



Extractives Hub



Is Responsible Mining Sufficient?

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Introduction

Over the past 20 years the mining sector has been through a lot of ‘soul searching’. This was motivated by the hypothesis that the sector had contributed more to conflict, corruption, community strife and environmental degradation than to economic growth and poverty reduction.

There is no question that there needed to be meaningful change in the sector. For decades it had been accused of a catalogue of ills. Among other things these included: treatment of environmental costs as externalities, use of rivers as industrial drains, degradation of ecosystems, hazardous tailings disposal, insensitivity to cultural values, illicit hand-outs to host country elites, tax evasion, forced displacement of communities, ignoring neighbours’ livelihoods and leaving legacies of toxic dereliction. These negative impacts were often dismissed as the inevitable trade-offs for the positives of revenues, export earnings, improved infrastructure and job creation.

The result was an explosion of numerous consultations and ‘dialogues’ to assess if these negative impacts were an inevitability associated with mining and constituted a cause - effect relationship or not. Most reviews concluded that it was *not* inevitable. Positive change was possible with better public sector and corporate governance. Consequently a plethora of subsequent initiatives has produced an ‘industry’ of third party experts and advisors to guide, monitor and cajole the sector in every aspect of its operations - a process that continues today.

Notwithstanding the occasional set-backs, leading mining companies have markedly improved their standards. There is, of course, much still left to do. There are leaders and laggards and some relatively new actors have entered the market - not all of whom are subject to the same accountability mechanisms imposed on companies listed in the OECD countries.

To a considerable degree, improvements have been voluntary, reinforced by the fact that it was in the self-interest of mining companies’ to address their situation. Access to finance, land and the most talented recruits were being seriously threatened by bad track records. The leading companies recognised that *acting irresponsibly is not an economically sustainable business strategy*. In today’s era of instant communications and social media it

is a risk that could have quick and material impacts on the survival of a company - no matter how remote their operations may be.¹

Case Study; Armenia

Armenia is a small, land locked country situated in the Southern Caucasus Mountain region between the Black and Caspian Seas. It was part of the Soviet Union until the latter's collapse in 1991, when Armenia gained independence. In early 2020, the World Bank had projected Armenian economic growth would be around 4.9% for the year, until the COVID-19 pandemic forced a revision and suggested GDP would shrink by 2.8%. (Reuters, 2020). Armenia's economic situation is not helped by on - going, long term, hostile relations over territorial claims with neighbouring Azerbaijan that have recently reignited.

A new gold mining venture, Amulsar, has promised to help support transformation of the country's economic prospects. The company, Lydian International², under the influence of the stringent conditions imposed by international investors, including the European Bank for Reconstruction and Development (EBRD), has made extensive efforts to plan, build and eventually operate the mine *responsibly*.

However, not everyone has been in favour of the mine. As with many post-Soviet states, the poor environmental and social mining standards of that previous era have shaped peoples' perceptions of mining. Soviet mining legacies are there for all to see, so the promise of more responsible modern mining standards are often greeted with scepticism. *Responsible Mining* is a hard act to sell.³

The same legacy also permeates the legislative environment too. This situation is slowly being addressed by closer harmonisation with EU regulations and directives (Geghamayan and Pavlickova, 2019). In 2014 a new law on 'Environmental Impact Assessment and Expertise', (Law No. HO-110-N) entered into force. This strengthened earlier Environmental and Social Impact Assessment (ESIA)⁴ requirements and clarified the conditions required

¹ Some commentators have suggested that the growth in interest in deep-sea mining is less about advances in technology and new discoveries, more about the recurring problems experienced in opening new green field mining ventures on land.

² Amulsar mine is 100% owned by Lydian International who are listed on the Toronto Stock Exchange.

³ Sometimes complicated (particularly in post-Soviet countries) by a resentment towards expatriate companies and expertise.

⁴ The terms and acronyms Environmental Impact Assessment (EIA) and Environmental and Social Impact Assessment (ESIA) are synonymous but are used here to distinguish between the ESIA label used by international lenders (EBRD) and the EIA label used by Armenian law.

before any mining proposal is approved. Beyond the requirements of Armenian law, Lydian also had to follow the EBRD's own performance standards (specifically EBRD Performance Requirement 1: Assessment and Management of Environmental and Social Impacts and Issues.) (EBRD, 2019).

The lengthy Amulsar ESIA process that resulted underwent at least ten iterations in response to new issues as they emerged. (Lydian International, 2016). In the process, as is often a benefit of ESIA's, the knowledge about the region's environmental and social characteristics and sensitivities were significantly deepened.

A comprehensive environmental and social baseline study established the foundations for a management programme and various action plans on issues requiring specific attention. These included extensive community engagement and support to local enterprises and a bio-diversity action plan (including *in situ* and temporary relocation of a regionally endemic plant population (*Potentilla porphyrantha*) listed in the Armenian Red Book of Plants (2010)).

Support was also offered, in an MOU signed with the government, to help establish a new National Park near the site as a form of *off-set* for anticipated residual negative impacts that could not be avoided or mitigated. (Lydian International, 2016).

An Independent Advisory Panel (IAP), consisting of seven Armenian and international experts, was established and it tabled its first report in 2018 (Amulsar IAP, 2018). Investor scrutiny and auditing were regularly carried out against an extensive register of conditions that accompanied project approval as construction commenced.

However, in 2018, mass protests in Armenia's capital, Yerevan, brought about a peaceful 'Velvet Revolution' and change in government leadership. This heralded a new hope for greater democracy in Armenia. A latent desire for greater engagement, inclusiveness and transparency in decision making was unlocked. The high profile Amulsar project was in their firing line. The company's commitment to transparency, one not shared by all other mining operators in Armenia, ensured that they had a regular high profile in the local media. Allegations of corruption by the previous, semi - authoritarian regime questioned some of the decisions it had made - including the permit for the mine. Protests against the mine escalated and eventually an illegal blockade halted construction - a situation that is still unresolved.

So, in spite of the company's efforts, a 'trust deficit' had been difficult to overcome. In addition to questions about the decision-making process, claims have been made that the ESIA had failed to adequately address some potentially significant impacts - not least relating to hydrology and possible risks to Lake Sevan - Armenia's largest body of water. Strangely, some new issues of concern are also now being raised by those who had declined to actively engage in the previous ESIA consultations.

This Armenian example raises two interesting issues, amongst a great many:

Firstly, there are sometimes unrealistic expectations of the ESIA process. An ESIA is not an exact science, it can only use the best available expertise to postulate risks to varying degrees of confidence - and experts do not always agree! An ESIA is an important resource but it does not *take* the decision about whether or not a mine should or should not proceed, it facilitates that decision.

An ESIA can only *inform* decision takers to an extent that will enable them to arrive at a decision with reasonable confidence. Importantly, it must also explicitly reflect the views of all stakeholders - including any important differences or minority opinions. It should neither promote a proposal nor be used to try and stop it. It should be a balanced assessment that, in the final analysis, provides the basis for the political leadership to make a decision. The latter are the accountable custodians of a country's natural resources and decisions about it.

Secondly, no matter how much effort is put into planning, developing and operating a *responsible* mine, *responsible* mining for some groups will be irrelevant. What is clear is that many of the Amulsar protests have been anti - mining - i.e. against the principle of mining *per se*. They question the role of mining in the development of Armenia. In such circumstances, seeking common ground can appear to be fruitless.

'Interested' and/ or 'Affected'?

During their review of ESIA regulatory developments in Armenia, Geghamayan and Pavlickova noted that "public participation has many weaknesses in practice, including the definition of stakeholders and the lack of guidelines and manuals which challenges expert action" (Geghamayan and Pavlickova, 2019). Amongst the initiatives previously mentioned there have been several that emphasised the diversity amongst stakeholders. They stressed the need for inclusiveness in decision making and paid considerable attention to the need for stakeholder analysis, profiling, engagement and development. (E.G. IFC,

2007). Yet ESIA convention tends to stay with a broad description of 'stakeholders' as 'Interested and Affected.'

The distinction between *interested* and *affected* people is often imprecisely made and consequently poorly managed. However, being *interested in*, or *affected by*, a proposal implies very different profiles. The former tend to focus on the longer term, strategic issues at the regional or national scale of decision making. The latter are usually most interested in local issues about how a proposal will directly impact their well - being and livelihoods on a day to day basis. Understandably, it is not unusual for *interested* and *affected* people to differ in their opinions especially if sometimes the former act as self-appointed guardians of local interests - a proxy sometimes given, but also sometimes assumed.⁵

This distinction somewhat complicates the practical operationalisation of concepts such as *Social License to Operate* and *Free Prior Informed Consent*. Some significant questions arise; Who should be given the responsibility to provide *consent* rather than be simply *consulted*? Should we develop a different weighting for the opinions of *Interested* and *Affected* groups? How can we evaluate national against local interests and concerns? Consensus seeking techniques can be used in public participation, but sometimes opinions may remain irreconcilable.

Sustainable or Responsible Mining?

One way to address this dilemma is to think of the two concepts of *sustainable* mining and *responsible* mining as roughly separate entities. From the outset it must be said that this is, of course, a fallacious distinction and only a theoretical convenience. The two concepts are inextricably inter linked. A *responsible* mining venture has a good chance that it will also be *sustainable*, just as an irresponsible one will not.

However, the distinction has convenient utility when trying to establish the differing perspectives of *Interested and Affected* parties and ensure people have a better chance of talking *to* each other rather than *past* each other. As the Armenian example appears to demonstrate *responsible* mining on its own will be inadequate if the role of mining in the future of a country has not yet been clearly established.

⁵ The extensive Armenian diaspora ensured that stakeholders interested in the Amulsar mine had an extensive international profile.

Sustainable Mining

Frequently the term *sustainable* mining is described as an *oxymoron*. Unless we are referring to geological time or to circular economies, the concept of sustainable mining is a little difficult to advocate. This is because mining is all about the exploitation of non-renewable, finite resources. Strictly speaking no mine can ever be truly sustainable - although some have been very long lived. The exploitation of non-renewable resources contrasts with the exploitation of *renewable* natural capital for which sustainability means the use of the resource in perpetuity, within sustainable yields and the limits that allow the resource to regenerate itself.

The theoretical way out of this quandary is to recognise that mining is not an end in itself but a means to an end. It is concerned with the exploitation of (non-renewable) natural capital (mineral resources) to produce materials and products to service society - and increasingly this includes commodities required by *greener* economies. However, to be sustainable the process must be seen as one of *converting* non-renewable natural capital into other forms of renewable capital. This is the only legitimacy for mining to partake in discussions about sustainability.

As such, *sustainable* mining is more of a public sector lead than one for a mining company who are more interested in project specifics. It is when fundamental questions need to be asked notably including: What is the role of mining in the future of a country? What is the role of the commodity in greener economies? How will the revenues and benefits of exploiting a finite mineral resource will be converted into other more sustainable opportunities in an equitable way? etc.

Sustainable mining requires definition of what *public sector* 'good governance' actually means. The criteria for *sustainable* mining provide the framework, enabling and incentivising conditions for *responsible* mining - and include; transparency and accountability, strengthened government institutional capacity, fair and stable investment climates, protection of rights, effective rule of law, open competition, environmental and social safeguards, equitable distribution of benefits and investment of revenues in sustainable development.

Responsible Mining

Once the role of mining (if any) in the future of a country has been agreed the process of extracting, processing and transporting the minerals and converting them into more sustainable opportunities must be done according to *responsible* mining standards throughout the life cycle of the mine (and the product).

Responsible mining must be non - negotiable. Regulations must set the lowest common denominator of responsibility for all mining operators to achieve. However, beyond that, leading companies recognise that it is in their interests to do more than comply with regulations and reduce their liabilities. It is now a cliché but a company that goes beyond legal compliance will seek to *do good* as well as *minimise harm*. In a competitive market, companies' practices are now under unprecedented scrutiny by all stakeholders - not least investors.

Generally speaking, practicing *responsible* mining is one that a company can take the lead on itself - it is within their immediate sphere of influence, driven by good *corporate* governance. Making mining more responsible with more stringent environmental and social standards has been the thrust of the initiatives for the past two or three decades, along with working with host governments on their public sector governance.

The Solution?

Responsible mining tends to focus on specifics at the project level - pollution prevention, resource stewardship, neighbouring community development etc. Whereas *sustainable* mining describes the bigger stage for formulating policies and principles that will eventually frame the nature of mining projects. *Responsible* mining in a situation of bad governance (and the corruption, conflict and degradation that it allows) is a tough challenge and has discouraged mining investors.

A common failing has been to delay environmental considerations until late in the project appraisal stage (i.e. ESIA) when the detailed project specifications have reasonably precise definition. However, by this time many of the critical strategic and significant investment decisions have already been made. This forces those wishing to express their opinions into reactive mode about what are essentially a *fait accompli*. The focus becomes how to mitigate the negative impacts of a proposal already well advanced not its fundamental merits. This is not meaningful participation. Little wonder then that the tendency is towards

conflicts, adversity, obstruction and mistrust. To return to the Armenian example, a disconnect emerged between those who wanted to address the strategic role of mining (if any) in the future of Armenia (i.e. interested parties) and those who wanted to address the project specifics at the Amulsar mine site (i.e. affected parties).

Although there may be some commercial sensitivities, the need is to open up the discussion much earlier in the decision making chain - at the formative stage of strategic and investment decisions. This needs to establish the role of mining in the sustainable future of a country or region before a mining project is defined. It will shape how a mining investment can be designed to contribute to sustainable development. A strategy is needed that will explicitly consider how and if a mining company can contribute to the attainment of the Sustainable Development Goals (SDGs) that a host country has no doubt committed to. (WEF et al, 2016)

This strategy may result in the decision to leave the resource in the ground in some cases. It should clearly identify places where sensitivities are too high to accommodate mining, or that the confidence to successfully predict and manage all significant negative impacts are unacceptably low. This would send a clear signal to a mining company that exploration activities in such areas would be inadvisable.

That is not to say that it is not also possible (and good ESIA practice) to consider a *no mining* option at the later project appraisal stage - a safeguard in case a 'fatal flaw' emerges. However, the tendency in ESIA is, reasonably enough, to include the 'no go' option to help explain the potential benefits that a proposed mine would bring (and conversely the costs of not allowing it). However, the weight is against the 'no go' option which becomes less likely as the level of commitment and investment increases to an extent that reversing a decision would be a costly exercise.

Addressing the desirability of mining at the earliest stages (or highest levels) of decision making (policies, plans and programmes) rather than leaving it until specific projects have been defined engages stakeholders in the principles involved. This will primarily appeal to *Interested* parties. Once the principles have been established, and assuming the conclusion is reached that mining is desirable (in the right place, at the right time and for the right commodity), the progression to the ESIA stage will increasingly focus on project details and site specifics (and be of most interest to the *affected* parties).

If undertaken effectively the key direction will have been agreed and the time for debating *principles* (during project appraisal) will have passed. The framework will have been established and the debate moved on to how to put these principles into practice *responsibly*. This will not only streamline the ESIA stage but it will also reduce the instances of stakeholders talking past each other. If the principles have been agreed, there would only be need for their reconsideration should exceptional new information become available.

This is drawing a distinction between two environmental and social assessment processes that already exist: (1) Strategic Environmental Assessment (SEA)⁶ of policies, plans and programmes and (2) ESIA of projects.

SEA is a process that aims to ensure the upstreaming of environmental considerations into strategic decision making. It is a governance tool that attempts to ensure that environmental issues, and their interplay with social and economic considerations, will not be treated as an afterthought. This has the added advantage of encouraging policy consistency across different sectors reducing the likelihood of later policy inconsistencies. However, above everything else, it helps formulate a long term vision of the desired role for mining in sustainable future of a country - leaving mining companies to get on and deliver this vision *responsibly*.⁷⁸

Changing Societal Expectations

To borrow from the *mitigation hierarchy* of biodiversity, the aspiration of *sustainable* mining should be to achieve *net gain* for societal welfare and the protection of eco-system integrity. *Responsible* mining, on the other hand, tends to be primarily about ensuring *no net loss* to human welfare and eco-system integrity.

So, just as things begin to improve in terms of *responsible* mining, the goal posts are moving for mining companies! The mining sector's role in society is again being challenged.

⁶ Also labelled as Sustainability Appraisal by some authors and Strategic Environmental and Social Assessment (SESA) by the World Bank to emphasise the need to address the inter relationship between the three pillars of sustainable development (economics, social and environmental).

⁷ This was proposed to the Armenian government in a 2016 report prepared by the Swedish Geological AB et al for the World Bank (World Bank (2016)).

⁸ Armenia has been a party to the United Nations Economic Commission for Europe's (UNECE) Protocol on SEA since 2011. However, it was observed by UNECE, when reviewing Armenia's legislative progress in implementing the Protocol and the draft "EIA and Expertise" Act, that "methodological and fundamental differences between EIA and SEA (were not clearly recognised)....and need to be the starting point for differential regulation.... The provisions on SEA (should be) elaborate(d) in a form of separate Law or a separate section in the current.. Law". (UNECE 1 and 2, 2014)

Expectations are moving beyond practicing site-specific *responsibility*, to mining companies being better *partners* in *sustainable development*. *Responsibility by itself is no longer considered sufficient.*

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