Challenges for sustainable governance in the development and implementation of comprehensive mining agreements

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This seminar …

- Makes four key arguments:
  - Inadequate attention is paid to the governance of agreements as *systems*;
  - Agreement governance should be seen as ‘intercultural’;
  - Agreement governance has to be explicitly understood and implemented as *transformative*;
  - Sustainable agreement governance needs to incorporate support for *diversity* amongst Aboriginal stakeholders.
1. Governance as an implementation issue

- Major agreements typically involve highly complex arrangements between parties;
- Negotiations and arrangements are driven by legal culture which may not account for intercultural and governance issues;
- Agreements focus on meeting / reconciling the various parties’ perceived aspirations and interests within a risk management framework;
- Implementation needs and issues are often given little attention in agreements.
Governance as an implementation issue (contd)

- Typically, agreement structures reflect and are mapped onto key issues identified in negotiations: e.g.
  - ‘certainty’ and viability for the resource developer;
  - Aboriginal rights and interests in country;
  - support of ‘culture’, cultural heritage protection;
  - environmental management;
  - financial benefits;
  - employment and training;
  - business development.
Case study: Century (GCA) Agreement

Map showing locations of Mornington Is, Normanton, Doomadgee, and Century mine.
Governance as an implementation issue (contd)

- The consequence can be that the governance of a large agreement as a system can be:
  - Unwieldy, cumbersome, and incapable of responding to changing circumstances;
  - Resource intensive (human and capital) for all parties;
  - In particular, place considerable strain on Indigenous people, communities and their organisations;
  - Be prone to failure at crucial points in the system and thus pose major risks to the interests of all parties.
2. Governance as intercultural

- ‘Intercultural’ – challenges the idea of separate, distinct, cultures (e.g. Indigenous, mainstream, mining etc);
- means that the particular arena or phenomenon draws from and in turn impacts on a number of ‘cultures’;
- Applies not only to Aboriginal structures and practices (e.g. royalty associations, work practices etc);
- Also applies to e.g. mining companies’ ‘community relations’ divisions, mine site culture etc;
- In particular, the implications of governance being intercultural need to be incorporated into both design and implementation stages of agreements.
Governance as intercultural (contd)

- How the intercultural nature of agreement governance is taken into account in design and implementation will depend upon the particular matter being considered.

- While entities such as an Indigenous representative and advocacy body, the company’s community relations division, and its mine site employment division must all incorporate a recognition of intercultural factors, different issues will arise for each.

- For example, it may be necessary to build in possibilities for different forms of Indigenous leadership to emerge across different arenas in the agreement.
Governance as intercultural (contd)

- A number of key governance arenas can be identified in mining agreements; each will have differing intercultural characteristics with important implications for their design and for agreement implementation . . .
Key governance arenas

Miners, governments etc

Governance of relationships

Intra-community governance

Indigenous communities, TO groups etc

Governance of relationships

Corporate governance

Indigenous organisations

Governance of relationships with community

Services, benefits etc

Representation, consultation etc

Governance of CR, HR, agencies etc

1

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Governance as intercultural (contd)

- Factors such as the following are relevant to defining the intercultural character of each arena for both design and implementation purposes.
  - Who/where is/are the source/s of authority as to the relevant principles of governance; e.g. to resolve disputes, to ‘declare’ what the rules are?
  - Does the institution involved have a formal, legal presence or is it a collectivity of some kind?
  - Is the governance that of a relationship between an entity and a collectivity, of relationships within a collectivity, or of an entity?
  - Does the particular governance arena entail multiplex linkages or is it relatively mono-dimensional?
3. Socio-cultural transformation

- Many major agreements based on native title claims;
  - native title obliges claimants to construct an account of their present in terms of essentially unbroken connections to a traditional past – as arising through adaptation to the wider society, not transformation by it (“traditionalism”);
  - but agreements offer possibilities for them to construct their futures through explicitly transformative processes involving engagement with the institutions of the dominant society (“modernism”);
  - Paradoxically therefore, while native title (or its assertion) can provide leverage for agreements, its legal fragility and constraints of themselves provide a poor substrate for agreements in terms of their long-term sustainability.
Transformation (contd)

- It is clear that Aboriginal people in mine hinterlands are undergoing profound & arguably accelerating change; the issue is not change, but its control & direction. e.g.
  - Major demographic changes (of which more later);
  - Destructive impacts of welfare, alcohol, poor health, etc.
  - People increasingly living off, or on periphery of, country;
  - Claimant groups living in polyglot communities, dispersed across wide regions with only intermittent contact with other members of the group;
  - Mostly living in situations where younger generations exposed to considerable diversity of values (Bourdieu: ‘doxa’ > ‘heterodoxy’);
  - Internal conflicts / politics of identity;
The demographics of transformation (1)

General Australian population

Enculturation

M F
The demographics of transformation (2)

Aboriginal population

Socialisation / enculturation

M F
Transformation (cont'd)

Such transformative factors need to be explicitly taken into account in negotiating, designing and implementing agreements: For example:

- Aboriginal authority structures and leadership domains e.g.
  - not unwittingly building in ‘cultural enclave’ principles – e.g. unchanging nature of ‘traditions’, Law etc;
  - Not building in ‘obsolescence’ e.g. ‘traditionalist’ notions of authority of ‘elders’ in domains where they may demonstrably not have such authority;
- Being alert to different principles which may operate in different governance arenas – e.g. decision making principles re ‘country’, cf those re commerce
Transformation (contd)

- Being alert to the implications of the complex interplay in Aboriginal societies between the local and individual on the one hand, and the collective or community on the other; e.g.
  - not focusing solely on ‘community’ based benefits
  - Being alert to the implications of deeply embedded enduring practices such as ‘demand sharing’ & assertive egalitarianism (e.g. in case of financial benefits)

- Being alert to the implications of the pervasive dialogue within Aboriginal societies around collective social forms in tension with the realities of localism – e.g. as shown in
  - individual entrepreneurship, stress on local group autonomy, ethical and political frameworks centred on kin groups.
4. Governance for diversity

- Most agreements have a ‘mainstream’ notion of economic development embedded in them;

- Focus on facilitating individual and perhaps family entrepreneurship and economic advancement;

- Typically however there is a wide diversity of views amongst Aboriginal people concerning legitimate ways of engaging with the dominant society;

- For long term viability of an agreement, its governance must be predicated on managing and supporting diversity in aspirations, ways of life, life trajectories etc.
Recognising diversity (contd)

- Many modern agreements do provide benefits in areas other than employment, business development etc.
  - however, these may not be of particular significance to the mining company or government;
  - their delivery may be poorly resourced and supported, and vulnerable to failure;
  - These benefits may however be seen as very significant by Aboriginal people concerned;
  - The incapacity of agreement governance institutions to manage conflicts over benefits and benefit flows can adversely impact on agreement viability.
Concluding remarks

- Agreement governance needs focused attention in negotiations, and is a critical implementation issue;
- It needs to be developed, and implemented, as a system rather than just an array of disconnected entities and processes;
- Governance capacity (for Indigenous and non-Indigenous parties) should be developed, if possible ahead of agreement implementation;
- Agreement governance should be understood as intercultural, and not designed and implemented in ‘cultural enclave’ terms;
- Agreements need to explicitly build for transformation, not implicitly support traditionalism;
- At the same time, to be sustainable agreement governance needs to facilitate diversity in Indigenous stakeholders’ goals and aspirations.