

# PROGRESS REPORT

October 2000

## INTERIM REVIEW

BPD Engagement

with the

Kelian Equatorial Mining Project



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# 1 EXECUTIVE SUMMARY

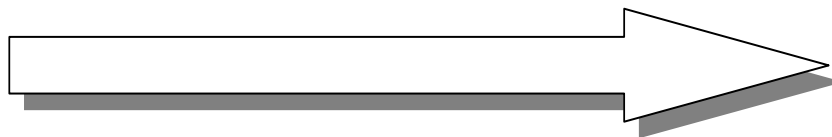
BPD's engagement with Kelian Equatorial Mining (KEM) is focused on partnerships associated with mine closure – currently scheduled in just over three years. The last 8 months have been difficult because of local disputes which have disrupted plans and processes. The combination of regional autonomy, increased democratisation and specific closure related expectations from the community have all contributed to instability. Key characteristics of this instability are:

- **A legislative vacuum and lack of trust in State Institutions.** This means that the rule book for interactions between communities, government and the company has been discarded. As yet, nothing replaces it except a general spirit of 'anything goes'. This is despite the fact that the current administrator (the *Bupati*) is broadly perceived to be fair and honest.
- **Changing community representation.** The legitimacy of existing community representatives has been challenged, both by new community institutions as well as by the resurgence of traditional authorities (the *Adat*).

Clearly the relations at Kelian are likely to remain charged as Closure draws closer. To cope with this, the partnership process must be innovative, flexible and robust. BPD's engagement at Kelian differs from other focus projects (two of which are in 'care & maintenance' phases) in the following ways:

- **Input from Executive as well as Operational representatives was essential** because the issues were so fundamental. This includes the President Director of KEM, Rio Tinto Indonesia, the Bupati, a Director of WALHI, and local village representatives.
- **The World Bank in Washington contributed expertise** to assist in ensuring that lessons can be learned as well as contributed to this focus project. This input recognises the broader social impacts and implications of mine Closure on poorer people both in Indonesia and more broadly in the developing world.

Outcomes and Impacts of the Kelian focus project can be summarised as follows:



## February/March 2000

- Local community institutions fragmented and conflicting.
- Land claims dispute dominates relations.
- No rules of engagement or resolution of disputes.
- Specific themes for closure identified (Village Impact; Employee Mitigation; Future Site Use) but derailed by immediate issues.

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- WALHI formally withdraws from the process. Its essential position as critic and watchdog may have been compromised by being too closely involved, and KEM failed to ensure adequate open communication.
- KEM opens communication offices in the community.
- Government, KEM and local community groups meet to create working groups and action plans for the resolution of 3 specific themes for closure.
- Dispute mechanisms provoke desire amongst all parties to create a national ombudsman / arbiter.

Significant impacts have been made in addressing critical issues of communication and improved governance associated with mine closure. Our proposals for a regional/national entity to discuss and resolve social and environmental concerns associated with KEM have considerable scope for broader application. We have already been approached by other NGOs and mining companies in Indonesia who would participate in this kind of initiative.

BPD's inputs capitalised on our unique position as independent intermediary and are built on principles of good governance. Over several months we worked to build trust between ourselves, each of the parties and eventually between the parties themselves. Interventions encouraged people to promote terms of engagement based on principles of participation, transparency and accountability.

Key outstanding issues remain. A principal concern of all stakeholders was how to sustain and maintain the partnerships that were now forming:

- The role of an independent facilitator was agreed to be essential, and two potential institutions / individuals have been identified who should be able to carry out this role. It will be important to address their training needs as early as possible.
- It is important to address specific issues about governance structures, representation, planning and resource needs to ensure that the proposals we agreed to can be implemented.

## 2 INTRODUCTION

This document is the third status report that describes BPD’s engagement with Kelian Equatorial Mining (KEM). The objectives of this report are:

- To review the progress of partnerships between KEM, the government and local communities in delivering social benefits;
- To identify and explain some of the reasons where and why the partnership process at Kelian has differed from the other focus projects;
- To describe key achievements, lessons learned, and next steps.

The contents of this report are informed by direct consultation with a broad variety of stakeholders including senior management at KEM and Rio Tinto, the regional government, local community leaders (representatives of the Adat) and local as well as national NGOs (LKMTL and WALHI). A list of these individuals is presented in Table 1. In addition, a successful two day meeting brought together local stakeholders and jointly committed parties to an action plan to resolve key Closure related Issues. The key points and next steps from the workshop are contained in Annex 1.

**Table 1: Persons contributing to this Status Report**

<b>Organisation/Name</b>	<b>Position/Responsibility</b>
<b>Kelian Equatorial Mining (KEM)</b>	
John Vale	President Director
Jan Andersen	General Manager Mine Closure
Budi Irianto	Community Development
Geraldine McGuire	Superintendent Environment
Angus Green	Consultant Anthropologist
Christine Boulan-Smit	Consultant Anthropologist
Terry Holland	Consultant Community Relations
<b>Rio Tinto (Indonesia)</b>	
Noke Kiroyan	President Director
Anang Noor	Deputy Director, External Relations
<b>Rio Tinto Foundation</b>	
Tom Malik	Executive Director
<b>Rio Tinto Plc</b>	
Glynn Cochrane	Senior Community Relations Adviser
<b>World Bank (Washington)</b>	
John Strongman	Mining Advisor
<b>WALHI</b>	
Emmy Hafild	Director
<b>LKMTL</b>	
Pius Nyompe, Pak Elias	Chairman
<b>Local Government</b>	
Rama Asia	The Bupati (Regent)
<b>Adat Representatives</b>	
Pak A. Idjau, Pak Y. Dullah	
<b>Other</b>	
Gerry Van Klinken	Outside Indonesia
Niel Makinuddin	PLASMA (local facilitator)
Andi Mallerengeng	Partnership for Governance Reform, Indonesia

### **3. THE WIDER CONTEXT**

#### **3.1 Project Description**

Kelian Equatorial Mining, one of the largest gold mining operations in the world, is set to close its operations in 2004. Kelian occupies a remote site in Kalimantan where, over the last decade, mining operations have had significant impacts on the rural economy and local livelihoods.

KEM is owned 90% by Rio Tinto Plc and 10% by an Indonesian partner, PT Harita Jayaraya. KEM will be the first mine closure managed by the Rio Tinto group. Both KEM and Rio Tinto have committed to a socially and environmentally responsible strategy for Closure. KEM has outlined its initial considerations in an extensive Closure Statement<sup>1</sup> which is currently under consultation and review.

BPD's role at KEM is to facilitate partnership between the company, the government and local communities with an objective to deliver improved and more sustainable social development. BPD acts as a neutral and independent agent with a specific mandate to record lessons and disseminate information on public/private/NGO relationships.

#### **3.2 The Need for Partnership**

In July 1998 KEM identified its priority issues in its Closure Statement. Of these issues, three specific items lent themselves to co-operation between the Government, Community-Based-Organisations and KEM:

- Mitigating some of the social and economic impacts on those communities likely to be hardest hit when KEM closes;
- Alternative employment opportunities for KEM staff and contractors;
- Working together in order to generate and then identify potential options for the management of KEMs site post-closure.

In each case, the focus of the partnership arrangements is around communication, shared responsibility, and shared tasks. There is broad recognition that neither KEM, nor any of its prospective partners, will be able to meet the challenges of closure on their own. In order to secure the integrity of the tailings dams, for example, a solution will have to be found that includes the Department of Forestry (legal recipient of the land after KEM's Contract of Work expires, but with limited capacity to meet their responsibilities), local communities (most at risk from discharges) and Rio Tinto (who will suffer from reputational consequences if the dams fail).

The Closure Statement set out alternatives and options for partnerships and also led to a number of specific recommendations:

- Commissioning of a Village Base-Line Survey in order to quantify and delineate KEMs impacts on surrounding communities – this study is to guide and target KEMs community development initiatives;
- Commissioning of a Stakeholder survey in order to understand employee and contractor dimensions and expectations better.
- The establishment of a steering committee comprising KEM, government and NGOs to negotiate post-closure issues for the site;

<sup>1</sup> *Preliminary Closure Statement*, December 1998, Kelian Equatorial Mining.

KEM also embarked on a programme targeted at generating alternative income opportunities through self-help groups, and improving agricultural productivity for the worst-affected villages through training and improved inputs. A further consideration has been KEMs commitment to complete a programme to provide infrastructure related projects to some surrounding villages (power supplies, water and asphaltting of roads).

It is fair to say that KEM needs to transfer the responsibility for its existing programmes onto other agencies (government or NGO) as stakeholder agreed end point criteria are met. Whilst this is of course a fair reflection of KEMs position (given the agenda for Closure) it is also fair to reflect that this approach was not particularly attractive from the perspective of the potential partners.

### **3.3 The Broader Social, Institutional and Economic Context**

KEM's current predicament can be better understood in the light of the dramatic political changes of the past two and a half years. In November 1997, the value of the Indonesian rupiah fell against the American dollar and other major trading currencies as part of a recession sweeping most of South East Asia. In Indonesia, spiralling food and commodity prices along with widespread allegations of corruption against the President's family, the Cabinet, the business community and armed forces fuelled community resentment that in May 1998 lead to Suharto's down fall. Much of the impetus for that political event came from students, intellectuals and non-government organizations under the banner of 'reformasi.' Among those non-government organizations (NGOs) seeking widespread democratic reforms was WALHI.

For many, KEM is regarded as an Australian company with a poor record on human rights and the environment. This has diplomatic and local implications different to other foreign companies in Indonesia charged with the same allegations. Accusations of Australian-sponsored human-rights violations in East Timor, coupled with nationalist feelings, forced some Australian KEM staff to evacuate to Singapore. The human rights accusations levelled by Australia at Indonesia at that time and those levelled at KEM presently add in obvious ways to an already difficult operating environment. There is a general nationalist sense that after the East Timor ballot Australia violated Indonesian sovereignty and may have participated in human rights abuses there.

The Kelian project was established in the 1980s under the Suharto regime. During that time Indonesian laws ensured that wealth derived from foreign enterprise benefited the state and in particular the central government in Jakarta. Under these arrangements, there was little obligation or incentive for foreign companies such as Kelian to factor 'community' into their operations but Kelian did recognise its social responsibility and commenced a community infrastructure development programme in 1995. However, since the Suharto downfall, community expectations about political reform have escalated though the legal reforms to address these expectations have hardly begun.

In many parts of Indonesia, poverty and dissatisfaction with the rate of reform coupled with 'provocateur' elements from fundamentalist groups, the judiciary, the armed forces and other quarters has fuelled religious and ethnic divisions and violence. Among ordinary citizens, there is now even less trust or regard for government, the security forces or the rule law.

We have seen evidence of this at Kelian in negotiations with workers and the community over project related demonstrations. In the social landscape in which KEM operates, the community strongly resists the involvement of government or the judiciary in the resolution of disputes. By and large, workers and the community prefer to manage their grievances directly with KEM. This is both an expression about the distrust of 'state structures' and a genuine desire to develop a direct social and economic relationship with an institution living amongst them – something that was impossible during the Suharto period.

This changing political scene throughout Indonesia has therefore changed the relationship of communities surrounding the Kelian project towards KEM. State autocracy has been replaced with a far more parochial system that requires KEM to deal directly with the community. Regional and local governments are impoverished, distrusted and generally unable to fulfill their administrative charter. Instead, WALHI as one of the architects of this new and uncertain order, have mediated certain conversations between KEM and the community as a quasi government. The consequence of WALHI's perception that KEM had not followed agreements has resulted in WALHI pulling out of negotiations.

Like other NGOs and the 'reformasi' movement in general, WALHI intends to pursue the unfinished project of full democratic reform in Indonesia. There are therefore dangers that issues concerning social justice and the environment applying to KEM become submerged in WALHI's far more ambitious national program to the detriment of the community. It is uncertain, for example, how far WALHI will pursue its agenda with KEM and the community in the interests of turning the tide on national issues.

For the reasons stated, KEM cannot rely entirely on the judiciary or any other aspect of the State apparatus to resolve day to day or accumulated problems between themselves and the community. This is evidenced in the number of foreign companies that have been forced to suspend operations in Indonesia in recent times. Instead, they need to supplement State mechanisms with other options that can define codes and workable processes to the satisfaction of all parties.

One option is to negotiate modus operandi or rules with WALHI and other NGOs that represent community interests. This is difficult because there are no statutes for the interpretation of negotiated procedures. Another option is to encourage local Dayak people to define and evoke their own customary law in a way that it can resolve matters to the community's satisfaction. This initiative would be in step with current proposals to devolve certain powers to the provinces. A third option is to negotiate a list of people or respected non-government and non-adversarial institutions such as the Indonesian Institute of Sciences (LIPI) to arbitrate in matters of common interest. We make specific proposals for each of these options in our recommendations.

The new democratic era is a hopeful sign for Indonesia but presents difficulties for KEM in matters surrounding project closure. It would be fair to say that in a highly complex and diverse nation, Suharto's regime offered an easier 'law and order' environment for Kelian and other foreign projects to operate. That certainty has now gone. Reconciling relationships with LKMTL and WALHI, resolving the allegations of sexual harassment and the compensation issue requires a more pro-active approach from KEM.

Viewing it from the inside, KEM operates against a backdrop of inertia in national law reform, the community's contempt and distrust of State institutions and nationalist antipathy towards Australia. These are events largely outside its control. Viewing it from the outside, KEM appears to operate within a corporate structure that cannot or will not keep pace with these changes. This is a problem that KEM management has the capacity to address.

## 4. PARTNERSHIP PROCESS AND STRUCTURE

### 4.1 The Partnership Process

The progress on the three main partnerships themes (villages, staff/contractors and site management) was reported during our meetings in October. In summary:

- Both the Village Base Line Survey and the Stakeholder Consultation took considerably longer than initially envisaged. As a result, community development activities have addressed infrastructure commitments already made and the strategy of sustainable development of self help groups. However, the strategy has not been based on hard data.
- Although the Steering Committee to resolve site related issues had been established, it had failed to meet with any regularity to resolve or discuss items of importance. Furthermore, the committee did not (as it was originally established) have any local community representation.

The reasons for these shortcomings becomes clear when we review the events that beset Kelian over the last 7 months (Table 2). Interactions between the company, communities and government were characterised by lack of trust, disputes and lack of communication. In particular, the following key points emerged:

**Local politicking and local representation** – New local community groups dissatisfied with the deadlocking of negotiations by LKMTL emerged and claimed that they were ‘true’ representatives of the community and claimants. KEM was seen by some from the outside to be supporting this group and promoting division and dissent within the community.

**Changing local legitimacy** – Local traditional leaders, known as the Adat Institution, formed a coalition to re-assert their authority in resolving local concerns. This group of people signed a declaration in June 2000 to exclude ‘outside influences’ (they made a direct reference to WALHI) from local affairs. The resurgence of the Adats occurred at least partly as a result of the new autonomy legislation that devolves increasing authority to the regions and away from Jakarta.

**Changing government responsibility** – The local government, also under autonomy legislation, has much increased powers and authority to create local laws and retain revenues from local businesses. But this increase in authority is, in many cases, not supported by increases in capacity or national guidelines. A case in point is the complete absence of national guidelines or legislation to guide decisions on Closure. Increased democratisation and forthcoming elections also means that the Bupati must be much more accountable to local interests.

**Increased expectations and uncertainty over Closure** – The lack of guidelines and resurgence of local autonomy, combined with the well publicised reality of Closure leads to a charged atmosphere. The community fully expects KEM to clear all its perceived debts from the past, to make good on all its promises, and to be punished for all of its perceived infringements over its entire operating life. The spirit of ‘reformasi’ means that people are more comfortable confronting the company directly, rather than working through the government.

**Lack of communication between the company and stakeholders** – All too often, KEM acted (or reacted) to pressures from the community without consulting with or informing other affected parties. KEM had no forum or protocols for communicating with stakeholders and as a result, its actions were often met with surprise as well as accusations that it had ‘stepped outside of the process’.

**Table 2 Local relations at Kelian between April and October 2000.**

	April	May	June and July	August and September	October
Partnership Programme	<p>Internal assessment begun.</p> <p>Lack of clarity over who represents the community.</p>	<p>Changes in local institutions and international criticism lead to local confusion about the potential for partnerships.</p>	<p>BPD / World Bank works with local and national stakeholders to generate a principle-based framework for resolving outstanding issues.</p>	<p>Principle-based forum proposes a two tier mechanism for resolving outstanding issues, local and national.</p> <p>Most stakeholders identify need for mechanisms, but lack of clarity for how to put them into place.</p>	<p>Local parties (government, Adat, LKM/TL and KEM) convene under BPD (with World Bank and Rio Tinto UK) and agree to definition of a series of joint work plans to implement solutions related to the social and environmental impacts of Closure.</p> <p>Potential local facilitators (PLASMA, and the University) identified and approached to seek buy-in.</p>
Events at the Mine	<p>Compensation dispute brings mine to forced cessation of activities.</p> <p>Emergence of new representatives who claim greater legitimacy than LKM/TL in representing claimants (and community) interest.</p> <p>Growing criticism from national and international NGOs that KEM has deviated from agreed processes. This leads to heightened crisis.</p>	<p>Continued disagreement between local government, KEM and communities over land compensation.</p> <p>Local facilitator (PLASMA) encourages parties to enable mine to re-open.</p> <p>Emergence of sexual allegations report.</p> <p>LKM/TL marginalized from land claim negotiation process. Some demonization of LKM/TL by KEM staff in the community and demonization of KEM staff by WALHI and LKM/TL.</p>	<p>Resurgence of local institutions (Adat Forum) who group together to reject 'interference from outsiders'.</p> <p>WALHI declare that KEMs breaches of agreements force them to 'withdraw from the process'.</p> <p>Most parties indicate that they will not engage in partnership until some action on land issues is resolved.</p>	<p>Some resolution at the local level LKM/TL and 'peoples representatives' brought together through concessions by KEM. Land price negotiations agreed and payments for some claims made.</p> <p>Communication with the community developed strategically.</p> <p>Communication Offices opened in Tutung and Linggang Bigung.</p> <p>Employee office opened on KEM site - with the objective of helping staff to understand the timetable of redundancies and options available to them, and other mine closure issues.</p> <p>Palpable sense of progress.</p>	<p>President Director of KEM proposes (in his annual plan to London) a stakeholder forum to involve community and government in defined closure issues.</p>

## 4.2 The Partnership Structure

It is clear that Mine Closure in the context of Reformasi and the new Autonomy laws presents special and important challenges to any relationship, let alone one that attempts to draw together government, business and local communities. The reality is that KEMs relationship with its neighbours is a living one – and in order for this relationship to work it must be responsive and adaptable to changing circumstances.

Whilst BPD initially focused on isolating and then developing specific partnership themes it quickly became obvious that this approach would not be fruitful. The reasons for this were:

1. **Levels of trust were low.** This is not only because of existing or historical grievances, but because of the uncertain nature of ‘who does what’ in the current legislative vacuum.
2. **Grievances related to one set of issues (in this case land compensation) spilled over into others.** This situation is exacerbated because many of the same parties dealt with a variety of social issues. So, if KEM was perceived to have reneged on promises in one area, LKMTL refused to negotiate on other issues until some formal resolution was reached on the first. Given that closure looms soon and large, it made little sense to simply ‘wait and see’ when the grievances would be resolved.
3. **Critical issues of relationships were being managed at the highest levels of each organisation.** The involvement of senior management (the President Director of KEM and Rio Tinto Indonesia, the London Director of Rio Tinto’s Gold Group, Director of WALHI, the local Bupati) was essential because there was no logical framework or precedent for any of the employees / contractors or other parties to develop and maintain their own relationships. In many ways, people were waiting for the bigger issues to begin to clear before they felt confident or able to pursue their own partnership themes.

## 4.3 The Principle Based Framework for Resolving Outstanding Issues

Stakeholders discussed options to resolve outstanding issues through adoption of a process that commits each party to open procedures that minimise the opportunity for interference in local politics.

Participants identified the following principles as important to define the process:

1. Timeliness
2. Equal treatment
3. Practical outcomes
4. Binding judgement
5. Public acknowledgement
6. Independent judgement conducted by persons of integrity
7. Inclusiveness.
8. Flexibility to deal with local, regional and national issues, as well as technical and non-technical issues.

Bearing these principles in mind, we jointly discussed to the following process:

1. Remember and define goals and objectives: Everyone has agreed that the objectives of this process are to **ensure that the local community are better off as a result of KEM operating in W Kutai, and that a sustainable harmonious relationship exists between KEM and the community.**

2. Establish working groups to resolve community grievances and outstanding issues.
  - a. We envisage two working groups - social issues and environmental issues.
  - b. Each working group would follow a predefined process to resolve the issues under its jurisdiction.
3. The proposed process is:
  - a. With stakeholders, prioritise the list of issues, ensuring that key issues are actioned early, and, wherever possible, deliver benefits to the community as quickly as possible.
  - b. Jointly collect information, with stakeholders, and review the case for and against the claimant.
  - c. Subject the claim to an independent review. In keeping with the principles outlined above, we envisaged three specified options for this court:
    - i. By preference of the majority of stakeholders, the local Adat should be the first route to resolve issues.
    - ii. If either claimant or KEM objects to the Adat forum, the second option could be through an independent national mediating body – examples suggested include LIPI and Kommitas HAM.
    - iii. If neither of these options is acceptable to either party, then the case should be referred to the national/regional judicial process.
4. Public acknowledgement and endorsement of outcomes is essential – ‘secret’ bilateral deals between parties should not occur. We all have to adhere to the process. This means that KEM and other parties submit to the process.
5. Evaluation amongst the community and KEM to ask whether this process is working, and how it might be improved.

Whilst this framework may not necessarily be adopted by all participants, at the time it served the important purpose of focusing people on issues and principles of engagement, rather than on personality. As such, it enabled parties to move the agenda forwards.

#### **4.4 Determinism**

The issue of changing local representation and legitimacy presents a complex operational problem for KEM. The importance of any local institution that is recognised or endorsed by KEM is immediately enhanced. So, simply by dealing with any forum, KEM unwittingly promotes the forum’s stature and weight in the community. KEM exerts this level of determinism because of its position as one of the largest and most important institutions in West Kutai.

There are important implications related to KEMs interaction with the Adat forum. We should be aware that this relationship could quickly and easily be seen as a precedent for similar resurgence more broadly in Indonesia. Whilst there is not necessarily anything inherently wrong with this, it is clearly important to be aware of the potential for such knock-on consequences.

#### **4.5 Partnership or Conflict?**

It could be argued that the dispute over land compensation was so disruptive that relationships at Kelian moved away from partnership and towards conflict. In fact, it is important to understand that the low level of trust is endemic to the situation – it is borne from the perceived crisis of mine closure and lack of any framework within which people can resolve their difficulties. Any partnership structure would have to work within these confines and be responsive to the heightened expectations.

Within this context, BPD's role was to provide an external and independent point of reference. By working with parties to agree to a principled framework for resolving outstanding issues (see section 3.3), it was possible to encourage people to look beyond personalities and towards the issues that they collectively faced. On many occasions this meant taking people a considerable way out of their own comfort zones in order to confront and resolve critical outstanding issues.

## 5. OUTCOMES AND IMPACT

### 5.1 Overview

In the Kelian area it is an undisputed fact that the mine is the main trigger of economic development. Out of a total of 990 Indonesian employees, 60% of them are hired from 4 sub-districts surrounding KEM, and the majority of 800 contractors employed from KEM, are also from the surrounding villages. Indirect employment stands at approximately 5 jobs to every one job created by the company<sup>2</sup>. The company also provides certain social services, such as a free bus service to school children in the surrounding villages, supplements the maintenance of village water supply systems, electricity to Tutung (the closest neighbouring village), and has committed to completing 98 village infrastructure development projects such as roads, schools, health clinics, etc<sup>3</sup>.

In addition the company is the main source of revenue and economic support to the regional government, which will be the main arm of authority and jurisdiction in the area when the new autonomy laws takes effect on 1<sup>st</sup> January 2001.

Closure therefore unless prudently managed, will come at huge economic and social costs to the local community and the newly formed regional government. This comes at a critical moment in history in Indonesia, as the country grapples with the transition from an authoritarian state to that of democracy. In this new context in Indonesia's history the poor are seeking greater economic opportunities. But they are also seeking a greater voice in the decisions that affect their lives. Accordingly, more influence is migrating from government to the private sector and the civil society. In parallel, localization has become a dominant political and social trend. An outside agency, such as BPD, without vested political interests has the best credence to pull these agencies together and work towards a common future and goal.

In this new institutional environment, the traditional roles of governments, civil society organisations and private corporations have changed. Closure will only be possible if there is true partnership between the different levels of government, the private sector, and the local community. To achieve such partnerships against the background of a volatile and uncertain political environment, where thin trust, and different and even at times conflicting objectives exist among the parties, is greatly facilitated through the presence of a neutral body such as BPD.

BPD's alliance with institutions such as the World Bank, brings with it authority and credibility, that firstly enables it ready access to all parties and secondly the ability to utilise that access towards the facilitation of such partnerships. Under a concerted partnership framework a favourable outcome might be possible, which cannot be achieved singly by any one party. This has been the role of BPD in the Kelian context.

BPD has tried to go beyond simply creating good relations in the Kelian context. Through a series of visits it has built a relationship and gained the trust of each of the parties. Through a series of informal meetings, repeated visits, cross verification and time dedicated to listen, it has found out each party's concerns, objectives, and noted and collated their stated principles for establishing a framework for partnerships. The differences between the parties needed to be resolved first and BPD facilitated a process that has gradually moved parties from a position of intransigence to that of constructive engagement.

<sup>2</sup> Christine Boulan Smith; Employee Consultation Activities Jan 2000-Jan 2001; BPD Meeting, Kelian 18-19 October 2000. Angus Greene; Village Baseline Survey-Stakeholder Participation Program; BPD Meeting October 2000.

<sup>3</sup> Angus Greene; Village Baseline Survey-Stakeholder Participation Program; BPD Meeting October 2000.

What it has achieved, has been to set up a collaborative framework, where under the auspices of a mine closure steering committee decisions are no longer the singular license of the company or the government, but rather will include all direct stakeholders, in a forum for joint decision making on closure issues.

## **5.2 Community Impacts**

- Officially and actively involved in the planning and decision making on closure issues that directly affect their lives and livelihoods. E.g. social mitigation measures for villages impacted by the mine, mitigated steps for employee relocation and post-mine land use of site.
- Community institutions are less an adversary and more of a development partner working towards long term solutions.
- Acknowledged the place of customary law and the position of customary law chiefs in contributing to site-related issues. Served to reconcile both state and customary laws that govern life in the Kelian area, by having the both the, Bupati (Regent) and the Kepala Adat Besar (Chief Head of Customary Law), serve together on the mine closure committee.
- By having members of the community represented on both Mine Closure Steering committee and also on the working groups, the company has now formed a partnership with the community, regarding post-site land use , thus reducing the potential for conflict and enabling all stakeholders to participate in decisions concerning future use of the site. This partnership has also provided a way for the community to understand and participate in decisions concerning the direction of the of the company's community development programs, which needs to be managed with the end goal of closure.
- WALHI's withdrawal from the partnership was ostensibly because of its perception that KEM had deviated from due process established in 1998. It is important to consider that WALHI's independence may have been overly compromised by engaging too closely with KEM – and that it was not in its interests to engage at this level. WALHI's principal role is that of a watch dog so it is questionable what it would gain from integrating closely as a 'partner'. In many ways, it is important to have external criticism that is seen to be totally independent, and this is the role that WALHI plays.

### *Weaknesses*

- Community representation is weak. There is no clear leader or single organisation that represents the community. Community representation is capricious and is subject to constant change. KEM is in a position to influence the nature of community representation.

## **5.3 Community Development:**

- Community has more of a voice. It is important that community capacity is built, so that they are able to distinguish between real needs and wants.
- Sequencing of activities and projects, in a manner that community and government capacity is simultaneously built to take over the management and maintenance of the project.

### *Weaknesses*

- Any type of partnership leads to increased and changed expectations. Managing these expectations will not be easy, especially as it concerns a society, communities and government that have had no history of partnership, and the inherent asymmetrical relationship that exists between the company and the other partners. This will requires some serious thought and, acknowledgement that many lessons might be learnt with the wisdom of hindsight and experience.

## 5.4 Good Governance

- Evaluate the effectiveness of social investments by having an external social audit.
- Establish a common criteria and mutually agreed objectives.
- Setting the precedent for establishing a system of accountability and probity, where the partners are mutually accountable to each other.
- Assessing risks by priority
- How significant are the risks?
- What can be done to reduce the risks?
- Identify collateral risks

### *Weaknesses*

- To a great extent the process has been driven, and relationships carved out by the personalities of the individuals i.e. the excellence and high degree of professionalism by KEM's technical staff, the commitment of the BPD facilitators and the integrity of the Bupati. This is exacerbated by the fact that in Indonesia, personalising relationships, and establishing personal contact is tantamount to doing good business. Classified as a 'high culture' society, personal relationships prevail over that of institutional. Individuals are called time and time again, to prove their commitment at a personal level in order to consolidate that which strictly remains within the realms of a professional relationship.

It is this barely indistinguishable line, between the personal and professional, that grants access, bridges differences and seals partnerships. If the relevant individuals disappear too early in the process then the partnership stands at risk. The regional elections, scheduled for November this year, means that the election of new Bupati, could threaten the partnership, if by chance the current Bupati is not re-elected and the new Bupati is not of the same ilk as the current one. In a fledgling democracy that is struggling to emerge in Indonesia, there are no governance structures strong enough to triumph over the personality of an individual in a high seat of power. Establishing a good governance system to sustain the partnership, is one of the challenges that BPD faces in establishing a structure to uphold the partnership now established.

## 6. CONCLUSIONS

### 6.1 Key Achievements

1. **A Better Understanding of the Internal Working of PT KEM:** Greater understanding of the business and its limitations. PT Kelian Equatorial Mining is Rio Tinto's first mine to face closure. Addressing closure under the new paradigm of sustainable development or as a corporate socially responsible company is a first for any mine and there are no best practice examples available for application.

KEM's Closure Statement asserts that KEM is seeking to set the standards and be the model for closure. However, the unique mix of skills needed to coordinate the good planning with implementation is something that the mine is still learning about. Such a task would be exceptional in any circumstances. It is especially significant in the current political context of Indonesia, where KEM, as in the case of the majority of foreign resource companies in Indonesia, is cast against the backdrop of approaching decentralisation, where local leaders are starting to pin all hopes of revenue earning from resource rich companies such as KEM, increasing local discontent over what is perceived as an inequitable sharing of their resource benefits, an assertion of local and traditional rights over their area's natural resources, a weak legal system that lacks both clarity and credibility and a deteriorating security situation.

This has meant first recognising, then acknowledging and finally taking the right steps to supplement the standard type of personnel used for operating a mine with persons who have the right skills, experience and authority to be able to take the correct type of informed decisions in these circumstances. It has meant the mine learning what two way communication is all about; that control over every local institution compromises the independence and is more negative than positive to the company's interests and ability to function in the local area; throwing money at every problem is not the best way to solve problems; and that time spent on good communication ensures a far more sustainable outcome, than buying one selves out of the problem. In many ways BPD assisted the company in identifying the type of resources, and the particular skills needed for true consultation and equitable partnership.

2. **Change in the company culture:** BPD has worked with senior management of both Kelian Equatorial Mining and Rio Tinto (Indonesia and London) to address issues, change perceptions and revise the working culture of the mine. This has firmly placed closure as a corporate issue, with wide ranging responsibility both internal and external to the company. It has in its approach targeted both the senior decision makers of the company and its corporate entity as well as the working management and technical team on site. It has required working on a change in company culture, from the way business used to be done, to the way business should be done, for any sort of partnership to come about.

3. **A Better Understanding of working with the requirements of the Indonesian political structure:** While much of the nationalist and international NGO rhetoric has been centered around distrust of the state, this has largely stemmed from distrust of persons of the former regime. Under the current climate of 'reformasi', and with the rising importance of regional governments and the control they will exercise over their respective regions with advent of decentralisation, it would be both intemperate and imprudent to have ignored the respective regional authorities under whose authority KEM operates in the area. The concepts of interpersonal respect, personal interaction, following the appropriate protocol with respect to communicating to both government, village and traditional leaders (*kepala adat*) has been instrumental in BPD's ability to create a partnership on Kelian mine closure. The partnership has knitted the two different arms of formal authority in the area – the resurgence of the traditional systems of customary law, with that of the elected formal political leaders.

**4. Greater understanding of community representation:** There is no single organisation or individual that represents the community. Recognising that the community is not homogenous group but in fact several groups with different interests and requirements. There are often factions within the community and their 'supposed' leaders do not often have the ability or authority to take decisions on behalf of their constituency. Lack of representation among the community, and no consensus with regard to who are truly community representatives is a difficulty. Recognising that both community and government representation can change, and finding a way to deal with it, is one of the keys to continuity. BPD throughout the last 6 months of its active involvement in the project, has consistently dealt with LKMTL (the WALHI sponsored local community based organisation), both during the apex of its power in the area, its subsequent alienation, and the current middle ground it occupies as the only established local community development organisation. When Tim Murni came into existence to counter what was perceived to be the intransigence of LKMTL to negotiate on land compensation, BPD also met with and included Tim Murni in the consultation process.<sup>4</sup>

**5. Focussing on Issues rather than personalities:** BPD meetings and mediation forced people to address issues rather than personalities. In a situation rife with politics, where demonisation of individuals has been the modus to resolving issues, BPD due to its objective stance was able to get people to de-personalise the issues and focus on principles, process and solutions.

**6. Establishing a Process for resolving outstanding Community Issues:** Following the July 2000 visit, the process that was set out in the 'Roadmap for resolving community issues at Kelian' helped to re-establish communication and relationships and brought what was virtually intractable parties back to the table, which resulted in the successful partnership outcome of the last meeting. This framework and ground rules were established with the distinct end of resolving some of the outstanding community issues at KEM, in order to move forward on closure. This process also helped to improve relations between the respective stakeholder groups, where stakeholders felt comfortable to focus on the future issues of closure, now that there was a process in motion to resolve the historical issues of the past.

**7. Converting closure to a tangible concept:** The outcome of the 2 meetings held during this visit, has meant that closure has been converted to a set of discrete, tangible sectors – Village Impact; Employee Mitigation; Future Site Use - with joint decision making teams formed and tasks outlined to deal with it. A mine closure steering committee has been expanded and reactivated. The President Director of PT KEM, and the Bupati of Kutai Barat are jointly chairing it. Members of the steering committee will include LKMTL representative, Adat Council representative, President Director of Rio Tinto Indonesia, Senior Advisor Community Relations Rio Tinto London, Head of BAPEDA (Provincial Planning Authority), Head of BAPADELDA (Provincial Environment Monitoring Authority) and the Provincial Head of the Department of Mining.

Four working groups will be formed under the steering committee- Regional Planning and Development; Post-Mine Site Facilities and Land Use; Post Closure Dam Management; Environment Technical Issues. Each working group will have a KEM, regional government, local community, Adat council, the relevant line ministries, appropriate academic and NGO representatives. A project manager has been appointed to coordinate the activities and the meetings of the working groups and the steering committee, a schedule for the meetings and facilitators for each working group has been developed.

A Memorandum of Understanding signifying the joint chairmanship of KEM and the Government on the closure steering committee and the Rio Tinto Foundation as the main development partner in the area, will be signed in November this year, at the conclusion of the first steering committee meeting (See Minutes of BPD meeting October 18 & 19 2000).

<sup>4</sup> Once prices had been settled on land compensation, Tim Murni disbanded.

## 6.2 Lessons Learned

1. **Communication is the key solution to many of the problems:** Good communication, that is consistent, timely, evenly distributed and the willingness to listen has been the key to resolving a number of the issues, building trust and demonstrates a commitment to engage. This applies both internally and externally. The best results have come in areas where communication has been strengthened and nurtured e.g. Tutung communication office, mobile communication team, open door policy for discussion of outstanding community issues.

2. **Relationships:** In Indonesia the importance of developing and managing relationships can not be over emphasised. Institutional or functional relationships need to be sealed by a personal bond, and it is important to recognise that while parties may interact at a personal level, cooperation can still occur at a functional level. Reluctance to consolidate working relationships at a personal level is perceived as ‘arrogant’, ‘lack of commitment’, or ‘sheer indifference’.

3. **Resources:** KEM was seriously under resourced to handle the magnitude of its problems and thereby lacked the understanding to assess the problems and develop appropriate solutions. Being socially responsible also means hiring people with the right qualifications and experience to the job. It means having to trust and confer authority to those outside of the traditional sphere of mining. It also means resourcing them earlier than later.

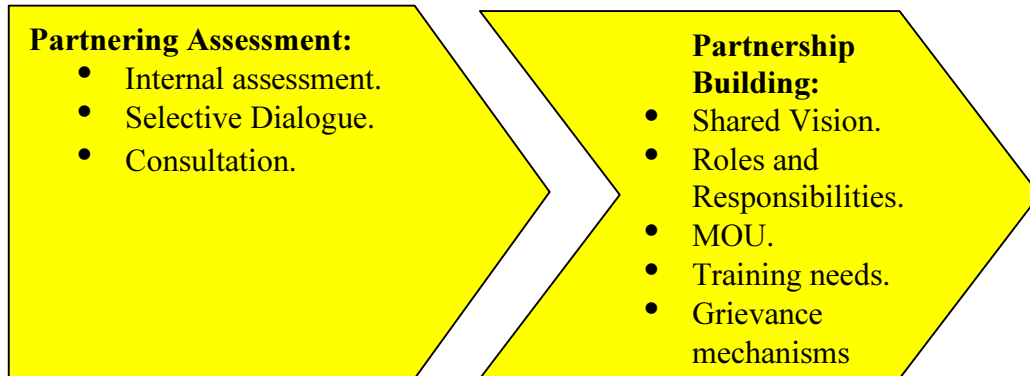
4. **Total Openness:** The company is learning that if it want others to work with it, then it needs to practice a policy of total openness. All interest groups needed to be informed on subjects that concern them. All parties need to be transparent about all their actions and decisions. Openness and transparency protects all parties from false accusations, and helps to avert rumour and speculation.

5. **Expectations:** KEM’s expectations of what BPD could contribute and BPD’s expectations of its role in Kelian mine closure started off on different premises. The mine did not need a facilitator for partnerships on specific projects such as health, agriculture and so on. It already had the capacity both through the Rio Tinto Foundation, and on its own to engage in such partnerships. Bigger issues such as a strategy to settle conflict between the company and the local community in order to establish a climate that was conducive to the process of stakeholder consultation and decision making, was needed in order include all stakeholders in the management and decision concerning the resources of their area. This was what emerged through the course of BPD’s engagement in the project. And this is where a role of an outside body, such as BPD, which had no interests in the mine, was in a position to make a difference. The resources and the time needed however have been inadequate and under estimated for this type of outcome.

KEM has learnt that the expectations and agenda of others such as NGOs, some of the local community groups, the regional government, is different to its own expectations and therefore the company needs to adjust its expectations and actions accordingly.

### 6.3 Lessons Learned for Partnership in the Broader Context

Given the events outlined above, it is important to reflect on BPDs own terms of reference. The partnership process proposed by BPD in April revolved around a series of discreet steps based on Partnering Assessment and Partnership Building:



Whilst these steps are logical and intuitive, their application to the circumstances at KEM was strained. We seldom found a smooth transition from assessment to dialogue and on to a partnership structure. Much more common, events on the ground forced parties to reassess their positions, redress their goals and open their eyes to alternative options for achieving progress. So, in reality, we found that parties iterated between the steps set out above – moving backwards and forwards throughout this spectrum of activities as each new event prompted.

The key point, mentioned by almost all stakeholders, was the importance of having neutral, external, and trusted facilitators to keep the process moving. Both WALHI and KEM, for example, asserted that it had been extremely useful to know that the facilitators were not ‘in the pockets’ of any party. As a result of this, and acknowledging BPDs limitations, we jointly highlighted the importance of resolving how to build this kind of function into relations between mining companies, NGOs and the government in Indonesia more generally.

**1. Expectations:** BPD’s expectations on the role it would play in facilitating partnerships has been in many ways quite inconsequential in comparison to the real needs on the ground. We found that the company, communities and government did not need an outside organisation like BPD - with prestigious links to institutions such as the World Bank - to set up partnerships for the running of basic infrastructure projects e.g health, education, business development. What was needed are partnerships as a solution to issues that have caused conflict or have the potential to cause conflict, involving joint planning and decision making. The principles that BPD brought to Kelian were those of good governance – participation, transparency and accountability.

It is also important to note that the presence of BPD causes raised expectations on all sides, and there is an onus then on the side of BPD to try and deliver at least on some of these expectations. If BPD intends to work at the project level, then it is obligated to work where the real needs are and meet with the demands of its constituency (the company, the government and civil society). It would be unrealistic to think that a team with the type of composition that BPD is made up of could visit the field and not create significantly raised expectations.

**2. Creativity:** Dealing with a complex social and political environment also means occasionally having to take risks. This means stepping outside of the narrow mandate of the job at hand in order to seek creative solutions that will move the whole process forwards. For example in the Kelian closure project in order to bring parties to the table BPD had to help in resolving internal differences within individual parties, as part of the groundwork for establishing a partnership. In situations where clear rules do not apply, then it is only through imagination and a willingness to seek unconventional sound solutions can something be achieved. Lateral thinking, a willingness to be flexible and alter the standard way of operating is sometimes the only way through which a meaningful outcome can be gained.

**3. Spending Time on the Ground:** There is no substitute to the value of spending time on the ground, establishing a relationship and gaining the trust of potential partners to learning about their concerns and agenda. This is not something that can be done through a couple of formal structured visits, or following an interview format. Mutual trust requires ongoing, reciprocal communication and BPD can not be expected to make a difference if it adopts a 'fly-in-fly-out' approach. Spending time on the ground gives facilitators the discerning ability to sift out impressions from the real facts governing a situation and a good understanding of the problems and difficulties preventing partnerships. There are no quick wins or short cuts to establishing sustainable partnerships. It takes time, commitment and hard work.

**4. Commitment:** Commitment is important on all sides, if partnerships are to work. BPD can not use the neutral position it occupies to divorce itself of commitment. Commitment is a 4 way process and BPD had to demonstrate its commitment to seeing the process work as much as any of the other partners. The personal commitment of the team on the ground, to both the principles set out and to the people they were working with has significantly contributed to the success in instrumenting a partnership in the Kelian case.

**5. Reputation:** The reputation of the institutions that stand behind BPD have played a large part in giving it credibility and an entrée for dialogue and discussions. The name and power of the World Bank has in many ways tended to dominate over the other partners, and has given BPD the bona fida needed to play its role of the neutral facilitator.

**6. Resources:** The type of resources in terms of time and personnel are currently under estimated if partnerships established are to be sustained. Sustaining partnerships need external verification, monitoring and at the beginning nurturing. The process, especially at the beginning needs an outside driver either directly through BPD or through a mechanism set up by BPD. The resources allocated have to be compatible with the work required.

## 7 NEXT STEPS

A schedule has been drawn and the facilitators identified for the steering committee and working groups. Next steps would involve:

- Establishing an organisational framework.
- Agreeing on a set of principles that would govern these groups.
- Agreeing on a set of shared objectives.
- Identifying a program of activities.
- Establish time frame and allocate responsibilities.
- Agreeing on a set of guidelines and mechanisms for monitoring and evaluation.
- Agree on and establish appropriate channels for conflict resolution.

### 7.1 Challenges

**Replicating People:** In many ways the personalities of individuals have been stamped on this process. This works both negatively and positively. While during the course of BPD's visit issues were separated from personalities, there is a tendency for personalities to strike back once the team leaves. Establishing a process that does not depend on individuals for its success or failure is a real challenge. Conversely the integrity and strong commitment of individuals has largely driven these partnerships. There is a critical need to identify the right people and deploy them appropriately. The challenge lies in replicating, what constituted of a unique mix of skills, personality, mind set in other projects.

**Sustaining the Partnership:** BPD has played a major role in getting people to focus on the issues and agree to do something. However unless there is an external motivator and structure that is put in place to sustain the partnership the process stands in danger falling over. This also takes into account that local conditions are subject to constant change and good participatory monitoring system is needed to ensure that the objectives and program remain relevant to dynamic, ever changing local context. The BPD work can therefore be seen in two phases. Phase of 1 - for the establishment of the partnership, Phase 2 - for the sustaining of partnerships.

The need for local facilitation resources to assist in mediating the relationship between KEM, the community and the government is clearly an important priority. Two potential resources were identified, and discussions held with one agency to see whether they would be interested in working on this issue:

1. PLASMA – a local NGO headed by Niel Makinuddin. Niel is experienced in brokering relationships between forest companies, local communities and the local government in E. Kalimantan. He works to promote better governance, transparency, participation and accountability. He expressed his willingness to contribute to the situation at Kelian, and we proposed that he arrange a meeting jointly with parties to assess his suitability.
2. University of Mulawarman – Pak Ali fin Leo. A trained facilitator used by the government to help parties address and resolve issues arising from the regional autonomy legislation.

**Scaling Up:** Much has been learnt from the Kelian experience to share with other companies. There is also a wider broader role that BPD can play in creating a robust environment that would enable the survival of partnerships. Strengthening capacity at local, regional and national levels to fill governance gaps; filling knowledge gaps through evaluation and learning. Provision is needed for conflict resolution, and also the development of mechanisms and monitoring techniques to hold government, communities and the private sector accountable for shortfalls.

Two specific opportunities to scale-up the impacts of this engagement have emerged:

1. KEMs President Director has proposed to Rio Tinto in London a stakeholder forum to manage and resolve issues related to the community and local government. The first steps to this forum, for KEM, will be the Steering Committee established to discuss options for use of KEMs site after use. This kind of forum, if successful, could be adopted more broadly by the Rio Tinto Group.
2. The Indonesian government, WALHI and interested mining companies outside the Rio Tinto Group have expressed considerable interest and desire to be involved in the creation of some form of national ombudsman / arbitration forum through which important issues like social impacts and Closure can be discussed and resolved. No existing institution exists to provide this service.

Key outstanding issues now are how to ensure that there is some follow up to these proposals that enable some of the successes of BPD to be capitalised upon.

## 7.2 What went Well, What could have been Improved?

The table below summarises comments / issues that participants noted went well or could have been improved in relation to partnerships between government, NGOs and KEM

<b>What went well</b>	<b>What Could have been improved</b>
Facilitated meetings	How to resolve issues of local representation better?
The team and their commitment	Personalities overcome issues without external facilitation.
Local knowledge and resources	
Following some principles of engagement	The time between the meetings!
Ability to go outside the ToRs - especially in relation to the compensation issues	How to sustain inputs / role that BPD provided?
Business understands its own limitations better	Decision making, governance rules, roles and responsibilities of the new stakeholder forums.
Important to have external, critical eye every few months to keep people on track	
Communication offices established in Tutung and elsewhere to ensure that people can communicate directly with KEM.	