CEE bankwatch network

EBRD policy comments

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Comments and recommendations on the EBRD Draft Mining Strategy

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Content

CEE Bankwatch Network's mission is to prevent environmentally and socially harmful impacts of international development finance, and to promote alternative solutions and public participation.

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Overall direction of the strategy

Vision

What is lacking in the draft[1] is a vision and strategic approach for long-term sustainability. Although the strategy should implement "responsible mining", there is no definition of what exactly is meant by this notion and how it is going to be implemented.

The Bank foresees growth in the mining sector (p.13) and sees its involvement as crucial in this process. The development of the sector has many associated problems[2] and the negative economic, environmental, social consequences (p.1 President's recommendations) of the mining sector could significantly undermine the Bank's mission. Specifically the draft mining strategy identifies the systematic problems of:

1. need for diversification of the economy in some COOs and negative impact of the mining sector on the competitivity of other non-natural-resources sectors. The draft strategy recognizes that no single mine can be sustainable since it exploits a finite local resource (p.18).

2. phasing out and rehabilitation of the mining areas and facilities where due to the weak legislation in most of the COOs those aspects could have significant negative economic and environmental impacts on the countries in the future. The Bank recognizes that mining can cause significant adverse environmental and social impacts, including permanent ones (p.40)

3. control over natural resources by special interest groups with close ties to the governing bodies and political agents which have negative impacts on the countries' transition progress due to the impact on competition but also on the overall democratic processes and inclusion of the local communities in decision-making processes. The President's recommendation (p.2) points out that "countries dependent on natural resources extraction tend to have weaker institutions and governance, lower transparency and are more prone to corruption and rent seeking behaviour."

These are systematic problems in the sector and require systematic change in the project selection, design, development , implementation and closure of the operations. The approach of the Bank suggested by the draft strategy (p.17) is characterised by practices for minimizing negative impacts, also known as the "do no harm approach". While it would indeed be a significant step forward if mining operations in the region really did no harm to local communities and their environment, the strategy does not show how the EBRD intends to bring apositive change and induce positive social and environmental transition, which makes questionable the added value of the Bank's support for the sector.

Recommendations

The EBRD needs to define strategy/ies for addressing the systematic problems mentioned above and in addition to the mitigation of negative impactss and promotion of the EITI, the Bank needs to:

1. On the Policy level adopt the practice of Strategic assessment as part of Country strategies, of the:

    a) mining sector's potential, risks and impacts including costs and benefits from the sector development for the country and affected regions, including systems in place to prevent secrecy by the beneficiaries or the use of tax havens, which are foreign non-cooperative jurisdictions characterised, in particular, by no or nominal taxes, a lack of effective exchange of information with foreign tax authorities and a lack of transparency in legislative, legal or administrative provisions, or as identified by

1 EBRD Draft Mining Strategy: http://www.ebrd.com/downloads/policies/sector/draft-mining-strategy.pdf

2 EBRD Draft Mining Strategy, p.12 with conclusions on the Evaluation of the Extractive Industry

the Organisation for Economic Cooperation and Development or the Financial Action Task Force.[3]

b) thorough assessment of the alternative scenarios for development of the countries' natural resources including scenarios of development of other business opportunities on the territories with natural resources and no exploitation of the reserves.

c) democratic practices for controlling mining operations and sharing benefits

2. On the project level, require:

   a) thorough assessment of the alternatives on the project level including “no exploitation” alternatives

   b) early involvement and consent of the local communities in project development, not merely as part of the Environmental Impact Assessment process, but much earlier, and covering the question of whether the project should go ahead at all

   c) that closure and decommissioning costs, including the cost of developing other business opportunities and re-education of the mining sector workers, are reflected in the cost-benefit analyses of the project and that a democratically controlled reserve fund is created for managing the transition and benefits sharing.

Measuring sustainability of the projects

Currently, it is not clear what indicators will be used for measuring the sustainability of the mining projects. Thus, we propose to add within Section 1 subsection ‘Operational priorities and Tools’ and to foresee the measurement and monitoring of the projects implementation the following:

> *“The Bank intends to measure and monitor performance against the over-arching vision statements set out above, including through the monitoring of selected physical indicators evidencing on-the-ground impact in addition to the transition benchmarks over the strategy period. The bank will publish projects' expected and actual contribution to the on-the-ground and sustainability goals in the projects’ PSD and update them annually.”*

As recommended already by Bankwatch, the Mining Strategy should introduce the following mining-related sustainability indicators[4] looking at both the overall sector in a country and on the project level where applicable:

- Percentage of people living above the poverty line, especially in countries where extraction of natural resources takes place and export of commodities is the main driver of economic development.
- Percentage of properly recultivated closed down mines.
- Percentage of mining waste facilities in compliance with their discharge permits and with relevant legislation for management of mining wastes, eg. the EU Directive 2006/21/EC.
- Presence of an effective monitoring system for mining waste facilities – in use and abandoned – and health monitoring of population exposed to the negative impact of extractive industries facilities.

Resource Efficiency and Sustainable Consumption

Natural resource use efficiency and sustainable consumption have not been deemed worthy of a

3 Countries in which EBRD clients are based need to have a requirement for a substantive local presence if the various initiatives against tax havens are to be meaningful.

4 CEE Bankwatch Network, Comments on EBRD country-level transition indicators, 22 March 2011: http://bankwatch.org/sites/default/files/Submission_EBRD_country_level_transitionindicators.pdf

separate description in the Strategy, but how to do more with less should be the centrepiece of the EBRD's approach. International scientific assessments, such as the Millennium Ecosystem Assessment, the Global Environmental Outlook and the 4th Assessment Report of the Intergovernmental Panel on Climate Change make it increasingly evident that significant innovation in both the supply (production) and demand (consumption) sides of the market is needed.

As the EU Resource efficiency Roadmap (COM(2011) 571 final) points out "The World Business Council for Sustainable Development estimates that by 2050 we will need a 4 to 10 fold increase in resource efficiency, with significant improvements needed already by 2020. Some dynamic businesses have recognised the benefits of a more productive use of resources, yet many enterprises and consumers have not yet realised the scale and urgency of the required transformations. Promoting efficient use of resources makes a lot of business sense and should help improve their competitiveness and profitability. It is therefore an integral part of the EU's agenda for global competitiveness. It also helps ensure a sustainable recovery from the economic crisis and it can boost employment."

The majority of the COOs need much more research on resource efficiency — notably metal scrap reuse for obtaining steel that could be beneficial for waste reduction and creation of new jobs. Improved waste management could cut significantly CO2 emissions.

Recommendation:

Section 3 should incorporate a separete sub-section on "Resource Efficiency" taking into account worldwide commitments and proposals for a transition to a sustainable and resource efficient economy[5]. The Natural Resources department should foresee more cooperation with the MEI and Industry, Commerce and Agribusiness department in the Strategy, in order to ensure the integration of the reduce-reuse-recycle principle in appraisal, reporting and monitoring of the projects.

Specific improvements needed for the Mining Strategy

1) Coal Mining

The EBRD has a crucial goal of promoting a transition to a low-carbon society, as reducing CO2 emissions needs to be achieved throughout every sector. As well as the EU's 2050 goals to reduce CO2 emissions by 80-95 percent, the European Council has called for global emissions reductions of 50 percent by 2050, and more recent scientific work suggests that emissions of 70 percent are needed globally[6]. In the mining sector, although there are significant emissions from all mining activities, the most significant issue concerns coal mining. The Bank's Draft Strategy covers all ores and minerals extraction (no oil and gas) as well as coal mining activities, although not covering carbon-related issues as coal combustion's impact on climate change. Thus, the bank has apparently indicated its willingness to engage more in financing coal mining, although in such a strangely-worded way that it is difficult to tell what exactly the bank's intentions really are in this sector. One thing is for sure - the draft does not exclude financing for coal mining, nor does it even indicate the desirability of decreasing financing for such activities.

The EBRD foresees the carbon-related issues of

5 As for instance reflected in the OECD's Green Growth Strategy and UNEP's Green Economy report, Roadmap to a Resource efficient Europe COM(2011) 571 final, as well as work by the European Environment Agency http://ec.europa.eu/governance/impact/index_en.htm

6 European Council Conclusions 29/30 October 2009. Paragraph 7: "The European Council calls upon all Parties to embrace the 2°C objective and to agree to global emission reductions of at least 50%, and aggregate developed country emission reductions of at least 80-95%, as part of such global emission reductions, by 2050 compared to 1990 levels; such objectives should provide both the aspiration and the yardstick to establish mid-term goals, subject to regular scientific review." The 70 percent figure comes from: Meinshausen, M. et al. (2009) Greenhouse-gas emissions targets for limiting global warming to 2° C, Nature, 458, 1158-1162 and Allen, M.R. et al. (2009) Warming caused by cumulative carbon emissions towards the trillionth tonne, Nature, 458, 1163-1166.

thermal coal continuing to be covered by the Energy Operations Policy[7], approved in July 2006, until the approval of the new Energy Strategy. The Energy Policy is, however, seriously outdated in terms of climate science with climate objectives and policy tools not clearly defined[8]. The result is lack of policy coherence, integrity in terms of climate impacts and clear guidance on investments in energy and mining projects, especially the ones involving fossil fuels.

Examples of coal mining investments with heavy climate impacts are in Serbia with the Kolubara lignite mine and Mongolia's Ukhaa Khudag (UHG) high quality coking and thermal coal deposit.

Serbia

In July 2011 the EBRD Board of Directors approved a loan worth EUR 80 million for the expansion of Kolubara mine, the largest lignite mine in Serbia. The Bank justifies its involvement in this project with improvements in efficiency of coal extraction and combustion equal to 200 000 tonnes of CO_2 saved yearly[9]. However this improvement cannot be a justification for supporting the mining of 87 million tonnes of lignite in the eastern part of Kolubara basin, which, when burned, will result in approximately 80 million tonnes of CO_2 emitted, cancelling the efficiency gains many times over and locking Serbia into coal dependency for decades to come.

The Bank financed coking coal projects totalling EUR 291 million during the 1999-2011 period, including two EUR 111 million investments for a coking coal project in Mongolia.

7 EBRD energy operations policy, approved 11 July 2006: http://www.ebrd.com/downloads/policies/sector/powerenergy.pdf

8 Coal projects of the EBRD are subject to: Energy Policy; Mining Strategy when it comes to extraction; Sustainable Energy Initiative for energy efficiency in coal mines and power plants; and Environmental and Social Policy for sustainability criteria for fossil fuel projects.

9 EBRD reply to CEKOR's letter on resettlement and Impacts on communities, April 17, 2012: http://bankwatch.org/documents/response-EBRD-Kolubara-17Apr2012.pdf

Mongolia

The EBRD has so far made three investments in the massive UHG coal deposit in Mongolia. In 2009 it invested EUR 14 million in an equity investment in Energy Resources; in 2010 it provided a loan for a coal washing plant[10] to the same company for EUR 89.5 million and in the same year it provided a loan of EUR 11.1 million to Leighton Mongolia contract mining.

It is unclear how can the Bank justify being involved at all when the project's Environmental Impact Assessment shows that even from the mining itself there will be direct emissions of 1 413 036 tonnes CO_2e per annum during the period of maximum operations, mainly from diesel consumed by mining equipment and coal combustion for on-site energy production. Even more concerning are the emissions from the end use of the coal, which is mostly exported to China: 22 633 789 tonnes of CO_2e per annum.

Currently, the company is implementing the second phase of the UHG project, expanding its production from 2 million tonnes to 15 million tonnes annually. The EBRD claims to add value by increasing private sector participation and improved business conduct, however it is far from clear why the bank should use its scarce resources to help companies extract coal more efficiently and wash it with scarce water resources in South Gobi desert. The EBRD should help to balance its past investments in fossil fuel projects in Mongolia with investments in renewable energy and energy efficiency in the country.

The Mongolian UHG coal deposit (part of Tavan Tolgoi coal deposit) is a mixed resource of coking (243,6 Mt) and thermal coal (183,9 Mt)[11], all of whose emissions will ultimately end up in the atmosphere if

10 EBRD press release "EBRD funds first coal washing plant in Mongolia", 6.7.2010: http://www.ebrd.com/pages/news/press/2010/100706.shtml

11 Environmental and Social Impact Assessment: UHG Phase II Project, Energy Resources LLC, February 26, 2010, http://www.energyresources.mn/uploads/14649Hrpt_-_ESIAfinal.pdf

extracted. While coking coal is exported to China for steel production, the market for thermal coal is less secure, because China has its own reserves and transportation costs make Mongolian thermal coal less competitive. Therefore the Mongolian government, together with foreign investors, is planning to build several coal-powered plants – both for supplying the power needs of the mining industry and for export. These climate impacts are only the tip of the iceberg as both projects have severe environmental and social impacts[12].

ArcelorMittal

The EBRD has financed environmental and social measures at ArcelorMittal steelmills in Ukraine, Romania, Bosnia and Herzegovina, and Kazakhstan that have failed to show the results envisaged[13]. The EUR 74 million Coal Mine Modernisation Project project at ArcelorMittal Temirtau in Kazakhstan for improvements of health and safety practices, which was approved by the EBRD in 2007 has raised many concerns. The project repeatedly showed the failure of the bank to influence its client to comply with the transparency requirements of the EBRD and has brought questionable results in terms of improvements in the health and safety situation at the mines[14].

Recommendation

Taking into account the above mentioned arguments, we propose the following changes in Section 1.2, p.4 with the paragraph under subtitle "Ores and minerals covered by the Strategy":

> "The Strategy covers mining of all ores and minerals except unbonded asbestos, any production or use of which is excluded from Bank financing by the Exclusion List in the Bank's Environmental and Social Policy (ESP). *The Strategy does not cover the extraction of hydrocarbons such as oil, gas and coal, which are covered in the Bank's Energy Operations Policy approved in 2006 with carbon-related issues of thermal coal, will currently continue to be covered by the Energy Operations Policy. The EBRD will not provide finance for coal mine projects that imply expansion of the facilities. Financing for improvements of EHS&S may take place as long as they do not result in the prolongation of the facility's operation or increases in production, and if the client's obligations are explicitly written in the contract and results transparently reported to the public.*"

It is often objected that many of the transition countries have coal and they are going to use it anyway. That may be so, but it is not the function of public money to finance them in doing this.

Regarding the "Iron ore and coking coal (p.5)" the sad experience at ArcelorMittal Temirtau indicates that the additionality of the EBRD in such projects is questionable, so, the text should be the following:

> *"The Bank's support for the extraction of iron ore and coking coal have relied on their importance in the steel industry including for the provision of coke in the process of producing hot metal in the blast furnace. Coke acts in three capacities, as a chemical reductant of iron ore, as a source of heat, and as a physical support of the material within the blast furnace. Whereas identifying substitutes for steel will reduce the demand for coking coal, steel remains a necessary input to many of the key technologies for decarbonisation – wind power, gas turbines, etc. In the COOs, steel is important to the overall economy, being a key supplier of raw input to a number of manufacturing industries. In addition, there are limited numbers of active coking coal operations globally, as producers reduced expansion plans*

12 Project pages http://bankwatch.org/our-work/projects/kolubara-lignite-mine-serbia and http://bankwatch.org/our-work/projects/mining-boom-mongolia

13 In the wake of ArcelorMittal – the global steel giant's local impacts, 2008: http://bankwatch.org/sites/default/files/mittal_local_impacts.pdf

14 ArcelorMittal Temirtau: http://bankwatch.org/our-work/projects/arcelormittal-temirtau-kazakhstan

since 2008. As such, coking coal supply is likely to be constrained in the medium term, which may lead to higher prices and increased price volatility. However, this should stimulate the market to invest more in this field without intervention from public sources such as multilateral development banks, and should also stimulate resource efficiency initiatives. The Bank therefore recognises it has a role to play in supporting EHS&S investments in steel-related mining such as iron ore and coking coal as long as they do not result in the prolongation of the facility's operation or increases in production and only if the client's obligations are explicitly written in the contract and results transparently reported to the public. In addition the Bank may be able to contribute to R&D initiatives for researching alternatives to steel and alternative fuels for the production and recycling of steel."

2) Commodity export dependence

The Bank acknowledges that the dependence of certain economies on commodity exports is a problem – but does not make it clear how it will address it. While it may appear to be more a matter for bodies such as the IMF, the EBRD too, through its projects and policy advice, has an impact on the direction a country's economy takes. If this was not the case it would not be useful for the EBRD to exist. Thus, if the EBRD supports commodities-related projects, it helps those sectors to grow, whereas if it sends a clear message that it does not support over-dependence on commodities by minimising its investments in those fields, and instead supports other fields, this gives a clear indication that the EBRD is putting its money where its mouth is.

Mongolia

It is estimated that already more than 80 percent of Mongolian exports are minerals, a proportion expected to rise in a few years to 95 percent, as more than 3,000 mining licenses have been issued by the government. Therefore Dutch disease and related macroeconomic threats are significant concerns for the country, as well as rising inequality for the population. Mongolia has the dubious privilege of being the leader in EBRD's mining investments with EUR 176 million for projects in the sector since it became an EBRD country of operation in 2006. Bankwatch estimates show that the Natural Resources sector (including oil) received more than 70 percent of investments in the country by 2010, and the proportion has grown since then.

In comparison the EBRD invested EUR 191 million in the whole SEE region and EUR 174 million in the Central Asian countries in mining between 1999 and 2011[15]. According to the Draft Mining Strategy, in Russia since 1999 mining projects have amounted to EUR 91 million, comprising a significantly smaller proportion in the overall portfolio for the country with a net business volume of EUR 17.4 billion. These figures clearly show the heavy bias in the EBRD's portfolio for Mongolia and the urgent need to increase the bank's efforts to balance its investments by redirecting support for other sectors of the economy.

Countries like Mongolia evidently suffer from an acute disbalance in their economies. A similar situation is in Kyrgyzstan where the Kumtor gold project is responsible for 10 percent of the country's GDP and constitutes 40 per cent of total exports and 50 per cent of industrial production[16]. In Armenia, too, in 2009, mineral exports constituted 40 per cent of the total exports of the country. [17]

Additionally in Country Strategies for the resource-rich countries the Bank should not only point to priority sectors of the economy, but should present a vision of what a balanced investment portfolio is that can reflect these priorities. Based on this vision, the

15 Draft Mining Strategy of the EBRD: http://www.ebrd.com/downloads/policies/sector/draft-mining-strategy.pdf

16 EBRD Strategy for Kyrgyz Republic, 2011: http://www.ebrd.com/downloads/country/strategy/kyrgyz.pdf

17 Armenia Mining, Zoi Environment Network: http://www.zoinet.org/web/sites/default/files/publications/Armenia-FINAL.pdf

Bank should then set binding and measurable targets for supporting diversification away from resource extraction dependency, and for achieving balanced investments across the various sectors of the economy. This approach should provide for a more targeted and strategic investment, versus the current approach of concentrating investments on the development of the already strongest sectors, that should require the least support and promotion.

Recommendation

Therefore the Section 1.7 should be rewritten so that the macro-economic impacts of mining are accounted for. The Strategy needs to identify countries which are over-dependent on commodities (or may become so) and de-prioritise them for investments into mining and infrastructure related to mining for the development of the other economic sectors that will bring long-term sustainability to the region. This proposal was supported by the evaluation report: "Azerbaijan and Mongolia are countries that are potentially overly reliant on the extractive industries sector, where there is a need to diversify the economy, taking into account the limited lifetime of the natural resources. (p. 9)"

The Mining Strategy should introduce an indicator measuring the sectoral investment balance and a target that investments in natural resources projects and related infrastructure should not amount to more than 30% of the portfolio for a country, in order to ensure support for diversification away from resource extraction and commodity export dependence.

3) Investments through financial intermediaries

The inclusion of the financial intermediaries (FI, p.8) in the strategy is welcome as it provides a more complete picture of the Bank's mining investments. However, the current formulation of the Bank's Public Information Policy, (3.1.2 "For projects where approval is not sought from the Board of Directors, but under delegated approval, a PSD will be prepared if there are significant environmental or social issues.")does not give the possibility to have more complete picture of the EBRD's operations in the mining sector through FIs.

Recommendation

More detailed information on the FIs projects should be provided in the Strategy and the 2013 PIP review should stipulate the following details on FI projects to be disclosed with annual updates in the project summary documents (PSDs):

a) *FI sectoral breakdown*
b) *Social and environmental impacts*
c) *Environmental category A and B loans*
d) *Percentage of the Board-approved amount that has been disbursed to banks and loaned to final beneficiaries*
e) *Number of sub-loans made for each project*
f) *Average size of the sub-loans*
g) *Average interest rate of the sub-loans made for each project*
h) *Emissions reduction (on energy efficiency projects)*

The FI and the EBRD should disclose qualitative, independent evaluation of FI activities to increase accountability and assess the extent to which the EBRD is achieving its stated goals with FI projects.

The Evaluation of the Extractive Industry Sector Strategy Review (p.18) states:

> *"Equity fund projects, as well as DIF and DLF projects, only require compliance with national social and environmental standards, not EU/international standards, as required for direct investments in the Environmental and Social Policies. This requirement for equity funds and DIF/DLF projects is based on the perception that these projects would be for smaller companies (SMEs) for which EU/international standards would not yet be realistic, which is clearly not the case for many equity funds sub-projects. By comparison, there are three DIF/DLF projects in the portfolio of the Natural Resources banking team, that are all €3-4*

million in value, which is significantly smaller than the average direct project or equity funds sub-project."

However, from the EBRD's evaluation – first of all: *"It would have been expected that the direct projects are much larger than the subprojects of the equity funds, even given the fact that the direct projects often involve significant syndicated amounts in addition to the EBRD loan, but the average size of projects is very similar."* (p. 18), and second *"Taking equity through DIF might be a sensible approach, subsequently followed by a loan to support production, while requiring an increase in standards."* (p.20)

Thus, it is not logical to have different approaches to mining projects by dividing them into direct and delegated approval ones if the amounts of money are roughly the same. It is necessary that every Bank or FI client implements the best international environmental precautionary measures if the EBRD decides to be involved even during the exploration period for greenfield projects. Free prior informed consent (FPIC) of local and indigenous peoples before exploration begins and prior to each subsequent phase of mining and post-mining operations should become part of the Strategy and should later be included into the ESP as the best current practice worldwide.

Not all the countries might have strong enough environmental law provisions or the capacity to enforce them. However the selective approach taken in the draft on environmental standards, which splits countries up into those seeking EU membership and those that are not is in danger of promoting double standards and undermining the Bank's additionality and demonstration effect.

On p.43:

"In the case where a FI is considering a mining or quarrying investments located in the accession countries seeking EU membership, the client company should also have a plan to meet forthcoming EU environmental standards over time; newly constructed facilities should be designed to meet EU requirements from the start."

At the same time the bank's ESP, mentioned on p.37, requires that "where financial intermediaries are providing project finance under an EBRD credit line with an estimated total project capital costs of $10 million or more for sub-projects involving (i) new developments or (ii) expansion or upgrade of an existing facility where changes in scale or scope may create significant additional environmental or social impacts, such sub-projects will be required to meet PRs 1-8 , 10." In our understanding the ESP in any case requires compliance with EU requirements and any reference to countries not aspiring to join the EU appears to be contradictory with this approach.

Recommendation

Thus, we propose the following changes in the text:

p.43:

"In the case where a FI is considering a mining or quarrying investments the client company should have a plan to reach EU environmental standards in its activities over time; newly constructed facilities should be designed to meet EU requirements from the start. "

4) Sustainable legislative and regulatory framework

The 3.4 Section is written very much favouring the mining industry investors over social and environmental standards. In recent years changes in the legislation in several countries (in Kyrgyzstan in the State Agency on Environmental Protection and Forestry reforms, Armenia's Code on Subsoil, potential changes in Georgia's legislation[18], etc.) have been observed which are lowering environmental protection safeguards. The EBRD, as a public

18 There's gold in them thar Georgian hills, January 24, 2012: http://www.bne.eu/story3173/Theres_gold_in_them_thar_Georgian_hills

institution, needs to balance its enthusiasm for promoting the private sector with the environmental and social sustainability element of its mandate.

Recommendation

To the Bank's approach list should be added: *"– if changes in the mining-related legislation are to occur, they must not lower the environmental and social safeguard standards and must be openly and thoroughly consulted with the public."*

5) Infrastructure Investments

"Many mining products are bulk commodities that require reliable, extensive and modern infrastructure to reach the market. (p.32)"

"Through its Power & Energy and Municipal and Environmental Infrastructure teams the Bank has the opportunity to enhance the sustainability of mining operations through the development of utilities that service the mine as well as benefit the local community. (p. 33)"

It is understandable that new infrastructure may be needed to bring mining products to the markets. Communal infrastructure is service mines and their workers, and vast amounts of water and energy are used in the mining production process. The question is why should these be financed from a public Bank's money when the vast majority of the benefits ultimately flow to private companies?

Recommendation

The bank's investments in infrastructure should focus on municipal infrastructure for the population, eg. water supply, wastewater, household waste management, especially in rural areas, thus it should be given priority. Investments into transport, energy and water infrastructure that are mostly or exclusively for the needs of the extractive industries should not be supported by the bank.

In the Mining Strategy itself, for example in cases of projects for new shared infrastructure for the local communities and the mining companies, new tariff setting should ensure that affordability and access to municipal services is not worsened, especially for the more vulnerable groups in the community, such as elderly, unemployed or female-headed households. These projects should be in line with local, regional and national plans and strategies for infrastructure development, and local authorities and communities should be included in the planning and implementation process, so that they will be aware of the short and long-term impacts of the construction and operation, as well as of the service affordability aspects.

6) Energy efficiency and climate change

Mining is a major energy user and significant contributor to greenhouse gas emissions (GHGs). The Bank's projects often include energy efficiency measures, however, the calculations of the total lifetime GHG emissions very much exceed the emission cuts – as in the cases of the Kolubara and Ukhaa Khudag coal mines described earlier.

The Bank intends to continue to promote monetising of GHG emission savings through available international and local carbon financing schemes (p.36), however given the lack of clear CO2 emissions reductions results from such mechanisms it is unjustifed to assume that they are sufficient.

Recommendation

To add to the Bank Approach (p.35):

> *"– The projects implemented by the bank or the FI must be carbon "negative" in line with scientific estimates of the need for 50-70 percent CO2 reductions by 2050 so that the energy efficiency measures investments produce an overall benefit not just an efficiency increase".*

7) Key Environmental and Social Issues

The Bank acknowledges that *"Mining can cause significant adverse environmental and social impacts, including permanent ones."* (p.40) Therefore it is essential in this of all sectors, that the EBRD applies the precautionary principle[19] and ensures a high degree of genuine community consent for its mining activities.

Further it is acknowledged that the section is based on the bank's Environmental and Social Policy (ESP) as of 2008. However, the policy is coming to the end of its 5-year implementation period, and will be revised in 2013. Last year the Public Information Policy revision took place and the majority of the comments were related to environmental information disclosure, showing the necessity for critical changes in the ESP text[20].

7.1) Project Area of Influence and Appraisal

The specification of the "Area of Influence" is covered by PR 1 of the ESP, and includes project infrastructure and impacted or potentially impacted communities, and the baseline environmental and socio-economic conditions as the starting point for the assessment is an important step for recognition that the potential impacts must be properly appraised and mitigated. Particular attention is paid to the environmental and social baseline conditions for the proposed project.

Kolubara Lignite Mine

The EBRD narrowly defined the Kolubara mine project's[21] area of influence only as Field C – the location for the coal excavator, and Tamnava West Field – the location for the spreader system. However, at the same time the biggest relocation process in recent times in the whole Balkan region is happening on Field D, where the Vreoci settlement is located. Although the EBRD has stated in its communication to Bankwatch's member group in Serbia, CEKOR, that the EBRD's project does not involve any activities in Field D and as such will not have any impact on Vreoci village, it is clearly evident that the purchased (mobile) equipment will be used on other Fields in the mine, as well for the purpose of expanding production there. Therefore the EBRD's due diligence should regard the on-going processes in the other fields in the mine and should assess their impacts and relevant mitigation measures. Furthermore, the Bank should not allow for a situation where its client treats two communities differently depending on their inclusion or exclusion in a project's area of influence.

Recommendation

In the Bank's approach (p.44) additional to "Identification of the scope of work required for the project due diligence" the EBRD should include

> *"Identification of potential links of the project to operations and impacts in the larger mine area, that carry significant reputational or other risk for the client or project"* and *"Identification of outstanding environmental and social impacts of the client's operations"*.

Mongolia – Oyu Tolgoi copper-gold mine

Oyu Tolgoi is a globally significant copper-gold mine in the South Gobi, Mongolia that is being considered by the EBRD for financing. The overall construction of the OT project was reported to be 82.2 percent completed at the end of April 2012[22] as it has been proceeding for the last two years and the first commercial production is to be expected in the first half of 2013. However, no ESIA meeting international

19 Communication from the Commission on the precautionary principle, 2000, http://ec.europa.eu/dgs/health_consumer/library/pub/pub07_en.pdf

20 Report on public invitation to comment: http://www.ebrd.com/downloads/policies/pip/0811/BDS11166A1w.pdf

21 EPS Kolubara Environmental Improvement: http://www.ebrd.com/english/pages/project/psd/2011/41923.shtml

22 http://www.ivanhoemines.com/s/Oyu_Tolgoi.asp?ReportID=379189

standards has been disclosed for public consultations though this project in a desert entails a whole range of social and environmental potential problems that concern the local population – water availability issue, biodiversity impacts, resettlement of herders, the cumulative impact of the mushrooming mining projects in the Gobi Desert within a 200 km radius and the loss of the baseline conditions before the project appraisal etc. Thus, the EBRD's policies provisions are being violated and it is questionable how the EBRD can justify its involvement if the project is not up to the Bank's standards.

Recommendation

To incorporate into the bank's approach (p.44):

> *"The EBRD will be involved in the financing of mining projects only if they are in line with the Bank's standards and if the baseline conditions are not altered before project assessment."*

7.2) Environmental and Social Action Plans

The Bank also emphasizes transparency and accountability among its clients. The current Bank policies encourage but rarely oblige its clients to be transparent to those most immediately impacted by its projects. The effectiveness of mining companies' information and consultation processes is questionable, considering that even the local administration of a town near to a coal mine in Mongolia was unaware of the impacts of coal extraction and combustion. Environmental and Social Action Plans are – except in environmental category A projects – optional to release (by the client) and local communities are rarely part of designing them.

Recommendation

"There is a need for more inclusive processes of preparation and more transparent reporting of progress on Environmental and Social Action Plans for mining projects both categories B and A.

The Bank will adhere to the more inclusive processes of preparation and more transparent reporting of progress on Environmental and Social Action Plans for mining projects and the transparency standards and requirements for the Bank's clients to be further strengthened in the Strategy and in the forthcoming reviews of the Public Information and Environmental and Social policies in 2013." (p.44)

7.3) Stakeholder Engagement and Consultations or Acceptance by stakeholders and increased transparency

Because of the possible serious impacts from mining projects, companies should obtain the free, prior, and informed consent (FPIC) of indigenous peoples before exploration begins and prior to each subsequent phase of mining and post-mining operations. Such consent must also be obtained from other local communities in advance of the project preparations, with all alternative scenarios for the region developed, including "zero" project development if people and communities do not accept the mining perspective. It is highly important that the 'responsible mining' does not force mining on the local population.

Amulsar gold project, Armenia [23]

The project is an example of unwillingness by the project company Geoteam (subsidiary of Lydian International) to admit that the mineral waters spa and resort town of Jermuk is in the affected area, as its population envisages tourism-based regional development and may not agree with the project.

FPIC, as mandated by the UN's Declaration on Indigenous Peoples, is the best practice. However, it should not apply only to indigenous peoples but to all local communities. After the FPIC has been

23 Letter to EBRD regarding the Amulsar Gold project in Armenia, March 30, 2012: http://bit.ly/M3IKph

achieved, active citizen engagement in the EIA and project oversight over its entire lifetime is crucial.

Recommendation

Section 4.3 of the strategy needs to incorporate free prior informed consent as best practice for mining operations in its Mining Strategy and later in other relevant policies.

A company's "social licence" to operate, understanding local people's demands, needs and expectations is highly important. Local resistance and dissatisfaction may grow as mining operators fail to communicate their environmental protection strategies with local communities, and then fail to meet the obligations they do make. It is important to note here that such communications strategies must be backed up by solid performance – it cannot be expected that local people will be placated with nice words if they do not experience the benefits promised.

Cyanide spill at Kumtor gold mine, Kyrgyzstan

In 1998 an accident resulted when the truck with cyanide fell into a local river. The toxic material dispersed quickly causing environmental and health damage and a significant and long-lasting negative public perception towards the company. The accident galvanized local resistance to mining whether or not cyanide was be used in operations, especially in areas with no mining history. In May 2012 local people rioted in the village near the potential site of Talas Copper Gold in Kyrgyzstan and later research showed that people are very much worried about the environmental problems the company may cause[24].

Permanent consultation through some form of committee, council or board should be considered. The intermediary body might consist of community representatives and independent experts and would help the company to negotiate with the community. Futher on, the concept of "community development agreements" or "impact benefit agreements"[25] might be applied when the community becomes a contracting party with legal rights[26].

Recommendation

"Free prior informed consent" for new mining projects and constant permanent consultation to reaffirm a company's "social licence" to operate with active mines will bring better understanding of the local demands, needs and expectations and help avoid possible misunderstanding and conflicts.

7.4) Involuntary Resettlement, Economic Displacement and Population influx

Mining companies often compete for resources such as land and water with local people whose traditional livelihoods (farming, herding, hunting, etc.) depend on the resources.A Sometimes the company chooses to relocate the people. The client and authorities are obliged to oversee the resettlement process and ensure the restoration of the livelihood of the resettled people.

Mongolia – Oyu Tolgoi copper-gold mine

Reports from the ground suggest that the operating company, Rio Tinto, at the Oyu Tolgoi mine, under consideration for financing by the EBRD, is pressuring nomadic herders into signing compensation contracts for the loss of their land and livelihoods. Rio Tinto has failed to engage the communities in negotiations required by the ESP, has not proven the unavoidability of the resettlement (the ESIA and Resettlement Action Plan are not public yet), has given the herders no options or alternatives to the

24 A Social Study of the Causes of Conflict between Citizens and Outside Investors in Talas Oblast - August 2011: http://oxusinternational.com/wp-content/uploads/2011/10/OxusInt_Talas_Survey_eng.pdf

25 www.sdsg.org

26 http://www.sdsg.org/wp-content/uploads/2010/02/11-09-29-CHILE-Presentation-OECD.pdf

compensation package offered, and has refused to disclose important information to stakeholders about the project and the contract. Action is needed by the EBRD to require Rio Tinto to cease pressuring herders to sign compensation contracts and to comply with the Bank's policies related to involuntary resettlement and disclosure.

Recommendation

To be added in the Bank Approach (p.47)

"The involuntary resettlement may occur only when "displacement cannot be avoided" the social impact assessment is done, the Resettlement plan is consulted and communities are informed.

Free, prior, and informed consent required for good faith negotiation between the client and the affected communities of indigenous peoples, documenting a mutually accepted process and evidence of agreement.

From the beginning there must be full information on the project for the population, understanding of the people's land ownership laws and knowledge of their own rights to ensure the resettlement is made as of international standards. If needed actions should be taken to provide legal assistance for the affected people.

The client must conduct all premature steps so that affected population would have possible choice of resettlement sites, and have possibilities to negotiate the compensation package."

7.5) Gender impacts of mining projects

The strategy outlines a variety of negative environmental and social impacts of mining projects and claims that its Environmental and Social Policy (ESP) is robust enough to address these. However, there are no clear commitments made as to how the bank will eliminate negative gender impacts and ensure positive ones. The strategy, like the ESP, is very superficial on gender. It focuses on loss of or barriers to economic benefits associated with mining, such as employment or spin-off business opportunities. However, it remains silent on the more brutal impacts, like decreased safety and increased sexual harassment for women, the rise in prostitution or the spread of sexually transmitted diseases (STDs), which accompany mining developments. For example, according to a study by the Asian Development Bank: "*a rapidly expanding mining sector and improvements in the transportation network in Mongolia create a potential high-risk environment for the spread of HIV.*"[27]

In 2006 Bankwatch studied the gender impacts of two natural resources projects and requested increased attention to the problem[28]. Six years later, in spite of assessment matrices having been developed, the gender impact of mining projects is still not always assessed properly. For example the Environmental and Social Impact Assessment of the Ukhaa Khudag coal mine project in Mongolia makes only brief and ad hoc references to gender impacts and does not discuss adequate measures for addressing these.

Recommendation

The Mining Strategy should make concrete commitments as to how it will improve the gender impacts of mining projects. The EBRD should also either come up with a binding Gender Policy or with a Gender PR as part of its ESP.

7.6) EITI and revenue sharing

The Extractive Industry Transparency Initiative is a useful tool for reporting by the companies. However, experience shows the initiative could bring many more benefits if it was expanded so that the

27 Asian Development Bank report on Mongolia: HIV/AIDS Prevention in ADB Infrastructure Projects and the Mining Sector. ADB (2008) : http://bit.ly/JTbwCe

28 Boom Time Blues: Big oil's gender impacts in Azerbaijan, Georgia, and Sakhalin, 2006: http://bit.ly/KqqaoF

companies would provide disaggregated reporting including environmental and social responsibility aspects and the transparency of the contracts.

The revenue/benefit-sharing does not receive any attention in the strategy. These arrangements between mining projects, central government and local communities may become lingering cause of resentment if the mining profits are not foreseen to be equitably shared and a lack of transparency in decisions on them occurs.

The evaluation of the Extractive Industry in the EBRD highlighted the "sustainability funds" as tools that were used recently by the Bank. However, these experiences were not included in the strategy, not analyzed in terms of potential further value or changes needed in this approach. The evaluation states:

> *"It is important that such funds are used properly, partly for priority investments at present, and partly invested for future generations. It is also important that there is proper and transparent reporting, not only of payments into the funds, but also of their use. Perhaps the best example of this approach is Norway. Azerbaijan, which is a member country of EITI, operates a sustainability fund related to its oil wealth, but there are uncertainties related to its use."*

Recommendation

Pending any expansion of the scope of the EITI initiative, (p. 29) *"the EBRD should ensure that contract transparency and disaggregated environmental reporting are required as part of its investments."*

The strategy must include in the Section 3 lessons learned from "sustainability funds" implementation. In one of the subsections for the operational priorities the alternative revenue/benefit sharing possibilities should be identified and described. Their implementation must be in line with local communities' plans for development, giving them rights over decision-making and improving transparency.

7.7) Occupational Health and Safety

Health and safety issues are an integral part of all mining operations, particularly in the countries of operation of the EBRD.

ArcelorMittal Temirtau

In 2007 the EBRD financed the USD 100 million Mittal Steel Temirtau – Coal Mine Modernisation Project. The project illustrates constant failure of the bank to influence its client in order to make them to comply with the requirements of the EBRD. The quality of the working conditions has not sufficiently improved, even with simple requirements such as equipment, clothing and water supply, and deaths and injuries are still taking place. Thus, it is not possible to say that this large international company brought good practices to Kazakhstan.

Recommendation

To the Bank's approach (p. 51):

> *"The EBRD should pay particular attention to health and safety issues and monitor the performance of its clients. The EBRD should define and implement concrete and effective actions to influence the clients that do not comply with the health and safety requirements.*
>
> *Environmental and Social Action Plans should be publicly available, as well as regular updates on implementation. This is particularly important for projects with a considerable impact on people's health and social wellbeing and environment. Disclosure of the ESAPs would provide the EBRD with additional information through informal public monitoring of the projects' implementation."*

7.8) Water Management

"Mines both require and affect water, and careful attention to water management – acquisition, use, storage, and discharge – is necessary for responsible development. Mines often require large quantities of water for ore processing or other purposes, which in arid areas in particular can compete for and/or deplete available water resources."

Mongolia – OyuTolgoi copper-gold mine

The copper-gold project company in South Gobi desert will need water sources to support the mine for approximately 40 years and it plans to pump it from deep-water aquifers. The companies state that there is no connection between the shallow water from which people take water for themselves and watering animals and the deep aquifers, however, there is no proven evidence in the public domain to validate their claim as even the ESIA and water monitoring studies have not been released to public to ease the concerns.

Recommendation

To add to the Bank approach (p. 52):

> *"– Water use for mining must not endanger the water supply for the local population and the principle of precaution must be applied if the threat is there.*
>
> *– Thorough comprehensive information must be provided to people about such a vital need as water once available and will be constantly updated.*
>
> *– the EBRD will not be involved in mining projects if the precautionary principle is not applied to water availability for the population."*

7.9) Materials Management: Cyanide

As the text of the Draft Mining strategy recognizes about the use of cyanide in mining *"...there were a number of highly publicised spills and releases that had significant adverse effects on river ecosystems and raised concerns about cyanide transport, use and disposal"* (p.54).

It is difficult to understand why the Bank, despite this fact, continues to support financially the use of cyanide in mining, thus undermining the precautionary principle in the nature protection and protection of human health.

Attempts to build an acceptable image of cyanide technology through the Cyanide Management Code cannot bring sufficient protection in countries such as most of those in the EBRD's region of operations where law enforcement leaves a lot to be desired. We therefore expect from a public institution such as the EBRD to take a more realistic approach that would truly prevent cyanide-related accidents.

One of the few available sources to evaluate the cyanide use is the IPPC Directive and the "best available techniques" defined in Article 2(11). If we look closer on the definition of BAT we will see that the cyanide technology breaches two of the pillars of this definition:

- **"available"** since the cyanide technology requires a unique set up and additional facilities according to the unique mineral and chemical composition of the ore. Practically, in most cases the cyanide technology is an experimental facility.

- **"best"** since the use of an extremely toxic substance/agent such as cyanide means that already the technology is not the "most effective in achieving a high general level of protection of the environment as a whole" and undermines the precautionary principle. The technology, even in autoclaves, involves emissions of HCN into the air and emissions of a number of non-monitored compounds in tailings dams and the wider environment.

The above mentioned statements have been subject of a Decision of the Supreme Administrative Court of Bulgaria on two court cases on Environmental Impact Assessments involving cyanide leaching technologies.[29]

For this reason the only presence of the cyanide leaching technology in the Reference documents on Best Available Techniques are:

- BREF for non-ferrous metals (the main document on precious metals treatment technologies) – a simple paragraph with a general description under the Emerging technologies chapter.

- BREF for the management of tailings and waste rocks – contains restrictions on the destruction of cyanide prior to discharging at the tailings dam pond, minimizing the cyanide addition at the processing plant and extended retention at the tailings water, but not the technology as such. Those requirements have been included into the document after the terrible cyanide accident in Baia Mare, Romania in 2000. There is a description of gold leaching with cyanide , but it clearly states that *"The following text on the use of the cyanide for the leaching of gold is taken from the "International cyanide management code for the manufacture, transport and use of cyanide in the production of gold""*

However the Cyanide Management Code is a voluntary agreement of the mining industry without any legal obligation on the operations of the companies and or penalties for breaching the announced principles.

Recommendation

We recommend the Bank to stop any financial support for the use of cyanide in the mining sector. Instead, it should enhance the development of environmentally sound and safer technologies, financing the necessary research as recommended by the Raw Materials Initiative of the European Commission and Resolution 0145(2010) of the European Parliament on a general ban on the use of cyanide mining technologies in the EU which also "Calls on the Commission and the Member states not to support, either directly or indirectly, any mining projects in the EU that involve the cyanide technology until the general ban is applicable, nor to support such projects in third countries".

7.10) Biodiversity: No-go zones and mechanisms for improved assessment of operations in critical habitats and protected areas

The Environmental and Social Policy of the EBRD has provisions for projects that impact critical habitat and protected or designated areas[30]. It is commendable that in a recent case the EBRD has required its client to divest from a subsidiary with operations in a UNESCO site in Russia. However the ESP provisions have not been effective in ensuring adequate protection in numerous other cases, since implementation depends too much on state authorities and the bank's clients.

Kumtor Gold mine, Kyrgyzstan

In 2009 the boundaries of the Sarychat-Ertash national reserve were changed to further expand the Kumtor mine. 4380 hectares of the reserve's territory including the Petrov glacier and the Koendy district, buffer and core reserve zones respectively, were set aside. This decision was made illegally, as a separate environmental impact assessment and public consultations were required but not carried out. The integrity of the important Sarychat-Ertash natural reserve, home to the snow leopard and other red-

29 Decision No.13092, Sofia 4.11.2009: http://bankwatch.org/sites/default/files/Chelopech_CourtDecision_4Nov09.pdf

30 Environmental and Social Policy, PR 6, paragraphs 13-15: http://www.ebrd.com/downloads/research/policies/2008policy.pdf

listed animals is under acute threat from the Kumtor gold mine's expansion.

Policy makers globally have recognized the limitations that states have in enforcing legislation on areas protected by both national and international law. Important safeguards such as transparency in decision-making, lack of strong regulatory capacity or control of corruption are still lacking in many of the EBRD's countries of operation. Additionally there is recognition of the fact that areas of high biodiversity value or critical habitats often lack protection status. There are also sites important as part of water source areas, however, states' attempts to protect them with law tend to meet opposition and strong lobbying efforts by mining companies, as is the case with Mongolian Law to Prohibit Mineral Exploration and Mining Operations at Headwaters of Rivers, Protected Zones of Water Reservoirs and Forested Areas.

The EBRD claims to have an unofficial list of of areas where the mining activities (or other activities) will not happen, for example UNESCO heritage and Ramsar sites. However, it would be much more transparent and clear if the Bank made this list official and expanded it according to the following recommendation to avoid selected implementation.

Kyrgyz glaciers and mining

The Central Asian mountains are the region's "water towers" but also the place where mining occurs – particularly in Kyrgyzstan. It has been recognized that the glaciers there are receding due to climate change. However, the mining legacies[31], the current activities and future ones are considered a threat to the transboundary regional water systems[32].

In March 2012 this year Centerra Gold – the mother company of Kumtor Gold mine – issued a statement saying that it expected a major decrease in production at its Kumtor mine[33]. Experts[34] comment that this may relate to the vulnerable location of the mine and the Davidov glacier's movement towards it, causing ice water to flow into the mine regularly. Furthermore they argue that reduced production is likely to be a continuing risk throughout the mine's operating life and essentially until the mine is closed unless a very strong effort is made to address the problem through revised designs and operating changes, as well as reclamation plans.

Furthermore, disruption by mining operations of sensitive natural areas can result in return in increased operational and investment risks, as is the case with mining on glaciers, in water scarce or seismically unstable areas. Proper environmental and social assessment for such operations in many cases is limited by a number of factors, to name just a few:

- assessment is carried out by a team paid by the investor, while independent data and analysis, or even proper baseline data, collected by scientists or state authorities is lacking;
- assessment focuses on a limited area of influence and disregards cumulative pressure on resources, such as for example water supply and biodiversity in the South Gobi desert where several big extractive projects are planned;
- assessment does not take into regard long-term factors like climate change that can exacerbate further the unfavourable conditions, as is the case with melting of glaciers, floods, desertification, lowering of the water table etc.

Recommendation

In view of the above problems with legislation enforcement, the need to protect the sites not covered by the legislation but of great importance, and production risks, we recommend that the EBRD

31 Second Assessment of River, Lakes, Groundwater, UN, 2011: http://bit.ly/smmwNN

32 Kumtor Gold Mine: Bringing Risks to Regional Water Ecosystems, NGO Briefing, January 2012: http://bit.ly/LGTV3I

33 Gold mine production cut will hit Kyrgyzstan's economy, 27 March 2012: http://bit.ly/GYGcV5

34 Expert comment on cutback in production at Kumtor gold mine due to massive flow of ice and waste rock into the mine, April 25, 2012: http://bit.ly/Mf1dfw

in its Mining Strategy (and later in its ESP) establishes no-go zones for:

- areas protected by national or international law, such as national parks/reserves, Natura 2000 sites and UNESCO World Heritage sites;
- areas not protected by law but which are (i) high conservation value areas, critical ecosystems, water-catchment areas and biological corridors; (ii) food security and traditional livelihoods; and (iii) territories of indigenous peoples where full free prior and informed consent has not been obtained, following the recommendations of the IUCN from the World Congress in Barcelona in 2008.

7.11) Waste Management, Mine Closure and Financial Assurance

Mining and ore processing generate large volumes of solid wastes (tailings and waste rock). This is especially the case when the “Lower grade ore deposits that were previously not commercially feasible have become profitable investments”(p.13). While mining is an activity of developing finite resources, the wastes will remain on site forever, will require remediation and treatment so that they will not endanger the environment. This also relates to the issue of mine closure.

Proper stabilization and closure needs to begin at the initial design stage and to be adjusted throughout the mine’s lifetime. It is important that constant monitoring and decontamination treatment is continued even after mine closure.

Kumtor Gold mine closure costs

The current costs of mine closure are estimated at USD 26.9 million[35] a figure slightly higher than original 1999 closure plan[36] and might not be sufficient. At the moment, there has been no public discussion around the mine’s closure and reclamation plans, and the company intends to finalise them "two years before operations cease". Closer scrutiny of the Kumtor mine in Kyrgyzstan gives grounds to doubt that the life cycle of the mine and all risks have been properly predicted[37]. A recent consultant’s report[38] recommend that Kumtor (and Centerra) include social and biodiversity aspects in future closure plans that are supposedly not currently taken into consideration.

It is highly recommended and desirable to have the mine reclamation plan publicly reviewed at least every five years to ensure that the plan and reclamation funds are adequate and sufficiently secure to protect the people. Any reclamation trust for currently operating mines must be the sole responsibility of the mining company, not the government.

Recommendation

To include in the bank's approach (p.53):

> *“Project-by-project assessment for waste storage methods is needed to address the case by case environment specifics. All stakeholders should be informed and aware of the situation.”*

And p.57:

> *“The closure plan should guarantee a reclamation plan is developed with full financial guarantees to ensure that the plan is implemented at the cost of the operating company.*
>
> *The mine reclamation plan must be publicly*

35 http://www.sedar.com/DisplayCompanyDocuments.do?lang=EN&issuerNo=00020738

36 Technical Report on Kumtor Gold Project, Centerra, 2011: http://bit.ly/L1eTJK

37 Kumtor gold mine, Kyrgyzstan. Bringing risks to regional water systems: http://bit.ly/LGTV3I

38 Assessment by consultant Prizma LLC: http://www.kumtor.kg/wp-content/uploads/2011/12/Prizma-Assessment-23-April-2012-ENG.pdf

reviewed at least every five years to ensure that the plan and reclamation funds are adequate and sufficiently secure to protect the local people.

The mining company must plan every stage of the mine's life-cycle and all the risks should be properly constantly communicated and presented to public.
The mining company must include social and biodiversity aspects in the closure plans, and continue with transparent reporting of closure planning and related financial provisioning.

The company should bear all responsibility and risks to ensure that all mining impacts are fully reclaimed."

Mining Strategy consultation, review and approval process

In the current strategy review the EBRD has invited public comments on the basis of the draft strategy. Previous experience of comments's submission and participation in the consultations held recently on the Mining Strategy show that the public submissions may fundamentally differ from the EBRD's vision and it is important to ensure that the strategy draft incorporates and addresses the public comments.

The current process of strategy approval does not give stakeholders the opportunity to see all the comments provided to the Bank and the replies to them from the Bank's staff until after the Strategy is approved. This system undermines constructive policy dialogue and inhibits the strategy/policy development process and public participation in it.

The Mining Strategy has been under preparation for the last two years. Workshops and discussions took place in 2009 in London, pointers for the Mining strategy have been prepared by Bankwatch and issues around controversial mining projects have been constantly communicated to the bank. However, until the draft strategy document was released, the public was not able to get any clear information on what would be in the document – not even the main strategic directions.

Although, the EBRD's Public Information Policy (PIP, 2011) currently foresees public release and posting on the Bank's website for a period of 45 calendar days for comments, and then after the Sectoral Strategy has been approved the release of the Report on the Invitation to Comment, containing the summary of public comments received and staff response, we would like to emphasize that since the Mining Strategy should set guidance for very environmentally and socially harmful activities, the procedure of its adoption should be improved and that the 2013's PIP revision should take into account this recommendation as well.

Moreover, there is a good example from the European Investment Bank that we would like the EBRD to follow. The revision process of the Transparency Policy consisted of two stages and after establishing a timeline, in the first stage the bank called for the public's views on the existing policy and in the second stage it provided an opportunity to comment on the new policy proposal. The views were considered before the final policy document was published. At both stages the EIB informed the public how its views were taken into account. We consider this process to have been of a very high standard and we call on the EBRD to follow such a process for the Mining Strategy revision.

We are facing a situation where the Strategy's environmental and social aspects, as well as disclosure of information, are subject to the the Bank's current policies, which need updating and will be revised in 2013. Thus the Bank needs to provide additional commitments in its Mining Strategy on how it will take into account environmental and social issues not adequately covered by the current ESP.

Recommendation

To have the final revised draft strategy made available to the public with a summary of comments received and staff responses *before* the policy is considered for final Board approval.

Many proposals for changes in the draft strategy are related to the policies that will be revised, so certain best practices that are not already in the ESP should be included in this strategy.