process in a way that is **responsive to the size and complexity of the proposed project**. This should enable the Department to avoid undue delays in the decision making process for smaller projects, while ensuring that larger projects, or those which are likely to have significant environmental impacts, are subject to more thorough scrutiny.

2.2.3.2. Once the *Environment Act* (2000) becomes effective, the Department believes that the process of **Environmental Impact Assessment** (EIA) for a major mining project will provide sufficient basis for the Minister for Mining to determine the identity of the **mine-affected communities** and ‘any other persons or organisations’ who might be affected by the project for the purpose of deciding who should be represented in a Development Forum. It should be noted that the EIA process under the *Environment Act* involves a process of public consultation following on from the submission of an Environmental Impact Statement by the project proponent.

### 2.2.4 Community and group identification

2.2.4.1. The Department is aware of the **many disputes which have previously arisen** as a result of failure to properly identify the external boundaries and internal organisation of exploration licence communities during the early stages of mineral exploration. It proposes to reduce the risk of such disputes by introducing a requirement for the holder of an Exploration Licence to conduct a preliminary **Community and Group Identification Study** before engaging in physical activities which are likely to entail either the compensation or employment of local landholders.

2.2.4.2. The Department will establish **guidelines** for the conduct of such a study. The Exploration Coordination Branch of the Development Coordination Division will:

- provide advice to licence holders on the interpretation and application of these guidelines, and on the engagement of appropriate consultants to conduct the study; and
- bring the results of the study to the attention of the Mining Warden, who will still be responsible, under Section 108 of the *Mining Act*, to determine the identity and interests of the landholders or other persons affected by any proposal for the grant or extension of a mining tenement.

2.2.4.3. The Department does not expect this kind of study to involve any detailed land investigations, the collection of genealogies, or similarly time-consuming (and expensive) activities. The guidelines will make it quite clear that this is a **preliminary** exercise whose aim is to establish the **basic ‘ground rules’** for interaction between the holder of an Exploration Licence and licence area communities. It may therefore be regarded as a precondition for any later land investigations in areas proposed for inclusion in a development lease, or as a ‘scoping study’ for any subsequent process of Social Impact Assessment required by the *Environment Act*.

2.2.4.4. The Department is aware of the need to ensure that the results of any study which seeks to identify the boundaries of landowning groups or communities should be subject to **public review and public agreement** by the members of those communities, and should, where possible, involve the **active participation** of community members in the conduct of the study. However, the Department is also aware that some of the knowledge held by landowning groups or individual landholders within such communities is regarded as property which is not fit for public consumption or dissemination. This issue will be dealt with in the formulation of the relevant guidelines and in the training provided to staff of the Exploration Coordination Branch who will be responsible for providing advice on their application. The guidelines will place considerable emphasis on the engagement of local government councillors, village court officials, and local land mediators in the process of community and group identification.

2.2.4.5. The Department believes that **compensation payments** should **not** be made to individual landholders by the holder of an Exploration Licence until the Community and Group Identification Study has been completed and subject to public audit by community members and representatives. The Department will work with the licence holder and community representatives to ensure that compensation for any damage caused before the study is completed will eventually be paid to the rightful claimants.

2.2.4.6. The initial survey of exploration licence communities, together with subsequent land investigations in areas proposed for inclusion in a development lease, will provide the basis for the Minister’s identification of ‘such persons as he thinks will fairly represent the views’ of the **mining lease communities** in the Development Forum. The Department proposes to establish separate **guidelines** for the conduct of lease area land investigations [see 4.3.4], and will provide advice to developers and other stakeholders on the application of these guidelines.

### 2.2.5 Social mapping

2.2.5.1. The Department of Mining is aware of the requirement, under Section 47 of the *Oil and Gas Act*, for:

- the holder of a Petroleum Prospecting Licence or a Petroleum Retention Licence to undertake a **preliminary social mapping study** and **landowner identification study** ‘of the customary land owners of the land comprised in the licence area’ before entering the area; and
- the applicant for a Petroleum Development Licence to submit, along with the application, the results of a **full-scale social mapping study** and **landowner identification study** of the customary owners of land which is likely to be affected by the development.

2.2.5.2. In the 4 years which have elapsed since passage of the *Oil and Gas Act*, the Department of Petroleum and Energy has yet to establish a regulation to specify the content, purpose and mutual relationship of such studies. When this work is completed, the Department of Mining will have the option to decide:

- whether any part of this regulation may be used as the basis for its own guidelines on the conduct of what are here called ‘Community and Group Identification Studies’; and if so
- whether these should be designated as ‘Social Mapping Studies’ (or ‘Landowner Identification Studies’) under the terms of a Sustainable Development Policy for the mining sector.

2.2.5.3. This decision will need to take account of some important **differences between the conditions of exploration and development in the mining and petroleum sectors** :

- The costs of exploration are normally much higher in the petroleum sector, and the companies engaged in exploration may therefore be expected to spend more money on the conduct of social surveys without this acting as a disincentive to exploration.
- The area covered by the development licences for a major petroleum project tends to be larger than the area covered by the leases issued for development of a major mining project, which means that the number of groups and individuals who stand to benefit from the development of a major petroleum project also tends to be larger.
- It is easier to determine the extent of the impact of a mining operation on different landowning communities, and to arrange the distribution of compensation and benefits in a way that reflects this differential impact.
- Much of the work of ‘landowner identification’ in the oil and gas sector is concerned with the incorporation of land groups under the *Land Groups Incorporation Act* (1974), but the Department of Mining does not propose to follow the Department of Petroleum and Energy in treating land group incorporation as a precondition for the distribution of cash benefits to mining lease communities unless it can be satisfied that this process will always produce the most transparent and equitable outcomes.

## 2.2.6 Prior and informed consent

2.2.6.1. The Department believes that the current mineral policy framework provides assurance that a major mining project on customary land cannot proceed without the prior consent of mining lease communities, and that the process of Environmental Impact Assessment under the *Environment Act* will ensure that it cannot proceed without the prior consent of other communities that would be affected by the project. However, the Department is aware that this will not always count as ‘prior **and informed** consent’ unless the representatives and other members of these communities have access to **independent professional advice** before a permit is granted by the Minister for Environment and a Development Forum is convened by the Minister for Mining.

2.2.6.2. The Department of Mining will liaise with other relevant government agencies to establish a **register of consultants** who may be called upon to provide financial, legal or environmental advice to these landowning communities. The developers will be expected to bear the cost of these consulting services, but the Department will set a limit to the cost which will normally be proportional to the scale of the proposed project. The choice of consultants will be made by mutual agreement between the Department, the developers, and community representatives. Where a Development Planning Committee (DPC) has been established for the purpose of commissioning a Baseline Planning Study of the proposed project [see Section 3.1.4], the DPC may be called upon to authorise the arrangement and agree to the relevant terms of reference.

## 2.2.7 Engagement of additional stakeholders

2.2.7.1. The Department is aware that **the number and identity of the local stakeholders involved in the development of a major mining project is liable to change** during its period of operation, especially if the mine operates for several decades. For example:

- unforeseen changes to the design and consequential impact of mining operations may create a new class of mine-affected communities;
- members of project area communities which do not count as mine-affected communities may exert increasing pressure to obtain a share of the project benefits;
- people employed by the mining company or its contractors may become members of a new ‘mining community’ which did not exist before the project was approved for development;
- female members of mining lease or mine-affected communities who took little or no part in the original project negotiations may be empowered as a result of its subsequent impact on their lives; and
- community members who were children or had not yet been born when the project was approved for development may articulate new demands as they become adult members of their communities.

The Department proposes to deal with such changes through the inclusion of a review mechanism in guidelines for a **Community Sustainable Development Planning** process during the operational life of the project [see 3.1.6.1].

## 2.2.8 Future generations

2.2.8.1. At the point when a major mining project is approved for development, the ‘future generations’ of people who have a stake in its development are normally understood to include the children of adult stakeholders. Many of these children will reach adulthood and should become stakeholders in their own right during the lifetime of the project. But **there will still be future generations of stakeholders at the point of mine closure**, some of whom will still be children, while others will not yet have been born. These people are not in a position to articulate their own interests in the negotiation of project development, so other stakeholders must act as their guardians or advocates in this process.

2.2.8.2. It is sometimes argued that the interests of future generations coincide with those of the natural environment, which is also unable to speak for itself, and that both types of interest should therefore be protected or advocated in the same way. This argument is commonly based on a belief that the social and economic benefits of mining do not last as long as the environmental damage which it causes. This might be true of some mining projects, but does not necessarily apply to all of them. While those who advocate the cause of environmental protection have every right to do so in respect of the mining industry as a whole, **all** members of the current generation who receive some of the mineral wealth created by **any** mining project should be responsible to ensure that future generations secure some benefit from the development of that project.

2.2.8.3. Unlike other stakeholders, **the State has a constitutional responsibility** to safeguard the interests of future generations of the national population [see 1.3.2]. Different government departments exercise this responsibility in different ways. The Department of Mining believes that its primary responsibility is to ensure that all **project area stakeholders** are aware of their own responsibilities in this respect. The Department is especially concerned to ensure that:

- mineral wealth is shared with members of landowning communities in ways which are consistent with customary institutions governing the **inheritance** of all forms of wealth;
- community leaders and members are properly advised on the best ways to **invest** mineral wealth for the ultimate benefit of future generations; and
- the membership and entitlements of future generations are clearly and consistently identified in the deeds of any **trust fund** established for their benefit.

The Department welcomes the collaboration of other stakeholders, including non-government organisations, in the pursuit of these aims.

## 2.3 BENEFIT DISTRIBUTION

What principles should guide negotiations about the distribution of **mineral wealth** between people who belong to the **current generation** of the national population, and then between the current generation and **future generations** of the national population, in order for mineral wealth to make the most effective possible contribution to sustainable development?

What principles should guide negotiations about the distribution of **mineral revenues** between different **levels of government** in order for mineral revenues to make the most effective possible contribution to sustainable development?

### 2.3.1 Principles of benefit distribution

2.3.1.1. There are four key principles which presently inform the distribution of mineral wealth between national stakeholders:

- The **compensation** principle says that people who suffer damage to their property, standard of living or quality of life as a direct result of an economic activity should receive a share of the wealth created by that activity which is more than enough to compensate them for their losses.
- The **insurance** principle says that people who have the motivation, capacity and opportunity to disrupt or halt an economic activity should receive a share of the wealth created by that activity which is more than enough to prevent or discourage them from doing so.
- The **fairness** (or equity) principle says that wealth should be divided between the people who are entitled to a share of it in proportions which reflect the extent of their own material needs or the extent of their capacity to use it in ways which meet the needs of other people who are also entitled to a share of it.
- The **derivation** principle says that a national government should transfer some of the revenue which it derives from an economic activity to the lower levels of government responsible for the area where the activity occurs so that these lower levels of government will have an incentive to support that activity.

2.3.1.2. The Department of Mining believes that **the derivation principle should not be applied to mineral revenues** collected by the National Government if derivation grants to provincial and local-level governments are to be justified as an incentive for specific regions to raise the volume of their export production. That is because there is very little which provincial or local-level governments can do to promote mineral exploration and development in their respective areas. If derivation grants are justified only because they discourage provincial or local-level governments from creating new obstacles for the process mineral exploration and development, then this represents an application of the **insurance** principle, not the derivation principle.

2.3.1.3. The conversion of a certain proportion of the National Government's mineral revenues into derivation grants for the provincial governments which host a major mining project has sometimes been justified by reference to the **fairness** principle. In this case, the argument is based on the tendency for mineral exploration and development to occur in the **most remote and least developed parts of the country**. In these places, mining represents the first, best, and perhaps the last big chance to 'catch up' with other parts of the country which are less remote and more developed. The implication of this argument is that the National Government should adjust the proportion of mineral revenues which it transfers to a provincial government in the form of derivation grants to reflect the extent of underdevelopment in the province or district where the source of those revenues is located. This would mean that derivation grants based on mineral revenues were being used as a way of implementing a policy to develop the 'less developed areas' of the country.

2.3.1.4. The Department does not believe that the **fairness** principle can sensibly be applied to the distribution of mineral revenues between provincial governments (whether or not they are the governments of mining provinces) in isolation from the **broader policy framework** which covers all of the financial relationships between the different levels of government. However, the distribution of **mineral** revenues between the different levels of government has been partially obscured in the national accounts, because these fail to treat mineral **royalties** as a form of national government revenue. This is apparently because the 1995 *Organic Law on Provincial Governments and Local-level Governments* (unlike the previous *Organic Law*) treats mineral royalties as being similar in nature to the timber royalties payable to the owners of the trees from which they are derived. Once mineral royalties have been returned to the realm of inter-governmental finance, it should be possible to show how the distribution of 'special grants' to **mining** provinces is related to the overall distribution of national government grants to **all** provinces. This is a task for the National Economic and Fiscal Commission.

2.3.1.5. Application of the **fairness** principle to the distribution of mineral revenues should not confuse the entitlements of a **provincial government** with those of the **people who belong to the project area** from which those revenues are derived. The reasons for allocating a certain proportion of mineral wealth to mining lease communities, mine-affected communities, or project area communities do not automatically count as reasons for transferring a certain proportion of the National Government's mineral revenues to a provincial government which is responsible for those communities.

2.3.1.6. Application of the **compensation** principle to **mine-affected communities** dictates that no group of people within these communities should lose more than they gain from the development of a major mining project – and that includes the members of **future generations**. It is therefore imperative that any process or procedure adopted for the purpose of determining the amount and type of compensation to be paid to members of mine-affected communities should take full account of the risk that some people might indeed lose more than they gain, and should incorporate some sort of guarantee that this will not occur.

2.3.1.7. It is sometimes argued that **mining lease communities** receive a share of mineral wealth which is out of all proportion to the amount which they ought to receive by way of compensation for costs which they incur as a result of mining. The discrepancy between the value of the benefits which accrue to these communities and those which accrue to **other mine-affected communities** can be cited as a breach of the **fairness** principle, or even (in some cases) the **compensation** principle. But the traditional owners of mining lease areas believe that their entitlements flow from their claim to customary ownership of mineral resources contained within their customary land, and the Government's policies on the distribution of royalties have lent increasing weight to this claim, despite the Government's insistence that mineral resources are still the property of the State. There is a high risk that any reduction in the value of benefits already committed or promised to mining lease communities will pose a threat to the viability of mining operations on their land. The State has good reason to preserve the value of such benefits through application of the **insurance** principle.

2.3.1.8. The **fairness** principle, as formulated here, puts as much emphasis on the capacity to make '**wise use**' of mineral wealth as it does on the extent of **material need** which might be indicated by a previous condition of underdevelopment or economic backwardness. But people who live in less developed areas may not be able to make wise use of a sudden increase in material wealth, especially if this arrives in the form of unearned cash incomes, and may then be more vulnerable to the effects of mine closure if they have since become accustomed to rely on such incomes to supply their basic needs. A major mining project will not contribute to the alleviation of poverty in its immediate area of impact if the immediate benefits create an **unsustainable dependency** on the existence of the mine itself.

2.3.1.9. The benefits which a major mining project brings to project area communities should **not** be regarded as 'compensation' for the lack of alternative development opportunities before, during, or after the period of construction and operation. Nor should the full range of benefits be regarded as 'compensation' for the negative environmental impact of the project. These ways of thinking confuse the **compensation** principle with the other principles which ought to apply to the distribution **and use** of mineral wealth. If members of the current generation treat all the benefits of mining as a form of compensation, they will not appreciate the need to invest a proportion of these benefits in the creation of **other** forms of wealth which will outlast the limited lifespan of a mine.

2.3.1.10. The isolation of the **Development Forum** from the process of planning for sustainable development has encouraged all the participants to treat the mineral wealth derived from each new mining project as if it were a **lottery prize**. While they have argued over the immediate division of the spoils, they have neglected the question of how to create **new incentives and opportunities** for sustaining this benefit beyond the point of mine closure. The problem is not just to decide the right and proper way to divide up a large pile of money at one moment in time, but also to plan the distribution of benefits through the different stages of the project cycle in order to match the available resources with the **needs and capacities** of the recipients. This point applies no less to the different levels of government than it does to the members of landowning communities.

2.3.1.11. Members of mine-affected communities have been persuaded to invest a proportion of their benefits in **future generation trusts**, but these presently account for less than 5% of the total value of the benefits which they have received from large-scale mining projects which are currently operating. Some of the other assets which they have purchased or acquired may also yield some benefit for future generations, but no attempt has yet been made to assess the value or sustainability of these investments. Members of these local communities are unlikely to be convinced of the need to invest a higher proportion of their incomes for the benefit of future generations unless they can see that **the Government** is also investing an equivalent proportion of its own share of mineral revenues for this purpose. While the Government consumes its own share of the windfall in recurrent expenditure, local landholders will have some reason to follow suit. The Government should therefore demonstrate its own commitment to the achievement of sustainable development outcomes in order to persuade local communities to follow its example.

### 2.3.2 Compensation payments

2.3.2.1. Compensation payable to members of mining lease communities and other mine-affected communities should be divided into two main categories, comprising those forms of compensation which are payable:

- to individual **landholders** (or their households) in respect of damage to their **livelihoods**; and
- to **landowning groups** (or communities) in respect of damage to their **land**.

**Land compensation** (unlike livelihood compensation) should be treated as a fund from which provision needs to be made for the welfare of **future generations** of landowning groups or communities.

2.3.2.2. While the Department strongly recommends that a proportion of **land compensation** be set aside in trust for the benefit of future generations, it recognises that the current generation will normally expect a **proportion to be paid in cash**. Although land compensation is understood to be compensation to the landowning group, rather than the individual landholder who is a member of that group, the Department believes, on the basis of past experience, that money paid to clan agents, block executives, or incorporated land groups is likely to be used in ways which violate the **fairness** principle. In these circumstances, it is preferable that land compensation should be treated in the **same way as livelihood compensation**, which means that cash payments should be made directly to landholders in a manner which is both transparent and fair to all concerned.

2.3.2.3. Generally speaking, the Department will encourage the recipients of land compensation to convert a portion of their entitlement into benefits which are **paid in kind**, rather than in cash, or to use part of it to purchase shares in the mining venture under the **Community Participation Option** [see 2.3.4.1], or to hold some of it **in trust for future generations**. However, the Department does not propose a requirement in policy or law for any portion of land compensation to be applied for the benefit of future generations, because the State has a stronger case for imposing this kind of requirement on the **royalty grant** [see 2.3.3.4].

2.3.2.4. The Department does not believe that the **guidelines published by the Valuer-General** are sufficient in themselves to determine the types and amounts of livelihood compensation which ought to be paid to landholders. That is because the guidelines are primarily designed to assess the replacement value of various types of object, and not the long-term impact of mining operations on local livelihoods. Since Section 154 of the *Mining Act* makes reference to loss or damage ‘foreseen to be suffered’ by the landholders, the Department believes that compensation agreements should be formulated in light of the **Environmental Impact Statement** submitted by a project proponent under the terms of the *Environment Act*, and by the subsequent process of Environmental Impact Assessment.

2.3.2.5. Where the development of a major mining project entails the **relocation or resettlement** of some or all of the members of a mining lease community, the Department will require the developer to make a **separate compensation agreement** with the people who are relocated or resettled. This agreement should include a commitment on the part of the developer to submit relocation or resettlement plans to the Development Planning Committee established for the project as part of the Community Sustainable Development Planning process [see 3.1.5.2]. The Department will expect these plans to conform to the benchmark principles established in the World Bank’s safeguard policy on resettlement (Operational Directive 4.30).

2.3.2.6. The Department is aware of the work which has been done by the PNG Chamber of Mines and Petroleum to establish a **standard format for compensation agreements** in light of existing policy and legislation. Insofar as the adoption of a Sustainable Development Policy results in the amendment of those parts of the *Mining Act* which deal with questions of compensation, the Department will consult with the Chamber to produce a revised version of this standard format, and will then endorse its application to specific mining projects.

### 2.3.3 Royalty grants

2.3.3.1. The Department does not propose any change to the policy of effectively repatriating all mineral royalties to their province of origin in the form of a grant which is equivalent to the amount of the royalties which the State has collected through its legal ownership of mineral resources. However, it proposes that **this ‘royalty grant’ should not be regarded as a form of derivation grant to the province.**

2.3.3.2. The Department does not propose any change to the proportions in which the royalty grant derived from **current mining operations** is distributed between provincial governments, local-level governments, and customary land groups. However, it proposes a new way of thinking about the **principles** which should inform the distribution of this grant, as indicated in the rest of this section.

2.3.3.3. The Department does not propose any change to the current requirement for **mining lease communities** to receive a **minimum of 20%** of the royalty grant derived from a mining operation, but it does propose a change to the way in which the rightful recipients ought to be identified.

2.3.3.4. The Department proposes to regard this minimum 20% share as a form of **additional land compensation**, but it recognises that the recipients are inclined to regard it as partial acknowledgment of their customary ownership of mineral resources, while developers are inclined to regard it as a form of social insurance for their mining operations. An additional land compensation payment can be justified as a **precaution against the unanticipated impact of mining operations on the welfare of future generations** of those landowning groups whose land is lost or damaged [see 2.3.2.3].

2.3.3.5. If this share of the royalty grant is understood to be a form of additional land compensation, then it should be distributed to the customary groups which own the land which is lost or damaged in **any mining lease area**, in accordance with the extent of the loss or damage which they incur as a result of mining operations. This represents a change from the current policy of distributing the royalty grant to the customary groups which own the land allocated to Mining Leases or Special Mining Leases, in accordance with the amount of land which they own within the lease area. This means that the customary owners of land permanently lost through the creation of a waste dump on a Lease for Mining Purposes should have the same entitlement to a share of the royalty grant as the customary owners of land permanently lost through the excavation of a pit on a Special Mining Lease. This represents an application of the **fairness** principle.

2.3.3.6. Even where the fairness principle is properly applied to the distribution of land compensation and a royalty grant between the members of mining lease communities in respect of a single mining project, it is recognised that this can lead to wide variations in the amounts which such communities receive, **on a per capita basis**, from different mining projects, even if their land is subject to the same amount of loss or damage. This is due to variations in the relationship between:

- the value of mine output (from which royalties are derived);
- the areas of land allocated to mining leases; and
- the population of the groups which are the customary owners of such land.

While the Department believes that this is an issue which needs to be considered in the context of a Development Forum, the issue is too complex to warrant any further application of the **fairness** principle to produce a standard method of reducing such inequalities.

2.3.3.7. If it is agreed, at a Development Forum, that the share of the royalty grant allocated directly to mining lease communities should exceed the 20% level specified in the *Mining Act*, the Department proposes a requirement under the Act for **the balance to be held in trust for future generations**.

2.3.3.8. The proportion of the royalty grant which accrues to **provincial governments** (rather than local-level governments) should henceforth be regarded as:

- compensation to the provincial government itself for the additional administrative and staffing costs entailed in hosting a mining project in its operational phase (an application of the **compensation** principle);

- a contribution to the cost of improving government services to those local communities in the province which do not count as ‘project area communities’, and might therefore be disadvantaged as a result of provincial government expenditure commitments in the project area (an application of the **fairness** principle);
- a fund with which to provide a set of incentives or opportunities which will discourage these provincial ‘outsiders’ from migrating into the project area in order to capture some of the advantages of living there, and thus causing additional problems for the project area stakeholders (an application of the **insurance** principle).

It is proposed that a **minimum of 20%** of the royalty grant derived from a major mining project should be allocated to provincial governments for these purposes.

2.3.3.9. It is proposed that the balance or remainder of not less than 20% and not more than 60% of the royalty grant (henceforth known as the **‘Royalty Wedge’**) should be allocated to **all mine-affected communities** as a fund which is managed in accordance with a **Community Sustainable Development Plan** [see Section 3.1.2]. The benefits derived from this fund should be distributed between the population of these mine-affected communities in accordance with the extent and duration of any negative impact of mining operations on the land and livelihoods of both current and future generations, and might therefore be regarded as a form of **compensation**. However, this fund should **not** be used for the purpose of making any cash payments to individuals, households or customary groups, but should be regarded as a means to **create new incentives and opportunities for sustainable development throughout the life of the mine and beyond mine closure**. This is the principal means by which the royalty grant will be applied for the benefit of the **future generations** of mine-affected communities.

### 2.3.4 Landowner equity

2.3.4.1. The Department and the mining industry both take the view that equity participation by mining lease or mine-affected communities can be a useful way of ensuring ongoing community support for a mining project, and can therefore be justified by reference to the **insurance** principle [see Working Paper 5]. The Department therefore favours retention of a **‘Community Participation Option’** whereby the relevant communities may receive a free carry of 5% of exploration costs, but would then be required to fund their 5% share of development costs once the project is approved for development. However, if the State chooses to abandon the option to take up equity in mining projects [see 2.1.3.3], the Department acknowledges a responsibility to advise the relevant communities of the potential risks and benefits of doing so.

2.3.4.2. The community share of development costs may be funded through:

- **concessional loans** from international financial institutions secured with the assistance of the State;
- **commercial loans** for which the developer would provide a guarantee; or
- **finance secured by the developer** acting on behalf of the community.

Repayment of these loans should be made from a fixed proportion of the land compensation, royalties or dividends which accrue to the community in question.

2.3.4.3. Where the exercise of the Community Participation Option is **subsidised by the State**, the Department proposes to regard the subsidy in the same way as the share of the **royalty grant** allocated to landowning communities during the course of mining operations. This means that the dividends paid on these shares, or the income subsequently realised from their sale, should be used or distributed in the same way as the royalty grant which is made under the relevant project agreements.

### 2.3.5 Tax Credit and Development Levies

2.3.5.1. The Department believes that the **intended beneficiaries** of development projects funded under the Tax Credit Scheme should be **clearly specified** in terms recognised by the Sustainable Development Policy.

2.3.5.2. It is proposed that Tax Credit expenditures by developers within the current standard limit of 0.75% of assessable income should be made for the benefit of all the **project area communities** associated with the relevant mining project in accordance with a **Community Sustainable Development Plan**. It is recognised that such expenditures are primarily motivated by the **insurance** principle, because they are intended to win the support of those communities whose members might otherwise threaten to disrupt mining operations. But the **fairness** principle should also be applied to the distribution of such benefits between the population of these project area communities.

2.3.5.3. The National Government may wish to negotiate with resource developers over the application of **additional** Tax Credit to **national infrastructure projects** with a much wider range of beneficiaries. Maintenance work on the Highlands Highway would be one obvious example. Such applications have a potential advantage for both the mining industry and the National Government if they serve to demonstrate the use of mineral wealth to meet **national investment priorities**. But it needs to be made quite clear that this kind of expenditure does **not** count as a grant from the National Government to lower levels of government or to project area communities.

2.3.5.4. It is further proposed that expenditures controlled by developers under the Tax Credit Scheme should be progressively converted into **tax-creditable Development Levies** during the operational life of a major mining project. This arrangement would only apply to expenditures earmarked for the benefit of **project area communities** or the **population of the province** hosting the project. The Department believes that this arrangement has several merits:

- It is largely consistent with Section 98 of the *Organic Law on Provincial Governments and Local-level Governments*, but it does not entail any addition to the total tax burden on developers.
- It answers the criticism often made of tax credit schemes in the mining sector, that they make developers responsible for performing the functions of government (and thus make government dependent on mining company expertise) in way that is unsustainable after mine closure.
- It enables developers to take advantage of the provision in the latest Tax Credit guidelines for capacity-building projects to be tax-creditable, while meeting the requirement (under Section 98) for developers to build provincial and local-level government capacity to make good use of Development Levies.
- It provides an additional revenue stream to local-level governments or their instrumentalities which can be paid directly by developers without first passing through the national or provincial treasury, but which can also be insulated from the political process through the trust provisions of Section 98.
- It provides a source of funding which is liable to grow substantially in the final phase of a mining operation, which tends to be the most profitable phase, and this can be applied to the maintenance of project area infrastructure and services after the point of mine closure.

It is proposed that this arrangement be known as the **‘Tax Credit Conversion Scheme’**, and that Development Levies paid under this scheme to local-level governments or their instrumentalities should also be managed in accordance with a **Community Sustainable Development Plan**.

2.3.5.5. Although Development Levies are not currently payable by developers of major mining projects approved before the passage of the *Organic Law on Provincial Governments and Local-level Governments*, the Department believes that the merits of the Tax Credit Conversion Scheme are sufficient to warrant its **application to existing projects**, as well as new projects, once any legal impediments have been removed and suitable institutional arrangements have been put in place.

2.3.5.6. The Department is aware of the need to establish a process by which to decide **when and how** Tax Credit expenditures would be converted into Development Levies in respect of any particular mining project [see 3.2.5.5].

### 2.3.6 Special Support Grants

2.3.6.1. The Department believes that Special Support Grants to provincial governments which host a major mining project represent an unwarranted application of the **derivation** principle to inter-governmental financing, and should be removed as soon as possible. Grants of this kind can only be justified during a mine’s construction phase, or during a transition phase following mine closure, because they can serve the same three purposes which are served by the provincial government’s share of **mineral royalties** during the operational phase [see 2.3.3.8].

2.3.6.2. The Department recognises that the sudden elimination of Special Support Grants currently paid to provincial governments in respect of existing projects will have a dramatic effect on provincial plans and budgets, even if the recipients should already be planning for this eventuality at the point of mine closure. If no change is made to the current arrangements for the distribution of mineral royalties derived from existing projects, there are **two options for mitigating this negative impact**:

- Special Support Grants could be removed in stages over a period of 3-4 years.
- Immediate withdrawal of Special Support Grants could be offset by an allowance for developers to spend an additional 0.25% of their gross revenues on Tax Credit projects for the benefit of the provincial population resident outside of the mining project area.

2.3.6.3. The second of these options would have the effect of raising the standard limit of Tax Credit expenditures in the host province to **1% of the developer's gross revenues**. This option has the advantage of allowing a fixed proportion of Tax Credit to be allocated for the benefit of the provincial population as a whole under the Tax Credit Conversion Scheme, which means that it would be converted into Development Levies payable to the provincial government, rather than the local-level governments representing the people of the mining project area. This would increase the conformity of the Tax Credit Conversion Scheme with the spirit of the *Organic Law on Provincial Governments and Local-level Governments*, while the simultaneous elimination of Special Support Grants would still mean a net saving to the National Government equivalent to the value of Tax Credit expenditures currently allowed under the *Income Tax Act*.

### 2.3.7 Business development, training and employment

2.3.7.1. The Department does not propose any change to the current policy of distinguishing '**areas of preference**' for the distribution of business development advice, mine supply contracts, or training and employment opportunities arising from the development of major mining projects [see Working Paper 3]. However, the Department recognises that such forms of affirmative action are also forms of market distortion, that they are likely to entail additional costs for the developer, and that they may be inconsistent with the **fairness** principle if the 'preferred areas' already have higher levels of social and economic development than other parts of the country before the start of mine construction. When these matters are raised in a Development Forum, the Department therefore proposes to use the most recent and reliable **District Development Index** for Papua New Guinea to guide the discussion.

2.3.7.2. The Department proposes to distinguish areas of preference in terms which are consistent with the classification of stakeholders already presented in Section 2.1 [above]. This means that preference should ideally be given to: (a) mining lease communities; then (b) other mine-affected communities; then (c) other project area communities; and then (d) the whole of the population of the province or provinces which contain some project area communities. In practice, it will not be necessary to make so many distinctions unless a mining project is of exceptional size and duration, is located close to a provincial boundary, or has a complex set of supply lines and downstream impacts.

2.3.7.3. Where developers are committed to giving preferential treatment to mine-affected communities or project area communities in their own business development plans or in their training and employment programs, the Department expects that these plans and programs will be integrated into the **Community Sustainable Development Plans** for these communities.

### 2.3.8 Project area infrastructure

2.3.8.1. Developers will still be expected to meet the full cost of constructing, maintaining, and eventually removing any infrastructure which is essential to mining operations. The Department will continue to support the efforts of developers to reduce these costs within the limits set by the demands of safety, efficiency, and sustainability. The Department will therefore continue to support the practice of **commuter (or 'fly-in-fly-out') mining** where this offers significant cost advantages, because that will normally enable a project to operate for a longer period and to provide more benefits to the nation as a whole. However, the Department will also expect a project proponent to demonstrate that savings of this kind are not being made at the expense of the natural environment or the long-term development of the project area.

2.3.8.2. The Department is aware that much of the infrastructure required for the development of a major mining project provides significant benefits to project area communities, even where the developer pays the full cost of its construction and maintenance during the operational life of the project [see Working Paper 4]. In some cases, these benefits could be enhanced, and could prove to be more sustainable in the period following mine closure, if the needs and capacities of project area communities were taken into account in the design of the relevant facilities. But the Department is also aware that these gains could entail some additional costs, and these additional costs ought to be shared either by the Government or by the communities who stand to receive the additional benefit. The Department will therefore expect a **Proposal for Development** to include an assessment of the **costs and benefits of alternative plans for project infrastructure**, not only for the developer, but also for project area communities, and not only for the life of the project, but also for the period following mine closure. If additional costs are to be incurred in the achievement of greater benefits and more sustainable outcomes for project area communities, the question of how to meet these costs will be addressed through the Development Forum and the Community Sustainable Development Plan [see Section 3.1].

2.3.8.3. These proposals should be regarded as supplements, rather than alternatives, to what is said about 'Works and Facilities' in Clause 5 of the **Mining Development Contract** template.

### 2.3.9 Wise use of national government revenues

2.3.9.1. The balance of mineral revenues retained by the National Government is treated as part of its consolidated revenue and spent in accordance with the priorities established through the Government's planning and budgeting process. The question of whether and how this process contributes to the achievement of sustainable development outcomes for the nation as a whole is a question which lies beyond the scope of a Sustainable Development Policy to be proposed and implemented by the Department of Mining. However, it is important to establish a connection between the way in which the National Government makes use of its own share of mineral wealth on behalf of the national population and the way in which it seeks to influence or control the use which provincial governments or landowning communities make of the portions which are allocated for their use or benefit.

2.3.9.2. The National Government's ability to persuade other stakeholders to accept and apply a new set of principles to the distribution and use of mineral wealth in mining provinces is constrained by the widespread belief that it has failed to use its own share of this wealth for the achievement of sustainable development outcomes for both present and future generations of the national population. It has been suggested that the effective abolition of the **Mineral Resources Stabilisation Fund (MRSF)** in 1999 is evidence of this failure.

2.3.9.3. Stabilisation funds are primarily intended to control the rate at which revenues derived from a particular source can actually be spent by the government. This kind of control is warranted when the revenues in question are highly unpredictable. Revenues from the mining and petroleum sectors are unpredictable because of the volatility of commodity prices and the element of chance and risk attached to the discovery and development of new reserves. Since the PNG economy is so dependent on the export of a range of commodities, including mineral commodities, whose world market prices vary widely from one year to the next, the 'sterilisation' of mineral revenues has been justified as a means to prevent the Government from spending too much money in the good years, and then being forced to borrow more money in the bad years in order to maintain the levels of expenditure to which it is already committed.

2.3.9.4. The MRSF was **not** intended to be a sort of 'trust fund' in which the Government would save money for the benefit of **future generations**, nor was it meant to contribute to the achievement of any **specific development outcomes**. It should not therefore be seen as part of a policy governing the distribution and consumption of mineral wealth, but as a form of discipline which the National Government imposed on its own behaviour. The decision to abandon this form of control was a condition of the Structural Adjustment Program agreed between the Government of PNG and the World Bank in 1998. This decision seems to have been based on the argument that a mineral stabilisation fund is only warranted when mineral revenues are on an upward trend, and when the existence of the fund acts as an effective constraint on excessive public borrowing and spending.

2.3.9.5. The Department of Mining does not propose to engage in a debate about the conditions under which a mineral stabilisation fund should be established, or how its effectiveness should be evaluated. However, since the Department is responsible for promoting additional investment in the mining sector, and that is likely to mean an increase in the volatility or unpredictability of government revenues, there is a strong case to be made for special measures to **stabilise government expenditures**, even in the absence of a stabilisation fund [see Working Paper 8].

2.3.9.6. The question of how the National Government makes use of its mineral revenues, along with all its other revenues, is currently addressed within the framework of the **Medium Term Development Strategy** (MTDS). The Department of Mining believes that the MTDS needs to be based on a clear recognition of the extent of the Government's current and future dependence on such revenues, and on the existence of a more specific strategy to reverse the downward trend in mineral exploration and development. The Department therefore believes that the MTDS should be clearly linked to the National Government's **fiscal strategy**, in order to provide a model for those provincial and local-level governments which play host to major mining projects, but which are presently unable to link their expenditure plans to their receipt of mineral revenues.

## 3 SUSTAINABILITY PLANNING FRAMEWORK

### 3.1 DEVELOPMENT PLANNING

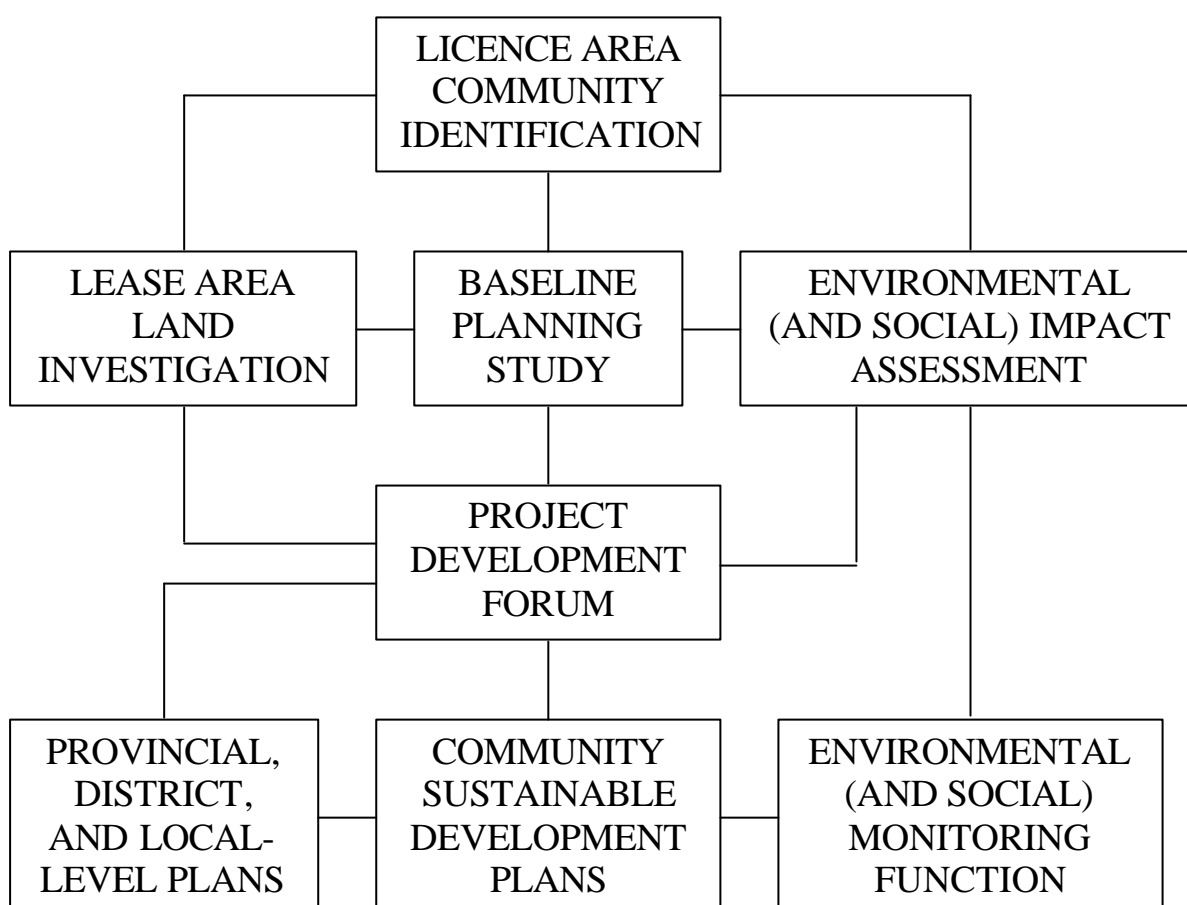
What should be the roles and responsibilities of developers, government agencies, and other stakeholders in **planning the contribution of individual mining projects** to sustainable development throughout the different stages of the mining project cycle?

#### 3.1.1 Basic principles of project planning

3.1.1.1. There is a broadly defined need for a fully **integrated project planning framework**, involving all relevant government agencies and project area stakeholders, through all the stages of the mining project cycle, with roles and responsibilities clearly specified, reflecting the resources and capacities of those involved, with appropriate incentives or sanctions for implementation. Since the goal is to maximise sustainable development outcomes from each major mining project, the Government proposes to call this the **Sustainability Planning Framework**. This integrated project planning framework should be related to broader national policies for **environmental** planning, **integrated land-use** planning, and **sustainable development** planning.

3.1.1.2. If sustainable development planning for mine-affected and project area communities is to be an activity which is integrated with the district and local-level plans required under the terms of the *Organic Law on Provincial Governments and Local-level Governments*, and also integrated with the management and mitigation of environmental impacts under the terms of the *Environment Act*, then the relationship between these three activities needs to be clarified **before** the Sustainable Development Policy is finalised and implemented, and a new institutional framework needs to be established for this planning function. The aim should be to avoid all unnecessary duplication of activities by constructing a **single framework** under which all relevant plans can be related to each other. A model of this planning framework is presented in Figure 1 and discussed throughout the rest of this chapter.

3.1.1.3. The planning provisions of the *Organic Law* have largely been ignored by provincial governments, and are not properly monitored or enforced by the National Government. Most of the government officials responsible for provincial, district and local-level planning do not have the necessary training, equipment or logistical support to do their job properly. It is unreasonable to expect the provincial and district planning system, as it currently exists, to cope with the potential impacts and benefits of a major mining project. The Sustainability Planning Framework must therefore take account of the **planning and implementation capacity** of provincial and local-level governments and aim to **build this capacity** through the different stages of the mining project cycle [see Working Paper 6, Chapter 7].

**Figure 1:** The project planning process under the Sustainability Planning Framework.

3.1.1.4. The National Government is currently unable to meet all of the commitments which it has already made to other stakeholders in respect of existing mining projects, and there is no sign that it is going to recover this ability any time soon. Provincial governments are in the same position. The institution of the Development Forum therefore needs to be amended in such a way as to include a planning mechanism which will prevent the participants, and most especially the representatives of government agencies, from making promises which they cannot keep. This means that they must **plan to avoid making unsustainable commitments** under the project development agreements which emerge from the Development Forum.

3.1.1.5. The National Government should be responsible to ensure that **lessons learnt from the planning of one major mining project are applied to the planning of other projects** which have not yet reached the same stage in the project planning cycle. In order for this to happen, there needs to be greater clarity about the respective roles of the Department of Mining and the Department of Planning and Rural Development in the implementation of a Sustainability Planning Framework for the mining sector.

3.1.1.6. There is at present no formal requirement for the developer of a major mining project to document its own understanding of the best way to achieve sustainable development outcomes for the host province and project area communities. The Sustainability Planning Framework needs to establish **forms of communication between the developer and other project area stakeholders** which will enhance the role which all parties should play in the project planning process.

3.1.1.7. The Government subscribes to the **principle of subsidiarity**, which states that decisions should be taken at the level of government which is most responsive and accountable to the people or communities most directly affected by those decisions. This means that **local-level governments and local community organisations** should be **active participants and partners** in the process of planning for sustainable development outcomes throughout the mining project cycle.

3.1.1.8. The Government is aware that members of landowning communities often have **unrealistic expectations** about the long-term benefits of mining, or about the willingness and ability of other stakeholders to sustain a certain level of benefits beyond the point of mine closure. When these expectations are not met, the resulting sense of disappointment and frustration can cause major problems in the relationship between local communities and other project area stakeholders. The **full engagement of local communities in the project planning process** is the best way to moderate these expectations and avoid these problems.

3.1.1.9. Developers are required to plan for the limitation or mitigation of social and environmental impacts under the terms of the *Environment Act* and its associated regulations and guidelines. A Sustainable Development Policy for the mining sector needs to address this aspect of the mineral policy framework without confusing the roles and responsibilities of the Department of Mining with those of the Department of Environment and Conservation. The Department of Mining believes that the current instruments of environmental policy are generally adequate for the assessment, management and mitigation of the **environmental impacts of mining**, as defined in the narrow (physical) sense. However, there are some problems with the Government's capacity and willingness to implement its own environmental policies, and these need to be addressed.

3.1.1.10. The relationship between the assessment, management and mitigation of **social and economic impacts** and the process of **planning for the sustainable social and economic development** of the host province and project area communities needs to be clarified. Developers and national government agencies alike often remain ignorant of resource province development constraints and opportunities until well into the life of a project because of the limited sectoral and geographical coverage of socio-economic impact studies. The process of social and economic impact assessment should be clearly related to negotiations over the distribution of project benefits through the Development Forum and to a process of planning which covers the whole of the mining project cycle.

3.1.1.11. In 2000, the Department of Mining and (what was then) the Office of Environment and Conservation produced a **Draft Mine Closure Policy (DMCP)** which seeks to apply the Fourth Goal of the National Constitution to the problem of mine closure planning. The DMCP was the outcome of a process of consultation between relevant government agencies and other stakeholders. It contains a number of **general principles or provisions** which could be incorporated into a broader Sustainable Development Policy for the mining sector. It also deals with **more specific issues** relating to the legal, technical, and environmental aspects of mine closure and rehabilitation. A Sustainable Development Policy for the mining sector needs to determine the relationship between mine closure plans and all the other types of plan which ought to be included in the Sustainability Planning Framework. This determination should take account of international experience which points to the difficulty of implementing mine closure laws and policies, even in developed countries, when such laws and policies are too ambitious in their scope.

### 3.1.2 Community Sustainable Development Plans

3.1.2.1. The Department proposes to establish a process of **Community Sustainable Development Planning** for all major mining projects, and to treat this as the keystone or centrepiece of the Sustainability Planning Framework for the mining sector. This process will:

- consolidate a range of activities already required of different stakeholders under the existing policy framework and a number of existing government and industry initiatives for which there is no clear mandate or rationale in current policy;
- bridge the gap which currently separates the planning capacities and activities of the developers from those of provincial and local-level governments by creating an institution which will transfer the relevant skills and responsibilities from one side to the other during the course of the mining project cycle in each mining province.

3.1.2.2. A **Community Sustainable Development Plan (CSDP)** should be a plan for the sustainable development of **mine-affected communities** or **project area communities** [see 2.2.2.2] through the different stages of the mining project cycle following project approval. Each CSDP will be formally integrated with the provincial, district and local-level planning and budgeting process in the host province under the joint supervision of the Department of Planning and Rural Development and the Department of Mining.

3.1.2.3. The Community Sustainable Development Planning process should be a **multi-stakeholder process** involving all of the **primary** stakeholders involved in the development of a major mining project. This process should **not** be coordinated by the developer, because that would only serve to reinforce the dependency of other project area stakeholders on the developer's own planning capacities. But it cannot be coordinated by any of the other project area stakeholders until they have developed their own capacity to plan for the application of mineral wealth to sustainable development outcomes. Coordination of the process should therefore be the responsibility of the **National Government**, and the Department of Mining will ensure that this becomes a central function of its **Development Coordination Division**.

**Box 9:** Why ‘Community Sustainable Development Plans’?

The proposed CSDPs are broadly equivalent to the ‘Social and Economic Development Plans’ proposed in the Ramu Project Memorandum of Agreement and the Draft Mine Closure Policy. The change of name is justified by four considerations:

- Such plans should be recognised as plans for **sustainable** development because they are meant to guide the implementation of the Sustainable Development Policy at the project level.
- They should be recognised as **community** plans because the boundary which separates project area communities from other local communities will not necessarily coincide with the planning and administrative boundaries previously recognised by the Government.
- They should also be recognised as **community** plans because mine-affected communities or project area communities should be directly involved in their production and implementation.
- The **mining industry** now has an incentive to support and resource ‘Community Sustainable Development Plans’ of the kind proposed here, because this is strongly recommended by the report of the ‘Mining, Minerals and Sustainable Development Project’ [see Working Paper 1, Chapter 13].

3.1.2.4. The CSDPs are to be plans for the expenditure of funds derived from two different sources:

- the proportion of the royalty grant which is known as the Royalty Wedge, and thus earmarked for the benefit of all **mine-affected** communities [see 2.3.3.9]; and
- the proportion of Tax Credit expenditures or Development Levies which is earmarked for the benefit of all **project area** communities under the Tax Credit Conversion Scheme [see 2.3.5.2 and 2.3.5.4].

In respect of any given mining project, the combination of the two may be called the ‘**Project Area Development Fund**’. However, CSDPs should be based on a recognition of the difference between the two components, both in terms of their underlying rationale and their intended beneficiaries.

3.1.2.5. Since the population and distribution of mine-affected communities and project area communities is bound to vary with the size, duration, impact and geographical situation of different mining projects, it is recognised that some mining projects will need to have **more than one CSDP**. In the case of the Porgera project, for example, the Department would anticipate the production of one CSDP for the people of the Porgera and Paiela local-level government areas, another for the downstream communities along the Strickland River, a third for the communities along the road corridor linking Porgera to Mount Hagen, and a fourth for those along the Hides transmission line. In such cases, careful consideration will need to be given to the allocation of the Project Area Development Fund between the different plans.

3.1.2.6. It is proposed that all CSDPs (like district and local-level government plans) should be **rolling 5-year plans** which are subject to annual review, but (unlike current district and local-level government plans) should also be based on a budgetary process which **clearly matches planned expenditures with forecast revenues**.

### 3.1.3 Development Planning Committees

3.1.3.1. The Department proposes the establishment of one or more **Development Planning Committees** (DPCs) for each major mining project to supervise the implementation of the Sustainability Planning Framework for that project and to take specific responsibility for the production, implementation, monitoring and evaluation of its Community Sustainable Development Plan (or Plans). All of the primary stakeholders involved in the development and eventual closure of the mine should be represented on the DPC.

3.1.3.2. The current models for this institution would be the **Mine Closure Planning Committees** already established for the Misima and Ok Tedi projects, and the **Program Development and Management Committee** which has been established to supervise the Western Province Capacity Building Project. For most projects, the Department would not support the simultaneous existence of a DPC and a Mine Closure Planning Committee, but anticipates a process by which a DPC may either **become** a Mine Closure Planning Committee within a certain period of anticipated closure or establish a Mine Closure **Sub-Committee** to address specific closure issues [see Section 3.1.8].

3.1.3.3. The Department will normally expect to establish **a separate DPC for each CSDP**. In the case of the Ok Tedi project, for example, the Department would envisage the establishment of a DPC for each of the six regions which have Mine Continuation Agreements with OTML. Where a project has more than one DPC, the relationship between them will need to be established in consultation with the project area stakeholders.

3.1.3.4. Each DPC should be **jointly chaired** by the relevant Project Coordinator in the Department of Mining (or its successor) and a representative of the national government agency responsible for planning matters (currently the Department of Planning and Rural Development). This arrangement should ensure that CSDPs are **consistent with the relevant provincial, district and local-level plans** during the period of mine construction and operation, and are **absorbed into these government plans after mine closure**. In those cases where the boundaries of the 'project area' happen to coincide with those of a single district or local-level government area, the CSDP could be identical to the relevant district or local-level plan during the period of mine construction and operation. However, it will still be necessary to establish a DPC in order to plan for the application of the Project Area Development Fund [see 3.1.2.4], whose size will greatly exceed any other revenues available to the relevant local-level governments, and to enable non-government stakeholders to participate in the planning and decision-making process.

3.1.3.5. If each DPC is jointly chaired by the national government agency responsible for planning matters, it can also assume responsibility for ensuring that any benefits which the mining project provides to a host **provincial government** for use **outside of the project area** are properly reflected in the relevant provincial, district and local-level plans. Since the project developer and the provincial government will both be represented on the DPC, this responsibility can easily be extended to include any benefits provided to the provincial government under the **Tax Credit Conversion Scheme**. In this respect, the DPC will function as an agent of the National Government [see 3.1.3.8].

3.1.3.6. Each DPC will be free to extend membership to **secondary stakeholders** who wish to participate and who have a specific commitment to the local planning process. Such secondary stakeholders might include civil society organisations based outside the project area, private companies aside from those engaged in the development of the project, or donor agencies which are prepared to fund some aspect of the planning process.

3.1.3.7. It is proposed that DPCs should **meet at least once a year** to review and approve CSDPs and to carry out their other functions. These meetings should take place within the project area, or at least within the host province. The Quarterly Review Meetings currently convened by the Project Coordinators in the Department of Mining should henceforth be regarded as meetings of a DPC or one of its sub-committees. Where other project-level committees have been set up to address issues which fall within the remit of the Community Sustainable Development Planning process and involve a number of project area stakeholders, these could also be designated as sub-committees of the relevant DPC if the stakeholders agree to this arrangement.

3.1.3.8. The Department is aware that its Project Coordinators do not have the time or the expertise to coordinate the production of CSDPs for review and approval by the DPCs. Nor does it expect that the necessary human resources will be available in the Department of Planning and Rural Development. This function will therefore be assigned to the **Sustainability Planning Branch** which the Department proposes to establish within the Development Coordination Division, and additional technical support for this activity will initially be secured through an extension of the Mining Sector Institutional Strengthening Project. At the same time, the Department also expects that project developers will be able to build the planning capacities of other project area stakeholders under the provisions of the Tax Credit Scheme.

3.1.3.9. The work of the DPCs will be supervised and coordinated, at the national level, by a **Mining Sustainability Planning Committee (MSPC)** which will also be jointly chaired by the national government agencies responsible for Mining and Planning. The **Sustainability Planning Branch** of the Department will act as the secretariat to the MSPC [see Section 4.1.3].

### 3.1.4 Baseline Planning Studies and Development Forums

3.1.4.1. If the Community Sustainable Development Planning process is to inform the negotiation of realistic and sustainable benefit-sharing agreements by the parties to the **Development Forum**, the process should begin **before** the Development Forum is convened. The Department therefore proposes that a **Baseline Planning Study (BPS)** be produced for each major mining project at the feasibility stage of project development.

3.1.4.2. It is proposed that a **Development Planning Committee** should be established for the purpose of commissioning and evaluating a BPS. This means that a DPC would perform a role similar to that of the Liaison Committee which the Department used to convene for the purpose of commissioning a Socio-Economic Impact Study.

3.1.4.3. Once a DPC is established for this purpose, the responsibility for project coordination will pass from the Exploration Coordination Branch to the **Development Coordination Branch** of the Department's Development Coordination Division.

3.1.4.4. In order for a DPC to represent the views of **other project area stakeholders** in the evaluation of a BPS, the Department will need to take account of the results of any previous Community and Group Identification Study (or Social Mapping Study) conducted in the area of the Exploration Licence held by the project proponent.

3.1.4.5. The Department will expect the proponent to cover the cost of engaging consultants to produce the BPS, but the DPC will be responsible for ensuring that the study conforms with the guidelines established by the Government. The DPC will also be responsible for ensuring that the study contains a more precise identification of the project area stakeholders who should be represented in the Development Forum, and that the Forum itself pays due consideration to the overall recommendations of the study.

3.1.4.6. The geographical scope of a BPS will not be confined to the 'project area' envisaged in the proponent's feasibility study, but will extend to the boundaries of the **host district(s)** (in the case of a medium-scale project) or the **host province(s)** (in the case of a large-scale project). This requirement is meant to ensure that the Community Sustainable Development Planning process is integrated with the relevant provincial, district or local-level plans which have already been put in place before the BPS is commissioned.

3.1.4.7. The Department proposes to regard a BPS as the equivalent of the '**cost and benefit analysis**' which the National Economic and Fiscal Commission (NEFC) is supposed to carry out under Subsection 116(2) of the *Organic Law on Provincial Governments and Local-level Governments*. In other words, the Department does not see any reason why the NEFC should be expected to carry out a separate 'cost and benefit analysis' once the BPS has been completed.

3.1.4.8. Once a Development Forum has been concluded, the DPC will be responsible for ensuring that **the first CSDP** (for mine-affected communities) is prepared during the project's **construction phase**, and is therefore ready for implementation when the Royalty Wedge becomes available after the first year of mining operations.

### 3.1.5 Responsibilities of developers

3.1.5.1. While the Department will not expect a project developer to coordinate the Community Sustainable Development Planning process or to bear the full cost of producing CSDPs, the developer will be expected to provide **specific inputs to the process** which are either based on its own plans and projections or on its commitments under the Mining Development Contract, the Development Forum, or an approved Environmental Impact Statement.

3.1.5.2. These specific inputs should include:

- a rolling 5-year forecast model of the total amount of revenue which is expected to accrue to the Project Area Development Fund, based on projected mine output, forecast commodity prices, and the benefit-sharing agreements which have been negotiated through the Development Forum;
- a rolling 5-year plan for expenditures within the project area under the Tax Credit Scheme, including a justification for such expenditures by reference to the principles set out in Section 2.3.1 [above];
- business development plans, training and localisation plans, relocation and resettlement plans, food security programs, AIDS and health awareness programs, and any other plans or programs for the management of community affairs which are intended to benefit or support project area communities;
- environmental management plans produced in accordance with the permit granted by the Director for Environment and Conservation; and
- mine closure plans required under the terms of the Government's Mine Closure Policy.

3.1.5.3. A developer will also be expected to produce a rolling 5-year forecast of the amount of revenue which is expected to accrue to a host **provincial government**, for use outside the mining project area, and plans for any **Tax Credit Scheme** expenditures to be made outside the project area (but within the province), in order to inform the relevant provincial, district and local-level plans. The DPC will be responsible to ensure that this has been done when it monitors the content of these plans.

### 3.1.6 Planning guidelines

3.1.6.1. The Department is aware of the need to produce **guidelines** for the production, evaluation and implementation of CSDPs. These guidelines should include, amongst other things:

- mechanisms for the integration and eventual absorption of CSDPs into the **provincial, district and local-level** planning processes specified by the *Organic Law on Provincial Governments and Local-Level Governments*, in accordance with priorities established by the National Government's Medium-Term Development Strategy;
- procedures for periodic review of the definition and representation of **'mine-affected'** and **'project area'** communities, and other project area stakeholders, in the planning process;
- procedures for dealing with development planning issues (such as problems of **food security** or the **spread of HIV/AIDS**) whose significance may not yet be recognised by project area stakeholders;
- procedures and criteria for the **appraisal of specific development projects**, with specific reference to poverty alleviation, gender equity and environmental impact;
- provision for socio-economic aspects of **mine closure** (especially **food security** and **resettlement** issues) to be dealt with from the earliest post-approval stages of the mining project cycle; and
- strategies for supporting **livelihood and enterprise development programs** for project area communities which reduce dependency on the mining economy both up to and after closure.

3.1.6.2. These guidelines should be incorporated into a **Community Sustainable Development Planning Handbook** for distribution to project area stakeholders in order to facilitate their participation in the design, appraisal, implementation, monitoring and evaluation of CSDPs.

3.1.6.3. Separate guidelines will need to be established for the production and evaluation of **Baseline Planning Studies** and then integrated with the guidelines for the production, evaluation and implementation of CSDPs. The BPS guidelines should include:

- a set of standard indicators for the assessment of social and economic conditions in the host province(s) or district(s) which can be used to establish a qualitative and quantitative baseline for subsequent development plans;
- procedures for the identification of those project area stakeholders whom the Minister should invite to a Development Forum;
- a model or template for the construction of mutually agreeable but sustainable benefit-sharing agreements or 'Integrated Benefit Packages' to be negotiated at a Development Forum; and
- a standard financial model which can be used to assess the medium- and long-term impact of these Forum agreements.

### 3.1.7 Integration of development planning and environmental protection

3.1.7.1. There is an option for CSDPs to integrate the social, economic **and environmental** aspects of sustainable development planning for mine-affected and project area communities within a single institutional framework. This option would make sense if the primary stakeholders (including the relevant national government agencies) could agree on a common approach to the problem of linking the values or functions of environmental protection and development planning. This does not seem likely under current circumstances, **except** perhaps in the specific context of mine closure planning.

3.1.7.2. Part of the difficulty of achieving such integration in the short-term is that the *Environment Act* has not yet been implemented, the process of Environmental Impact Assessment under that Act has not yet been tested in practice, and little progress has yet been made in the formulation of additional guidelines or policies for which the Act does make provision.

3.1.7.3. The Department of Mining is well aware of the resource constraints which limit the capacity of the Department of Environment and Conservation (DEC) to carry out its appointed tasks. However, the two Departments have a long history of dialogue and collaboration in dealing with the social and environmental impacts of major mining projects, which is currently institutionalised in the **Social and Environmental Monitoring Committees** established for each project. The Department of Mining expects that this kind of institutional collaboration will continue to provide a forum for integrating the values of environmental protection into the development planning process.

3.1.7.4. The Department of Mining believes that the Community Sustainable Development Planning process proposed in this Green Paper should greatly reduce the need for the DEC to concern itself with monitoring the **socio-economic impacts** of major mining projects. The reason is that many of these impacts need to be addressed by a process of development planning which the DEC has no mandate or capacity to coordinate.

3.1.7.5. Where a project has already been approved for development under the terms of the *Environmental Planning Act* (1978), and the developer is required to implement an approved **Environmental Management and Monitoring Program**, the functions of the Social Monitoring Committee (currently chaired by the DEC) should be split between the Environmental Monitoring Committee (also chaired by the DEC) and the Development Planning Committee (on which the DEC will be represented). This will mean a further reduction in the total number of committees sitting on each project.

3.1.7.6. Where a new project is proposed for development under the *Environment Act*, and the proponent is required to submit an **Environmental Impact Statement** (EIS) as part of the process of Environmental Impact Assessment (EIA) coordinated by the DEC, there should be some relationship between the EIS and the **Baseline Planning Study** proposed here as the precondition of the Development Forum. This could take the form of a requirement for the BPS to be attached as an appendix to the EIS, which would have the advantage of the subjecting it to the process of public consultation prescribed by the *Environment Act*. However, the Department of Mining is mindful of the period of time which might elapse between the submission and final approval of an EIS, and will therefore seek to avoid any arrangement which complicates the EIA process.

3.1.7.7. Since Baseline Planning Studies will cover much of the ground previously covered in ‘Socio-Economic Impact Studies’, it can be argued that the ‘social’ element of the EIA process should focus on the conservation of **cultural heritage values** and **customary social institutions** in a project’s area of impact. This focus is consistent with the general emphasis of the *Environment Act* (and previous environmental legislation) on the limitation or mitigation of ‘environmental harm’. If this argument is accepted, it should be reflected in the guidelines which the DEC is presently drafting for the process of ‘**social impact assessment**’ under the *Environment Act*. These guidelines will need to be aligned with the proposed Baseline Planning Study guidelines in order to avoid further confusion or duplication.

### **3.1.8 Integration of Sustainable Development Policy and Mine Closure Policy**

3.1.8.1. There is a good deal of overlap, and a certain amount of inconsistency, between the Draft Mine Closure Policy and the Sustainable Development Policy foreshadowed in this Green Paper. This situation has arisen because the Draft Mine Closure Policy was drafted before the decision was made to draft a Sustainable Development Policy for the mining sector. The relationship between the two policies will need to be clarified before they are both finalised. The main point at issue is the relationship between **Mine Closure Plans** and **Community Sustainable Development Plans**.

3.1.8.2. One option is to remove all reference to ‘socio-economic’ or ‘development planning’ issues from the Mine Closure Policy and leave such issues to be covered under the Sustainable Development Policy. The Mine Closure Policy would thus become part of the Government’s **environmental** policy and planning framework, and Mine Closure Plans would essentially be plans for decommissioning, site rehabilitation, and the management of long-term biophysical impacts.

3.1.8.3. A second option is to maintain the requirement for developers to address socio-economic issues in the Mine Closure Plans which they submit to the Government (and other stakeholders) under the Mine Closure Policy, but to treat these as one of several inputs which developers are expected to make to a Community Sustainable Development Planning process which is prescribed in the Sustainable Development Policy, **as well as** a separate process by which the Government regulates the biophysical impact of mining operations.

3.1.8.4. A third option is to use the Mine Closure Policy, and the associated process of Mine Closure Planning, as a way of **integrating** socio-economic and biophysical issues within a single multi-stakeholder planning process which begins when all stakeholders (including the members of mine-affected communities) are willing and able to participate in such a process. Under this option, the area of overlap between the two policies might be confined to the last few years of a mining operation, but it would then be all the more important to ensure their mutual consistency.

3.1.8.5. The choice between these options should be guided by the following considerations:

- The Department does **not** propose the establishment of a Mine Closure Planning process to run parallel to the Community Sustainable Development Planning process. This could only lead to a waste of time and resources on all sides.
- Recent experience has shown that a focus on mine closure issues **can** serve to galvanise the interest and concern of national government agencies which might otherwise be reluctant to engage with sustainable development issues in the mining sector. The institutions and networks which have already been established to develop and implement the Mine Closure Policy should be regarded as the **foundation** for a broader Sustainable Development Policy.
- The Department is aware that an attempt to engage project area communities in a multi-stakeholder planning process which deals explicitly with ‘mine closure’, **rather than** ‘sustainable development’, may give rise to **additional political conflict** in some circumstances. This is especially the case if a ‘Mine Closure Forum’, similar in constitution to the original Development Forum, is convened to initiate the process.
- There should be some avenue for communication between the National Government and the operators of a major mining project about contingency plans for ‘**premature closure**’ resulting from the incidence of civil unrest in the project area. The Department is aware that this issue may not be suitable for inclusion in a multi-stakeholder planning process, but it still needs to be covered by a Mine Closure Policy, even if it is not covered by a Sustainable Development Policy.

## 3.2 BENEFIT MANAGEMENT

What should be the roles and responsibilities of developers, government agencies, and other stakeholders in **managing the investment of mineral wealth** for purposes of sustainable development in the provinces or areas which host major mining projects?

### 3.2.1 Basic principles of benefit management

3.2.1.1. There is a broadly defined need for an **integrated benefit management regime** for provinces and areas which host major mining projects, involving all relevant stakeholders, through all the stages of the mining project cycle, with roles and responsibilities clearly specified, reflecting the resources and capacities of those involved, with appropriate incentives or sanctions for implementation. However, this benefit management regime can only be partially integrated so long as there are different institutional arrangements required for the benefit streams allocated to different groups or classes of stakeholders.

3.2.1.2. A Sustainability Planning Framework for major mining projects should include provision for the effective implementation of **Community Sustainable Development Plans** (CSDPs) through the management of **Project Area Development Funds**. In principle, a **single** institution should be established to manage **all** the benefits which the National Government and the host provincial government agree to allocate for this purpose in respect of each major mining project. In practice, it may be necessary to allow for the existence of more than one institution in order to accommodate the diverse interests of different communities or groups within the project area.

3.2.1.3. There is a general lack of conditionality, transparency and accountability in the way that **provincial governments** have been using their own share of mineral revenues. The basic principles of project activity cycle management have been ignored. Standard accounting and financial management practices have not been followed. The provincial public service has commonly been politicised and demoralised. The National Government must take steps to address these problems within the Sustainability Planning Framework.

3.2.1.4. The management of **landowner companies** and **landowner trust funds** is a subject of widespread concern, both within and outside the mining sector. The Government must accept a measure of responsibility for ensuring that the principles of transparency and accountability are applied to such organisations, especially in the period following the closure of a major mining project, when the developer can no longer be expected to play a supervisory role.

3.2.1.5. As a matter of principle, any organisation established to manage the distribution, and above all the investment, of mineral wealth should have the legal and institutional characteristics which are necessary to **insure it against the acts of misappropriation or plunder** which have unfortunately been characteristic of many such organisations in PNG. This means, amongst other things, that resource flows should be transparent and accountable, and management should be accountable to all the stakeholders. In particular, any persons or organisations that function as **trustees** for other stakeholders should be made **aware** of the responsibilities which are attached to this role, and must be **held accountable** to the beneficiaries for their performance.

3.2.1.6. Most of the organisations involved in the distribution, management and expenditure of the nation's mineral wealth seem to incur **transaction or overhead costs** which are much too high. In some cases, it is difficult or impossible to establish the proportion of the relevant benefit streams which is consumed in this manner. But these costs clearly limit the proportion of mineral wealth which is left to be spent on the achievement of sustainable development outcomes. Transaction costs therefore need to be calculated and publicised in a more transparent fashion, and steps need to be taken to reduce the level of duplication, waste and inefficiency involved in these forms of expenditure.

3.2.1.7. As in the case of project planning [see 3.1.1.5], there needs to be greater clarity about the respective roles of the Department of Mining and the Department of Planning and Rural Development in the management of mineral wealth within a Sustainability Planning Framework for the mining sector. That is because the National Government is responsible to ensure that **examples of good management are duplicated** where possible, while opportunities for mismanagement and misappropriation are **not repeated** as a result of the failure to learn from past mistakes.

3.2.1.8. The Government should clarify its understanding of the role of **corporate trust funds, social funds, or foundations** in the management of mineral wealth for sustainable development in areas affected by major mining projects. The institution of the Tax Credit Scheme can be taken as an admission of the Government's own lack of capacity to manage the distribution and investment of mineral wealth for the benefit of people in the host province and the project area. However, it is important to establish the separation of public revenues and expenditures from the dispensations made by developers on their own account, as acts of charity or enlightened self-interest.

## **3.2.2 Management of Project Area Development Funds**

3.2.2.1. Community Sustainable Development Plans for project area communities will not produce sustainable development outcomes unless the funds available for their implementation are properly managed. The level of funding available for this purpose is so far in excess of the level of funding normally available to local-level governments as to warrant the establishment of a **separate institution** to manage these resources during the operational life of a major mining project.

3.2.2.2. The Department proposes that this institution should normally be a **Special Purposes Authority** (SPA) established under Part VII of the *Local-level Governments Administration Act* (1997). The current model for such an institution is the Porgera-Paiela SPA, more commonly known as the **Porgera Development Authority**. Under the terms of the Act, an SPA is an instrumentality of one or more local-level governments, but is also accountable to the Minister responsible for Provincial and Local Government Affairs (currently known as the Minister for Inter-Governmental Affairs).

3.2.2.3. Since the Department recognises that the number of mine-affected and project area communities attached to a large-scale mining project may sometimes warrant the creation of more than one Community Sustainable Development Plan for that project [see 3.1.2.5], it is also aware of the possible need to establish **more than one SPA** to manage the Project Area Development Funds allocated for the benefit of those communities. This is most likely to be the case if the project area communities are distributed between a number of local-level government areas, and the local-level governments are unable to agree to the establishment of a single SPA to manage the benefits allocated to these communities.

3.2.2.4. The Department recognises that the establishment of an SPA for this purpose will **not** be justified if:

- the district administration and local-level government(s) responsible for the project area have demonstrated (to the satisfaction of relevant central government agencies) a capacity to manage the benefits derived from a medium-scale project; or
- a local-level government refuses to consent to its establishment; or
- agreement has already been reached to establish an alternative institution (such as the **Ramu Foundation**) which has very similar functions, powers and responsibilities; or
- the level of benefits yet to be derived from a mining project which is nearing closure would not warrant the time and effort required to establish a new institution to manage such benefits.

3.2.2.5. There may also be cases where the developers of an existing project have already secured the agreement of other primary stakeholders to establish an institution (such as the **Ok Tedi Foundation**) which manages the supply of benefits to project area communities beyond the formal requirements of government policy. While the Community Sustainable Development Planning process should take account of such an arrangement, an SPA should be established for the **specific purpose of managing those Project Area Development Funds** (which are essentially government revenues) **whose allocation is required by the Sustainable Development Policy**.

3.2.2.6. In the planning and negotiation of any future mining project, the Department will ensure that the establishment of an SPA is one of the matters addressed at the **Development Forum**, provided that this has been given due consideration in the **Baseline Planning Study**. The **Baseline Planning Study** guidelines will therefore need to make provision for such an assessment.

3.2.2.7. Where an SPA is established for the purpose of managing all or part of a Project Area Development Fund:

- the money to be spent by the SPA should be paid **directly into its account**, either by the project developer (in the case of the Royalty Wedge or Development Levies) or by the National Government (in the case of any portion of a Special Support Grant or other grant which the Government has agreed to allocate to the project area);
- any spending in the project area which is controlled by the developer under the **Tax Credit Scheme** should be partly or wholly managed under a contractual relationship between the developer and the SPA.

These arrangements are consistent with the proposed Tax Credit Conversion Scheme [Section 2.3.5] and with the role of the Development Planning Committee in the production and implementation of CSDPs for the project area [Section 3.1.3].

3.2.2.8. The Department is aware of the argument that some of the SPAs established (or purportedly established) outside of the mining sector have been used as vehicles for the misappropriation of public funds. The Department therefore proposes to undertake a **review** of the status and current operations of the two SPAs which have already been established within the mining sector (in the Porgera and Lihir project areas) in order to assess their planning, budgeting and financial management procedures. This will form the basis for:

- developing **general guidelines** for the operation and management of SPAs;
- determining the **feasibility** of establishing SPAs in other mining project areas; and
- recommending strategies for the engagement of SPAs in implementation of the **Tax Credit Scheme**.

The Department aims to complete this exercise before the Sustainable Development Policy is finalised.

3.2.2.9. Guidelines established for the operation and management of SPAs in the mining sector will need to make adequate provision for these institutions to be wound up, or for their role to be reviewed, **after mine closure**. During the course of the mining project cycle, it is understood that an SPA will initially be responsible for management of the Royalty Wedge, will then assume increasing responsibility for the management of Tax Credit expenditures and Development Levies payable under the Tax Credit Conversion Scheme, but might end up as the manager of a **trust fund** which has been set up to absorb a portion of these revenues in order to pay for the maintenance of local infrastructure or public services once mining operations have ceased.

3.2.2.10. Under the institutional framework established for implementation of the Sustainability Planning Framework, the **Sustainability Planning Branch** of the Department will be expected to:

- strengthen and extend the role of SPAs in the management of Project Area Development Funds in accordance with Community Sustainable Development Plans; and
- collaborate with the Department of Provincial and Local Government Affairs in the monitoring and evaluation of their performance.

### 3.2.3 Integration of development planning and benefit management functions

3.2.3.1. In those cases where an SPA (or a single institution with similar functions, powers and responsibilities) is established to manage a Project Area Development Fund, there is an option for the **DPC to be identical to the Board of the SPA** (or to the Board of a similar institution). This would have the obvious advantage of reducing the number of institutions involved in implementation of the Sustainability Planning Framework at the project level, while producing more incentives and opportunities for staff of the SPA to be directly engaged in the Community Sustainability Planning Process.

3.2.3.2. However, this arrangement also has a number of potential disadvantages:

- It would remove the checks and balances implied in an arms-length relationship between the bodies responsible for development planning and benefit management.
- It would mean that the Department of Provincial and Local Government Affairs could not be represented on the DPC, because its role under the *Local-level Governments Administration Act* precludes representation on the Board of an SPA.
- Additional difficulties may arise from any requirement for a body which is co-chaired by the national departments responsible for Planning and Mining to be held accountable to one or more local-level governments.
- The arrangement may be unacceptable to the Boards of those SPAs which have already been established in the mining sector.
- There might be no need to establish separate SPAs for each of the six groups of communities which have entered into a Mine Continuation Agreement with OTML, even if the value of community participation in the planning process warrants the existence of six DPCs [see 3.1.3.3].

3.2.3.3. The legal and institutional form of the relationship between DPCs and the Boards of SPAs in each major project area is a matter which will be addressed in the proposed **review** of the status and current operations of the two SPAs which have already been established within the mining sector [see 3.2.2.8].

### 3.2.4 Management of benefits for landholders and landowning groups

3.2.4.1. The Department is aware that its right to insist on specific arrangements for the management of **compensation payments** made to landholders or landowning groups is limited by the fact that these are **not grants** made by the Government, but are the agreed entitlements of people who suffer loss or damage caused by the actions of the companies which are responsible for making the payments.

3.2.4.2. However, the Department acknowledges responsibility for:

- advising the parties to a compensation agreement on the most appropriate methods for ensuring that cash payments reach the individuals or households for whom they are intended; and
- providing additional advice to landowning groups and communities on the establishment of institutions and processes for saving or investing a portion of their land compensation, or else holding it in trust for future generations [see 2.3.2.2].

It is proposed that Project Coordinators will perform the first of these tasks, while the second will be performed by the Sustainability Planning Branch.

3.2.4.3. The Department proposes to institutionalise the arrangement by which developers have been given responsibility for the actual distribution of **royalty grants** to members of mining lease communities on behalf of the State, but will expect any cash payments to be made in accordance with the procedures established for the payment of land compensation. Where a portion of the royalty grant is invested in the purchase of project equity or saved in a trust fund, the Department will not expect the developer to manage such benefits on behalf of the recipients, but will require a separate arrangement to be made through the Development Forum.

3.2.4.4. The Department is concerned by the **diversity of trust arrangements** which have already been put in place to manage a relatively small proportion of the compensation and benefits allocated to landowning groups and communities around existing projects. The Department therefore proposes to undertake a **review** of these arrangements which will recommend strategies to ensure:

- the suitability and sustainability of trust deed objectives;
- board compliance with the trust deed; and
- monitoring of trust fund management up to and after the point of mine closure.

This will complement the proposed review of existing SPAs [see 3.2.2.8], and should also be completed before the Sustainable Development Policy is finalised.

3.2.4.5. The Department does **not** presently anticipate any role for SPAs in the management of the royalty grant allocated directly to mining lease communities, even where part of that grant is held in trust for future generations or for other purposes, since this would create a risk of confusion between this portion of the royalty grant and the Royalty Wedge which is allocated to Project Area Development Funds.

3.2.4.6. The review of current trust arrangements will include the arrangements by which the **Mineral Resources Development Company** (MRDC) and its subsidiary companies manage the landowner equity stake in mining projects which are already operational. The Department is aware of the legal obstacles to any fundamental change in these current arrangements, but will use the findings of this review to examine alternatives to the assumption of MRDC's right to manage the equity stake in a future mining project which is acquired under the Community Participation Option [see 2.3.4.1]. The Department is also aware of the need to ensure that any alternative arrangement offers greater protection for the long-term interest of the beneficiaries.

### 3.2.5 Management of provincial government benefits

3.2.5.1. Under the proposals set out in Section 2.3 [above], the benefits which a **host provincial government** (rather than any local-level governments) will derive directly from a major mining project during its period of operation will consist of:

- a share of the royalty grant from the National Government which is not less than 20%, and not more than 60%, of the value of mineral royalties derived from that project; plus
- Tax Credit expenditures with a value of 0.25% of the developer's gross earnings, which are gradually converted into Development Levies with the same value under the Tax Credit Conversion Scheme; **or**
- an interim Special Support Grant which will be phased out within a period of 4 years.

These proposals do not preclude the negotiation of other 'special' grants by the National Government to a host provincial government during the periods **before** and **after** the operational life of a major mining project.

3.2.5.2. Since these proposals imply a considerable reduction in the amount of money derived from a major mining project which is added to the normal budget of the host provincial government, there will be less of an imperative to make special arrangements to prevent this money from being spent in ways which prove to be unsustainable after mine closure. However, it will still be important to ensure that the provincial government makes its own contribution to the task of integrating the provincial and district planning process with the Community Sustainable Development Planning process. While this may be achieved, to some extent, through its participation in the relevant Development Planning Committee, the DPC will not have the authority or capacity to **implement or monitor** the distribution of mine-related benefits **outside** the project area.

3.2.5.3. The relevant DPC will be responsible to ensure that a developer **plans** its Tax Credit expenditures **throughout** a host province in ways which are consistent with the relevant provincial and district plans [see 3.1.3.5]. A separate mechanism is required to monitor and evaluate the extent to which

- **Tax Credit** expenditures by the developer **outside** the project area, and
- provincial government spending of its own share of the **royalty grant or any other mine-related grant** made by the National Government

have in fact been made in accordance with provincial and district plans which incorporate the principles of sustainable development. It is proposed that the **Mining Sustainability Planning Committee**, acting on advice from the Department's Sustainability Planning Branch, should be responsible for making this determination.

3.2.5.4. The ability of the **Sustainability Planning Branch** to provide relevant advice to the MSPC will be a function of its additional responsibility to support the role of **Provincial Management Teams** in the management of provincial government benefits. This will include the provision of advice on:

- monitoring and evaluation of Tax Credit expenditures throughout the province;
- planning livelihood and enterprise development programs to reduce dependency on the mining economy both up to and after mine closure; and
- establishment of trust arrangements for the receipt and management of the provincial government's share of Development Levies received under the Tax Credit Conversion Scheme.

3.2.5.5. The MSPC will then be responsible to determine:

- the nature of any physical or 'value-for-money' **audits** of provincial benefits to be undertaken by staff of the Sustainability Planning Branch in association with Provincial Management Teams;
- the extent to which the provincial government has adopted the basic principles of **project activity cycle management** in spending its share of the royalty grant; and
- the manner and timing of the conversion of Tax Credit into Development Levies for any part of the **Tax Credit Conversion Scheme** which is applied to parts of the province which lie outside the project area.

3.2.5.6. Where a Special Purposes Authority is established to manage the share of **Development Levies** which are held in trust for local-level governments under the Tax Credit Conversion Scheme, there is an option to **extend this role** to the management of any additional share of Development Levies which are held in trust for the provincial government. Pursuit of this option would be consistent with the more specialised role of the SPA as a trust fund manager in the period following mine closure [see 3.2.2.9], but might not be consistent with the requirement for SPAs to be accountable to local-level governments **rather than** provincial governments.

### 3.3 TRANSPARENCY

What should be the roles and responsibilities of developers, government agencies, and other stakeholders in **disseminating information about the distribution and management of mineral wealth** in order for mineral wealth to make the most effective possible contribution to sustainable development?

#### 3.3.1 The basic need for transparency

3.3.1.1. The institutions of **transparency** and **accountability** are essential to the governance of the mining sector. If a government has a policy relating to the distribution and management of mineral wealth, it should also have a policy relating to the **dissemination of information** on this subject. The PNG Government is currently failing to make much of an impact on the debate between the mining industry and its most vocal critics because it cannot show that the benefits of mining are being effectively managed to achieve the goal of sustainable development. As a result, the Government is vulnerable to criticism about the social and environmental costs which it is prepared to accept by way of a trade-off in the achievement of this goal.

3.3.1.2. The Government believes that the mining industry has generally done a good job of reporting the **environmental impact** of its operations in PNG, and that the current policy framework makes adequate provision for independent audit of such reports. But greater provision needs to be made for the independent and public **audit or certification** of the overall contribution which the **developers** of large-scale mining projects make to the sustainable development of host provinces and project area communities.

3.3.1.3. The Government recognises the importance of collecting, updating and disseminating information on the **redistribution of mineral revenues to host provinces**, as well as the flow of benefits provided by developers on their own account. This kind of information is not to be collected and distributed for its own sake. The point is to provide a more effective **safeguard against the misappropriation or mismanagement** of the **national** share of mineral wealth.

3.3.1.4. The principles of transparency and accountability need to be reconciled with the principles of **privacy and confidentiality**. However, the principle of commercial confidentiality should not be used as a pretext for creating a cosy relationship between developers and the national government agencies to which they submit their reports, because this will only encourage other stakeholders to believe that the Government is privately acting to protect and advance the interests of the industry. What is required is an overall improvement in the quality of public reporting by **both** parties.

3.3.1.5. The Government should also take responsibility for raising the level of transparency and accountability within **local communities**. It cannot be assumed that communities have effective ways to control the behaviour of their leaders or representatives. Melanesian culture favours the production and protection of secret knowledge in forms which may be inappropriate for the purpose of dealing with the distribution and management of mineral wealth. Even where institutions are put in place for regular community consultation, community representatives often fail to report back to their communities, and need to be made aware of their responsibility to do so.

3.3.1.6. Transparency is a two-way street. As matter of principle, all stakeholders engaged in the process of Community Sustainable Development Planning, or in the management of mineral wealth for the benefit of people in the province or area which hosts a major mining project, should agree to be held accountable for spreading **false rumours or misinformation**. Rumour and gossip are very powerful forces in Melanesian culture. Those stakeholders who have the capacity to enlighten others also have the responsibility not to mislead them.

### 3.3.2 Transparency at the project level

3.3.2.1. The Community Sustainable Development Planning process will include provision for **annual reporting of all expenditures made out of Project Area Development Funds**, including those made under the Tax Credit Scheme. Guidelines for the production of annual reports will include provision for physical audit of any items of expenditure above a limit to be determined by the Mining Sustainability Planning Committee. Where feasible, photographs of these items will be included in the reports.

3.3.2.2. The Department will expect developers to maintain records of **all compensation payments** made to members of mining lease and mine-affected communities. Where developers have been given responsibility for the payment of royalty grants to members of mining lease communities, the Department will expect them to keep records of such payments in the format which is used to record land compensation payments. The Department will establish the standard format to be used in recording all of these payments, and will expect developers to submit copies of their records in electronic form on a quarterly basis.

3.3.2.3. Since the **royalty grants** paid to members of mining lease communities are grants from the public purse, are made for the benefit of groups rather than individuals, and for the benefit of future as well as current generations, the Department believes that all members of these communities should be entitled to know the amount and timing of each payment and the identity of the recipient, and will expect the developers to make this information available to them. The Department is aware that some of the recipients may feel that the security of their persons and property will be put at risk by the distribution of such information, but it believes that measures can be put in place to minimise such risks. The Department does **not** propose to release such detailed information to the general public, but will release summary annual reports of the amounts paid out in royalty grants and all forms of compensation to each of the mining lease communities in PNG.

3.3.2.4. The Department is aware of public concern over the apparent lack of transparency in the management of **mining project equity** held in trust for mining lease communities by the Mineral Resources Development Company (MRDC). The Department will therefore request the directors of MRDC and the relevant subsidiary companies to publish all information relating to distribution of income from this source which cannot be construed as a breach of trust.

### 3.3.3 Transparency at the national level

3.3.2.5. The Department proposes to establish a **standard format** for the operator of each major mining project in PNG to report the amounts paid annually:

- to the National Government and any lower levels of government by way of taxes and levies of all kinds;
- to national and foreign companies for the supply of goods and services to the project;
- to citizens and non-citizens in the form of wages and salaries (net of payroll tax);
- to landholders or landowning groups by way of compensation; and
- to other organisations or individuals by way grants or donations.

3.3.2.6. The Department proposes to collaborate with the PNG Chamber of Mines and Petroleum to establish a method of reporting which captures the **full range of costs** incurred by the operators, including the cost of environmental protection and the management of ‘community affairs’, and the full extent of their direct contribution to the Government’s revenues. The Department will also consult with the Chamber and with any other interested parties to establish the most cost-effective way of compiling and disseminating this information to the general public.

3.3.2.7. The Department of Mining proposes to collaborate with the Internal Revenue Commission, the Department of Treasury, and the National Economic and Fiscal Commission, to establish a standard format for reporting:

- the amounts of government revenue which are **derived directly** from major mining projects through different forms of taxation in each calendar year; and
- the amounts which are **actually transferred** each year from the National Government to lower levels of government through different forms of grant related to the existence of these projects.

For this purpose, inter-governmental transfers will be understood to include all expenditures made under the proposed Tax Credit Conversion Scheme [see Section 2.3.5], but **not** the royalty grants provided to mining lease communities.

3.3.2.8. In the event of any **inconsistency** between the figures supplied by the industry and the Internal Revenue Commission regarding the amounts paid to the National Government in different forms of taxation, the Department will convene a meeting of industry and government representatives to reconcile these figures. Once this has been done, the role of the relevant government agencies should be to check and verify the figures supplied by the industry before they are placed in the public domain.

3.3.2.9. Responsibility for establishing a common framework for tracking flows of mineral wealth through government accounts will be vested in a sub-committee of the **Mining Sustainability Planning Committee**. The MSPC will be responsible for authorising the annual publication of this information. The National Economic and Fiscal Commission will be responsible for verification of the information pertaining to inter-governmental transfers of mineral wealth.

### 3.3.4 Methods of dissemination

3.3.4.1. Information pertaining to the distribution of mineral wealth derived from each major mining project, together with the content of the Community Sustainable Development Plan(s) pertaining to that project, will be posted to the Department's **official website**. This task will be the responsibility of the Department's Minerals Information Branch.

3.3.4.2. The Department will expect the operators of each major mining project to carry the cost of publishing **hard copies** of the information pertaining to that project for distribution to project area stakeholders.

## 3.4 DISPUTE RESOLUTION

What should be the roles and responsibilities of developers, government agencies, and other stakeholders in **resolving disputes arising from the development of major mining projects** in order for the mining industry to make the most effective possible contribution to sustainable development?

### 3.4.1 Arguments caused by mining projects

3.4.1.1. Dispute resolution is a major issue for the implementation of a Sustainability Planning Framework for the mining sector in PNG because the prospect of social disorder and periodic outbreaks of violent social conflict in the vicinity of major mining projects is **one of the main disincentives** to investment in the sector.

3.4.1.2. The social, economic and environmental impact of major mining projects includes a wide range of occasions for argument between project area stakeholders, which can sooner or later embroil other primary or secondary stakeholders from outside the project area. Many of these arguments seem at first sight to revolve around claims for compensation for the environmental damage caused by mining operations, but turn out, on closer inspection, to be concerned with the principles which ought to govern the distribution and management of mineral wealth. These disputes need to be dealt with in a manner which combines the principles of **fairness**, **efficiency** and **transparency** with the achievement of sustainable development outcomes.

3.4.1.3. In many cases, the distribution of increasing amounts of mineral wealth to provincial governments and local communities has had the effect of increasing the number and intensity of disputes between individuals and groups who feel themselves to be entitled to a share of this wealth. In the case of local communities, the sudden access of mineral wealth is also likely to undermine the authority of individuals and institutions which have traditionally been responsible for the resolution of social conflict. The National Government therefore needs to take responsibility for **supporting traditional forms of dispute resolution or finding alternative mechanisms** which are acceptable to the disputing parties.

### 3.4.2 Alternatives to litigation

3.4.2.1. The Department believes that far too much time and money is being spent on the resolution of disputes about the distribution and management of mineral wealth by means of litigation in the national courts. The formal court system is already overburdened with other matters, and lawyers are the only stakeholders who seem to secure any lasting benefit from **excessive litigation**. The Department will therefore use its best efforts to ensure that such disputes are resolved by other means which are less costly for the disputing parties.

3.4.2.2. Some people might argue that the number of disputes arising from the development of mining (and also petroleum) projects is sufficient to justify the establishment of a **special tribunal or authority** – perhaps even an Ombudsman – to deal with them. Several points can be made about this kind of suggestion:

- PNG already has an Ombudsman who deals with complaints about the abuse of State power, but many (if not most) of the disputes in the mining sector arise from a lack of government capacity to manage a complex set of relationships between other stakeholders, and an Ombudsman cannot create government capacity where it is lacking.
- Given the National Government's current financial situation, there is no realistic prospect of securing additional government funds for the creation of a new judicial institution, or even the addition of new functions to one which already exists.

- There are cases in developed countries where an industry has established and funded an independent Ombudsman to investigate public complaints about the abuse of that industry's market power, but this kind of institution would not be an appropriate way of dealing with most of the disputes which afflict the PNG mining sector, even if the industry were willing and able to support it.
- Non-government organisations could play an important role in resolving some of these disputes, but they are not likely to succeed if the Government is unable to create greater public understanding and acceptance of its own laws and policies.
- The range of disputes which presently afflicts the mining sector (and also the petroleum sector) is too great for any single institution to deal with all of them effectively, even if additional human and financial resources were to be made available.

The Department therefore believes that the best way forward is to clarify the roles and responsibilities of different institutions for dealing with different kinds of dispute, and to build their capacity to do so when this can be done with a modest amount of additional resources.

### 3.4.3 Disputes over customary land rights

3.4.3.1. Some disputes about the distribution mineral wealth are disputes between landowning communities, landowning groups, or individual landholders about the nature and extent of their rights to customary land within the areas covered by an Exploration Licence or a development lease. Once a project has been approved for development, these may turn into disputes between organisations or associations established by members of different groups or communities.

3.4.3.2. The Department believes that disputes about the ownership of customary land, and hence about the distribution of entitlements to compensation or benefits which flow from this customary ownership, should, wherever possible, **be heard and resolved on the land which is the subject of dispute**. Where many community members are witness to the process, it is much harder for individuals to press false or vexatious claims.

3.4.3.3. The Department's Project Coordinators will be responsible to ensure that all areas proposed for inclusion in a development lease are declared as **Land Mediation Areas** under the *Land Disputes Settlement Act* before a Development Forum is convened and the project is approved for development. The appointment of local Land Mediators will normally be made in consultation with local councillors and village court officials during or immediately after the conduct of a lease area land investigation at the expense of the project proponent. Any areas identified as being subject to dispute during the course of the investigation will then be referred to the Land Mediators as soon as they are appointed.

3.4.3.4. Once a project has been approved for development, Project Coordinators will provide support for Land Mediators to mediate any further disputes over rights to customary land within the areas leased to the developer. Since these are defined as disputes to which the developer is not itself a party, the Department will also expect the Lands Officer(s) employed by the developer to provide advice and support for the process of mediation where this is requested by the Land Mediators.

### **3.4.4 Other disputes within or between project area communities**

3.4.4.1. The social impact of a major mining project normally includes a degree of social disruption which entails an increase in the frequency and intensity of disputes between the people of the project area. Many of these disputes are not concerned with the distribution of land rights between customary landholders or landowning groups, but may still be concerned with the distribution of mineral wealth derived from the possession of such rights. Other disputes arise from interaction between customary landholders and immigrants to the area who may or may not be employed by the mining company or its contractors. Nor can the incidence of disputes between groups or communities be clearly distinguished from the increase in violent behaviour or criminal activity which tends to accompany the unequal distribution of disposable cash incomes within the project's area of impact.

3.4.4.2. Wherever possible, these local-level disputes should initially be dealt with by the **Village Courts**. An assessment of the capacity of these institutions should be included in the Baseline Planning Study for a major mining project, and then reviewed through the Community Sustainable Development Planning process. However, the Department is aware that Village Courts alone will **not** have the capacity to manage all the different forms of social conflict in the project area, and that this responsibility will therefore need to be shared with the local **police force** and with the **security staff** employed by the developer.

3.4.4.3. It is sometimes difficult for the mining company to maintain an appearance of neutrality in the management of social conflict within the project area, simply because of the obligation placed on the company to employ substantial numbers of local people who may be party to a local dispute. However, companies are commonly obliged to intervene because the Government's law enforcement agencies do not have the resources to do the job by themselves. The Department will therefore expect each developer to formulate a **local conflict management strategy** to be implemented by its Loss Control Department, and to include this with its other inputs to the Community Sustainable Development Planning process.

3.4.4.4. The Department does **not** think it is appropriate for a developer to include any subsidy or support for **police operations** within its local conflict management strategy. Mining companies should not be expected to bear the risk of being seen to use the Government's apparatus of law enforcement for their own purposes, especially if this might lay them open to accusations of human rights abuse. If the police do not have the resources to carry out their tasks within a project area, the supply of additional resources should be the responsibility of the agency which is charged with management of the **Project Area Development Fund**, and which is therefore accountable to the local-level government(s) responsible for the area. Provision for such additional expenditure should therefore be made by the Community Sustainable Development Plan(s) approved by the Development Planning Committee.

3.4.4.5. Where the members of one or more local communities are engaged in a dispute over the distribution or management of mineral wealth which could not be addressed by a Village Court, and for which the developer is also unable to provide any solution, the Department will encourage the parties to refer the matter to **mediation** before they consider taking it to a higher court [see Section 3.4.7].

### **3.4.5 Compensation claims against developers**

3.4.5.1. Where members of a mining lease community are in dispute with a developer over the implementation of a compensation agreement, or where they are demanding compensation for damage not previously foreseen or covered by an existing agreement, the Department will seek to mediate the dispute through the office of the **Mining Wardens** or other staff of its **Regulation Division**. This is to avoid any perception of bias on the part of the Project Coordinators, whose role involves more frequent communication or association with the developer.

3.4.5.2. Officers of the **Department of Environment and Conservation** may also be expected to play a role in the settlement of such disputes, either under the existing legislation for which the Department is responsible, or (in the case of new projects) under the terms of the *Environment Act*. However, the DEC is even more likely than the Department of Mining to experience difficulty in performing this role because of its own lack of resources.

3.4.5.3. The Department is aware that disputes of this kind are the ones most likely to attract the interest of **non-government organisations** because they provide an opportunity for non-government organisations to act as advocates for the rights of local or indigenous communities against the power which is commonly attributed to large mining companies. The Department does not place any restriction on the right of project area stakeholders, including members of landowning communities, to seek support or advice from organisations based outside the project area. The Department's main concern is to ensure that these secondary stakeholders are **properly informed** about the facts and issues at stake, that they act in a **responsible manner** in their dealings with project area stakeholders, and that they accept some measure of **accountability** for their actions. In any particular case, the Department will expect the relevant Project Coordinator to brief the representatives of any organisation which has been invited to support members of a landowning community engaged in a dispute with the project developer. In return, it will expect the representatives of that organisation to provide the relevant Project Coordinator with a report of their findings and any proposals or recommendations for further action by the Department.

### **3.4.6 Role of Development Planning Committees**

3.4.6.1. Many disputes over the distribution and management of mineral wealth are likely to be disputes over the interpretation or implementation of **Development Forum agreements**. The Community Sustainable Development Planning process is intended to provide an ongoing forum for the resolution of such disputes. Each Development Planning Committee would have the freedom and authority to establish a separate institutional mechanism (a sub-committee, for example) to deal with those disputes which are not resolved through the planning process itself.

3.4.6.2. The Porgera project already has a multi-stakeholder Law and Order Committee which is convened by the Department's Project Coordinator. The Department proposes to treat this committee, and any similar committees established for other major projects, as a sub-committee of the Development Planning Committee. It is understood that the range of disputes or issues addressed by such a body would not necessarily be confined to those which arise from Development Forum agreements or which involve the distribution and management of mineral wealth. But all issues of public order in a project area are relevant to a process of sustainable development planning.

### **3.4.7 Role of external mediators**

3.4.7.1. Development Forum agreements normally include a clause which allows for a dispute between the parties to be referred to arbitration under the *Arbitration Act*. However, the process of arbitration can be as clumsy as any process of litigation, and has rarely been used to settle disputes of this kind.

3.4.7.2. Experience has shown that **independent mediators** with relevant expertise or experience can do a better job of resolving disputes between the primary stakeholders in the development of a mining project, and also in the exploration phase which precedes the process of development. Some of these individuals would be expected to figure in the **register of consultants** who may be called upon to provide financial, legal or environmental advice to landowning communities before a Development Forum is convened [see 2.2.6.2]. The Department therefore proposes to expand this register to include a list of potential mediators. The Department will welcome the inclusion in this register of **non-government organisations** which specialise in conflict resolution or the practice of restorative justice.

3.4.7.3. A request for the services of an external mediator may either be lodged by a Development Planning Committee, or one of its sub-committees, or by mutual agreement of the disputing parties. The choice of mediators will then be made by mutual agreement between the Department and the disputing parties.

3.4.7.4. During the operational life of a project, the Department will normally expect that payment for the services of an external mediator will be made from the Project Area Development Fund, subject to authorisation by the Development Planning Committee. In the earlier stages of the mining project cycle, the Department will ask the developer, or the holder of the relevant Exploration Licence, to bear the cost of mediation. Where the dispute arises after mine closure, the cost may be attributed to a mine closure bond or trust established under the Mine Closure Policy, but the feasibility of doing so will depend on the nature of the dispute.

### 3.5 CAPACITY BUILDING

What should be the roles and responsibilities of developers, government agencies, and other stakeholders in **building the capacity of national and local institutions to manage the mining industry and mineral wealth** for the achievement of sustainable development outcomes?

#### 3.5.1 The capacity for sustainable development

3.5.1.1. **Provincial governments, local-level governments, and community organisations** suffer from an obvious lack of capacity to manage the benefits which they derive from major mining projects to plan for their application to the goal of sustainable development [see Working Paper 6, Chapter 7]. Where their performance should be supervised and audited by national government agencies, the latter have also shown a lack of capacity to carry out the task. The ability of developers to manage the distribution of benefits to local communities is itself constrained by the lack of provincial and local-level government capacity. The National Government therefore needs to establish and maintain a mechanism whereby developers can claim a **Tax Credit** for building this capacity.

3.5.1.2. The current mineral policy framework places too much emphasis on the role which developers should play in building national and local capacity to participate directly in a mining project, whether as employees or contractors, rather than the capacity to participate in a **broader process of sustainable development** in areas which will probably only host a major mining project for a limited period of time, and will then be faced with the need to find an alternative livelihood which still represents an advance on the social and economic conditions which prevailed before mining began [see Working Paper 3, Chapter 5].

3.5.1.3. The National Government cannot reasonably expect developers to take on this broader role without setting clear guidelines on the way that it ought to be performed, and then taking its own share of responsibility for planning, funding and managing the capacity-building process for provincial and local institutions. The Sustainability Planning Framework should therefore make clear provision for a process of **human capital formation** which is clearly linked to the different phases of the mining project cycle.

3.5.1.4. National government agencies cannot rely on mining companies to build national government capacity to implement a Sustainable Development Policy or Sustainability Planning Framework. This would not only place an unacceptable burden on the industry, but would also expose the Government to criticism for the extent of its dependence on an industry which it is meant to regulate. This is especially true of the Government's role in regulating the social and environmental impacts of major mining projects, where the resources currently available to key government agencies (most notably the Department of Environment and Conservation) are clearly inadequate. Provision therefore needs to be made for engagement of **foreign aid agencies** in building the capacity of national institutions.

### 3.5.2 Tax Credit Conversion Scheme

3.5.2.1. Section 98 of the *Organic Law on Provincial Governments and Local-level Governments* states that developers 'shall provide to the National Government, Provincial Governments and Local-level Governments, **expertise and professional advice** as to the use of development levies' which are payable to provincial and local-level governments. The Tax Credit Conversion Scheme proposed elsewhere in this Green Paper [see Sections 2.3.5 and 2.3.6] is intended to enable the developers of major mining projects to pay Development Levies to provincial and local-level governments (or their instrumentalities) **and** build their capacity to make 'wise use' of these funds **without** adding to the overall cost of project development. In order for this intention to be realised, it will be necessary:

- to amend the *Organic Law* to allow for Development Levies themselves to be tax-creditable; and
- to ensure that the guidelines for Tax Credit expenditures under the *Income Tax Act* allow for credit to be claimed on projects which build the capacity of provincial and local-level governments.

The Department strongly supports both of these policy measures.

3.5.2.2. The Department proposes to produce a set of guidelines which specify the nature of the **'expertise and professional advice'** which will be counted as part of a tax-creditable project to build the capacity of all three levels of government, **rather than** being counted as part of the input which the developer will be obliged to make to the Community Sustainable Development Planning process [see Section 3.1.5]. These guidelines will need to be approved by the **Mining Sustainability Planning Committee**. The MSPC will also be responsible for approving specific capacity-building projects proposed under the Tax Credit Conversion Scheme, because this will be part of the wider process of determining when and how Tax Credit expenditures will be converted into Development Levies [see 3.2.5.5].

3.5.2.3. The **Western Province Capacity Building Project** provides a model of the sort of project which the MSPC might be expected to approve under the Tax Credit Conversion Scheme. Oversight of this project is vested in a Program Development and Management Committee which should henceforth be regarded as a sub-committee of the MSPC. While the National Government agreed to fund this project out of a 25% share of the royalty grant **and** a 25% share of the Special Support Grant allocated to the Fly River Provincial Government, the Provincial Government has diverted the second of these amounts to other purposes. As a result, OTML has been obliged to make up the shortfall out of its own budget, but receives no credit for this subsidy. The funding of such a project under the Tax Credit Conversion Scheme would insulate its budget from the political process and remove the need for a corporate subsidy which may not be sustained.

### 3.5.3 Community institutions and human capital formation

3.5.3.1. Although the Department supports the use of Tax Credit expenditures to build the planning and management capacities of local community institutions engaged in the Community Sustainable Development Planning process [see 3.1.3.8], it will still expect this kind of expenditure to be limited to the early stages of a mining operation. As responsibility for the implementation of a Community Sustainable Development Plan is increasingly passed to a **Special Purposes Authority** (or equivalent institution), along with the Development Levy which will partly fund its implementation, so the SPA itself will increasingly assume responsibility for building the capacity of other community institutions engaged in the planning process.

3.5.3.2. The Department will include the design of capacity-building projects for community institutions, especially women's groups, in its own guidelines for the production, evaluation and implementation of **Community Sustainable Development Plans** (CSDPs). These guidelines will **not** assume that all such projects are to be funded under the Tax Credit Conversion Scheme, but will make allowance for the fact that some activities will continue to be funded out of a developer's Community Affairs budget, or by a body like the Ok Tedi Development Foundation, while others may receive the support of secondary stakeholders such as non-government organisations or donor agencies.

3.5.3.3. The proponents of major mining projects are currently required to include **Training and Localisation Plans** in their Proposals for Development, and specific commitments to train and employ people from mine-affected or project area communities are normally included in a Mining Development Contract. Capacity building for local landowner companies is also a standard feature of the **Business Development Programs** which are also required under the standard Mining Development Contract. However, the Department is aware of the need to place more emphasis on training or educating the members of project area communities to take advantage of economic opportunities which are not dependent on the existence of a mine which must eventually close.

3.5.3.4. The developer of a large-scale mining project with a relatively long lifespan may reasonably be expected to support a broader program of training for regional economic development. The mining industry as a whole should also have an interest in promoting the continued employment of skilled mineworkers who are made redundant by the closure of any major mining project. However, the Government must also accept some responsibility for ensuring that the mineral wealth derived from each project is partly invested in the formation of human capital which will be able to produce new kinds of wealth after mine closure, both for the province and the landowning communities which formerly hosted the mine. Developers may help the Government to achieve this goal through expenditures approved under the Tax Credit Scheme, but a broader set of mutual commitments should be incorporated either into Development Forum agreements or into Mining Development Contracts [see Working Paper 3, Chapter 6].

### **3.5.4 Mining Sector Institutional Strengthening Project**

3.5.4.1. The overall aim of the Mining Sector Institutional Strengthening Project (MSISP) is to build the capacity of the Department of Mining and the Internal Revenue Commission to manage the development of the mining industry and the distribution of mineral wealth in PNG. The production of this Green Paper, and the eventual adoption and implementation of a Sustainable Development Policy for the mining sector, is one component of the MSISP.

3.5.4.2. The MSISP makes provision for the appointment of a **Sustainable Development Training Coordinator** for a period of 2 years to assist the Department to train the staff of the Development Coordination Division for the further development and implementation of the Sustainable Development Policy and Sustainability Planning Framework in the country's major mining project areas. The consultant appointed to this position will also play a key role in the preparation of the guidelines and the conduct of the reviews proposed as part of the process of finalising the Sustainable Development Policy. The Department is proposing a further extension of the MSISP to provide technical support to the **Sustainability Planning Branch** within the Development Coordination Division to implement the Sustainable Development Policy and Sustainability Planning Framework over a 5-year period [see Section 4.1].

3.5.4.3. It is proposed that the staff of the Sustainability Planning Branch should have a number of capacity building functions built into their duty statements. In particular, they will be expected to:

- collaborate with provincial and local-level governments hosting major mining projects to **improve core skills** in public administration, planning and financial management;
- collaborate with developers to support **civil society groups** (especially women's groups) in mine-affected areas to improve their planning and financial management capacity, and their capacity to secure resources for priority community programs and projects; and
- conduct **training workshops** in the application of all guidelines approved by the Mining Sustainability Planning Committee (MSPC).

3.5.4.4. In addition, all staff of the Development Coordination Division will be expected to collaborate with staff of other national government agencies represented on the MSPC in the process of implementing the Sustainable Development Policy and Sustainability Planning Framework. This process of collaboration will also serve to build the capacity of these other agencies.

## 4 FURTHER IMPLICATIONS

### 4.1 INSTITUTIONAL ARRANGEMENTS

#### 4.1.1 Progress to implementation

4.1.1.1. The Department proposes to accomplish the finalisation and implementation of the Sustainable Development Policy in two phases:

- In the **first phase** (to end of 2003), the Sustainable Development Policy will be finalised and approved (as a White Paper) by the National Executive Council and the National Parliament, appropriate changes will be made to existing legislation, and a set of institutional arrangements (the Sustainability Planning Framework) will be put in place to implement the Policy.
- In the **second phase** (2004-2008), the Department proposes to extend the Mining Sector Institutional Strengthening Project, under which the Policy has been developed, with additional donor support for implementation of the Policy in each of PNG's mining provinces. This sub-project will be called the '**Planning for Sustainable Development**' Project.

#### 4.1.2 Completion of Sustainable Development Policy

4.1.2.1. The Department proposes a **period of public consultation** over the contents of this Green Paper, beginning in February 2003 and lasting for at least 4 months. During this period, the Department will:

- collate and review all written comments on the Green Paper from both primary and secondary stakeholders;
- ensure that there is a further process of consultation with existing project area stakeholders, especially members and representatives of mine-affected communities.

The primary focus of this second round of consultation at the project area level will be the development of strategies and guidelines for the **Community Sustainable Development Planning** process.

4.1.2.2. As part of the process of further consultation at the project area level, the Department will undertake reviews of:

- the actual and potential role of **Special Purposes Authorities** in the management of benefits for mine-affected and project area communities [see 3.2.2.8];
- **trust fund** arrangements for the management of '**landowner benefits**' derived from major mining projects [see 3.2.4.4];
- the contribution of **corporate trust funds, social funds, or foundations** to sustainable development in areas affected by large-scale mining projects [see 3.2.1.8]; and

- the current operation and management of the **Tax Credit Scheme** in each major project area.

These reviews will form the basis for developing additional strategies and guidelines for the **management of mineral wealth** (or mine-related benefits) at the provincial and local level.

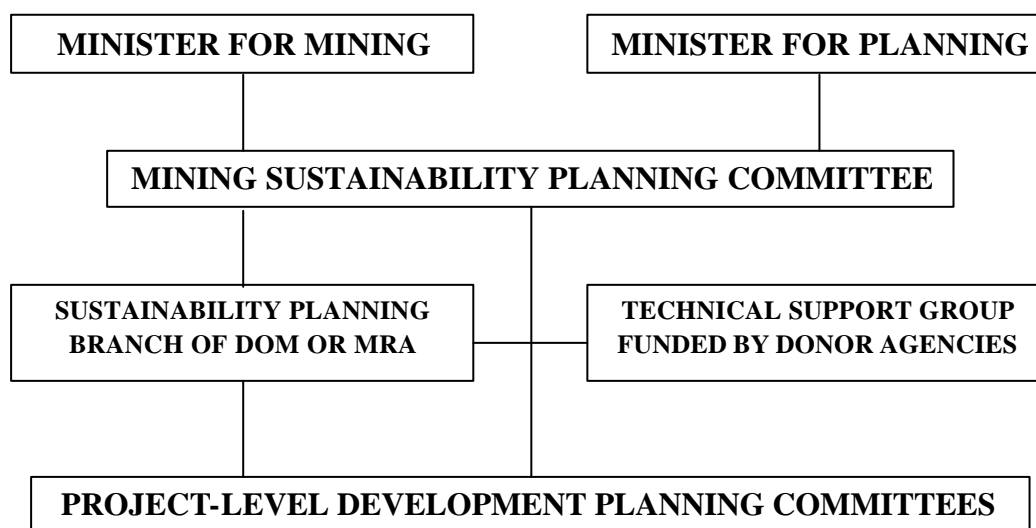
4.1.2.3. The Department proposes to use resources already available under the **Mining Sector Institutional Strengthening Project** to coordinate and facilitate this process of consultation and review. At the same time, it will be seeking additional donor support to implement the **‘Planning for Sustainable Development’ Project** as an extension of the MSISP, once the Policy has been approved by the National Parliament [see Working Paper 6, Chapter 8].

4.1.2.4. Oversight of this process will be vested in a **Mining Policy and Planning Committee (MPPC)**, which will be constituted in the same way as the National Steering Committee which has overseen the development of this Green Paper. The MPPC will be responsible for review and approval of successive drafts of the White Paper and any consequential drafting instructions before these are presented to the National Executive Council. It will also be expected to provide advice to the Department on the further process of consultation with project area stakeholders in the preparation of strategies and guidelines for implementation of the Sustainable Development Policy.

### 4.1.3 Framework for implementation

4.1.3.1. When the White Paper has been approved by the National Executive Council (and in anticipation of its subsequent approval by the National Parliament), the Department of Mining (or the Mineral Resources Authority) will proceed to establish an institutional framework for implementation of the Sustainable Development Policy. The core elements of this framework are shown in Figure 2.

**Figure 2:** Institutional arrangements for Sustainability Planning Framework.



4.1.3.2. It is proposed that national coordination of the Sustainability Planning Framework should be vested in a **Mining Sustainability Planning Committee** (MSPC) which will inherit the functions of the Mining Policy and Planning Committee once the Sustainable Development Policy comes into effect. This body, like the Development Planning Committees established for each major mining project, should be jointly chaired by the national government agencies responsible for Mining and Planning. The model for this arrangement is the Mining and Petroleum Policy Committee which was established at the time of Independence, which was jointly chaired by the Secretary for Finance and the Secretary for Minerals and Energy, and which reported to the National Executive Council through their respective Ministers. If the Government approves the establishment of the **Mineral Resources Authority**, the relevant legislation will need to make provision for the establishment of this body, in the same way that **Division 2 of Part III** of the current *Mining Act* specifies the composition and responsibilities of the **Mining Advisory Board**.

4.1.3.3. The MSPC will be responsible for:

- establishment and supervision of **Development Planning Committees** (or Mine Closure Planning Committees) for each major mining project;
- approval, implementation and periodic review of **guidelines or regulations** pertaining to implementation of the Sustainable Development Policy [see Section 4.3];
- advice to the Minister for Mining on the mobilisation of **Development Forums** for new mining projects;
- advice to the Ministers for Mining and Planning on the relationship between **Community Sustainable Development Planning** for project area communities and **provincial, district or local-level planning** under the *Organic Law on Provincial Governments and Local-level Governments*;
- determination of the rate at which Tax Credit expenditures are converted into Development Levies under the **Tax Credit Conversion Scheme** as this applies to each major project [see 3.2.5.5 and 3.5.2.2];
- arrangement of an **independent review of the ‘Planning for Sustainable Development’ Project** to determine the future of national government assistance to mining provinces and project area communities.

4.1.3.4. The **Sustainability Planning Branch** (SPB) of the Development Coordination Division in the Department of Mining (or the Mineral Resources Authority) will act as the secretariat to the MSPC. The SPB will be responsible for:

- advice to other stakeholders on the establishment of a **Development Planning Committee**, commissioning of a **Baseline Planning Study**, and mobilisation of a **Development Forum** for a new mining project;
- preparation, in consultation with project area stakeholders, of **Community Sustainable Development Plans** for each project;
- assistance to **Special Purposes Authorities** (SPAs) and other local-level institutions in the management of benefits for mine-affected and project area communities in accordance with CSDPs;

- assistance to the **Department of Provincial and Local Government Affairs** in the establishment and supervision of SPAs in the mining sector;
- collaboration with project developers to support **civil society groups** (especially women's groups) in mining project areas to improve their planning and financial management capacity, and their capacity to secure resources for priority community programs and projects;
- conduct of **training workshops** in the application of all **guidelines or regulations** pertaining to implementation of the Sustainable Development Policy;
- collaboration with provincial and local-level governments hosting major mining projects to **improve core skills** in public administration, planning and financial management;
- support for the role of **Provincial Management Teams** in the management of benefits for provincial governments in accordance with provincial and district development plans; and
- development of a **Management Information System** to facilitate planning, monitoring and reporting on the progress of Community Sustainable Development Plans and provincial, district and local-level government plans in mining project areas.

4.1.3.5. The Sustainability Planning Branch will be the institutional location of the **Project Support Team (PST)** which is engaged to implement the **'Planning for Sustainable Development' Project**. The PST should comprise:

- a Project Manager with specialist skills in development planning and administration;
- a Public Infrastructure and Services Project Officer;
- a Livelihood and Enterprise Development Project Officer;
- a Community and Public Works Engineer; and
- an Office Manager.

It is expected that the PST will carry out the functions of the Sustainability Planning Branch with the assistance of a donor-funded **Technical Support Group** during the 5-year period of project implementation.

## 4.2 AMENDMENTS TO EXISTING LEGISLATION

### 4.2.1 Mining Act

4.2.1.1. The *Mining Act* will need to be amended in a variety of ways to make it consistent with other legislation enacted since 1992, to reflect the establishment of the Mineral Resources Authority as successor to the Department of Mining, and to reflect changes in the administration or regulation of the mining sector which fall outside of the scope of the Sustainable Development Policy proposed in this Green Paper. **The amendments proposed here are those which are directly related to the proposals put forward elsewhere in this document.** The main focus here is on the changes which need to be made to current provisions of the Act, rather than the addition of new divisions or sections. That is because there are many proposals in this Green Paper which, once endorsed as Government policy, could be accommodated by means of **regulations or guidelines** under the more general provisions of the Act. Regulations or guidelines should generally be preferred as instruments of policy if their content is likely to be subject to periodic revision or refinement. Consideration should then be given to amendment of **Section 170** of the Act to include mention of the regulations which are likely to be required to give effect to the main provisions of the Sustainable Development Policy [see Section 4.3].

4.2.1.2. Consideration will be given to the inclusion of some general statement about the contribution of mining to the sustainable development of the nation, the host province, and project area communities in **Section 1** of the Act. This may be done by reference to the Act's compliance with constitutional requirements [see Section 1.3].

4.2.1.3. The Act does not presently define a 'Special Mining Lease', a 'Mining Development Contract', or a 'Development Forum' in a way which is inconsistent with the proposal for all '**major**' (rather than '**large-scale**') mining projects to be subject to these institutions [see 2.1.2.2]. However, if Mining Leases are no longer to be issued for '**medium-scale**' projects [see 2.1.2.1], then consideration will be given to amendment of those parts of the Act which deal with the grant of Mining Leases and Alluvial Mining Leases.

4.2.1.4. **Section 3** of the Act, which requires the Minister to convene a **Development Forum** before the grant of a Special Mining Lease, will be amended to make it consistent with Section 115 of the *Organic Law on Provincial Governments and Local-level Governments*. The amendment is expected to follow the example already set by Section 48 of the *Oil and Gas Act*, by requiring the Minister to invite the representatives of the relevant local-level government(s) and 'any other persons or organisations which the Minister considers would be affected by the mining project if the application is granted' [see 2.2.3.1]. This section of the Act might also be extended to include a statement of the preconditions which need to be met before a Development Forum is convened, or the matters to be addressed by a Development Forum, but these are issues which might better be left to regulations or guidelines.

4.2.1.5. Consideration may be given to the addition of a section or sections to **Division 1 of Part V**, which specifies the conditions attached to the grant of an Exploration Licence, to require the holder to conduct a **Community and Group Identification Study** as an initial condition of exploration activities [see 2.2.4.1], in the same way that Section 47 of the *Oil and Gas Act* requires the holder of a Petroleum Prospecting Licence to undertake a **preliminary social mapping study** and **landowner identification study** [see 2.2.5.1]. This requirement could be extended to include other types of study, such as detailed land investigations. However, experience with the implementation of the *Oil and Gas Act* indicates that this kind of requirement should be couched in very general terms in the legislation, while the designation, content and timing of specific studies should be left to regulations or guidelines [see 4.3.4].

4.2.1.6. Consideration will be given to amendment of **Sections 106, 108 and 165** of the Act to clarify the Department's intention to ensure that the grant of an Exploration Licence over customary land is conditional on the **prior consent** of exploration licence communities, and the grant of a Special Mining Lease over customary land is conditional on the **prior and informed consent** of mining lease communities [see Section 2.2.6].

4.2.1.7. **Section 154** of the Act will be amended to reflect the distinction between **land compensation**, which is payable to landowning groups or communities in respect of customary land, and **livelihood compensation**, which is payable to individual landholders [see 2.3.2.1]. Since this amendment will need to recognise the distinction between individual 'landholders' and the groups or communities which count as the 'owners' of customary land, the definition of '**landholder**' in **Section 2** of the Act will also need to be amended, and a definition of '**landowning groups**' or '**landowning communities**' will need to be included [see Section 2.2.2.].

4.2.1.8. Consideration will also be given to the further amendment of **Section 154**:

- to make explicit reference to the process of **Environmental Impact Assessment** under the terms of the *Environment Act* in the formulation of compensation agreements relating to the development of a major mining project [see 2.3.2.4]; and
- to require a separate agreement for the **relocation or resettlement** of some or all of the members of a mining lease community affected by the development of a major mining project [see 2.3.2.5].

4.2.1.9. Consideration will be given to amendment of **Sections 161 and 163** to reflect the Department's intention to establish a standard procedure for reporting the costs and benefits associated with the development of major mining projects, and especially the distribution of mineral revenues collected by the Government itself [see Section 3.3.3]. The emphasis on **confidentiality** in Section 163 should be counter-balanced by an explicit commitment to the principle of **transparency**.

4.2.1.10. Subsection 98(6) of the *Organic Law on Provincial Governments and Local-level Governments* indicates that the *Mining Act* should ‘make provision for the rates, management, sharing arrangement, and application’ of any **Development Levies** to be paid by the developers of major mining project. This should be done by means of a Part or Section of the Act which reflects those parts of the Sustainable Development policy which relate to the calculation, management and use of the Development Levies payable either to provincial governments or to local-level governments under the proposed Tax Credit Conversion Scheme [see 2.3.5.4, 2.3.6.3, 3.1.2.4, 3.1.3.5, 3.2.2.9, 3.2.5.5, 3.3.2.1, 3.3.2.9, 3.5.2.1].

4.2.1.11. Since the Government no longer proposes to draft the *Mining (Royalties) Act* foreshadowed in the *Mining Act*, a separate Part should be added to the *Mining Act* to express the principles pertaining to the **distribution of the royalty grant** derived from a major mining project [see Section 2.3.3]. If the Act is to contain a separate Part which makes provision for the ‘management’ and ‘application’ of Development Levies, then the Part which deals with the royalty grant should also make provision for the **management and application** of that grant [see 3.1.2.4, 3.2.2.9, 3.2.4.3, 3.2.5.3, 3.3.2.3, 3.3.2.9].

## 4.2.2 Organic Law on Provincial Governments and Local-level Governments

4.2.2.1. The proposals contained in this Green Paper are intended to take all possible advantage of the current provisions of the *Organic Law*, because it is recognised that the amendment of constitutional laws is likely to be a more complex and time-consuming process than the amendment of ordinary legislation. However, there are to respects in which amendment of the *Organic Law* would seem to be advisable.

4.2.2.2. In order for the **Tax Credit Conversion Scheme** to operate in the manner proposed in this Green Paper [see 2.3.5.4], **Subsection 98(2)** of the *Organic Law* should be amended by removal of the words ‘out of its own cost’. This will enable Development Levies to be treated as tax-creditable payments to provincial or local-level governments [see 3.5.2.1].

4.2.2.3. In order for the National Government to proceed with its stated intention of eliminating the payment of **Special Support Grants** to provincial governments which host a major mining project, **Subsection 97(1)** should be amended to remove the requirement for such grants to be paid under existing agreements.

4.2.2.4. If any clause in the *Organic Law* is to be amended, there is an argument that **Sections 97-99 should be reviewed in their entirety**. However, the justification for such a review is not to be found entirely in the requirements of a Sustainable Development Policy for the mining sector.

### 4.2.3 Other legislation

4.2.3.1. Amendments to the *Resource Contracts Fiscal Stabilisation Act* and the *Income Tax Act* will be required to incorporate the measures announced in the 2003 Budget [see Section 2.1.3]. Since these measures have already been announced, it is expected that the relevant amendments will be formulated by means of a process which is distinct from the process of finalising and implementing the Sustainable Development Policy for the mining sector.

4.2.3.2. There is a possibility that the proposed review of the actual and potential role of **Special Purposes Authorities** in the management of benefits for mine-affected and project area communities [see 4.1.2.2] will result in proposals to amend Part VII of the *Local-level Governments Administration Act* in order to provide additional legal safeguards for the efficiency, transparency and accountability of such bodies [see 3.2.2.8]. Any such proposals will obviously need to be drafted in close consultation with the Department of Provincial and Local Government Affairs.

## 4.3 GUIDELINES REQUIRED FOR IMPLEMENTATION

4.3.1. This Green Paper foreshadows the production of a series of guidelines which will be required for effective implementation of the Sustainable Development Policy. These guidelines will be subject to **approval and review by the Mining Sustainability Planning Committee** once the Policy is approved for implementation. Draft versions of these guidelines may be subject to review and approval by the Mining Policy and Planning Committee at the same time as the draft White Paper.

4.3.2. The first priority will be the compilation of a **Community Sustainable Development Planning Handbook** for distribution to project area stakeholders [see 3.1.6.2], which will include guidelines for:

- the production, evaluation and implementation of **Community Sustainable Development Plans** [see 3.1.6.1 and 3.5.3.2], following the principles of best practice on activity cycle planning and management, with provision for annual reporting of all expenditures made out of **Project Area Development Funds** [see 3.3.2.1]; and
- the production of **Baseline Planning Studies** [see 3.1.6.3 and 3.2.2.6], with clarification of their relationship to the process of **Social Impact Assessment** under the *Environment Act* [see 3.1.7.7] and the conduct of a **Development Forum** under the *Mining Act*.

Production of these guidelines will entail a significant level of dialogue between the Department of Mining, the Department of Planning and Rural Development, and the Department of Environment and Conservation, as well as a process of consultation with project area stakeholders.

4.3.3. The second priority will be the production of guidelines on the **management of mineral wealth in mining provinces and project areas**, which will partly be based on the findings of a process of review of existing institutional arrangements [see 4.1.2.2]. These guidelines will cover:

- the **operation and management of Special Purposes Authorities**, including their role in implementation of the Tax Credit Scheme, at each stage of the mining project cycle, including the period following mine closure [see Section 3.2.2];
- the **management of trust funds** established to hold any portion of mineral revenues allocated to provincial or local-level governments or to landowning groups and communities, including those established to receive Development Levies under Section 98 of the *Organic Law*;
- the role of **corporate trust funds, social funds, or foundations** in the management of mineral wealth for sustainable development in mine-affected areas; and
- the **‘expertise and professional advice’** which developers are required (by the *Organic Law*) to provide to provincial or local-level governments on the use of any Development Levies imposed on major mining projects, making due provision for the need to inform the provincial, district and local-level planning process [see Section 3.5.2].

Production of these guidelines will entail a significant level of dialogue between the Department of Mining, the Department of Provincial and Local Government Affairs, the Department of Planning and Rural Development, the Department of Treasury, and the Internal Revenue Commission, as well as a process of consultation with project area stakeholders. A clear connection needs to be established between these guidelines and the Tax Credit guidelines established under the Income Tax Act [see 3.5.2.1].

4.3.4. The third priority will be the production of guidelines for a number of **activities to be undertaken by companies engaged in mineral exploration or in the development of major mining projects** under the terms of the Sustainable Development Policy. These will include guidelines for:

- the production of **Community and Group Identification Studies** [see Section 2.2.4] or **Social Mapping Studies** [see Section 2.2.5];
- the conduct of **lease area land investigations** [see 2.2.4.6];
- the content of **compensation agreements** with landowning groups and communities [see 2.3.3.6]; and
- the format to be used in **recording and reporting payments** made to the National Government and other stakeholders [see 3.3.2.5].

4.3.5 The Department will expect the Chamber of Mines and Petroleum to play an important role in organising the industry's input to the production of these guidelines. The Department will also consult with the industry over the production of **additional guidelines or codes of practice** which reflect the industry's experience in the design and implementation of **Business Development Programs** or **Training and Localisation Plans**, as required under existing Mining Development Contracts [see Working Paper 3, Chapter 6]. These additional guidelines may be regarded as part of the industry's input to the production of guidelines for the Community Sustainable Development Planning Process [see Section 3.1.5].

4.3.6. The standard templates for **Mining Development Contracts** between the State and the proponents of major mining projects, and for the **Memoranda of Agreement** between the parties to a Development Forum, may also be regarded as 'guidelines' whose production is primarily the responsibility of the Department of Mining (or its successor). The Department proposes to revise these templates to reflect the proposals contained in this Green Paper. This process of revision will be undertaken within the context of negotiations over the development of specific projects. Those revisions which pertain directly to the issues covered by the Sustainable Development Policy will also be subject to approval and review by the **Mining Sustainability Planning Committee**.

4.3.7. The standard template for a **Mining Development Contract** will need to be amended in two key respects:

- The template should be extended to include a draft annex which contains a statement of **the principles or standards of best practice to which the State and the project proponent are prepared to hold each other accountable**, and for which they are prepared to accept a **third party audit** of their compliance [see Section 2.1.4].
- The clauses which pertain to the developer's responsibility for '**Environmental Management and Protection**', '**Training and Localisation**' and '**Local Business Development**' should be revised and absorbed into a **separate Part** which documents the responsibilities of the developer to contribute to the sustainable development of the nation, the host province, and project area communities, in accordance with the recommended amendment to Section 1 of the *Mining Act* [see 4.2.1.2]. This part of the template should also make provision for an assessment of the costs and benefits of alternative plans for **project area infrastructure** [see Section 2.3.8].

4.3.8. A standard template for a **Memorandum of Agreement** between the parties to a Development Forum will need to be drafted in such a way as to embody several features of the Sustainable Development Policy, especially those which relate the Community Sustainable Development Planning process and the other aspects of the Sustainability Planning Framework. The Department proposes to use the Ramu Project Memorandum of Agreement as the starting point for the construction of this template.

4.3.9. If the *Mining Act* is not amended to make explicit provision for the establishment, composition and operation of the **Mining Sustainability Planning Committee** [see 4.1.3.2], the Department will establish a separate set of guidelines to achieve the same purpose.

#### 4.4 FINANCIAL COSTS TO GOVERNMENT

4.4.1. Government approval for establishment of the Mineral Resources Authority will create the financial latitude required to fund the staffing and operations of the Project Support Team (or the Sustainability Planning Branch of the Development Coordination Division) out of the Authority's general revenue stream [see 2.1.6.2].

4.4.2. If the National Government does not approve establishment of the MRA as corporate successor to the Department of Mining, it is very unlikely, in current fiscal circumstances, that funding from general government revenues will be made available for the creation of new public service positions.

4.4.3. An alternative option (with or without the establishment of the MRA) is to fund the staffing and operations of the Project Support Team out of a **planning and management levy on Project Area Development Funds** [see 3.1.2.4]. This can be justified by reference to the role of the Project Support Team in the formulation and implementation of Community Sustainable Development Plans.

4.4.4. It is **not** recommended that funding be sought from a levy on **provincial government benefit streams** derived from the mining sector if the National Government accepts and implements the proposal to remove Special Support Grants in their current form [see Section 2.3.6]. A levy on provincial government entitlements would only be warranted if these were to remain at their current levels, and if the Project Support team were to play a greater role in the management of these benefit streams than is presently envisaged [see Section 3.2.5].

4.4.5. It is **not** recommended that funding be sought by any **additional tax or levy on the mining industry itself**, since this would run counter to the Government's stated intention to stabilise the fiscal regime [see Section 2.1.3].

4.4.6. The application of **foreign aid** to fund the staffing and operations of the Project Support Team should be regarded as a last resort, because this source of funding is unlikely to be sustained in the long term, and the implementation of a Sustainable Development Policy requires the existence of a permanent institutional capacity within the government system. Donor funding is already being sought for the provision of technical support to the Project Support Team in the short and medium term [see 3.5.4.2].