The Perils of Excluding Local Governments from the Mining Scene

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When most academics, NGO's, governments, or international financing institutions think of principal stakeholders involved, or affected by, mining projects, the usual players most commonly taken into account are: mining companies, communities, indigenous peoples, labor, and governments. And when they think of governments, they usually mean national or, federal, governments. This oversight was recently well illustrated in the Extractive Industries Review (EIR), the most exhaustive revision of the World Bank's lending policies to extractive industries, in which the above-mentioned stakeholders were represented, but local governments had no representation whatsoever[1].

This exclusion can not only lead to enormous amount of conflicts between mining companies and local governments, but local governments and national governments, and may increase the chances of project failure. The decision not to consider local governments as major stakeholders in mining projects can also lead to severe disruption of local development plans. Recent events in places like Tambogrande and Cajamarca, Perú, illustrate this emerging global problem. In these cases, local governments, supported by strong civil society movements, soundly rejected two multi-national mining projects, which were strongly supported by the national government. Then there is the case of the Philiphines, where *"At least two Philippines provinces have banned large scale mining due to perceived environmental destruction in exercise of their power vested under Local Government Code of 1991"*[3]. As centralized governments around the world continue their natural course of ceding some of their powers to local governments, and the demand of minerals continue to rise, the conflicts are bound to increase.

One of the main issues at the heart of the conflicts between big scale mining projects and local governments, as is often the case with communities and mining in general, is one of power. The other, closely related, is one of sovereignty. Is it acceptable for a mining company, even when not legally required, to bypass the local governments when seeking mining concessions or developing a mine? Who should have the final say about a mining project; the national government, or the local governments and communities who will undoubtedly have to bear the brunt of a project's negative impacts? If we agree on the premise that the stakeholders most likely to be affected by a mining project should have the most power of decision, then the local inhabitants- indigenous as well as non-indigenous- should rightly have a strong voice in the decision making. The rights of local populations is sufficiently treated elsewhere in this treatise, so I will focus the dynamics of large mining corporations and implications and consequences of ignoring local governments.

Decentralization, Conflict of Interests, and the Incredible Skewdness of Power

Nations with traditionally strong centralized governmental structures are oftentimes reluctant to part with some of their traditional roles and power, such as the power to grant concessions and benefit from mining projects. For some national governments obtaining authorization from local governments (or local potentially affected populations) is seen as a loss of sovereignty. For both, national and local governments, anyway you look at it, the issue represents a potential source of tension and conflict. The range of conflict can range from the question of ownership of the minerals, to how or whom should exploit them, the right of veto, how the rents should be divvied up and regulatory aspects; to issues involving political sovereignty and the right to decide the type of development to pursue in a given jurisdiction. The issue encompasses fundamental legal questions entailing the rights of local vs. national governments. It's a can of worms most national governments would rather keep a lid on.

Though it is a concept that is finally beginning to evolve, most of the world's nations consider ownership of subsoil minerals to be exclusively in the hands of the state, as embodied in the national government. The main rationalization for the concept seems to be that minerals are a non-human made resource thus, the property of all its citizens, and to be used for universal benefit. However, the justification starts to break down when reflecting on the status of all native vegetation. The ownership comes with the right to grant mining concessions, and creates a perfect scenario for clashes between the central government, and the entities and peoples who stand to suffer the most direct impacts from a mining project. First nation peoples, by the way, are effectively challenging this right, as no doubt other key stakeholders, and specially, local communities and governments, will likewise do in the near future.

The issue taking center stage right now is not so much one of ownership, however, it's rather focused on who has the right to decide if the minerals should be exploited in the firsts place; and if so, under what considerations, who should regulate it, and who should reap the most benefits. It's basically an issue of power. And, a too powerful player can upset the balance and complicate this already overly complicated and skewed power structure.

Big extractive corporations wield a lot of power; much more so than most of the world's Municipal and state governments (and some national ones as well). This is specially the case in developing countries, where there is a prevalent scarcity of financial resources to provide their citizens with the very basic human, environmental and social services. By offering to provide basic services directly to the communities, and/or thousands of jobs in a economically depressed area, the situation can be used by mining companies to pressure governments into accepting mining projects by pitting the communities against them. Where there is acceptance by the local government, the company can work hand in hand with it and strengthen it- as long as it tows the line. Where there is opposition, the company can turn the tide of public opinion against the local officeholders by simply offering the non-existent public services and creating expectations for high-paying jobs. This, in fact, is exactly what a mining company in the Intag region of Ecuador is currently trying to do. And, even though some corporations say the recognize the danger in supplanting many of a government's role and that they are not in favor of it[2], this is, in essence, what commonly ends up happening.

It is not typical for corporations to do this openly, however. They have several options at their disposal varying in degree of openness. One is the creation of proxy "development" organizations, which either secretly, or openly, tout the company's agenda. In the case of the Junín copper mining project in Ecuador's Intag area, for example, a pro- mining community development organization was created to undermine the municipality of Cotacachi and the initiatives carried out by a previously established anti- mining development council. The newly established council is openly pro-mining, and offers, at times closely with the company's presence and support, all kinds of basic services lacking in this cash-strapped county; such as health clinics, roads, bridges, sewer systems, school buildings, a university, free new homes, water projects, computers for schools, and so on and on (so far the moon hasn't been offered). The company's (Ascendant Exploration) spokesperson candidly says that the projects will be undertaken in collaboration with governmental institutions, and claims they have several such agreements for joint implementation in their pockets. These social projects, it needs to be underlined, will be undertaken without local government participation. Not only does this severely undermine the work of smaller community-based development organizations and local governments that do not share the mining agenda, but it also undermines the social and political policies and work of the these two local governments who are working to create a participatory and open system of governance.

Incredibly, due to the strong rejection of the copper mining project by local communities and the Cotacachi County government, one of the main points of the agenda of the made-to-order organization now calls for the creation of a whole new county government! It is the logical development of the need to secure the outcome of a unpopular project when all other scripted strategies have failed. The initiative, based on lies, false promises and a nasty smear campaign, has only been moderately successful, and it is starting to generate more and more resistance from the local township governments against the mining company.

The implications of a mining company disrupting local governments in order to secure their project are ugly. Can they get away with it? It depends on some basic factors, including: the health and independence of a nation's judicial system, a country's record for respect for human rights, the real political power of the local government, the level and effectiveness of decentralization, and the level of corruption. Just like a strong and well-organized civil society can tip the balance in favor of local government to force equitable negotiations with a transnational, the amount and nature of the support for mining from the central government also plays a major part in the outcome. In Ecuador, as in many developing countries, the national government's support is a given.

This is clear example of why big-scale mining should never receive financial support in countries like Ecuador, or in fact, in most countries where governments- and local governments in particular- are unprepared or inexperienced to deal with these powerful players. And while a strong civil society sector can play a crucial role in the outcome and in trying to level the unequal playing field, this sector is often weak and insufficiently organized itself to confront a transnational mining company supported by national government and funded by the IFI's. This unequal power scheme, in place in most developing countries, works to the advantage of big mining companies, and commonly exacerbates the problems of civil society and local governments. It also sets the stage for likely human rights violations, and social and environmental upheaval[4, 7].

Rents and Local Government
While it is true that big-scale mining has the potential of bringing in much needed rents for local governments, it has failed to do so for the most part in developing countries[6], such as Peru, where some of the poorest provinces are home to some of the world's most profitable mines. On the other hand, as has been shown by the Extractive Industries Review and other studies, policies deregulating the role of the state in the mining sector, like those openly promoted by the World Bank with their economic incentives to private capital, exacerbate the social and economic problems for developing countries. In other words, the effects of the "resource curse", bad enough at the national level, are even more applicable to local governments; especially since these often lack the resources and power to negotiate on equal terms with big multinationals, or the necessary capacity to regulate their activity.

In the case of countries with a long history of strong central governments that have recently undergone processes of decentralization, the situation borders on the catastrophic. Many times the environmental department of these small governments, if they have one at all, is usually severely understaffed and under financed. Often, the officials know nothing of the impacts of mining, and there is great pressure for the government to focus on addressing basic social needs over those of the environment.

The fiscal problems faced by local governments is a situation often exploited by transnational corporations in developing countries; especially when local governments reject extraction projects or put up exacting and just safeguards to address potential social and environmental impacts, as has been the case of Intag and many other places around the world. When the local government cannot count on the support of federal institutions, the chances for the abuse of power drastically increase. In the case of Cotacachi County, to better illustrate, the company is openly violating a Municipal Ecological Ordinance that severely restricts or prohibits most mining projects. The Municipality's lawyers also contend that the company has violated the constitutional right for local communities to be previously consulted. Throughout the long-drawn out legal struggle for the local communities and Municipality to have their rights respected, no help has been forthcoming from the national authorities, which openly back the mining company. It has been up to organized civil society, with support from the Municipality, to, to date, stop the company's plans.

The weak fiscal situation prevalent in many municipal governments in developing countries can also be used by a central or provincial government interested in promoting a mining project, by withholding the provision public services. Obviously, this weakens the Municipal government, and opens the door for a transnational to step in and offer to provide the missing services. In other words, create a problem that a extractive project can solve. It is not so far fetched as it seems- in the Intag area of Ecuador it's a daily occurrence.

In fact, it is not uncommon for fiscally strapped national or local governments to purposely or openly cede part of their responsibilities of providing their citizens with public services to mining companies. It saves them money and resources, and helps to solve problems. Again, in the case of the Intag area, the central government is quietly supporting the mining company by speeding up community development projects it, or its proxy development organization presents- and the company openly makes reference to its power to. The company also supposedly has several contracts with local or national government institutions to construct bridges and fix roads, and bring cheap housing; among other infrastructures. The more opposition it meets on the ground, the more projects it is offering. Since the opposition is overwhelming, Ascendant has some work to do.

What is wrong with this picture? Simply put; it's a type of ghastly bribing. These public projects should be undertaken by the different public entities, with public funds, and by entities accountable to voters. It is highly dangerous to cede the responsibility of providing for the welfare of a nation should to private corporations- this is one of the most important roles of a government. Once it is entrusted in private hands, the citizens lose the power of demand accountability, and human and civil rights go out the window.

Previous, Informed Consent and Local Governments

If the above deals with the almost ubiquitous abuse of power by the large mining corporations and some of the consequences, the other issue, that of regional autonomy, is one that has largely been ignored by policy makers around the world.

In many developing countries, the mineral rights belong to the "state". The right to exploit these minerals has, by in large, been held by the national government; apart from the case of countries that successfully decentralized this power, and where the power now lies in the hands of local governments.

The conflict between the national government's wielding of the power to grant mining concessions, and the rights of local government's to direct development policies and safeguard the health and welfare of its citizens, is increasingly coming into conflict. The conflict is exacerbated when national governments fail to get previous consent from local governments before granting concessions rights within county or state governments (or even township governments).

Such arrogant use of power can severely disrupt a local government's development plans and land-use strategies. It can interfere with drinking-water programs, urbanization, and creation of protected areas, road construction, tourism projects, and so on. It can also directly cripple a local government's capacity to safeguard the health or security of its citizens. Moreover, if a mining project is developed, it can easily overwhelm a small municipality's capacity to provide basic health, education and other public services. On the other hand, the danger of having a private mining company supplant the government's role and responsibilities in providing these services only serves to weaken it in the long run, and sets the conditions for social and economic turmoil once the minerals are exhausted and the mine closed.

In such a centralized system at any time community residents can one morning wake up to find that a transnational mining company has acquired the right to mine in their land, including where their homes sit. This is not at all a far-fetched scenario. It is not uncommon in developing countries where the national government has the exclusive power to grant mining concessions without the previous, informed consent of local communities and local governments. Usually, without them even having the remotest idea of what a mining project entails.

Thus, one of the main criteria for a just mining policy, or for the International Financing Institutions to consider when funding large-scale mining projects- anywhere- has to include the presence of a civil-society driven viable mechanism to obtain a free, prior and informed consent from all potentially affected stakeholders. This includes local communities, indigenous peoples, as well as local governments. To talk of acquiring a social license otherwise is to talk nonsense.

Sources:
1) Final Report: Volumes 1 and 2. The Extractive Industries Review. Emil Salim. 2003
2) MMSD. IIED. 2002. *Breaking New Ground.* Mining, Minerals and Sustainable Development.
3) 2002 (e book)
Sustainable Development in The Philippine Minerals Industry: A Baseline Study
M.V. Cabalda, M.A. Banaag, P.N.T. Tidalgo & R.B. Garces MGB, Philippines.
4) Power, T. M. 2002. *Digging to Development? A Historical Look at Mining and Economic Development.* Boston, Massachusetts: Oxfam America.
5) One of the three main components of the World Bank funded PRODEMINCA project in Ecuador called for revision of the mining law, which resulted in eliminating royalties issuing from the exploitation of the nation's minerals. This was only one of many other severe fiscal and environmental deregulatory changes beneficial to the private mining industry.
6) Michael Ross. 2001. *Extractive Sectors and the Poor*. Oxfam America.
7) In fact, in some countries, like Ecuador, the revision of mining legislation funded by the World Bank, dry up any potential economic benefit to the local governments from extractive activities