Comments on Guiding Principles For Durable Extractives Contracts

Comment on Principle I: Strategic goals of host Government are usually defined in the documents which has no legal enforcement for license holder. The strategic goals are not intended for particular project or deposit, but it would stipulate very general vision. Therefore, it is important for both side to include provisions for shared ‘visions’. For instance, if the strategic document states that Country intend to build a copper smelter in coming Decade, the durable extractives contract should include provision for supplying copper ore to the smelter, if it’s built.

Comment on Principle II: During the negotiation it is also important to keep the confidentiality of the draft contract. Due to nature of the negotiation stage it is also important to manage the expectations. Because of the confidentiality and sensitiveness of the issue the people receive the contract as ‘surprise’. In many occasions the opposition party will use the opportunity to criticise.

Comment on Principle III: Many large scale Investment contracts left open the Local Community Development issues. Only after main contract is signed by National Government and Investor, the investor starts talk with Local Government on Local Development issues. This leaves a huge risk to the project. Therefore, the principle 3 or 2 may need to include provision that durable contracts should include as much as many local development issues or these should be discussed in parallel with local government. For example, the Government of Mongolia made an Investment Agreement with Rio Tinto in 2009, but the Local Cooperation agreement was signed only in 2014. The local community missed 5 years of benefiting from the mine.

Comment on Principle IV: The Investor who works on Large scale mining project should work as Development Agent in some way. The investor’s contribution to Policy Development, especially consulting with donor organisation on Infrastructure planning is much needed. In companies like Rio Tinto, National citizens are mostly highly skilled professionals within their sectors. It is highly recommended to include these people in the discussions without mentioning their employers name.

Comment on Principle V: It is important for the government to have Investors Financial modelling especially during the negotiations of durable extractive contracts. It is also very critical to answer the question how much role the estimates, financial modelling and other calculations, assumptions can play during the contract implementation. What would happen if there is serious issues with the ‘wrong’ modelling or calculations. How it can affect the validity of the contract?

No comments on principle VI

Comment on Principle VII: Governments should have special right to introduce new laws and regulations especially in an area of Environmental protection and international good practices. This may include introducing new laws on Mine Closure, which in turn may require substantial financial deposits.

No Comment on principle VIII
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