

Review on the Book: State Governance of Mining, Development and Sustainability

by Tracy-Lynn Field (Professor, School of Law, University of the Witwatersrand), 2019, 394 pp

Professor Field's lengthy and detailed book considers in depth the dilemma of jurisdictions in reconciling the duty of promoting mining and the obligation of regulating the industry.

The book is extensively researched, clearly reasoned, and thought-provoking. However it does not cover small-scale or artisanal mining and does not consider non-fuel extraction. Due to the difficulty of accurately translating technical and legal language, consideration is mainly given to English-speaking jurisdictions.

The central theme is the move from 'mining extractivism' (the colonial exploitation of resource-rich countries and export of unbeneficiated products, thereby enriching foreign investors with consequent meagre local benefits) to 'neoextractivism' (mineral exploitation equitably benefiting all stakeholders). Some thought is given to post extractivism (minimizing extraction and consequent environmental impact by means of reducing, recycling, and reusing).

The first two chapters present discourses for and against mining respectively. The next four consider mining rights, taxation, environmental issues, and mine closure in great detail.

It is noted that as a result of popular perceptions of mining being a dirty, dangerous, environmentally destructive industry, several international industry initiatives such as codes of practice for cyanide and tailings storage facility (TSF) management have been implemented during recent decades in order to reduce reputational risk and comply with moral obligations.

Furthermore, in many, if not most, jurisdictions, state support of 'double movement' responsibility is sadly lacking. Examples are incomplete or non-existent cadastres, inadequate geological mapping, and poor regulatory monitoring and enforcement.

The list of topics covered and examples given is extensive. For instance, among others, full elaboration is given to mining rights, regulatory uncertainty, stakeholder expectations, environmental issues, upfront impact assessments, worker health and safety, meaningful consultation, ownership 'free carry', responsible sourcing (e.g. 'green gold', 'conflict diamonds'), the resource curse, taxation models, corruption, and mine closure.

Satisfactory mine closure is identified as one of the most problematic undertakings when one considers upfront agreement on outcomes, enforcement, adequate and secure funding, change of ownership, changing legislation, time scales, post-closure remediation and so forth.

'State Governance of Mining, Development and Sustainability' makes for essential reading by legislators, state ministries, mining company boards and their executives, as well as service providers.

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