Freeport's Grasberg/Ertsberg Mine in West Papua, Indonesia

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Executive Summary

Freeport-McMoRan Copper & Gold, Inc. (Freeport) has been investing in the exploration and exploitation of copper, gold and silver in the Grasberg/Ertsberg mine in West Papua, Indonesia since 1967. While Freeport's investment had been both fairly profitable and contributing to the economy of Indonesia, it has caused serious security and environmental problems. Also, Freeport's payment to Indonesian military and police officials was criticized as bribery and causing human rights violations.

In order to fend off these criticisms, Freeport has been investing in security and environmental protection as well as in local community development. Such investment has been fairly effective in improving the security and environmental conditions of the mine and the social conditions of the local community. However, as shown in recent reports by the mass media and a few NGOs, there is still room for improvement in security, environmental protection and community development initiatives by Freeport.

Freeport defended its payment to Indonesian military and police officials as necessary to maintain the security of mine workers and the mine region. However, such argument was not enough to fend off the criticism that direct payment to military and police officials is prohibited under both Indonesian and US laws.

Currently, the US Securities Exchange Commission (SEC) and the US Justice Department are investigating Freeport's payment to Indonesian military and police officials. Freeport, as a successful investor in natural resources development in developing economies, should make utmost effort to tackle social problems such as environmental protection and local community development. It should also make its business and accounting more transparent.

The case of Freeport provides an illustrative example of the changing environment and challenges that a long-term foreign investment faces.

Introduction

Profile of Freeport-McMoRan Copper & Gold, Inc.

Freeport-McMoRan Copper & Gold, Inc. (Freeport) was the world's lowest-cost copper producer and one of the world's largest producers of gold. It was formerly based in New Orleans, Louisiana but recently moved its headquarters to Phoenix, Arizona, after acquiring copper producer Phelps Dodge Corp. in 2007. It had been investing in the exploration and exploitation of copper, gold and silver in the Grasberg/Ertsberg mine in Papua province, Indonesia (formerly Irian Jaya or West Papua), the world's largest gold mine and the second largest copper mine deposit,[1] since 1967.

The Business Rationale for the Investment

The 2005 year-end aggregate proven and probable recoverable reserves of Grasberg/Ertsberg mine deposit totaled 2.8 billion metric tons of ore, whose grade was 1.07% copper, 0.92g/t gold and 4.02g/t of silver representing 56.6 billion pounds of copper, 58.0 million ounces of gold and 180.8 million ounces of silver.[2]

Overview of the Investment Experience

In 1936, Jean Jacques Dozy, a Dutch mining engineer, discovered the Ertsberg mineral deposit, but the report on the find had gone unnoticed due to World War II. Freeport discovered the report in 1960 and that same year, the expedition led by Forbes Wilson and Del Flint rediscovered the Ertsberg mineral deposit.

Freeport signed a Contract of Work with the government of Indonesia on 7 April 1967, making Freeport the exclusive mining contractor for the Ertsberg deposit and all the other mining deposits within a 10 km radius. According to the Contract, the 30-year contract term would begin as soon as the project was declared operational. On 1 July 1973, after the successful exploration drilling and completion of the feasibility study, Ertsberg was declared operational, and the 30-year contract term started.

By the mid-1980s, the mine had been largely depleted. However, Freeport, instead of selling it, searched for further deposits in the area. In 1988, the Grasberg copper/gold deposit was discovered just three kilometers from the Ertsberg mine. A series of expansions were initiated following the discovery, which resulted in a fairly promising discovery of copper and gold deposits.

In June 1991, Freeport signed with the Indonesian Ministry of Mines a new Contract of Work with a 30-year term and provisions for two 10-year extensions to 2041. The contract allowed Freeport to conduct exploration, mining and production activities on a 24,700-acre area (Block A). Freeport could also conduct exploration activities in approximately 500,000 acres (Block B). All of the proven and probable mineral reserves and current mining operations were located in Block A. Freeport also had exploration rights covering 1.7 million acres in addition to Blocks A and B.

Freeport owned 90.64% of PT Freeport Indonesia, the principal operating subsidiary in Indonesia, including 9.36% owned through its wholly owned subsidiary, PT Indocopper Investama. The Government of Indonesia owned the remaining 9.36% of PT Freeport Indonesia. In 1995, PT Freeport Indonesia announced a US$ 1.35 billion strategic alliance with Rio Tinto-Zinc Corporation, a UK-based mining company. Freeport later purchased 23.9 million common shares from Rio Tinto for US$ 882 million in 2004, though the Freeport-Rio Tinto Grasberg joint venture continued.

In 1998, the Gresik copper smelter and refinery was completed. The entire smelter feedstock was transported by ship from Freeport's Grasberg mine, some 2,600 kilometers to the east. Gresik, located 30 kilometers north of the city of Surabaya, East Java's major port, was the first copper smelter in Indonesia. Gresik's equity partners were Mitsubishi Materials with 60.5%, PT Freeport Indonesia with 25%, Mitsubishi Corporation with 9.5%, and Nippon Mining and Metals Co. Ltd with 5.0%.

In 2005, Freeport achieved record copper and gold production of 766,000 tons of copper and 107 tons of gold. In 2007, with the acquisition of Phelps Dodge, a New York City-based mineral company, Freeport became the world's largest copper company with mining deposits in Indonesia, Europe, North America and South America.[3]

Ore from the open pit and from underground block-caving operations was transported by conveyor through adits to centralized mine facilities. Mine facilities included a power plant, several mills, crushing and screening operations, concentrators, thickeners and a pump station. Three pipelines delivered concentrate (slurry) composed of 65% solids-by-weight from the mill to the port site at Amamapare 74 miles away. In addition to these mining facilities, Freeport constructed an airport, a port, a 119 km road, an aerial tramway, a hospital and related medical facilities, two town sites with housing, schools, and other facilities sufficient to support more than 17,000 persons, consisting mainly of mine workers and their families.[4]

Challenges Faced in Implementing the Investment Decision

Deadly Landslides

The mine was located in the steep mountainous area reaching as high as 4,500 meters above sea level. The steepening of slopes resulting from mining activities, as well as earthquakes and frequent heavy rainfall, had resulted in deadly landslides in the mine workings and overburden[5] stockpiles in 2000, 2003 and 2006 with more than a couple of dozen casualties.

Waste Management

Since 1997, the Indonesian Environment Ministry had repeatedly warned Freeport that the company was breaching environmental laws, stemming from operations that had already generated an estimated six billion tons of waste. Much of the waste had been dumped in the mountains surrounding the mine or down a system of rivers that descended steeply onto the island's low-lying wetlands, close to Lorentz National Park, a pristine rain forest reservation that was declared a World Heritage site in 1999 by the UNESCO.

The mine dumped 110,000 tons of tailings per day into the Ajikwa river, and by the time it closes in 30 years, it will have excavated a 230 square-kilometer hole in the forest that will be visible from outer space.[6] The danger was that the waste rock atop the mountain would trickle out acids into the honeycomb of caverns and caves beneath the mine in a wet climate with 12 feet of rain a year. Freeport could curb much of it by blending in the mountain's abundant limestone with the potentially acid producing rock. But before 2004, a report by Parametrix, a consulting company who did the study for Freeport, said that the mine had an excess of acid-generating material. There were signs that acids were already flowing into the groundwater, according to a geologist who worked at the mine.[7]

The amount of sediment resulting from dumping wastes presented another problem. Too many suspended solids in water could smother aquatic life. Indonesian law stated that these should not exceed 400 milligrams per liter. According to an environment ministry's field report in 2004, Freeport's waste contained 37,500 milligrams as the river entered the lowlands, and 7,500 milligrams as the river entered the Arafura Sea.[8]

In October 1995, the Overseas Private Investment Corporation (OPIC), a United States government agency that insured American corporations for political risk abroad, revoked Freeport's insurance policy for environmental reasons. In doing so, two environmental experts, Harvey Himberg (an official at the agency) and David Nelson (a consultant), issued a report after visiting the mine for several days. The report was critical of Freeport's operations, especially the huge amounts of waste it had dumped into rivers. Freeport refuted the report, arguing that it reached inaccurate conclusions. Freeport said that it had considered a full range of alternatives for managing and disposing of its waste instead of using the river, and settled on the best one. Freeport threatened to take the agency to court over the cancellation of its insurance. After protracted negotiations, the insurance policy was reinstated for a few months, as a face-saving gesture to Freeport. It was not renewed.[9]

Freeport suspended all exploration activities outside of Grasberg Block A in December 2006 because of safety and security issues and regulatory uncertainty relating to a possible conflict between mining and exploration rights in certain forest areas and an Indonesian Forestry law enacted in 1999 prohibiting open-pit mining in forest reservation areas. Recent Indonesian legislation permitted open-pit mining in Freeport's Grasberg Block B area, subject to certain safety and reservation requirements. Following an assessment of these requirements and a review of security issues, Freeport planned to resume exploration activities in certain prospective Contract of Work areas outside of Block A.[10]

Payments to Local Military and Police Officers

In the Grasberg/Ertsberg mine area, human rights investigators had documented numerous human rights violations, including rape, torture, extrajudicial killings and arbitrary detention committed by the Indonesian military against indigenous communities living near the mine. For instance, according to the Australian Council on Overseas Aid, during 1994 and 1995, the Indonesian military, with the assistance of the mine's own security forces, caused the "disappearance" or death of 22 civilians and 15 other people who were alleged to be "guerrillas."[11] Human rights advocates had long suspected that Freeport was paying Indonesian military, an arrangement that would make the company complicit in the military's abuses... and that was the case.

In 2003, after being forced to disclose information by the US Security Exchange Commission (SEC), Freeport admitted that it had been paying the local Indonesian military and police officers to keep the native landowners away from the lands it developed under the existing contract. It argued that this was necessary to provide security to its employees.

In 2005, the New York Times reported that the total amount paid between 1998 and 2004 amounted to US$ 20 million.[12] The New York City comptroller charged Freeport of having knowingly made false or misleading explanations about payments to the Indonesian military in violation of the Securities Exchange Act as well as Foreign Corrupt Practices Act, which forbid American companies from paying bribes to foreign officials. The SEC and the US Justice Department were investigating these claims.[13]

Relationship with Local Communities

In March 1996, the long-simmering anger at the company erupted in rioting when anti-mining sentiment among different groups coalesced into what was perhaps the biggest threat to Freeport to this day. The mine and its mill were shut down for three days. Rioters destroyed US$ 3.0 million worth of equipment and ransacked offices. Freeport intercepted e-mail messages which suggested that certain military units, the community and environmental groups were working together. Local leaders later met with company officials and said that they had provoked the disturbances as a means of expressing their aspiration to receive greater benefits from Freeport's operations.[14]

In February 2006, Freeport prohibited indigenous people from collecting gold out of the tailings of Grasberg mine. Protestors blockaded the road to the mine and clashed with the local police. Freeport suspended its operations. After Freeport accepted the requested increase in the indigenous people's share of the Community Development Program, the protestors lifted the blockade and Freeport resumed its operations.[15]

Labor Dispute

In April 2007, operations at Grasberg mine were halted as thousands of workers attended a rally over a labor dispute. The police said 2,500 protesters turned out in Timika, about 62 miles from the Grasberg mine, demanding that their salaries be raised to 3.6 million rupiah, or US$ 395 per month from 1.45 million rupiah.[16]

Approaches Taken by Freeport to Address Challenges

On Landslides

Freeport suspended its operations after the landslide incidents, and resumed operations after it had brought the sites back into good condition. Before resumption of operations, the Indonesian mining authorities inspected the sites and authorized the resumption. Freeport had also been reclaiming and replanting the area.

According to Freeport, its safety performance continued to compare quite favorably with that of similar US mining companies. A statistical comparison showed that Freeport's 2001 lost-time-injury rate per 200,000 hours worked stood at 0.36, well below the US metal/non-metal mining industry average rate of 2.24. Further, Freeport's total reportable rate (all reportable injuries) of 0.83 was significantly lower than the US industry average rate of 4.04. Within the five-year period starting in 1996, PT Freeport Indonesia's safety performance in 2001 was second best only to their 1999 record. For these efforts, Freeport received the Golden Award from the Indonesian Department of Energy and Mineral Resources, which recognized both safety performance and safety management system implementation.[17]

During 2006, the lost-time-injury rate per 200,000 working hours at PT Freeport Indonesia was 0.10, an improvement over 2005 and comparing very favorably with the US metals and mining industry average for 2005 of 2.15. The total reportable injury rate per 200,000 working hours was 0.31, an 18% improvement over 2005 and again comparing favorably with the 2005 industry average of 3.55.[18]

Freeport was implementing its safety policy through the Freeport Safety and Health Management System, which was also adopted by all contractors and privatized companies serving its operations in the Grasberg mine. It involved management and supervisory focus: a comprehensive safety management system for every aspect of operations; introductory, fundamental, specific skill and supervisory training (including annual refresher courses); and a system to track results and progress in achieving safety goals.

Freeport measured its progress using the international NOSA (National Occupational Safety Association) 5 Star Rating System, as well as the Supervisory Safety Accountability Program to measure supervisory safety performance. Annual safety and industrial health performance was a key indicator in the annual performance review of each supervisor and manager. The system had worked well and Freeport's safety performance had consistently compared very favorably with that of mining operations in the US and other economies. In 2006, 15 Freeport divisions achieved 5-star ratings from NOSA. In addition, several divisions were recognized as best-in-class worldwide when compared with other operations using the NOSA system.[19]

Freeport's Corporate Safety and Health Policy Statement, adopted by its Board of Directors on 31 July 2007, declared that "[t]he safety and health of all Freeport …employees …are of the highest priority", and that their "objective is zero work place injuries and occupational illness."[20]

On Waste Management

Freeport had long complained about problems of conflicting Indonesian environmental legislation. Forestry law 41 of 1999 essentially prohibited exploration and exploitation of natural resources existing within a protected forest. If interpreted literally, the law would prohibit operations even if the protected status was conferred subsequent to the issuance of a Contract of Work. Hazardous waste regulation issued in 1999 (PP18/1999) revised toxicity characteristics leaching procedures (TCLP) numbers for waste disposal, which far exceeded standards in Australia; Canada; and the US.[21]

On the other hand, Freeport claimed that it had a comprehensive waste management system involving waste reduction and segregation of hazardous wastes in compliance with relevant Indonesian regulation. Its 2006 *Working Toward Sustainable Development (WTSD) Report* explained its activities in detail as follows:

1. Freeport had been conducting annual internal environmental audit since 1994.
2. It was awarded ISO 14001 certification in December 2001.
3. It participated in the environmental management performance rating program, known as PROPER, which was administered by the Indonesian Ministry of Environment. The rating evaluation was mainly based on the performance of companies in managing effluent discharges, air emissions and hazardous wastes.
4. Its environmental management system included an in-house environmental inspection program that is conducted continually throughout the year.
5. In 2005, its triennial independent external environmental audit was conducted by Montgomery Watson Harza to fulfill one of Freeport's commitments that was included in its Environmental Impact Assessment (AMDAL) approved by the Government of Indonesia in 1997.

The audit concluded that Freeport's mining operations "are among the largest and most environmentally challenging and complex in the world" and that the company's "environmental management practices continue to be based on (and in some cases represent) best management practices for the international copper and gold mining industry."[22]

The tailings deposition system was operated under Freeport's tailings management plan, which was approved by the Government of Indonesia during the 1997 300K AMDAL (environmental and social impact study) process. As part of the 1997 AMDAL process, it was agreed that the approved tailings management option should be studied further. A Tailings Review Committee comprising of members of the Environmental Risk Assessment Review Panel Team, Freeport Environmental Advisory Council and Freeport management was established to review this issue. After the completion of a series of detailed studies, including an analysis of remote sensing information, evaluation of potential pipeline options, a review of geotechnical considerations, flood and hydro-geological impacts and comprehensive risk assessments, the Committee concluded that the approved tailings management system was the best option available.[23]

A technical group comprising of experts and representatives of the Bandung Institute of Technology, PT Puri and Freeport reviewed the Freeport's tailings management practice and developed some recommendations to enhance the effectiveness of tailings retention program techniques. The tailings retention plan divided the deposition area into three sections based on the elevation, sediment grain size, and type of flow, and details specific techniques that may be effective in each section. The recommended techniques included the use of bio-filters, permeable groins, flow deflection structures and other engineering applications.

Freeport was committed to the implementation of the plan. In 2002, Freeport also submitted to the Government of Indonesia a detailed Environmental Risk Assessment (ERA) of the tailings management system. It found the identified environmental impacts of Freeport's tailings management system consistent with those anticipated by the AMDAL of 1997. Freeport started a five-year update of the ERA study which should be completed by 2007.[24]

Studies of tailings reclamation and the establishment of demonstration plots on deposited tailings showed that tailings could be readily replanted with native forestry and agricultural plants. In fact, natural re-colonization had rapidly taken place. Upon the completion of mining, the tailings deposition area would be reclaimed in a manner consistent with the appropriate technique established through consultation with various stakeholders, taking into account appropriate consideration of environmental and social impacts.[25]

Freeport also claimed that it had not caused serious degradation of the water quality of rivers. Again, according to its 2006 WTSD Report, extensive sampling of water quality in the tailings management system showed that the water in the river that transported the tailings from Freeport's mill in the highlands to the lowlands tailings deposition area met the Indonesian and the US Environmental Protection Agency (EPA) drinking water standards for dissolved metals. Data from biological sampling continued to demonstrate that the estuary downstream of the tailings deposition area was a functioning ecosystem, based both on the number of species and the number of specimens collected of nektonic, or free-swimming organisms such as fish and shrimp.[26]

With the approval of the Government of Indonesia, Freeport constructed a new levee to the east of the existing west levee. This created a new channel between the new levee and the old west levee, and Ajkwa River was diverted to the new river in 2005. The diversion of Ajkwa River from the tailings deposition area to its original channel had a number of environmental advantages. It significantly decreased the amount of tailings transported through Ajkwa River to the tailings deposition area. It provided additional natural fresh water flow along the eastern boundary of the heavily populated area of Timika. It also allowed large-scale reclamation demonstration projects to be carried out on previously deposited tailings in the area between the two western levees. This area had become the site of successful reforestation and agriculture projects.[27]

To address the acid rock drainage (ARD) problem caused by sulphide minerals contained in overburden (see *supra* n.5), Freeport had been implementing a comprehensive Overburden Management Plan approved by the Government of Indonesia. Under the Plan, Freeport placed overburden in managed areas around the Grasberg open pit, and provided for capture and treatment of the existing acid rock drainage, in conjunction with limestone blending and limestone capping of existing overburden placement areas to manage future acid rock drainage generation.[28]

On Payments to Local Military and Police Officers

Inasmuch as the investigations by the US SEC and Justice Department were ongoing, Freeport had declined any official comments on the details of its payments to Indonesian local military and police officials.

On the other hand, Freeport's Social, Employment and Human Rights Policy of 2004 declared that in order to uphold human rights standards, Freeport's security personnel would, among others, (1) Respect all people's human rights throughout their daily activities; (2) Consult regularly with local communities on security matters; and (3) Ensure that all security procedures and policies are publicly available in order to mitigate distrust between operations and local communities.

With respect to the security forces not under Freeport's direct control (military and police personnel), the Policy declared that Freeport would (1) Consult regularly on security, human rights, and related work-place safety issues; (2) Communicate company policies regarding ethical conduct and human rights; (3) Support government efforts to provide human rights training and education for all; (4) Inform the public of any arrangements of support made by Freeport for the benefit of public security so that such support shall be transparent and publicly disclosed; (5) Monitor the use of equipment provided by Freeport and investigate situations in which equipment is used in an inappropriate manner; and (6) Report any credible allegations of human rights abuses by public security in the Contract area to the senior military or police official in the area and to the Corporate Human Rights Compliance Officer.[29]

On Community Development

Freeport emphasized its commitment to the local community in its Social, Employment and Human Rights Policy. In order to enhance its commitment, the Policy declared that Freeport would: (1) Build relationships with people in Indonesia and especially with people indigenous to areas of operations or exploration; (2) Work continuously to understand the culture and social patterns of the people in Indonesia and especially the people indigenous to areas of operations or exploration. To accomplish this, Freeport would undertake social, cultural and health studies; (3) Consult with local populations about important operational issues that would impact on their communities; (4) Work with the Government of Indonesia, the local people and responsible non-governmental organizations to create and periodically update social integration and/or sustainable development plans for all operational sites. These plans would address the issue of economic and social viability of each operating area after cessation of operations; (5) Encourage awareness among the employees of attitudes, beliefs and values of the local community; and (6) Recognize its significant impact on the local indigenous population and voluntarily recognize this in various ways.[30]

In furtherance of its commitment to community development, Freeport had established voluntary trust funds for the local indigenous tribes (Amungme and Kamoro tribes) and had contributed US$ 8.5 million through 2006. In conformance with the applicable land rights agreement, it would continue to contribute US$ 1 million annually to the fund. A portion of these funds were used to purchase shares in Freeport, thereby permitting the indigenous people to become equity participants in the mine.

As of 31 December 2006, the funds held a combined total of nearly 22,000 common shares in Freeport, worth more than US$ 1.2 million. These funds were in addition to the Freeport Partnership Fund for Community Development, which had received approximately US$ 242 million from Freeport since 1996 for investments in numerous community development projects. Examples included the hospitals in Timika and Banti that treated thousands of patients each year; the education program, which provided scholarships or educational assistance to thousands of Papuan students; and economic and village development programs that provided rural income generating projects, clean water, church facilities and other infrastructure to remote villages in the highlands of Papua.[31]

In 2000, after five years of negotiation, Freeport concluded a Memorandum of Understanding (MOU) with Amungme and Kamoro local community organizations, focusing on socio-economic resources, human rights and environmental issues. As part of the 2000 MOU, the MOU Forum was created, consisting of representatives of LEMASA, the Amungme tribal agency; LEMASKO, the Kamoro tribal agency; YAHAMAK, a nonprofit advocacy group for Papuan women and children; the regional government and Freeport. The MOU Forum met regularly to discuss issues related to the implementation of the 2000 MOU.[32]

In 1996, Freeport committed to improve significantly the training and education program for indigenous employees. It pledged to double the number of indigenous Papuan employers throughout the workforce by 2001 and to double that number again by 2006. It also pledged to at least double the total number of Papuan management professional employees. Both goals were met in 2006. At the end of 2006, Freeport had nearly 2,650 Papuan employees, including about 320 Papuan management staff employees, compared to 600 Papuan employees in 1996, of which fewer than 50 were management staff. Another 1,050 Papuans were employed by privatized companies serving Freeport compared to year-end 2005. These numbers reflected a substantial increase in the number of Papuans employed directly and indirectly by Freeport since the end of 2005.[33]

In 2003, Freeport formed the Nemangkaw Mining Institute, whose goal was to provide pre-apprentice, apprenticeship and advanced career development opportunities for Papuans. In 2006, the Institute accepted over 1,000 enrollment in the apprentice and pre-apprentice programs. It was expected that most of these students would be hired by Freeport and its associated partners.[34]

Freeport justified the prohibition of gold extraction from the tailings in February 2006, by pointing out that such extraction was not licensed by the Government of Indonesia and that the panners had moved into the area by the thousands, straining resources (particularly medical resources) and pressuring the local population.[35]

On Labor Issues

The Freeport's Social, Employment and Human Rights Policy of 2004, paragraph 2, set out basic policies on industrial relations. It declared that Freeport was committed to support fundamental principles of labor relations, including the elimination of discrimination in the workplace, the freedom of association and the right to collective bargaining, the elimination of forced and compulsory labor and the abolition of child labor. According to the Policy, in order to support these principles, Freeport would, among others, (1) Obey the laws and regulations of Indonesia with respect to employment practices; (2) Adhere to applicable international standards of health and safety; (3) Employ as many citizen of Indonesia as practicable and, wherever practicable, employ people who are indigenous to the operational and exploration site; (4) Provide training to citizens of Indonesia with a primary focus on those indigenous to the operational or exploration area to prepare them for employment in the operation; (5) Ensure that employees are fairly remunerated; (6) Respect the employee's right to join a union or other coordinated association.[36]

Although the details of the solution of the labor dispute of April 2007 had not been reported, it would be safe to assume that the dispute was settled through peaceful means according to Freeport's policies on industrial relations.

Conclusions

Lessons Learned for the Company, Local/Central Governments, Private Sectors, and Society

Mining is an activity that directly affects natural and human environment over a long period of its operation. It also has serious social impact on the local community where it is conducted. Securing workers' safety and environmental protection must be the top priorities for sustainable mining investment. Freeport must make utmost efforts for achieving them. To this end, it must consult with the Government of Indonesia (Ministries of Mining and Environment, etc.) on how to comply with relevant laws and regulations of Indonesia, including those on environmental protection, workers' safety, labor relations, and protection of land rights of indigenous people.

The host government has a primary responsibility to secure Freeport's compliance with local laws and regulations. At the same time, it must avoid applying conflicting laws and regulations to particular environmental laws. This does not mean that the Government of Indonesia must not enact strict environmental laws and regulations during the long Contract period. It means that such enactment should be conducted through due process, and should be applied in a transparent manner. Such procedure should include prior announcement of a new enactment, consultation with Freeport on what impacts it will bring to the existing Contract, and the renegotiation of the Contract, if necessary.

Merely complying with local laws is not enough. Considering the huge impact of its activities on the natural and social environment of the region, Freeport must take proactive steps to secure the safety and environmental soundness of its activities and to enhance community development. The various measures taken by Freeport particularly since the late 1990s, as discussed previously, show that Freeport has been trying to fulfill its responsibility in this regard. Also, it must be admitted that Freeport has been trying to make its activities more transparent than before, by publishing its annual report on sustainable development since 2001. These efforts, especially the latter, are effective in providing information about Freeport's activities and policies to the stakeholders including the local community, local and central host governments, nonprofit organizations and the company's shareholders. As more and more emphasis are put on corporate social responsibility (CSR) and investors relations (IR), Freeport's effort in that respect serves as a good reference.

Corruption is no longer part of normal business practices for foreign investors. Freeport must assure everyone that it will never make corrupt payments to Indonesian military and police officers, and that it will disclose all financial records to its shareholders. The investors' home government also has a shared responsibility for the elimination of corruption abroad. Investigations by the US SEC and Justice Department will elucidate whether and to what extent Freeport's payment was in violation of the US Securities Exchange Act and Foreign Corrupt Practices Act. On the other hand, Indonesian military and police were not innocent, either. The local and central government of Indonesia should have secured sufficient budget for the maintenance of security in the region. Both investors and host governments are responsible for the elimination of corruption.

Consideration of the Possible Application to Other Economies

Foreign investors in the mining sector in developing economies generally have similar challenges (workplace safety, environmental degradation, corruption, labor dispute, etc.). This case can be applied to investment cases in the mining sector elsewhere. Also, many of the lessons of the case can be applied to long-term investment cases in various other sectors elsewhere. These include the importance of continuous consultative relationship between foreign investors and host governments, the importance of compliance with local laws and regulations, the increasing emphasis on CSR and IR, and the shared responsibility of investors, home governments and host governments in abolishing corruption.

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[25] *Id*.

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[27] *Ibid*., p. 39.

[28] *Ibid*., p. 42.

[29] Freeport-McMoRan Copper & Gold, Inc., *Social, Employment and Human Rights Policy, 2004,* para. 3b. http://www.fcx.com/envir/socemploy.htm

[30] *Ibid*., para.1.

[31] Freeport-McMoRan Copper & Gold Inc., *supra* n.18, pp. 9-10, 16.

[32] *Ibid*., p. 10.

[33] *Ibid*., p. 22.

[34] *Id*.

[35] *Ibid*., p. 46.

[36] Freeport-McMoRan Copper & Gold, Inc., *supra* n. 29, para. 2.

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