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Regulating mining resource investments towards sustainable development: The case of Papua New Guinea

Jason Sing [a,b,*]

[a] Centre for Regulatory Studies, Faculty of Law, Monash University, Clayton, VIC 3800, Australia
[b] Resources, Environment & Development, Crawford School of Public Policy, ANU College of Asia & the Pacific, The Australian National University, Acton, ACT 2601, Australia

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ABSTRACT

This paper analyses the regulation of and actions taken to facilitate sustainable development in the mining sector, focusing specifically on the case of Papua New Guinea (PNG). Here, it is the landowner communities, not the government, that have shown their capability to induce unconventional "regulation". The actions taken by landowner communities can be seen to constitute a "decentralised regulatory society": they seem to be forcing larger mining companies to achieve "good corporate citizenship" in PNG, and to rethink the importance of a social license to operate.

1. Introduction

If a weak state is incapable of exercising some of its nominal power to regulate the mining industry, is some of that regulatory power then assumed by communities or by society, and if so, how? This paper seeks to answer this question, drawing upon the case of Papua New Guinea (PNG), a country that is heavily dependent upon the revenues of its extractive-mining industry, which is widely recognised as an under-regulated and thus unsustainable industry (Mathrani, 2003, p. 1). Ninety-seven per cent of PNG land is owned by Papua New Guinean (PNGean) tribal landowner communities. This has brought into question the government's ability to properly enforce conventional regulation, particularly for the mining companies that operate in remote landowner communities.

This paper contributes to the literature on mining in PNG by examining further the regulation of operations in the country. It does so by bringing to light new ideas about what regulation can actually mean. It reflects critically on the mining and development literature, identifying the desired outcome of sustainable development and examining the role that non-government actors must play to achieve this. The paper argues that the government is incapable of properly regulating the country's mining industry and, by extension, to achieve this vision of sustainable development. It is other actors that have and must continue to take up this mantle in a fragmented regulatory process.

The paper argues that the government's ability to regulate, specifically to reorientate the mining industry towards sustainability, is not particularly comprehensive. The government is unable to make the necessary changes to push mining into the twenty-first century, a time when sustainability is at the forefront of the development agenda, because its power is lacking as compared to the many other groups that are able to influence the performance of mines operating in PNG. Some mining companies are capable of making larger contributions to balanced development in PNG than others through self-regulation (Imbun, 2007). There has been an extraordinary shift in companies' self-management that has reorientated them towards acting as better corporate citizens that engage in sustainability practices. However, their abilities to regulate in the best interests of PNG's state-society are limited. This paper argues that it is the landowner communities that have the largest part to play in reshaping the regulatory context in PNG. They are the major "regulators" of the mining companies in PNG, and are more capable than other state and non-state actors of facilitating a shift towards sustainability outcomes. Their "regulation" forces the mining companies to reflect more earnestly on models of Corporate Social Responsibility (CSR), to explore ideas related to Creating Shared Value (CSV), and to look into ways of becoming good corporate citizens in order to attain social licenses to operate in a landowner community in PNG. As

* Correspondence to: Room 2.21 Stanner Building, The Australian National University, 37 Lennox Crossing, Acton, ACT 2601, Australia.
E-mail address: Jason.Sing@anu.edu.au

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will be discussed, this type of regulation cannot be characterised as conventional.

Section 2 analyses the different theoretical regulatory concepts and reflects critically on the social license to operate for mining companies. Section 3 illustrates, via four thematic case studies, how PNG society has come to be characterised by "decentralised regulation", a term coined by Black (2002, p. 30), that is leading to the enforcement of models of good corporate citizenship for the mining companies by landowner communities. Section 4 discusses the consequences of decentralised regulation, arguing that this type of regulation is above and beyond typical governmental command and control (CAC) strategy and other forms of government regulation that co-opts mining companies to gain regulatory legitimacy (Hodge, 2011, pp. 7–8). Non-government, decentralised and fragmented regulation is a mainstay in PNG.

2. Can the mining industry be regulated in a fragmented, developing and resource-dependent nation such as PNG?

The view here is that the regulation of PNG's mining industry is important if sustainable and balanced development is to be achieved. This includes the need for the appropriate use of the revenues from resource extraction. These objectives are tied into the expectations of the landowner communities which then "provide" the social license to operate for the mining industry in PNG. However, these objectives are seemingly too difficult to achieve across PNG.

Following independence in 1975 the new PNG Nation-State espoused social and environmental goals, and anchored them in its constitution. However, it shifted its focus to that of maximising the state's income through foreign investments in resource extraction ventures. Environmental concerns, social responsibilities and infrastructure became secondary priorities. It was expected that the returns and profits made by the government from its resource investments would then assist with these concerns in post-mining development initiatives as Jell-Bahlsen and Jell (2012, p. 333) explain. As a result, commercial-capitalist interests have been pursued by the government and transnational mining companies, which have often led to tensions with the landowner communities about social and environmental protections.

Furthermore, following mining and revenue accumulation, it is often the case that the government fails to ensure the equitable distribution of mineral wealth and environmental protection. This is because of ineffective collaboration between different government agencies due to intense competition and the difficulty of securing consensus among differing factions within government (Filer and Macintyre, 2006). It is also the result of corruption across the bureaucracy. At the beginning of the twenty-first century, the larger mining companies that were concerned about their reputations from working in such an environment left PNG. Notably, BHP Billiton left PNG in 2001 and Rio Tinto, in 2005. However, it was in this year that the Metallurgical and Construction Corporation of China was allowed to develop the Ramu nickel mine on the back of a ten-year tax holiday from the government. Filer (2011, p. 3) argues that this was a sign to many that the government was willing to continue down a path that undermined a balance between environmental, social and economic development goals.

As a result of a global extractive industries boom, fuelled by a surge in mineral commodity prices, many investors returned to PNG. Some mining companies followed the lead of the government and were not so scrupulous. This has created a "space" of diverging interests, as well as many differing power dynamics. Government agencies, mining services and landowner communities have all come to contribute to different forms of "regulation", allowing regulation to take on a diverse cloak within PNG.

It is important to understand how a developing country that is underpinned by weak governance structures – such as PNG – is able to "regulate" its industries. The paper particularly focuses on mining. In doing so, this section sets out three different regulatory concepts, offering some real world examples of the application of each in an attempt to gauge their relevance to PNG's mining industry. Through this, the section discerns that the landowner communities of PNG are the key regulators for mining, if, indeed, the ultimate goal is sustainability.

In PNG, landowner communities have been dissatisfied with the lack of CSV and its encompassment of sustainability, which has ultimately led the mining industry and government in the country to "lose" their social license to operate. Landowner communities have carried out "regulation" that has forced the companies and government to rethink the importance of a social license to operate if the goal is to maintain a functioning mining industry. The companies, in tandem with the government, must now carefully balance and address economic, social and environmental issues in a way that will benefit people, communities and society (after International Institute for Sustainable Development, 2004). Overall, the emphasis has been on identifying organisational decision making processes capable of anticipating, responding to and managing areas of operations through creating shared value (Imbun, 2007). As will be explained, the landowner communities place the companies under constant pressure to fulfil their commitments whilst holding them responsible for the impacts that they generate. This is achieved through increased compensation and royalties, as well as the construction of infrastructure, roads, bridges, health centres and schools.

The paper emphasises that this is a possibility – that is, for non-state actors to act as regulators of sustainability – in PNG where there is weak governance and legally enshrined indigenous landowner entitlement.

2.1. What is the place of conventional government regulation?

It is often the case that regulation is considered to be the prerogative of the state. State regulation is viewed as taking the form of CAC, based on legal rules established by the state and backed by sanctions. Conventional regulation theory suggests, therefore, that there is a significant role for the state to play. In this sense, it is "centred" regulation, which assumes the state to have the capacity to CAC, to be the only commander and controller and to be effective (Black, 2002).

This, however, poses a problem because it is increasingly understood that governments are not perfect, as demonstrated by continuing national debt, recurring budget deficits and increasing pressures to reduce public spending through the cutting of social services. This is in the face of increasing demands from communities that governments achieve more social outcomes. It demonstrates the pressure that governments are under. As a result of overload, the demands for policy and services often exceed their capacities to respond, therefore progressively weakening their authority and social license to operate (Grabosky, 1995).

The Government of PNG has been an active regulator in imposing sustainability controls on the mining industry (Viner, 1984, p. 343). It has developed a set of conservation and environmental protection laws, and it requires developers to prepare Environmental Impact Statements. However, as explained by Jell-Bahlsen and Jell (2012), the general position of the government has been that the economic benefit of mining to the Nation-State outweighs the social cost and negative environmental impact of large-scale projects. This trade-off has led to conflict between the citizens and government. The government seems willing to compromise environmental protection if it means increasing resource extraction and royalty payments.