



# MINING AND GOVERNANCE OF MINERAL RESOURCES IN THE DEVELOPMENT OF THE AMERICAS



| October 18, 2022


# MINING, GOVERNANCE, AND DEVELOPMENT?

- ❑ The title of for this panel touches on themes which are crucial in determining the future of the sector.
- ❑ For starters, it suggests that mining, as a sector within the national economy, if governed effectively, can contribute to growth and help the Americas reach its development potential.
- ❑ However, that would be the case if—and only if—the sector is governed effectively.
- ❑ Regrettably, many national governments do not publicly recognize mining as a strategic sector that not only contributes to GDP but is also a vital source of investment, employment, education and skills development, and—importantly—tax revenue.

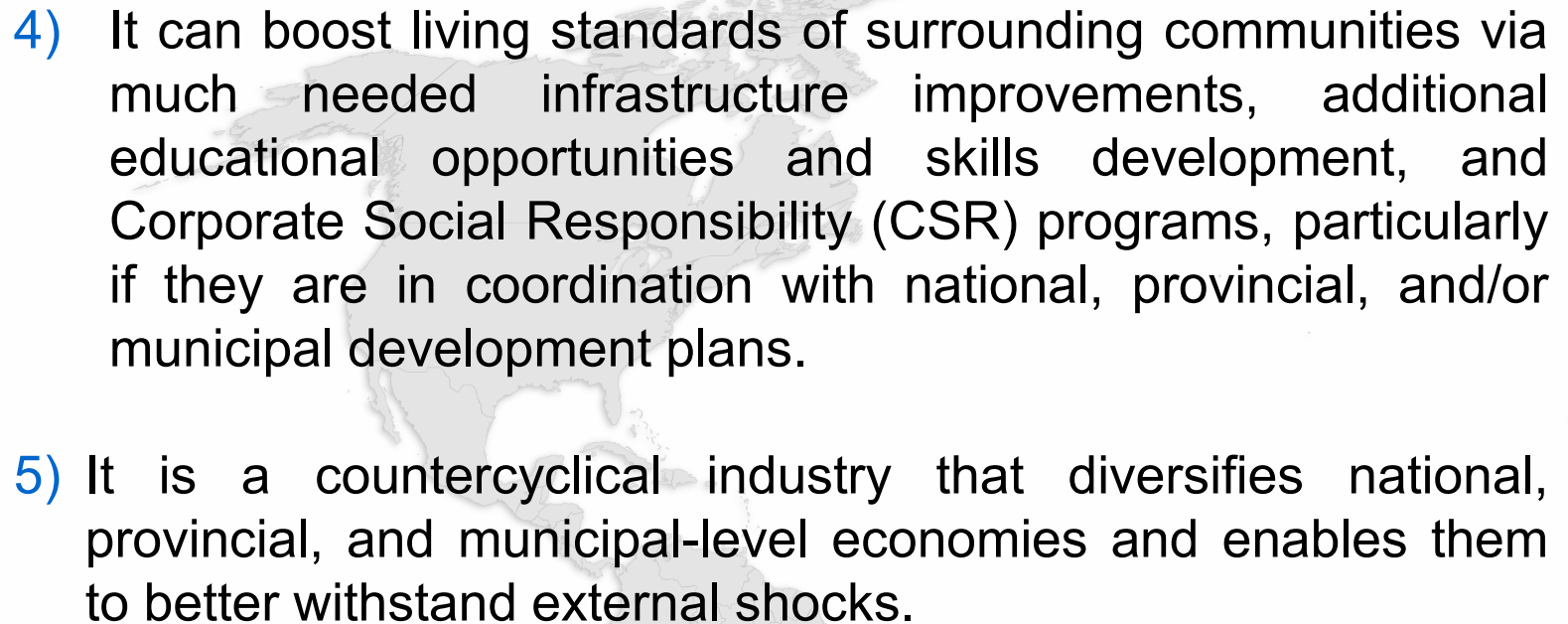
# MINING, GOVERNANCE, AND DEVELOPMENT?

- ❑ This disregard towards the strategic importance of mining seems to be almost universal and is apparent in countries both with a rich mining history and culture as well as in those with virtually none.
- ❑ The reluctance to acknowledge the importance of this sector—when called upon to do so—arises from the general misperception of mining’s environmental impact, which can be mitigated with good governance.

# MINING

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- ❑ For their part, presidents and their administrations are often reluctant to absorb the political cost resulting from this misperception.
  - ❑ The mining sector has many positive attributes:
    - 1) It injects millions of dollars in investment into national economies.
    - 2) Mining projects are usually located in remote rural areas, far from the urban, voter-dense areas that governments tend to concentrate on.
    - 3) It can generate direct and indirect jobs, in areas where jobs generation is problematic, particularly where there is unskilled labour.

# MINING

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- 4) It can boost living standards of surrounding communities via much needed infrastructure improvements, additional educational opportunities and skills development, and Corporate Social Responsibility (CSR) programs, particularly if they are in coordination with national, provincial, and/or municipal development plans.
  - 5) It is a countercyclical industry that diversifies national, provincial, and municipal-level economies and enables them to better withstand external shocks.

# GOVERNANCE

- ❑ While one would assume that governments would be entirely in charge, effective governance of the mining sector falls within the purview of both the government and the mining companies.
  
- ❑ ***Governmental governance requires***
  - 1) Sound regulatory frameworks
    - a) Effective oversight
    - b) Help identifying the stakeholders
    - c) Appropriate royalty levels
    - d) Transparent distribution of tax revenues to impacted communities
  
  - 2) Institutional capacity
    - a) Institutional structure (e.g., no mining cabinet or split cabinet portfolios)
    - b) Qualified cabinet ministers and ministry officials

# GOVERNANCE

- c) Sufficient budgetary allocations for
  - i. oversight
  - ii. ongoing training of technical mining and environmental personnel
  - iii. accurate communication on the importance of the sector to everyday citizens
- 3) “Rational corruption,” if corruption is endemic
  - a) Political leadership with integrity
  - b) Ethical decision-making
    - i. awarding concessions based on merit and not to shell corporations created at the 11th hour, or to dubious “juniors”
- 4) A president and administration willing to stand up for the sector, when appropriate

## SOCIAL LICENSE TO OPERATE

- ❑ The term Social License to Operate (SLO) was first coined in 1997 and then developed in the mining industry as “a metaphor for the level of acceptance of a project among communities, stakeholders, and the public.”
- ❑ It is important to recognize that “Social License” does not necessarily imply unanimous agreement within affected communities.
- ❑ The term “Social License” is synonymous with the concept of public or indigenous consultation, under ILO Convention 169 (or C169).
- ❑ While many countries in the Americas have signed C169, few countries have the regulatory frameworks to regulate such processes.
- ❑ Hence, many actors have exploited C169 to thwart mining projects.



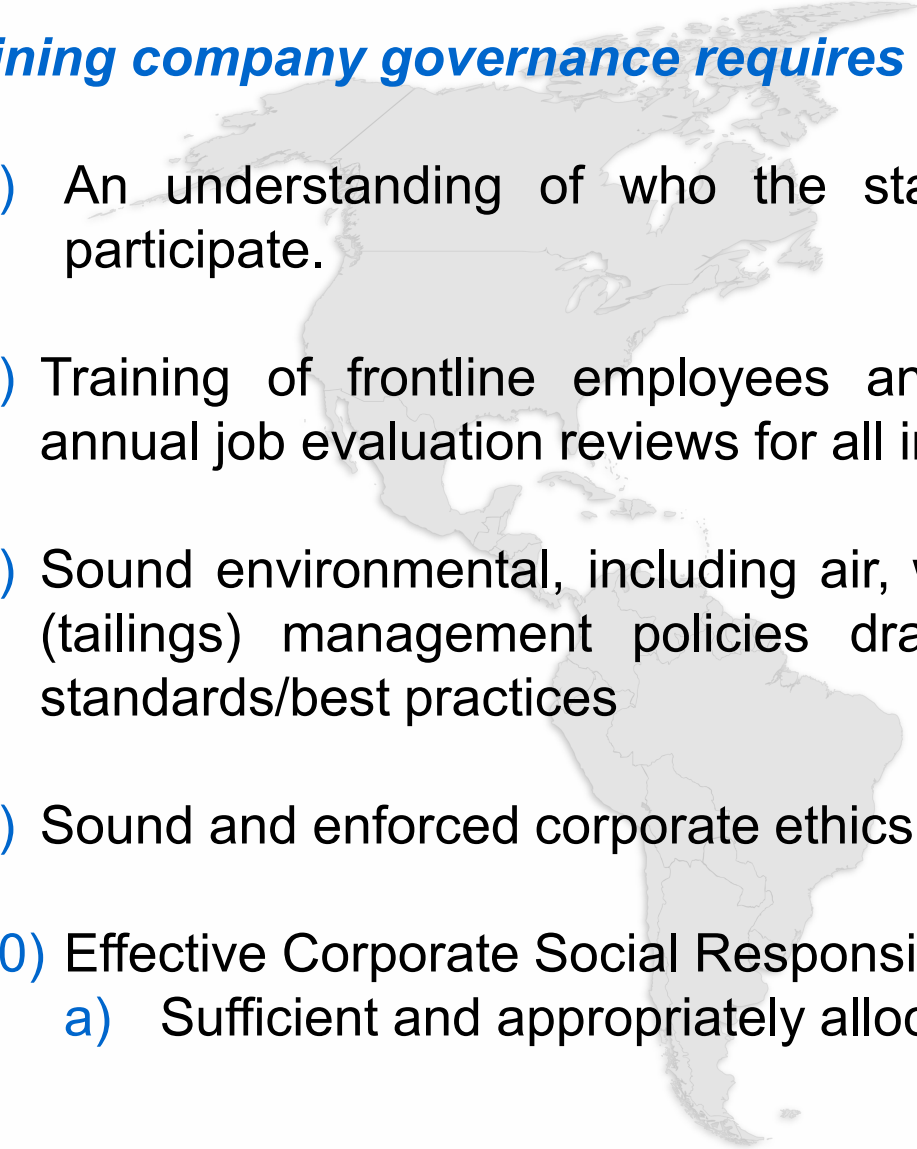
# GOVERNANCE

## □ *Mining company governance requires*

- 1) Social License to Operate (SLO) should be a major objective, with constant reinforcement of SLO vs. mere lip service.
- 2) A hands-on approach, where SLO is not delegated to consultants.
- 3) Effective oversight by board of directors and senior management teams (guided by independent feedback).
- 4) Competent and committed senior management team.
- 5) A well-defined view of what is meant by SLO, and a method to measure implementation and success.

# GOVERNANCE

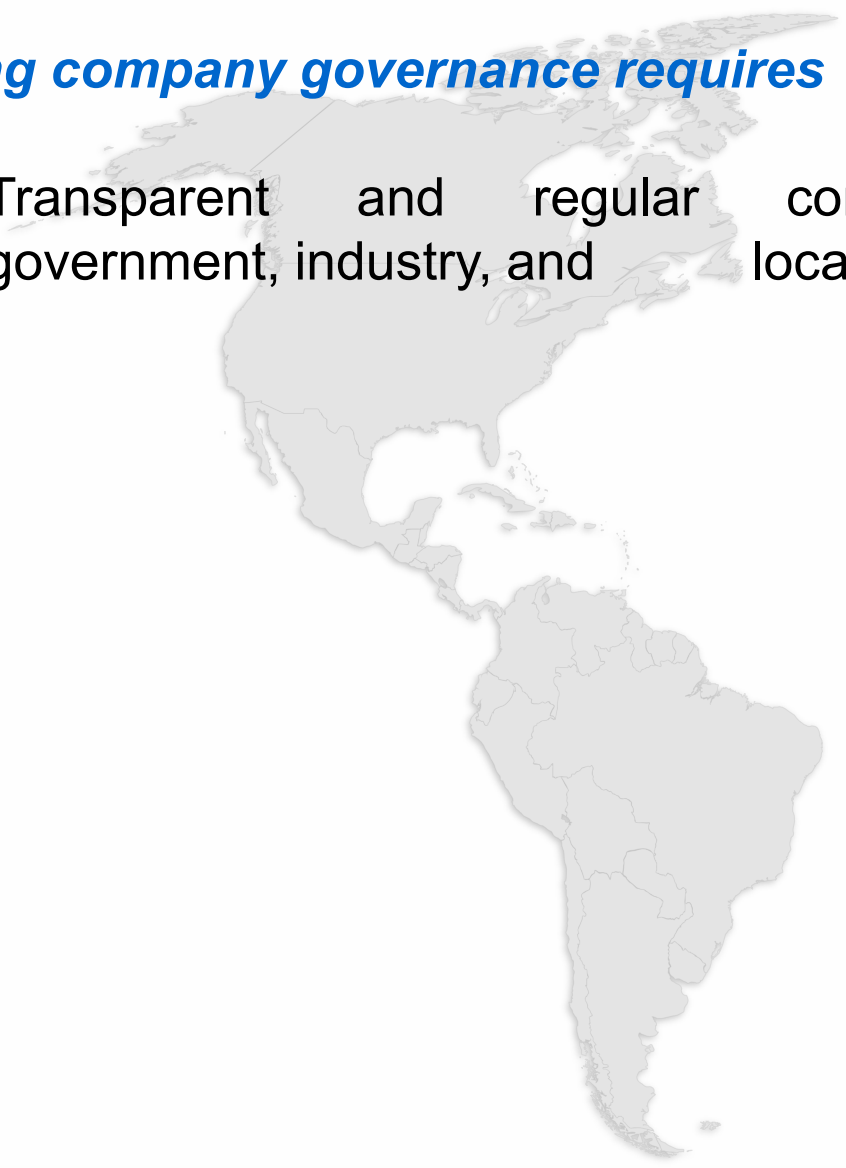
## ❑ *Mining company governance requires*

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- 6) An understanding of who the stakeholders are that will participate.
  - 7) Training of frontline employees and making SLO part of annual job evaluation reviews for all involved employees.
  - 8) Sound environmental, including air, water and waste storage (tailings) management policies drawing from international standards/best practices
  - 9) Sound and enforced corporate ethics policies
  - 10) Effective Corporate Social Responsibility (CSR) programs
    - a) Sufficient and appropriately allocated budgets

# GOVERNANCE

## ❑ *Mining company governance requires*

- 11) Transparent and regular communication between government, industry, and local stakeholders.



# THE THREATS POSED TO SOL / GOVERNANCE

- The concept of Social License has, however, been misrepresented by actors who use the provision to stall operations to extort mining companies, or by the following parties, with other illicit motives:

1) **Legitimate local landowners** who want to extract a greater settlement payment from the mining company.

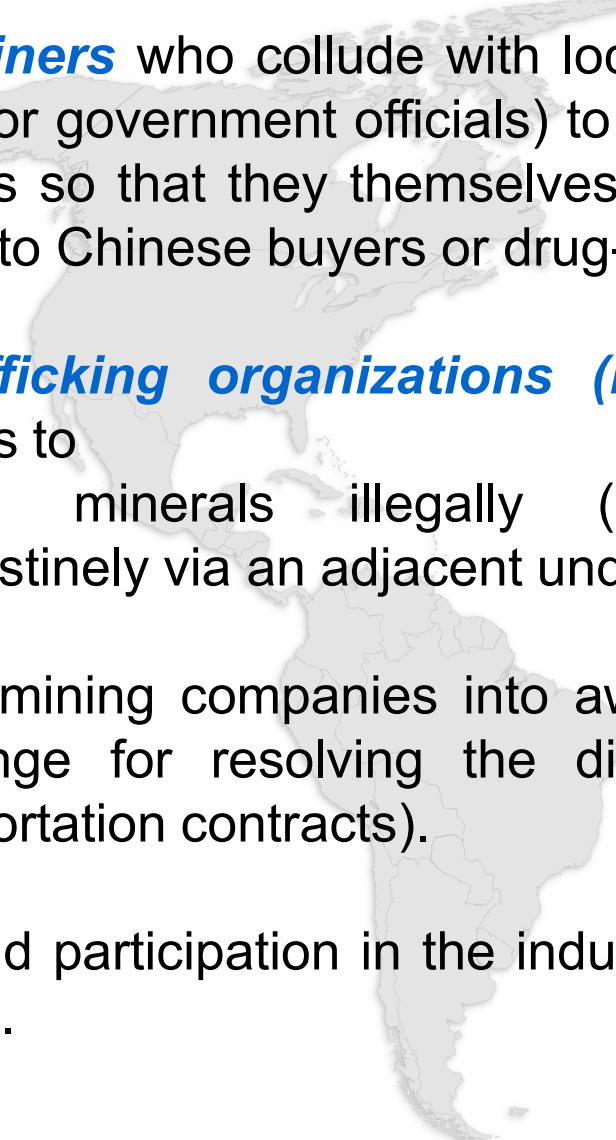
2) **Labour unions** that claim a labour dispute and contend that a project does not have a SLO, erect a blockade, and do not acquiesce until they obtain certain concessions or a percentage of the settlement payment.

3) **“Intermediaries”** that include the following:

- a) Governmental or nongovernmental
- b) Local or outside actors

**Who encroach on landowners to provide “advisory” services in exchange for a % of the settlement**

# THE THREATS POSED TO SOL / GOVERNANCE

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- 4) **Illegal miners** who collude with local or outside actors (e.g., agitators or government officials) to stall concessioned mining operations so that they themselves can extract minerals and sell them to Chinese buyers or drug-trafficking organizations.
  - 5) **Drug-trafficking organizations (DTOs)** that have stalled operations to
    - a) extract minerals - illegally (i.e., theft), sometimes clandestinely via an adjacent underground concession.
    - b) extort mining companies into awarding them contracts in exchange for resolving the disputes (e.g., security or transportation contracts).
    - c) demand participation in the industry for their own financial benefit.

## 6) *Chinese model versus the Publicly Traded Mining Companies model:*

- a) Publicly traded mining companies trade in the New York Stock Exchange (NYSE) and/or the Toronto Stock Exchange (TSE) and must comply with securities laws / disclosure requirements, local laws, international mining standards, and foreign corrupt practices laws, which many Chinese “companies” that are not publicly traded do not adhere to.

This may explain, in part, why Chinese-owned operations have less stringent company oversight and require enhanced governmental oversight.

Even if Chinese-owned companies are publicly traded, many major ones announced in August 2022 that they would be de-listing from the NYSE, which translates into

# THE THREATS POSED TO SOL / GOVERNANCE



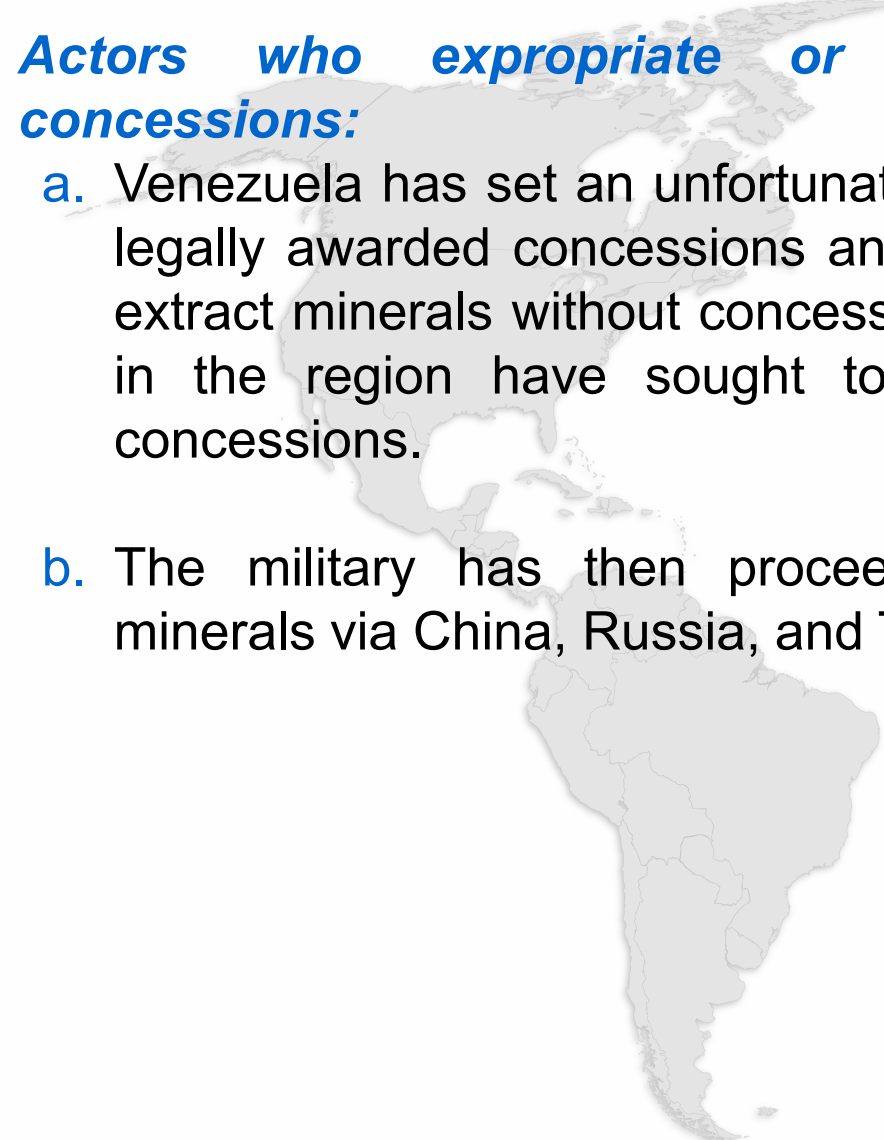
less transparency, less accountability, and less compliance with regulatory frameworks and international standards.

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The clash between business models (closed vs. open) is as consequential as the clash between governing models (authoritarian vs. democratic); particularly when considering mine safety, the imposition of Chinese workers vs. local workers, and environmental standards.

# THE THREATS POSED TO SOL / GOVERNANCE

## 7) *Actors who expropriate or usurp legal mining concessions:*

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- a. Venezuela has set an unfortunate precedent, by usurping legally awarded concessions and enabling the military to extract minerals without concessions. Some governments in the region have sought to usurp legally awarded concessions.
  - b. The military has then proceeded to “launder” these minerals via China, Russia, and Türkiye.



# THE COSTS OF HAVING OR NOT HAVING AN SLO PSI

Real World Results

- The costs associated with attaining and maintaining the Social License to Operate can vary depending on the type of opposition and the institutional strength/capacity of the national government.
- 1) ***No Social License to operate:*** If a mining company does not obtain an SLO, it may fail to generate revenue, and ultimately have to put the mining projects in “care and maintenance” or to sell the assets.
- 2) ***Recurrent Social License to operate:*** If public and stakeholder opposition is opportunistic—never reaching long-term agreement and perpetually on the lookout for further gains—the costs of that opposition can be considerable, and projects will not be profitable or sustainable over the long term.

# THE COSTS OF HAVING OR NOT HAVING AN SLO PSI

Real World Results

- 3) ***Enduring Social License to operate:*** If the public and stakeholder opposition is rational and stable, companies can attain an SLO and ensure that project time lines and budgets are realistic and factor in ongoing community consultation, engagement, and investment.

# WHY EFFECTIVE GOVERNANCE MATTERS?



# WHY EFFECTIVE GOVERNANCE MATTERS?

- ❑ The COVID-19 pandemic has demonstrated why good governance matters: various critical sectors of national economies were decimated as governments struggled to sustain their economies and generate the necessary tax revenues to help mitigate this deadly external shock.
- ❑ The Pueblo Viejo Mine example of advancing tax dollars to offset some of the COVID impacts on public health and the economy is a good example of how mining can help.
- ❑ Another external shock already wreaking havoc on many nations is the environmental, physical, and social impact of climate change.

# WHY EFFECTIVE GOVERNANCE MATTERS?

- Unless there is strengthening of formal economies—with mining playing a vital role as a countercyclical industry—governments will not have the requisite revenue to adapt, mitigate, or recover.***
- Good governance cannot allow informal economies to capture the mining sector for the illicit enrichment of a few and at the expense of the greater public good.***



# Thank You

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