“Mining Industry in XXI: Assessing Sustainability, Global and National Governance, and Participation of Local Communities”

Scott B. Martin – Columbia University/The New School
João Paulo Veiga – Universidade de São Paulo
Introduction: Setting the Scene

• Increased Mining Activity in Developing World with Global Commodity Boom

• Conflicts arise at community level: Why so common? What causes? What means of preventing or resolving?

• How to understand and overcome these conflicts in a larger national and global perspective? How to integrate different levels?
Structure of Today’s Session

I. The Global Level
II. The National Level
Exercise 1. Designing International Arrangements
I. The Community/Local Level
Exercise 2. Materiality Matrix
I. The Global Level
I. Global Level

• Absence of a Global Governance Regime for Community Engagement/Relations in Mining

• Some fragments....

  – U.N. Declaration on Rights of Indigenous Peoples, ILO Convention 169 on Indigenous and Tribal Peoples (22 countries ratified) -- “free prior and informed consent” (FPIC) for all development activities

  – Industry initiatives (ICMM Position Statement on Indigenous People and Community Development Toolkit) “open dialogue” and “timely, accurate and relevant information”
Absence of a Global Mining Governance Regime on Community Engagement

  principles of consultation

– Problems:

  1) Principles without much implementation guidance
  2) principles often in contradiction: consent or consultation?
  3) Absence of enforcement and compliance monitoring
<table>
<thead>
<tr>
<th>#</th>
<th>REVIEW OF SELECTED COMMUNITY ENGAGEMENT APPROACHES</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>#1: PREPARE COMMUNITIES BEFORE ENGAGING</td>
</tr>
<tr>
<td></td>
<td>#2: DETERMINE WHAT LEVEL OF ENGAGEMENT IS NEEDED</td>
</tr>
<tr>
<td></td>
<td>#3: INTEGRATE COMMUNITY ENGAGEMENT INTO EACH PHASE OF THE PROJECT CYCLE</td>
</tr>
<tr>
<td></td>
<td>#4: INCLUDE TRADITIONALLY EXCLUDED STAKEHOLDERS</td>
</tr>
<tr>
<td></td>
<td>#5: GAIN FREE, PRIOR, AND INFORMED CONSENT</td>
</tr>
<tr>
<td></td>
<td>#6: RESOLVE COMMUNITY GRIEVANCES THROUGH DIALOGUE</td>
</tr>
<tr>
<td></td>
<td>#7: PROMOTE PARTICIPATORY MONITORING BY LOCAL COMMUNITIES</td>
</tr>
</tbody>
</table>

**Industry Initiatives**

<table>
<thead>
<tr>
<th></th>
<th>#1</th>
<th>#2</th>
<th>#3</th>
<th>#4</th>
<th>#5</th>
<th>#6</th>
<th>#7</th>
</tr>
</thead>
<tbody>
<tr>
<td>ICMM Position Statement on Indigenous Peoples¹</td>
<td>✗</td>
<td>0</td>
<td>✗</td>
<td>✗</td>
<td>✗</td>
<td>0</td>
<td>✗</td>
</tr>
<tr>
<td>ICMM Community Development Toolkit²</td>
<td>✗</td>
<td>✗</td>
<td>✗</td>
<td>✗</td>
<td>✗</td>
<td>0</td>
<td>✗</td>
</tr>
<tr>
<td>IPIECA Guidance Document on Sustainable Social Investment³</td>
<td>✗</td>
<td>0</td>
<td>✗</td>
<td>✗</td>
<td>✗</td>
<td>0</td>
<td>✗</td>
</tr>
</tbody>
</table>

**Financial Institution Policies and Guidance**

<table>
<thead>
<tr>
<th></th>
<th>#1</th>
<th>#2</th>
<th>#3</th>
<th>#4</th>
<th>#5</th>
<th>#6</th>
<th>#7</th>
</tr>
</thead>
<tbody>
<tr>
<td>IFC Performance Standards / Equator Principles⁴</td>
<td>0</td>
<td>✗</td>
<td>✗</td>
<td>✗</td>
<td>✗</td>
<td>0</td>
<td>✗</td>
</tr>
<tr>
<td>IFC Stakeholder Engagement manual⁵</td>
<td>✗</td>
<td>✗</td>
<td>✗</td>
<td>✗</td>
<td>✗</td>
<td>0</td>
<td>✗</td>
</tr>
<tr>
<td>World Bank Safeguard Policies⁶</td>
<td>0</td>
<td>0</td>
<td>✗</td>
<td>✗</td>
<td>✗</td>
<td>0</td>
<td>✗</td>
</tr>
</tbody>
</table>

**Host Government Laws**

<table>
<thead>
<tr>
<th></th>
<th>#1</th>
<th>#2</th>
<th>#3</th>
<th>#4</th>
<th>#5</th>
<th>#6</th>
<th>#7</th>
</tr>
</thead>
<tbody>
<tr>
<td>Philippines Mining and Indigenous Peoples laws⁷</td>
<td>0</td>
<td>✗</td>
<td>0</td>
<td>✗</td>
<td>✗</td>
<td>✗</td>
<td>✗</td>
</tr>
</tbody>
</table>
Parallels to Weaknesses in Global Governance of Other Aspects of Mining

• Transparency of negotiations and deals regarding revenue and royalties (EITI)

• Environmental Norms (tailings, carbon emissions, etc.)
II. The National Level
Root Cause of Community-Level Conflicts

• *Mismatch in Incentives and Priorities in Face of New Mining Projects and Proposals* 🤔

• *Suboptimal Governance: Skewed benefits and concentration of costs*
Mismatches Complicating Mining Governance and Community Buy-In

• National and Regional Levels vs. Local/Community Level

• State vs. Civil Society
National and Regional Levels vs. Local/Community Level

• Federal government (Ministry of Mines and Energy) seeks to maximize revenues and promote exports
• State government seeks to maximize royalties and secure political support
• Community/Locality: Experience social, environmental, and economic downsides and trade-offs; projects divide as much as unite
• Local government: complex material tradeoffs and political tradeoffs
  – Will locality, and will incumbents, experience more costs or benefits? Terms of burden sharing with powerful corporations?
State vs. Civil Society

• State Actors: Promote Economic Development through Natural Resource Extraction, Political Benefits for Incumbents
  – Room for “Collusion” with Private Actors at Multiple Levels of Government, especially Higher Levels

• Civil Society: Diverse and often conflicting development preferences and concerns (jobs, environmental impacts on livelihoods, parallel social investments, etc.)
Root Problem: Pro-Forma Licensing and Approval Process

Lack of Community “Buy-In” during Pre-Feasibility and Feasibility Stages of Project Design and Approval (Times 1 and 2)

Contested/Delayed Projects at Implementation and/or Operational Phases (Time 3 and 4)
Top-Down Licensing and Approval Process (1)

- Permitting by Ministry of Mines
- Environmental licensing carried out by environmental authorities
- Technical criteria predominant (feasibility, technology, timelines)
- Close professional links between mining authorities and mining companies
- Regional/local economic development considerations often secondary
Top down Licensing and Approval Process (2)

• Weaknesses in Environmental Impact Assessment
  – Bias toward approval and focus on mitigation measures
  – Much of bargaining with federal authorities has already occurred (state has surrendered substantial leverage)
EXERCISE 1

• Construct a feasible and desirable international institutional arrangement for community engagement in mining project considering following key issues:

  1) Who would be the main actors and types of actors (intergovernmental organizations, private sector, civil society)?

  2) What role would be given to non-state actors (consultative? deliberative?)
(3) Voluntary or binding standards? What penalties for non-compliance?
(4) What key substantive issues and principles (employment, environment, revenue allocation, etc.)?
(5) What monitoring & enforcement mechanisms?
III. The Community/Local Level
Mining Companies, Local Governments, and Civil Society: A Complex Triangular Relationship

• Alcoa in Juruti, Pará as insightful case study
What Degree/Type of Community Buy-In?

- “Free, informed, and prior consent” at one pole for CSOs and in some international soft law instruments

* CSR concept of “social license to operate” is fluid and ambiguous
  - Acquiescence or active support?
  - Three basic options: inform, consult, or negotiate?
Why Should Business Engage Communities?: The Business Case for Risk Mitigation
GOVERNANCE OF MINING

I. INTERNATIONAL LEVEL: IOs + private/public governance

II. NATIONAL LEVEL:
- Ministry of Mines
- Ministry of Development
- Regulation - Taxes - Royalties
- Mismatch 1. Environmental

§III. REGIONAL LEVEL
- Company and Regional Govern
- Environmental licenses SEMA
- §

IV. LOCAL LEVEL:
- Compensation
- CSR actions
- Public Policies
- Health, schooling, infra-structure
- Mismatch 2. Development Agenda
- Mismatch 3. Imperatives (Local Political Logic) X Business
- Mitigation
- Regional Spillovers – value added
CASE: ALCOA MINING PROJECT

JURUTI SUSTENTÁVEL:
Uma proposta de modelo para desenvolvimento local

Construção de indicadores de desenvolvimento, para monitorar as transformações sociais, ambientais e econômicas da região.

Criação de um espaço para participação ampla e democrática das partes interessadas.

Apoio ao desenvolvimento local com investimentos nas prioridades indicadas pelo Conselho Juruti Sustentável e nas necessidades apontadas no monitoramento de Juruti e entorno.

Indicadores de Desenvolvimento Sustentável

Agenda de Desenvolvimento Local Sustentável

Conselho Juruti Sustentável (Conjus)

Fundo Juruti Sustentável
CASE: ALCOA MINING PROJECT
CASE: ALCOA MINING PROJECT

- Company: Transaction costs and information
- Risk management
- Setting up the agenda

Mayor: collective evaluation and power networks

Civil Society: funding projects and alliances
CORPORATE APPROACHES TO LOCAL COMMUNITIES

- STAKEHOLDER INDEX

HIERARCHY Vs.

DEMOCRATIC PARTICIPATION

MINE PROJECT

WORKING COMMUN. LOCAL COMMUN.

NATIONAL/INTERNATIONAL COMMUNITY

REMOTE COMMUNITY
Exercise 2

Materiality Matrix
<table>
<thead>
<tr>
<th>Importance</th>
<th>Low</th>
<th>High</th>
</tr>
</thead>
<tbody>
<tr>
<td>For</td>
<td>High</td>
<td></td>
</tr>
<tr>
<td>Society</td>
<td>Low</td>
<td></td>
</tr>
<tr>
<td>Importance for</td>
<td></td>
<td>Company</td>
</tr>
</tbody>
</table>
Principles of Effective Community Engagement (WRI, 2009)

1) Prepare Communities Before Engaging
2) Determine What Level of Engagement is Needed
3) Incorporate Community Engagement into Each Phase of the Project Cycle
4) Include Traditionally Excluded Stakeholders
5) Gain Free, Prior, and Informed Consent
6) Resolve Community Agreements through Dialogue
7) Promote Participatory Monitoring by Communities